

Ensuring the safety and public order as a justification of criminalisation of migration

Inclusion of instruments used so far in the criminal law to migration law, through penalisation of some behaviours typical for migration, as well as using criminal law institutions (such as detention or preventive measures) as new strategies of control over migrants is called „crimmigration” (criminalisation of migration). Most of the legal provisions and practices, that are covered by the term „crimmigration” – as it is declared by the initiators of these changes – are introduced in order to protect the safety of the state and its citizens. Such justification of changes in the law or practices requires in-depth criminological reflection.

The objective of the project is an attempt to assess to what extent the newly introduced legal institutions linked to extension of control over foreigners meet the expectations linked to them and whether wide usage of criminal law instruments in migration law may contribute to the increase of public safety. The study will cover selected aspects of criminalisation of migration, in particular the application of isolative and non-isolative preventive measures towards migrants, which means detention and measures alternative to detention (such as an obligation to report at a specified place or financial security), as well as the effects of penalisation of facilitation of unlawful stay of foreigners on the Polish territory (article 264a of the Penal Code). Apart from the study of the roots and the functioning of the selected provisions, the project will also include the qualitative research aimed at investigating how professionals and foreigners perceive the application of preventive measures taken from criminal law in administrative procedures.

The study will be conducted with reference to the world theoretical achievements, mainly in the area of criminalisation of migration, as well as penal populism, moral panics, extension of control over societies. The mentioned theoretical framework will serve to explain the roots of changes in the Polish migration law that fall into the term “crimmigration” and to determine the results of the changes in provisions and practices, including the determination to what extent the inclusion of instruments of criminal law to migration law contributes to the increase of public safety and public order, or reduce undesirable migratory processes, and to what extent it conforms to the standards of human rights protection. The analysis within the project will cover provisions and their enforcement since 2003, with a special focus on the situation after 2015, which is after the peak of the so called migration crisis in Europe and the increasing scale of fears linked to terrorist threats.

In the project, both qualitative and quantitative techniques will be used. Also triangulation of methods and the analysed sources will be applied. The proposed study consist of: 1) analysis of the available Polish and international literature, as well as other existing publications; 2) analysis of the provisions of administrative law and criminal law that are aimed at increasing the control over migrants, as well as justification given upon introduction of these laws and the social and political context of their introduction; 3) comparative analysis of the scope of criminalisation of different behaviours linked to migration, which means introduction of new categories of offences that may be committed only by migrants or people involved in organising migration; 4) analysis of files of criminal court cases linked to conviction of the offence described in article 264a of the Penal Code, which is the facilitation of illegal stay of a foreigner on the territory of Poland; 5) study on the prerequisites and compliancy with the law in using detention, which is placing foreigners in guarded centres for foreigners, and imposing measures alternative to detention (this analysis will be conducted basing on the court files regarding decisions on detention of foreigners); 6) analysis of the available statistics on using detention, as well as quantitative data obtained in the study of court cases; 7) study on how the representatives of institutions involved somehow in using preventive measures – such as the courts, the Border Guard, and social organisations – perceive the isolative and non-isolative preventive measures applied towards foreigners, as well as their effectiveness (30 in-depth expert interviews); 8) analysis how foreigners under asylum or return procedure, towards whom measures alternative to detention have been used, perceive these measures (40 in-depth individual interviews with foreigners).

Undertaking the study on criminalisation of migration is important due to at least two reasons. Firstly, in the Polish literature (both criminological, legal and migratory) it is necessary to initiate the discussion on controlling migration, and to be more precise – on its state and the effects of it. It is especially important in the context of increasing interest in migration in the Polish public debate, increasing scale of immigration, as well as in the light of expansion of migration provisions linked to increasing control over migrants, especially between 2015 and 2017. Secondly, in the light of the domination of the Anglo-Saxon views in foreign studies (mostly from the US and the UK), it is important for the Polish scholars to contribute to the discourse focused on “crimmigration”. This, however, requires conducting a complex scientific research, that has been never conducted so far, in the area of the roots and results of incorporation of criminal law instruments to migration law in a country which has different immigration history than countries of Western or Southern Europe (Poland is becoming a target country more and more often, but it is not necessarily linked to the so called migration crisis), as well as in the area of the real impact of these changes on ensuring public safety and public order.