

## Who Assists Irregular Migrants in Poland and at What Cost? A Court Files' Analysis of Convictions of Facilitating Unauthorised Stay of Migrants<sup>1</sup>

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The aim of the article is to present one of the facets of the state's approach towards irregular migration, namely identification of and reaction of the law enforcement and judiciary to the offence of facilitating or enabling unauthorised stay of another person and gaining personal or material profits from it (introduced to the Polish legislation in 2004). Based on the analysis of court files of 243 criminal cases, we indicate forms of facilitation of unauthorised stay (with predominance of document frauds) and analyse the features of the constitutive elements of the offence, i.e. facilitators, persons whose stay is enabled, and profits. We conclude that among convicted facilitators there are those whose intentions were far from enabling the stay of another person and actual facilitators often remained unidentified. We also point to doubtful court decisions, in particular those regarding undetermined profits and recipients or recipients sentenced as facilitators. Thus, we prove that despite the declared prioritisation of irregular migration as a problem to be tackled in Poland, the practice of the law enforcement agents and the courts reveals a determination to

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achieve easy targets, following known paths, as well as abandoning areas that require more attention and possibly also efforts.

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## Introduction

Around 2015, cross-border mobility and the diversifying structure of immigration to Poland became an issue of public interest which resulted in questions of security being placed at the very centre of the government's migration policy. This was followed by an increased focus on control activities and declaratively more efforts made to prevent uncontrolled, irregular migration (see e.g. Szulecka 2019: 46; Łodziński, Szonert 2017). This also resulted in a significant limitation of access to asylum procedures at the eastern border (though declared illegal by international courts and experts<sup>4</sup>, being constantly in place since at least mid-2015; Szczepanik 2018)<sup>5</sup> and contributed to perceiving non-nationals as a potential threat and source of social tensions (see e.g. Klaus 2017; 2020).

Although in public and political debates immigration became perceived as a security issue and associated with the so called refugee crisis in the EU (which never "affected" Poland as a country) (Klaus et al. 2018), in reality migratory phenomena have been predominantly connected with the economy and a growing number of migrant workers being offered both permanent and temporary jobs by employers in Poland. Moreover, the presence of economic migrants has been encouraged by relatively liberal policies in this respect. At the same time, though, policies and practices of admitting asylum seekers have become more based on deterring practices (Klaus 2020).

Importantly, the focus on preventing irregular migration has always constituted a significant element of Poland's migration policy<sup>6</sup>, even at times when the scale of migrants' inflow to Poland was insignificant. To some extent, such a focus resulted

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<sup>4</sup> Border Guard officials seemed to turn a deaf ear to requests for international protection made by individuals who reached the Polish border. Such individuals were denied entry and sent back to Belarus, the practice of which has considerably reduced the number of asylum seekers in Poland in recent years (Klaus 2017; 2020). The "push backs" observed at the border were considered illegal by both national (see e.g. Białas et al. 2019) and international courts (see the judgement of 23.07.2020 of the European Court of Human Rights, the case "M.K and others v. Poland").

<sup>5</sup> Depriving asylum seekers of the possibility to apply for international protection has been presented by the authorities as a way of preventing irregular migration in the wider EU context, i.e. preventing asylum seekers from clandestinely entering other EU countries (Szulecka 2019: 44,54).

<sup>6</sup> Understood as the state's approach towards migratory processes, not necessarily the written document. In fact, such a document has been accepted as binding by the government only once in Poland's contemporary history (in 2012; for details of the written policy see: Zespół do Spraw Migracji, Ministerstwo Spraw Wewnętrznych 2012). However, the document was repealed in October 2016, a year after the political powers in Poland changed. The declared reason referred to new challenges related to migration in the global and the European context.

from the transit character of Poland, especially in the 1990s. Part of this kind of mobility was based on irregular practices, including the facilitation of illegal border crossings or offering assistance to migrants trespassing Poland without proper documents to do so. Transit mobility through the territory of Poland in the 1990s was also associated with human smuggling and trafficking in persons, especially women exploited in the European sex businesses (Jandl 2007; see more Okólski 2000; Siron, Van Baeveghem 1999: 21–57).

There is an extensive body of literature about illegal border crossings and their facilitation in the Polish context (Klaus, Woźniakowska-Fajst 2015; Perkowska 2013; 2017). In this paper, we would like to focus on another type of facilitation of irregular migration, namely facilitation of unauthorised stay of immigrants. This type of offence, which assumes support for irregular migrants, was introduced to the Polish criminal code in 2004 as an effect of the compulsory implementation of the European *acquis* during the process of Poland’s accession to the EU (Vermeersch 2005). And even though more than 15 years have passed since that moment, this crime has never been a topic of criminological analysis.

Our paper aims to fill this gap. We would like to present the various forms this crime takes in practice, or – to be more precise – how human behaviours have been construed by law enforcement agents and courts to meet the legal criteria of this crime. Sometimes, in our view, the realms of applying the provisions in this respect contradict the very letter of the law. The identified forms of the crime include marriages of convenience, false declaration of fatherhood, document frauds, commissioning of work to irregular migrants or unlawful transit through Poland. All of them will be presented in our paper. In addition, we outline the characteristics of people involved in these processes – those sentenced for this crime and those who were not despite their involvement. Throughout the paper we try to expose at least two phenomena: (1) the illegalisation of immigrants, especially those in semi-legal situations, and (2) the criminalisation of unwanted groups of immigrants. Our analysis involved the study of court cases in which the crime of facilitation of unauthorised stay was legally confirmed. The presentation of the findings is preceded with a theoretical background and information regarding the phenomenon of irregular migration in Poland. This is followed by an explanation of the process of criminalisation of the facilitation of unauthorised stay.

## **Irregular migration – policies towards the phenomenon and people behind it**

There is a long list of terms that irregular migration is described with (like “undocumented”, “clandestine”, or “illegal” – to name just the most popular ones), and situations that are encompassed by those terms including processes of entering the

country and different forms of “illegalisation” on the territory (Castles et al. 2012: 122–123; Triandafyllidou, Bartolini 2020: 15–16). There is also a grey (or fluid) sphere of semi-legality – when not all legal requirements to stay and work are met by the person (although some are) (Kubal 2013; Triandafyllidou, Spencer 2020), and in fact it is up to the law enforcement or other officials to confirm or deny the legality of stay. This happens, for instance, in the course of regularisation programmes, when the authorities decide whether hitherto unauthorised stay can be legalised. The opposite process is observed when a marriage of convenience is detected within the legalisation procedure – a marriage declared bogus by the state implies the illegalisation of a foreigner’s stay (their legality is denied). Although the basic policy instrument towards irregular migrants is to expel all those deemed “undesirable” from the country (on a voluntarily basis if possible), for a number of reasons, some countries are unable to do it effectively (Leerkes, Van Houte 2020). As a result, “non-deportable” migrants or migrant groups are tolerated by the authorities and eventually get the possibility to legalise their previously illegalised stay (Düvell 2006).

Tolerance of irregular immigrants within the country has its limits and is usually connected with random harassment of irregular migrants by law enforcement (by stop and search practices, imposing fines or other administrative measures on them). This process is part of policies widely implemented in the Global North that are called criminalisation of immigration or crimmigration (Guia et al. 2013; Stumpf 2006). Those policies include *inter alia* deploying criminal law to control immigrants and criminalising certain activities that constitute parts of the very process of migration, such as border crossings, work or stay on the territory of the country. Even if such activities were previously identified as not compliant with the law, only administrative measures were imposed on people who breached the provisions at that time. However, it has been changed recently and criminal sanctions have been introduced instead of administrative ones (Franko 2020). Notably, not only are immigrants targeted by this policy, it also affects people who help them – *pro bono* (for humanitarian reasons), for profit or for other reasons (Macías-Rojas 2016; Webber 2017).

The irregular status of migrants – theoretically beyond the control of any authorities – results in the fact that the number of immigrants in such – usually hidden – position is difficult to count. A global estimation shows that they represent between 10 and 15% of all immigrants (Castles et al. 2012: 117). But those numbers significantly differ depending on regions and even from country to country. In the case of Poland, for many years now all indicators of irregular migration (detected unauthorised border crossings, unauthorised stays or work, return decisions issued) have confirmed a very low scale of the phenomenon, especially in the light of Poland’s transition into an immigration country (Klaus, Szulecka 2018; Szulecka 2016). According to a very recent estimate, based on indicators of migration control, in 2019 the number of irregular migrants in Poland amounted to 15,000–20,000 foreigners, which would mean that those apprehended by the Polish Border Guard account for

around 15–20% of the total (Beręsewicz, Pawlukiewicz 2020: 1). Those numbers are significantly lower than the ones provided between 2008 and 2012. In the latter year the last regularisation programme in Poland was conducted. The estimated numbers of irregular immigrants amounted to a few tens of thousands, including 15,000 irregular migrants from Vietnam and Armenia (Krajowy Punkt Kontaktowy Europejskiej Sieci Migracyjnej w Polsce 2011: 59) or ranged between 50,000 and 300,000 persons (Vogel 2009). Importantly, the given estimations lacked solid explanation of the counting method.

The results of regularisation programmes<sup>7</sup> imply that the lower numbers as closer to reality, with a reservation that estimates referring to hundreds of thousands of irregular migrants may apply to the situation of “semi-legality” (Kubal 2013; Ruhs, Anderson 2006), especially undeclared work undertaken by migrants having valid documents authorising them to stay in Poland (see also Klaus, Szulecka 2018: 376). In fact, the most common “irregularities” observed by both the state’s administration and researchers have been associated with undeclared work performed by migrants. Another irregularity associated with the discussed phenomenon are document frauds, and more specifically – obtaining visas or residence permits fraudulently. Documents obtained under false pretences, as the state’s administration claims, are used to enter Poland or the EU to undertake activities that are often non-compliant with the ones declared upon applying for visas or residence permits (Perkowska 2013: 105–111; Szulecka 2016: 245–265). Another phenomenon that differentiates Poland from most western EU member states is the fact that among irregular migrants we can hardly meet “failed” asylum seekers. Those either keep trying to obtain international protection and finally manage to legalise their stay (through getting permits for tolerated stay or due to humanitarian reasons) or leave the country – traveling further to other EU countries or going back home (on a voluntary or forced basis) (see also Szulecka 2016: 236–237).

In general, the reflection on preventing irregular migration in Poland refers more and more to other actions than protecting borders from illegal crossings. Since Poland’s accession to the EU and the Schengen zone, the external border shared by Poland has been considered well secured and difficult to cross outside of the border crossing points, especially at the border sections with Belarus and the Russian Federation<sup>8</sup>. In the latter cases, the attitude to border protection of neighbouring countries’ border services – having a rather restrictive character – cannot be ignored as those countries protect people from leaving their territories illegally, what is usually an attribute of authoritarian states (Stola 2012: 46–48). Therefore, the relative tightness of the eastern Polish border is the result of not only the EU focus on securing the

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<sup>7</sup> There were three regularisation programmes: in 2003, 2007 and 2012. Approximately 15,000 applicants were reported in these programmes and around 7,000 immigrants obtained permits for stay in Poland on this exceptional basis (see more Fagasiński et al. 2015).

<sup>8</sup> With Kaliningrad oblast.

external border and preventing undesirable mobility, but also of Poland's geopolitical position, with the common past of Poland and ex-USSR republics including strict border protection systems, which in some places have been recently modernised and reinforced<sup>9</sup>.

## The criminalisation of facilitating irregular migration

Before presenting the findings from the analysis of court files, including sentences for facilitating the unauthorised stay of immigrants in Poland, it is necessary to shed light on the legal framework of the analysed provision. It is a matter of fact that irregular migration is the consequence of restrictions envisaged within migration policies. Needless to say, the more requirements immigrants (be they forced or voluntary) struggle to satisfy, the more probable it is that they choose modes of migration in which legal requirements are circumvented. This is especially so if they can expect support in this, most often provided on a for-profit basis. The mentioned requirements, rules, limits, barriers (sometimes also privileges) and modes of examining whether the behaviour of various parties is compliant with the rules on crossing national borders and staying on the state's territory constitute migration control.

How does Polish legislation with regard to penalising and controlling undocumented migrants look against the presented backdrop? Among provisions tackling irregular migration, those relating to illegal border crossings are the oldest legislation on migration on the Polish territory and date back to mid-19<sup>th</sup> century. The crime of crossing the border in places other than designated for this purpose or without the required documents appeared in Polish legislation in 1926 and featured there in a roughly unchanged form until 2005, when it changed its status to a misdemeanour (individual illegal border crossing). Two other forms of illegal border crossing, both introduced in 1997, remained classified as offences. These forms include organising illegal crossings for other persons (in other words, being a smuggler of persons) and illegal border crossings with the use of violence, threats and deception or in cooperation with other persons, i.e. as a group, when the group plans the crossing together (Klaus, Woźniakowska-Fajst 2015).

The offence assuming for-profit facilitation of unauthorised stay (art. 264a of the Polish Criminal Code – hereafter PCC) was introduced to Polish legislation in 2004, upon Polish accession to the EU<sup>10</sup>. Its states that anyone who, for financial or personal benefit, enables or facilitates another person's stay in the Republic of Poland in breach of the law, is liable to imprisonment from three months to five years

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<sup>9</sup> See e.g. information about observation towers built along eastern border in 2019 (InfoSecurity24 2019).

<sup>10</sup> Article 1 subsection 6 of the Law amending Criminal Code – *Ustawa z dnia 16 kwietnia 2004 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw* (Dz.U. Nr 93, poz. 889 z późn. zm.).

(art. 264a § 1 PCC). Importantly, extraordinary mitigation of punishment or even absolute decree may be applied in exceptional cases when the offender has not received financial benefits (art. 264a § 2 PCC). This, however, remains at the courts' discretion.

A few elements of this provision should be highlighted before the outcomes of the court files' analysis are presented. First of all, Polish legislation envisages punishment for persons who provide assistance that facilitates or enables irregular migrants' stay in Poland, if such assistance brings either financial or personal profit (or both). This general clause offers a broad scope of interpretation, which is very interesting from an analytical point of view, but for persons convicted of this offence may mean criminal liability in circumstances not easily identifiable as leading to crime-related support for irregular migrants. Moreover, personal gain is an extra element added by Polish lawmakers, not required by European law that obliges member states to elaborate provisions tackling facilitation of unauthorised entry, transit and stay. Article 1 (subsection 1.1 b) of the Directive 2002/90/EC<sup>11</sup> requires every country belonging to the EU to pass proper legislation stipulating sanctions towards every person who consciously, on a for-profit basis, facilitates a third country national's stay on the territory of any EU country in a way infringing immigration law in this country. Therefore, the Polish provision in this respect is wider – it assumes criminal liability of persons who benefit also personally. And what is more, Polish provision does not address the issue of deliberate intent of facilitation. It means that if behaviours of individuals were aimed at other things than assistance in the unauthorised stay of an immigrant, but the court perceives them as punishable under article 264a PCC, the person may be convicted under this provision (which was clearly confirmed by our analysis presented below).

Another form of criminalising irregular migration is linked with sanctions for employers hiring immigrants who lack proper documents to stay on the territory of the country. Roots of state provisions in this respect may be found in the so-called Employers Sanctions Directive (2009/52/EC)<sup>12</sup>, which was implemented in Poland in 2012. In fact, laws introduced along with the implementing act<sup>13</sup> remain firmly dead, with no criminal proceedings ever having taken place using them. It stems from the awkward wording of the provisions, making them difficult to apply in practice (Śtubik 2014). The fact that these provisions are not used in practice by no means proves that the phenomenon of employment of undocumented immigrants does not exist

<sup>11</sup> Council Directive 2002/90/EC of 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence (OJ L 328, 5.12.2002, pp. 17–18).

<sup>12</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third Country Nationals (OJ L 168, 30.6.2009, pp. 24–32).

<sup>13</sup> Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej (Dz. U. poz. 769).

in Poland. However, its scale is probably lower than the scale of semi-legalities of work and stay of immigrants in Poland (see also Keryk 2018). This, together with the possibly low level of detection of cases eligible to be processed under provisions on sanctions for employers, results in the fact that the law is practically not used. Meanwhile, commissioning work to irregular migrants may be sanctioned under other provisions, either criminal, or administrative.

## **Methodological issues and basic characteristics of the sample**

The basis for our analysis is the study of court files conducted between 2018 and 2019. To determine the size of the sample for the research regarding this crime we approached the National Criminal Register (an office that collects and processes information about all convictions) and asked for data of all perpetrators convicted under article 264a PCC between 2004 (when it was introduced to the law) and 2017. Since the total number of cases for this particular crime accounted for 287 (proceeded in 112 courts), we decided to apply an exhaustive sample and approach all courts with the request to access the files for further examination. Having in mind the fact that not all court files would be available for research purposes (e.g., due to ongoing procedures or denied access to court files), we expected that the final sample would be smaller. Indeed, the number of analysed cases was slightly lower (243), but still constituted almost 85% of all cases concluded by Polish courts in the mentioned period. Altogether, 499 perpetrators were sentenced for the facilitation of unauthorised stay in the mentioned 243 cases.

The court files were analysed with the use of qualitative and quantitative techniques. We distinguished five main forms of committing the offence:

- arranging marriages of convenience or taking part in such;
- false declaration of fatherhood;
- document frauds;
- assistance in an illegal border crossing and transit through Polish territory, and
- commissioning work to migrants lacking valid documents authorising them to stay in Poland.

The majority of the cases involved one form of the offence. Part of them, however, related to facilitation that included a combination of two or more forms. Some encompassed one of the main forms (from the list above) and other – less common – forms of support (e.g., providing migrants with food). Among the studied cases, facilitation involving document frauds was the most frequent – sometimes accompanied by facilitation through marriages of convenience or false declaration of parenthood (see Table 1).

Table 1

The share of forms of facilitation of unauthorized stay in the sample (N=243)

Form of the offence	Number of cases (% of the sample)
Document frauds or obtaining documents fraudulently	90 (37%)
Marriage of convenience – arrangement or participation	49 (20.2%)
Assistance in an illegal border crossing and transit through Poland	31 (12.8%)
Commissioning work and providing accommodation to an undocumented migrant	30 (12.3%)
False declaration of parenthood	11 (4.5%)
False declaration of parenthood and document fraud	9 (3.7%)
Marriage of convenience and document fraud	8 (3.3%)
Commissioning work to an undocumented migrant	5 (2.1%)
Commissioning work, providing accommodation and food to an undocumented migrant	5 (2.1%)
Providing accommodation	4 (1.6%)
Document fraud, commissioning work and providing accommodation to an undocumented migrant	1 (0.4%)

Source: Own elaboration

For analytical purposes, we distinguished two roles in the studied cases: (1) the perpetrator – the person who facilitated the stay of an immigrant and (2) the recipient – the immigrant who benefited from this facilitation. In theory (and according to the legal definition), these two groups should be separable and intersections between them should not be possible as the offence concerns the facilitation of stay of another person. Surprisingly enough, in the studied courts' decisions we found that 10% of perpetrators were sentenced for the facilitation of unauthorised stay for themselves, which constitutes illegal practice (see more details below, in part devoted to perpetrators).

Despite the large volume of both qualitative and quantitative data obtained in the study, in the article we refer mostly to quantitative outcomes of the analysis to show the broad picture of the phenomenon as reflected in the juridical practice. We describe in a more detailed manner only selected cases, representing the most common forms of facilitation revealed in the study, i.e. document frauds and marriages of convenience and assistance in illegal border crossings. We refer to them also because analyses of these three forms raised various questions regarding migration control in Poland, especially linked to admission to the labour market, as well as circumstances in which irregular immigrants look for support in having their stay facilitated and the context in which the involvement of facilitators is detected.

The results of the study presented below are organised around the main elements of the offence that have to be determined by the law enforcement and then serve the courts to adjudicate certain cases. These elements include: forms of the offence, characteristics of facilitators and recipients, motives and profits gained. Although the analysis provokes many legal questions, concerning e.g. how such cases are adjudicated, what sanctions are imposed, how the legal provisions are interpreted by judges, to what extent the case law is coherent, in this article we focus on more sociological aspects of the criminalised phenomenon. We refer also to the relation between facilitators and recipients as well as the interpretation of profits offered to or gained by facilitators. These issues raised doubts about the criminal character of the assessed behaviours.

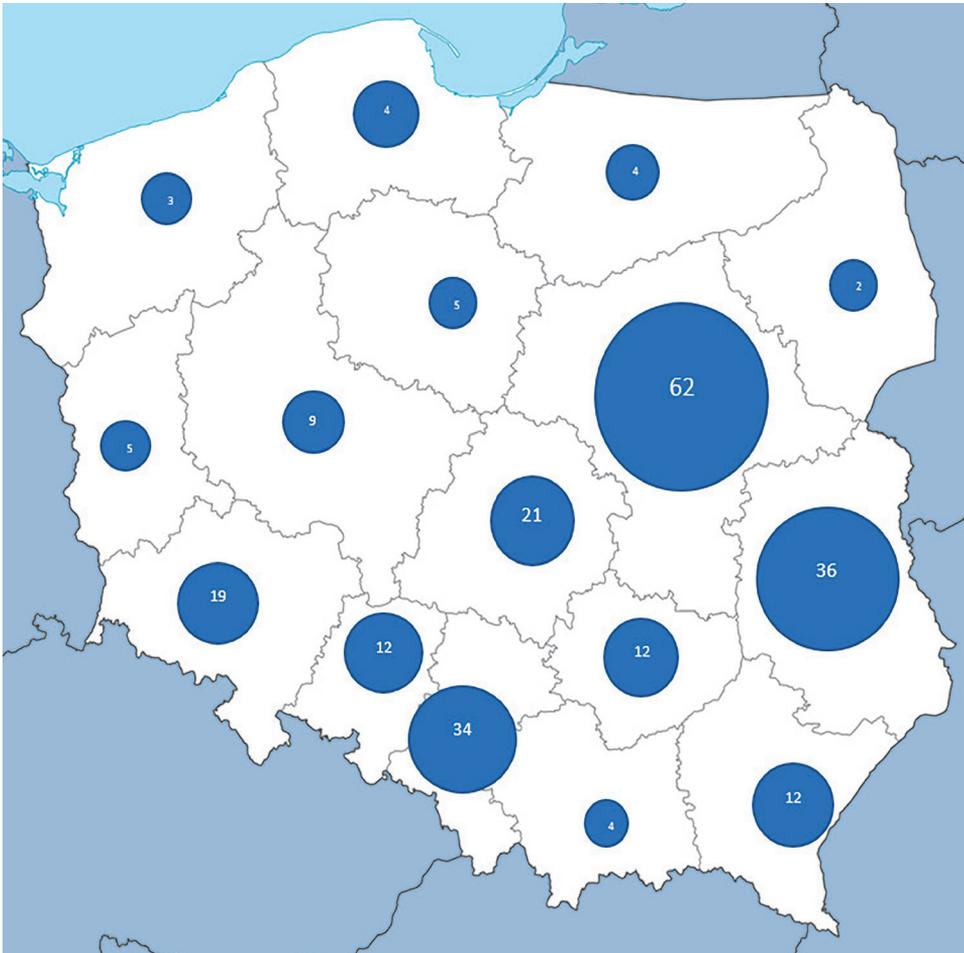
## **Detection of facilitation or enabling unauthorised stay**

Importantly, the presented information comes from court files, which may be quite limited. It is especially true – from the court’s point of view – for simple or obvious cases or cases when the perpetrator or the recipient is absent, had already left Poland voluntarily or on a forced basis (e.g., due to expulsion following unauthorised stay). Therefore, despite applying an exhaustive sample of cases, we cannot offer a full picture of the phenomenon. As official migration statistics do not fully reflect migratory phenomena, the content of all court files does not offer complete knowledge of the phenomenon involving facilitation or enabling migrants’ stay in breach of the law. The presented picture is rather a reflection of who attracted attention of law enforcement agents and what situations were identified as criminal.

It leads to questions whether control institutions are really interested in detecting facilitators or if they do it “by accident”, “by the way”; whether they rely on help of the society or institutions encouraged to cooperate (Klaus and Szulecka, 2021). It also provokes the question whether facilitators being foreigners themselves are more prone to be suspected of and then sentenced for the offence than Polish citizens. In other words – whether the issue of prejudice based on nationality (or ethnic origin) plays a role in apprehension and initiation of criminal proceedings and how discretionary the entire procedure is. Practices of nationality profiling were proven in other countries (Dekkers et al. 2019; van der Woude, van der Leun, 2017) and it is possible that they also function in the Polish context. The issue of detection also implies a reflection about the roles in the facilitation of unauthorised stay played by powerful individuals aware of the legal significance of their activity (as in case of public office employees, medical doctors) and individuals with a low awareness of the law, encouraged by others to do things wherein the consequences do not depend on them and sometimes are not even known to them.

Picture 1.

The number of cases concluded by courts in each voivodeship



Source: Own elaboration (map licenced under CC BY-SA 3.0)

The “geography” of the cases (see Picture 1) indicates the greatest number of convictions in the Mazowieckie voivodeship (62 concluded cases), Lubelskie (36) and Śląskie (34). The study showed that the majority of cases were reported in the provinces with the largest Polish cities (e.g., Warsaw, Wrocław, Katowice, Łódź), however this did not apply to all big cities (as in the case of Kraków, Szczecin and Gdańsk). As far as border regions are concerned, the number of cases processed in the Lubelskie voivodeship deserves special attention, especially in the context of other provinces with an EU external eastern border, i.e., Podlaskie (bordering with Belarus) and Podkarpackie (bordering with Ukraine), both with an insignificant number of cases.

The reasons behind such a distribution of concluded cases can be only partially associated with migratory challenges and attitudes of neighbouring states' border services. Since almost half of the sentences relating to the facilitation of unauthorised stay in Poland in Lubelskie voivodeship concerned assistance in illegal border crossings and transit through Polish territory, it is possible that organised illegal border crossings revealed in Podlaskie and Podkarpackie was prosecuted under other provisions. Illegal crossings of external borders outside the border checkpoints have a rather individual character and are relatively rare, mostly concerning the Ukrainian border. Thus, the situation at the external eastern EU border shared by Poland is very different from the one observed in the 1990s, when big, assisted groups of irregular migrants were entering Poland from the territory of Lithuania, Belarus or Ukraine (Szulecka 2016: 216–228). Results of our study pointing to Lubelskie voivodeship as the one with the highest number of sentences relating to the facilitation of unauthorised stay most probably only confirm the specialisation of border services in this area and the judiciary attitudes in assessing behaviours identified by the Border Guard as facilitation of unauthorised stay. The distribution of cases also raises questions about the way organised illegal border crossings are tackled by the law enforcement in the area of the challenging section of the internal border, i.e. Polish-Lithuanian one (in Podlaskie voivodeship). Despite observed difficulties in this area (see e.g. Szulecka 2016: 216–228), the studied provision seems not to be used by law enforcement, contrarily to practices observed in Lubelskie voivodeship.

All in all, the geographic distribution of the concluded cases based on article 264a PCC has to be treated as the result of the focus of law enforcement in certain regions and its determination to bring the cases to the courts. To some extent it can also be treated as a result of the specialisation of the law enforcement in certain forms of this crime, as in the case of Łódzkie region, where 14 out of 21 cases were proceeded by only one court, and 11 of these cases concerned just one and quite unique form of the offence, i.e., false declaration of fatherhood. Another example concerns Świętokrzyskie voivodeship where 8 out of 12 cases included document frauds. In turn, in Opolskie voivodeship, 8 cases out of 12 concluded there concerned commissioning work to irregular migrants and providing them with accommodation.

A lack of cases confirming the facilitation of unauthorised stay of migrants in regions in which we would expect such activity (e.g., near the western border, especially before December 2007, when internal border controls at land borders were finally waived) does not exclude activity of the law enforcement in detecting and preventing irregular migration and sanctioning persons facilitating this kind of mobility. It is possible that border guards or representatives of various offices, and consecutively the courts treat similar behaviours as breaching other criminal provisions than the one assuming punishment for facilitators of unauthorised stay of immigrants. These can be provisions concerning offences against the credibility of documents or offences

regarding the organisation of illegal border crossings (applied independently, without linking charges to article 264a PCC).

Another study based on expert opinions provided by Border Guard officers proved that the legal qualification of the alleged offences and their confirmation by prosecutors and courts depend very much on the specificity of the area and attitudes of prosecutors whose opinions may determine further interest of the law enforcement in detecting certain behaviours and efforts to prove their criminal character (Szulecka 2017: 113–114). An additional factor shaping the geographic distribution of the court cases relates to the specificity of the offence. Persons involved in it – as facilitators or as migrants receiving their support – are mobile and they often move across the country. Therefore, it is possible that cases detected in one region are passed to the law enforcement in another region where the investigation is more advanced or where the roots of the crime were identified. Detecting document frauds may serve as an example here – e.g. although fraudulent documents were revealed in western Poland, it turned out that they were issued in central Poland, where eventually the case was passed (Szulecka 2016: 245–265).

The activity of the law enforcement may sometimes be inspired or initiated by information passed by ordinary people (members of local communities, acquaintances or members of families involved in facilitating the unlawful stay of migrants) or people linked professionally with migration control and executing other public policies. Importantly, the latter situation is required by the law (in certain legislation) or may be encouraged by law enforcement officers themselves (Klaus, Szulecka, 2021). It can be done by so called institutionalised cooperation between Border Guards and other institutions as in the case of cooperation with local labour offices. Other forms of this cooperation (or denunciation) are initiatives theoretically aimed at raising awareness, undertaken in offices or at various meetings at the local level. Requests of the Border Guard to provide information about any “suspicious” situations or people at such meetings may be interpreted by local administrations as compulsory actions, despite no legal obligation imposed on these actors to contact the Border Guard in this respect. The soft measures presented as “cooperation” with institutions recognised by the Border Guard as strategic partners (or informants) in migration control may also affect the direction of officers’ activities, and in consequence – legal cases adjudicated by courts. Such scenarios are, however, probable if other institutions are interested in sharing responsibilities in migration control or perceive certain behaviours as a problem to be addressed by law enforcement. If not, the main institution responsible, i.e. the Border Guard, relies only on their capacities, exchange of information within the institution and interest in prosecuting certain behaviours in a particular region (Klaus 2016: 301; see also Szulecka 2016: 264–265).

## Forms of facilitation of unauthorised stay

### Document frauds

Document fraud as the only form of offence was confirmed in 37% cases as a form of facilitation of unauthorised stay of immigrants. Those documents included obtaining visas under false presences (usually based on imposturous declarations of intent to hire a foreigner or – less often – on invitations for a foreign citizen registered at Polish offices). Notably, Polish legislation includes separate provisions addressing sanctions for offences against credibility of documents, such as counterfeiting, alterations of documents, using false documents or unauthorised signatures on documents, certification of an untruth in circumstances of legal significance, obtaining a certification of an untruth by deceitfully misleading a public official or another person authorised to issue such a document (articles 270–276 PCC). Taking into account the consciousness of perpetrators sentenced for the facilitation of unauthorised stay through document fraud (usually taking the form of obtaining documents under false pretences), the question about the adequacy of legal qualifications inevitably leads to the issue of the scale of the phenomenon. Both this study and previous studies (Szulecka 2017) proved that very similar deeds may be qualified quite differently.

All in all, 44% of perpetrators were charged with document fraud. Repeated statements about the growing scale of document fraud used in the process of irregular migration results in the scope of documents to be controlled going far beyond the basic ones possessed by migrants (passports, visas or residence cards). This in turn leads to the development of migrants' strategies to adjust the required supporting documents to (often unpredictable) expectations of persons issuing visas or checking the credibility of intent stated in documents presented for inspection at the border vis-à-vis the "real" plans of immigrants. Stephen Scheel perceives this as a process of changing the clear dichotomy of "fake" and "real" to a more complex set of features ascribed to documents, including e.g., "real fakes" (Scheel 2017).

The case of declarations of intent to hire a foreigner registered by local labour offices in Poland serves as a perfect translation of Scheel's statements to the Polish context. Until 2018, the law in force allowed for the declaration of intent to hire a foreigner (or foreigners) without the need to document the possibility to hire (the actual availability of work to be performed) or with no consequences for not hiring. Declarations submitted by Polish employers were used in the visa application process, which soon contributed to the growth of intermediary businesses using this liberal instrument of admitting migrants to the labour market in facilitating entry to Poland (or in a wider sense – to the EU; see more Górny et al. 2018: 23–30, 89–125).

One of the reasons of qualifying alleged document frauds as offences linked to the facilitation of unauthorised stay of migrants refers to the guidelines of the

Attorney General’s office (Szulecka 2017: 107–108). Although the guidelines were issued in 2013, already in 2011 some courts sentenced facilitators who took part in providing migrants (mainly from Ukraine or Belarus) with declarations of intent to hire them, without the real will and possibility to do so. As it can be read in the reasonings of the court cases, such “employers” were assured by usually unidentified intermediaries that submitting declarations would not bring any negative consequences and obligations. The latter was true as far as the provisions were concerned. However, soon after realising that submission of declarations at local labour offices attracted the attention of border guards, such “fake employers” wanted to give up such activities – their virtually meaningless declarations were understood as contributing to enabling migrants stay in Poland in breach of the law. Well-oriented intermediaries usually turned to people in unfavourable economic situations (already known or met accidentally) to involve them in registering declarations as company owners or prospective employers. They were offered financial compensation for their cooperation. Thus, the real facilitators avoided revealing their identity in the labour offices, which also meant remaining outside the scope of control activities run by the border guards (see also Szulecka 2016: 253–256).

In a part of cases including document frauds, another form of facilitation was revealed as an important element leading to criminal charges under article 264a PCC. According to the files, false declarations of fatherhood or documents confirming marriage were used in legalisation procedures within which they were verified and recognised as certifying untruth and used only to circumvent immigration law. In such cases among recognised facilitators were people who could be aware of the consequences of their illegal deeds, as in case of a doctor who confirmed – on paper – the pregnancy of a Polish woman (who was not pregnant) to allow for a faster arrangement of a marriage with a foreigner.

## **Marriages of convenience**

Taking part in a marriage of convenience or arranging such marriages, without reference to document fraud, related to 20% of the studied cases and applied to 29% of all perpetrators. Looking thoroughly, however, into the roles of these perpetrators in the arrangements of marriages raises serious doubts whether the persons convicted intended to facilitate the unauthorised stay of a singular person, and whether the marriages were in fact concluded only to circumvent immigration law. Indeed, among the researched convictions there were obvious cases of sham marriages organised by a main coordinator (a Polish citizen originating from an African country) and persons assisting him in recruiting potential Polish spouses. He offered his services to Nigerian migrants staying in Poland or other EU countries and requested quite big profits for this – 6,000 euro, meanwhile profits offered to Polish spouses amounted to approximately 2,000 euro. Altogether, around 20 marriages were

registered in relation to the activity of the main organiser and a few people supporting him in recruiting others.

Interestingly, in a few cases related to the activities of the group mentioned above, one public office employee attracted attention – the woman confirming the marriages and booking convenient dates upon request of the main organiser in one of the offices most often chosen for the ceremonies. Although in the related cases even witnesses of the ceremony were sentenced by the court, we did not find information about the conviction of the public official whose role seemed crucial, whose involvement was permanent and awareness of the consequences probably very high. In turn, among the perpetrators were persons whose presence during the ceremony was sometimes accidental, which means that also the intent of facilitating the unauthorised stay of a foreigner can be questioned.

Notably, the study revealed cases in which the courts sentenced not only Polish spouses for facilitation, but also their family members, which naturally raises doubts. Even if the sham character of the marriage could be confirmed (which was not always obvious), arguments indicating personal profits gained by family members of the recipients seemed unjust. The personal profit should have been clearly pointed out by the courts as this is a crucial element constituting this crime. The courts, however, ascribed the roles of instigators to e.g., parents who looked for solutions to legalise the stay of their child and claimed that the possibility to legalise the stay is a personal profit for the parent, perceived as a perpetrator. Doubts concerning personal profit and the perpetrators' roles appeared especially in the case of marriages that were not linked with other cases adjudicated by the courts in our study. In these cases, recipients originated most often from eastern countries such as Ukraine, Armenia or Georgia. Moreover, in four of the studied cases of sham marriages, the court did not address the issue of profits at all, which only contributes to doubts whether convictions were legally justified.

The problem of the assessment of truthfulness of marriage in any procedure (including the administrative one when the marriage constitutes a ground for the legalisation of stay of a person) raises a lot of both legal and factual questions. Especially that in most of the cases the assessment procedure starts when a Polish spouse is disappointed with the marriage itself or did not receive a payment (or other benefits like proper care) and thus in this resentment reports to the authorities the fact of doubtful intention of marrying someone (Klaus 2016).

## **False declaration of fatherhood**

False declarations of fatherhood involved 7% of all perpetrators included in the study. Importantly, all cases of facilitation based on such false declarations concerned recipients originating from Vietnam. Often, the courts saw mothers as both perpetrators (because they instigated the offence and assisted in it) and as recipients (the legalisa-

tion of stay of their children could lead to the legalisation of their stay). Motives identified in such cases included both personal profits (for mothers) and material ones for Polish citizens who were compensated for their involvement in this procedure.

## **Facilitation of unlawful transit through Poland**

The facilitation of unauthorised stay related to the assistance in unauthorised border crossings and transit through Polish territory regarded 12% of all perpetrators. The exact number of recipients of such facilitation were inaccessible. The highest number of recipients determined by the court amounted to 1,324 persons who received assistance in an irregular border crossing. In justifications of verdicts released under article 264a PCC, the courts usually used phrases like “took part in organising illegal crossing of the border of the Republic of Poland by at least 378 citizens of other countries” without even specifying where they came from and referring to them as “nationals of Asian countries”.

Due to the fact that organising an irregular border crossing for another person is criminalised in other provisions of the criminal code (art. 264 § 3 PCC), as it was already mentioned, supposedly the results of the study illustrate information only in how many cases the law enforcement and the courts noticed an element of accommodation provided to migrants coming to Poland or transiting its territory. In several cases, there were sentences for Polish and Vietnamese nationals who took part in organising a transfer of undocumented migrants through Poland *en route* to countries of western Europe (more on that, see Perkowska in this volume). Notably, the courts neither discussed the aim of perpetrators – in fact, it was the transit of foreigners through the country and not the facilitation of their residence in Poland, nor took into account the fact that the stopover constituted a mere episode in the whole smuggling operation. Then, it seems that courts have wrongly classified the cases as the facilitation of unauthorised stay, not understanding (or misunderstanding) the wording of the provision.

## **Commissioning work to irregular migrants**

Another form of the offence identified by the law enforcement and confirmed by the courts included commissioning work to undocumented immigrants. In 12.5% of the analysed cases hiring an irregular immigrant was directly linked with offering them accommodation. In practice, the place of work could serve also as a living space and sometimes the provided work was also accompanied by alimentation. Periods of employment differed. In one examined case, a Polish national was punished for facilitating the unauthorised stay of a Ukrainian female who had worked on his farm for 8 years. During the investigation, it was determined that the employer had confiscated the woman’s passport and only paid her for the first 6 months of work.

The woman never got any money for the remaining employment in excess of 7 years (when she demanded the payment, the employer reported her to the Border Guard for not having documents warranting authorised residence). The issues of withheld remuneration and confiscation of the passport failed to interest the court – the perpetrator was punished for facilitating the unauthorised residence with a symbolic fine of 25 EUR and a one-year suspended prison sentence (without any additional probation measures). At least in the studied cases, the question of human trafficking was never raised. This implies mentioning the problem of proper recognition and identification of human trafficking survivors, especially when it concerns victims of forced labour, already discussed by a number of academics and practitioners (Dąbrowski 2014; Karsznicki 2010; Klaus 2014; Lasocik, Wieczorek 2010).

## **Whose stay is facilitated, by whom and for what profit?**

### **Perpetrators**

As it was already mentioned, to commit a crime of facilitating an unauthorised stay, the following elements must coincide: a facilitator (perpetrator), a recipient (an immigrant) and a profit (financial or personal). Therefore, looking at perpetrators not as at unique individuals but at their facilitating roles in the studied cases seems reasonable. In the 243 cases analysed there were altogether 499 offenders convicted of the facilitation of unauthorised stay of foreigners<sup>14</sup>, with a predomination of men (69%). Polish citizens constituted 72% of this group; among them there were also naturalised immigrants originating from the same countries or regions where the recipients came from. Among perpetrators, quite an important share (14.5%) was constituted by citizens of Vietnam. Citizens of other countries were responsible for fewer cases of identified facilitations of unauthorised stay. Among those whose shares were visible in the study we can indicate citizens of Ukraine (4%), Nigeria (2%) and Armenia (1%).

Offenders belonged to different age groups; however, they were typically between 35 and 45 years old at the moment of committing the crime. Among the youngest offenders (approximately 20 years old), Polish female citizens prevailed. Usually, they decided to marry a foreigner, which was identified by the authorities and the court as a for-profit facilitation of an unauthorised stay of a migrant in Poland. Persons convicted of facilitation of unauthorised stay through document fraud or the organisation of an irregular border crossing represented the oldest group of perpetrators.

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<sup>14</sup> 13 persons were convicted in two or three cases so the number of offenders included 484 individuals. However, since we focus on the offence here, and the profile of the perpetrators serves only to better understand what behaviours are identified as criminal and what consequences it brings, presented characteristics refer to the total number of offenders in all cases.

Involvement in this offence usually constituted a side activity, additional to their regular work, as in the case of farmers or company owners.

According to data provided by the courts, at the moment of committing the offence approximately half of the offenders had a full-time job (as hired workers or company owners), although this work usually did not bring a high income. The sectors in which offenders worked included construction, retail trade, catering (including “ethnic” restaurants) and entertainment (bars, clubs), transport (taxi drivers), labour brokerage<sup>15</sup>. There were only singular cases of people with stable jobs working in the public sector (police or border guard officers, employees of public offices). 11,5% of the offenders had part-time jobs and unstable sources of income, as in case of assistants to traders or persons collecting scrap. 16% of offenders were jobless, whereas 6% already retired. According to court files, 4,5% of the offenders had income only from criminal activities (such as transport services for irregular migrants or registering a “virtual” company to be involved in obtaining documents fraudulently).

More than a quarter of offenders (27.5%) were punished in the past. Offences connected somehow with the facilitation of unauthorised stay of migrants included organising of irregular border crossings (the case of 18 offenders) or document fraud (21 offenders). The same offence committed in the past referred to five perpetrators. For instance, among the perpetrators there was one who married a Vietnamese citizen twice and each time this marriage was deemed a marriage of convenience. One of the perpetrators was already punished for other offences, but after he had been released from prison he became involved in document fraud which became his source of income.

10% of the facilitators were declared members of organised criminal groups (article 258 PCC). Usually, they were just members of criminal groups, less often they headed the group. Charges of being involved in organised crime appeared in our study in the context of two forms of the offence, i.e., facilitating unauthorised border crossings and transit through Polish territory as well as arranging marriages of convenience. Facilitators convicted as criminal group members were either drivers transporting immigrants from or to the border, or persons coordinating certain phases of illegal border crossings and transit. In case of sham marriages, they were usually recruiters aiming to find Polish citizens willing to marry African immigrants and the main coordinators of arranged marriages. The latter usually did not directly participate in the ceremonies, but relations between spouses (acquaintances, family members, cousins, residents of the same town) led the law enforcement to revealing other persons than the ones present at ceremonies as actual inspirers and organisers.

19% of the perpetrators were declared by the courts as playing the role of instigators and 6.5% – of assistants to the main facilitators. Those roles were usually

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<sup>15</sup> Such activities were given as the official source of income. According to court files, however, it happened that such activity was only virtual and the task of connecting potential employees with employers did not take place.

ascribed to recipients, which meant that recipients were also sentenced for taking part in the facilitation of their own unauthorised stay. This was the case of 10% of convicted persons. This outcome seems paradoxical, especially from the legal perspective. Indeed, according to art. 19 PCC the crime could be also committed in the form of assistance or instigation. For some of the judges who adjudicated the analysed cases such roles could be assigned to recipients, who e.g., provided the main offenders with required data to be used in documents obtained fraudulently or asked them for a favour in facilitating their further stay in Poland. In our opinion, this understanding is in clear breach of the law, as art. 264a PCC (and the EU legislation that it was based on) unequivocally states that the crime can be committed only if someone (perpetrator) facilitates the stay of another person. So, this wording excludes the facilitation of stay by immigrant themselves. Another understanding can therefore lead to the criminalisation of undocumented immigrants which clearly was not the purpose of the 2002/90/EC directive. This understanding is also confirmed in the Opinion of Advocate General Bot in Case C-218/15 (point 28) which clearly states that EU legislation in this matter “concerns only smugglers and not individuals who avail themselves of this method” (Info Curia 2016).

## Recipients

As the analysis indicates, quite often the courts were not able to determine the number of recipients in a particular case (in 12.5% of the sample), especially if they assumed the facilitation of irregular border crossings. In such cases, the courts used such expressions as “at least”, “mostly”, “of Asian origin” describing recipients, and did not mention their gender, age or even citizenship, which is understandable in the context of the supposedly large numbers of recipients involved in these cases. If they concerned assistance in unlawful transit through Polish territory, the number of facilitators in a singular case was also high, e.g., 27 or 16 perpetrators involved in enabling an illegal border crossing.

Cases in which the number of recipients and their identity were known to the courts involved marriages of convenience and usually all forms of document fraud, which is not surprising – such basic data as age, gender and citizenship were stated in the documents obtained fraudulently or those applied for. Obviously, in all cases in which there was only one recipient (36% of the analysed cases), details of the recipients were known to the courts.

According to the available data, the recipients usually originated from Asian countries, in particular from Vietnam and China, also from Pakistan or India. Citizens from these countries were usually mentioned in the context of the organisation of an irregular border crossing. Relatively often citizens of Ukraine and – less often – Belarus were indicated as recipients, in particular in cases assuming the facilitation

of obtaining visas on a fraudulent basis. Citizens of Nigeria also constituted a distinct group among recipients – most often their stay was connected with sham marriages.

Men prevailed among those recipients whose gender was known. Certainly, they predominated among recipients whose stay was facilitated through marriage of convenience. Among those whose documents authorising them to cross the border and enter Poland were identified as obtained fraudulently there were both adult women and men. The oldest recipient whose age was known to the courts was 75, whereas the youngest were one year old or even younger – these were usually children of Vietnamese women staying in Poland irregularly, revealed in cases of false declaration of fatherhood.

From the perspective of assessing the behaviours identified as illegal, the relation between facilitators and the recipients requires attention. According to the court files, around 85% perpetrators were contacted with the recipients by intermediaries or they were directly contacted by the recipients looking for facilitating services. This means that usually both parties at the moment of facilitation of stay recognised by the law enforcement as illegal did not know each other. In turn, 8.5% of offenders had weak ties with the recipients – they knew each other from work or the neighbourhood. 6% of offenders had strong ties with recipients – they were either family members or partners living together.

## **Benefits**

As it was already mentioned, Polish legislation indicates both material and personal profits as a necessary element of recognising someone's assistance provided to irregular migrants as an offence of facilitation or enabling a stay in breach of the law. In other words, the profit should be identified by the court during the criminal proceeding and then stated in the sentence. All in all, almost 84% of facilitators gained a material profit, whereas 18% – a personal one (some facilitators gained both). The court did not manage to determine the profit for one facilitator, whereas in the case of 13 offenders (approx. 2.5%) the courts did not address either the character of the profit or its value; they remained negligent to the motive of the perpetrator, but this, however, did not prevent them from sentencing the punishment.

Taking into account the profits and forms of the offence, in all forms of the offence material profits predominated. 127 perpetrators involved in marriages of convenience gained financial profit, whereas only 19 persons were found as gaining personal profit from this form of offence. The latter were usually persons close to the recipients, their actual partners or parents. Similar proportions apply to the facilitation through false declarations of paternity. Among 36 people involved in this form of offence, 25 gained material profit, 7 (usually mothers of children recognised by Polish citizens) – personal and in case of 4 perpetrators the courts did not address this issue. Perpetrators involved in the facilitation of transit of irregular migrants

through Polish territory in the vast majority had financial gains (58 persons out of all 63 involved in this offence). As far as commissioning work to irregular migrants is concerned, often combined with offering them accommodation, approximately a quarter of perpetrators were associated with personal motives, whereas the majority got financial benefit. In the latter case, the benefit did not necessarily mean financial income – it usually referred to work that was not paid or was underpaid by the facilitator.

Referring to cases involving commissioning work to irregular or “illegalised” immigrants, it should be emphasised that sometimes the courts assessed similar behaviours differently. For instance, the fact that a migrant provided care to the mother of the facilitator and performed domestic work or unpaid domestic work in return for accommodation and food was construed by the court as personal profit. But extra hours performed by immigrant workers without payment – according to another court – meant financial benefits for facilitators. It seems that qualifying the type of profit depended on whether the facilitator ran their own business outside of the household or benefited from work of the migrant at home, family farm etc.

Interesting outcomes relate to the determined motives of perpetrators who applied document fraud in their activities and which were assessed as facilitation of unauthorised stay. In these cases material profits also predominated, confirmed in the case of 176 perpetrators. According to the courts, 55 persons gained personal profits. This result would not raise any doubts if the same profits had not been qualified differently. For instance, for some courts cigarettes, alcohol and sweets offered by unknown intermediaries (delivering declarations of intent to migrants in Ukraine) were treated as material profit, whereas other judges saw in this personal gain, e.g., possibility to drink alcohol for free. Since the value of such profits was usually not determined it is difficult to say whether e.g., cigarettes in fact increased material resources of the facilitator (e.g., if they could be sold and bring financial profit), or their consumption brought only a short-term relief or satisfaction for persons convicted of the offence. In the context of profits gained, it is worth mentioning that some offenders were addicted to alcohol, which definitely influenced their readiness to be involved in activities in return for alcohol, but this also raises the question whether the involvement of such persons in the studied offence was aimed at the intent envisaged in the provision, i.e., facilitation of unauthorised stay of a migrant.

Apart from the character of the profit, the value of gains seems important, especially in the context of sentencing and criminal sanctions. According to the study, it was possible to determine the value of material gains only with regard to about half of the perpetrators. Even then, however, the profit was preceded by such expressions as “at least”, “no less than”, “between”, “approximately”, “promise of” or followed by expressions like “to be shared among”, “eventually not paid” (as in the case of 50 USD promised, but only 15 USD paid). The determined value of profits gained by facilitators ranged between 25 and 475,000 euro. The highest profits were obtained

by facilitators involved in assisting irregular immigrants in transiting Polish territory. This form of the offence, however, usually involved the largest number of facilitators providing such assistance to quite big numbers of recipients.

## Conclusions

Since 2015 migration in the Polish political discourse has featured prominently, causing a significant rise in Poles' resentment of immigrants and reinforcing their perception as dangerous individuals (Jaskułowski 2019; Klaus 2020). At the same time, the relative absence of undocumented immigrants in Poland means that despite the declared objective to counteract irregular migration, the preventive measures are rather scarce. Polish authorities are mainly focused on protecting the borders, especially the external border of the EU, both from illegal crossings and the influx of asylum seekers (Klaus 2017). At the same time, relatively liberal policies of admitting foreigners to the labour market, accompanied by difficulties faced by migrants within procedures following applications for visas or residence permits, contribute to specific phenomena such as "semi-legality" in migrant experiences (Kubal 2013). Depending on the situation, it can be assessed as undesirable and leading to return orders or it can be more or less openly tolerated (Welch 2003). The results of our study devoted to penalisation of intermediary actors in the processes associated with the phenomenon of facilitating unauthorised stays illustrate what behaviours are identified as undesirable and who – according to agents of formal social control – deserves punishment in this respect.

The outcomes of the study also bring into question how the courts could determine the criminal character of the offenders' behaviours if it was impossible to reveal profits or details concerning recipients, i.e., immigrants who benefitted from these processes. As regards the last element mentioned, it can be assumed that in cases involving large numbers of recipients, to conclude the case with a sentence it was sufficient for the court if the details concerning at least a few of the recipients were known to the law enforcement agents. Persons whose stay was deemed unlawfully facilitated in Poland were detected by border guards either during a legality check within the territory and standard control procedures (such as control of drivers and vehicles at roads) or in border areas or upon information delivered by other persons (e.g. neighbours of the facilitators). The details revealed served the law enforcement and the courts to estimate the scale of activity undertaken by the revealed perpetrators.

A more thorough look at facilitators' activities, decisions, profits, relations with recipients lead to the conclusion that in the majority of cases the punished offenders are not the ones who gained the highest profits and played the leading role. With few exceptions, the main beneficiaries, i.e., intermediaries, brokers, persons initiating contacts and involved permanently in facilitating activities, remained absent in the

court files, unidentified to the agents of the criminal justice system. In turn, with some exceptions, identifying behaviours of individuals as intending to facilitate or enable the stay of a migrant in breach of the law in Poland raises doubts. This is especially so in the case of family members of recipients or persons who were asked for an *ad hoc* favour and could have no chance to recognise the potential consequences of deeds in which they were involved.

According to other studies, in the UK judges treat immigration offences with utmost seriousness, even though the actual behaviours in question are trivial and victimless, like destroying or forging travel documents (Aliverti 2013: 107–115). Assessing the attitude of judges in Poland based solely on our findings is not an easy task. On the one hand, the study proved that the courts confirmed charges of facilitation of unauthorised stay in unobvious cases. These were, for instance, all the cases in which perpetrators undertook activities aimed at gaining some profits, but the intent of their activity was far from facilitation or enabling the unauthorised stay of foreigners, as in the case of facilitation of obtaining documents under false pretences, i.e., visas based on declaration to hire a foreigner that was from the very beginning a promise without perspectives of their fulfilment. Cases of recipients who were also identified as offenders, i.e., took part in facilitating their own stay in Poland, may exemplify the determination of the courts to sanction any form of involvement in enabling or facilitating migrants' stay in Poland in breach of the law.

On the other hand, however, the verdicts envisaged punishment that, despite a declaration about the relatively high extent of social harm of the deeds, undermine the restrictive attitude to sanctioning this kind of immigration-related offences. 3.5% of offenders were sentenced to imprisonment, 60% – were punished with a suspended short sentence of imprisonment (usually 6 months) and fines. In the case of 38% of perpetrators, fines did not exceed 250 euro, and in case of another 29% of perpetrators, the fine sentenced by the court was between 250 and 1250 euro. In the case of 26% of the offenders, the forfeiture of the benefits from the crime was ruled.

In some of the cases in which perpetrators were convicted for enabling the unauthorised stay of an immigrant, especially through assistance in obtaining documents under false pretences, migrants concerned did not even enter Polish territory. Sometimes, it was due to the fact that their documents were questioned at the border, which led to refusing them entrance. Sometimes, other reasons lay behind giving up arrival to Poland. Nevertheless, facilitators of only potential unauthorised stay were treated by the courts as bringing potential threats to legal order in Poland. And to support this argument, the courts referred to cases of immigrants who entered Poland with visas obtained – according to the law enforcement – fraudulently, often in the context of a general threat to legal order or security posed by immigration as such. More elaborated arguments discussing the extent of social harm were in general absent in court justifications, which seems to fit the common trend in Polish policy towards irregular migration. The phenomenon is presented as a serious threat and

a real challenge to be addressed and when it comes to details, various aspects of irregular migration seem only an imagined threat, potential risk, whereas real processes observed that have so called semi-legal forms are more or less openly tolerated.

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