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Witold Klaus, Katarzyna Laskowska, Irena Rzeplińska (eds.)

**Przestępczość cudzoziemców. Aspekty prawne,
kryminologiczne i praktyczne**

[Criminality of Foreigners. Legal, Criminological and Practical Aspects]

Wydawnictwo Naukowe SCHOLAR, Warszawa 2017, pp. 639

The anthology with the above title was written by 19 Polish authors under the editorship of Witold Klaus, Katarzyna Laskowska and Irena Rzeplińska, as a joint project of the Polish Academy of Sciences and the University of Białystok.

Altogether the reviewed monograph consists of 27 chapters, divided into six parts. They deal with the criminality of foreigners in Poland (I); transborder criminality of foreigners (II), organized crime with the involvement of foreigners (III); human trafficking and smuggling (IV); preventing crime by foreigners based on experiences from selected countries (V); and good law enforcement practices concerning crime of foreigners (VI).

This review's English-language readership, inspired by the United Nations call for safe, orderly and responsible migration, may be interested in finding out what the Polish authors have to say in each of the book's relevant parts. The miniscule number of foreigners that are suspects of crime in Poland (less than 1%), mostly involved in road traffic offences and smuggling of, and trade in, counterfeit goods (pp. 36-37), which initially says little about the relevance of the UN call in a book of over 600 pages. But, clearly, its voluminous size and versatile content are commensurate to the intensity of the moral panic caused by the 2015/2016 influx of refugees and migrants from the Global South into the Global North, including social unrest in some of the European Union countries which accepted them. Although Poland did not accept migrants, in one of the chapters in part I of the anthology, Dagmara Woźniakowska-

Fajst (p. 51, fn. 36), notes remarkably similar levels of strongly negative perceptions of Polish and Western European respondents to various surveys asking about their opinion on honour crimes perpetrated by Muslim male immigrants on Muslim women. The respondents unanimously – and in my opinion quite rightly – felt that these crimes objectify women. However, the author falls short of noting that the problem of sexual domestic violence is by far not limited to Islam but is global and involves likewise drastic sexual assaults by native men on native girls, for example those by British men in the group of Pakistani perpetrators of organized crime¹. This is not a minor oversight, because this fact reminds that such assaults are not an intercultural but a sex/gender related matter. Finally, she concludes with the following statement: “Persons who decide to emigrate, generally have higher social capital, are more open to innovation, are more courageous and determined than persons who do not take such decisions. Even among foreigners who committed serious crime, there is an over-average percentage of persons declaring secondary and tertiary education. Most of them also worked at the time of crime commission. If Poland decides to accept a bigger number of immigrants awaiting now in the Southern Europe a new safe life, their involvement in crime will grow. There will also be the growth of persons willing to take a job, settle, having children which will be taught in the Polish schools, and if we do not discourage them, they will stay in Poland permanently, so as to work legally, pay dues from which Poles will obtain their pensions” (p. 85).

In four articles in part II Magdalena Perkowska (pp. 117-240) discusses various facets of transborder crime of EU ‘aliens’ visiting Poland, both along its external Schengen border (Belarus, Russia, Ukraine) and within the EU’s Schengen area of participating countries. In keeping with this review’s goal, in one of her texts she anticipates that the Global South-North migration “through the territory of Poland to the EU” (p. 164) will only be a transit area to Germany and the Scandinavian countries, because Poland is not an attractive destination in terms of social welfare. This quote must either be a Freudian slip that unwittingly overwhelmed the author confronted with the populist “polexit” thinking, or is just misled. Be that as it may, the author very correctly emphasizes that the dynamics and patterns of transborder crime are strongly influenced by the implementation of various local and EU – (non) Schengen transborder agreements on the movement of people. Against the background of these agreements, the author anticipates that illegal border crossings and/or the use of falsified travel documentation may become a real problem for Poland as an entry State to better off EU countries, including those mentioned above.

In part III Katarzyna Laskowska in four out of the five chapters deals with organized crime involvement of foreigners’ in Poland, mostly people trafficking, the smuggling of migrant and the smuggling of and the alcohol and cigarettes. She

1 H. Kury, S. Redo, *Refugees and Migrants in Law and Policy – Challenges and Opportunities for Global Civic Education*, Springer Heidelberg 2018, p. 872.

arrives at the conclusion of that the transit location of the country encourages the latter kind of operations, especially because of high profit margins, and the leniency of punishment. But even more appealing to various foreign organized crime actors in Poland – as the book informs – is that on their way to Western Europe Poland is reportedly the one country in which they feel safe, in the sense that they are fought humanely, i.e. as per democratic law enforcement rules. Hence, the author surmises, when the economic growth of Poland continues, Poland will eventually become a country that is a final destination for immigrants (pp. 292-3).

The view about the eventual final destination status is not shared by another of the book's contributors, Monika Szulecka (pp. 450-1) who does not think that Poland will ever become such an attractive destination as the more developed countries of the European Union. In part IV, along with three other authors, she offers a criminological analysis of the phenomenon of people trafficking and irregular migration affecting Poland. Szulecka argues that orderly, safe and responsible migration will increase the likelihood of the engagement of migrants in crime, because undocumented immigrants must stay out of conflict with the law, or – at least – reduce its likelihood. She argues that non-documented immigrant status: “paradoxically...causes that they avoid contacts with the inspection authorities and law enforcement agencies, indeed they feel forced to obey the law”. Immigrants “who want to remain unnoticed, do not cross the street on red traffic light or take part in events that potentially may be of interest to law enforcement services (e.g. brawls or speeding). It is probable, but also more difficult to uncover, that foreigners operating beyond registration, supported by other immigrants, are involved in crime (as for example, in illegal cigarette production or in falsifying trade marks in an unregistered manufacturing plant” (p. 451).

In the same part IV we may note two further points from the two chapters by Barbara Namysłowska-Gabrysiak on, respectively, the perpetrators and victims of trafficking. First, regarding the perpetrators, there are controversies concerning general leniency of court verdicts handed down to traffickers in Poland. The author discusses a very controversial judgement in this context, relating to the case of a Bulgarian trafficker of Turkish descent and Muslim religion who received such a lenient sentence because in the court's view “in his culture such behaviour is not considered blameworthy”, and his mother “accepted his conduct” (p. 322). It may be recalled here that after a remarkably similar opinion of a German judge in the case of domestic violence by a Moroccan perpetrator on a German spouse², the judge was removed from the bench. There should not be any respect for such conduct, whether by kin or by a court of law in any country for that kind of legal culture. It is therefore self-explanatory what should happen in the Polish judiciary to rectify its own mistaken attitude. Second, regarding the victims, the author pursues arguments

2 *Ibidem.*

for the strengthening of legal and social welfare assistance for the trafficked women, including first of all the adjudication of compensation for them (p. 360).

In part V six the authors analyze crime prevention issues concerning foreigners in the light of the experiences of some European States (the Czech Republic, France, Italy, Ireland, and Russia), the European Union and the United Nations law. Given this review's focus on safe, orderly and responsible migration we should emphasize the importance of this part for its Polish readers keen on learning about the integration experiences of foreigners in the above host countries. Across this spectrum of countries, Italian integration experiences are very well analyzed by Katarzyna Gracz who separates in this regard, documented from non-documented immigrants. The latter, in conflict with the law, undergo a very successful resocialization and integration experience through various acculturation programmes, reportedly putting them on the same footing as their Italian peers (p. 496). She quite rightly concludes that "Regardless of the frontier EU country status, Poland and Italy share also the status of a bridge between the two worlds, hence - because of the geopolitical location of these countries - it is easier to shape and regulate the massive movement of people than to fight it" (p. 497).

Given this final lofty reflection on the precarious interstate and intercultural status, it could also have been the metaphoric accord of the book alerting to the inevitability of enhancing international cooperation for orderly, safe and responsible Global South-North and South-South migration. However, this call is a prelude to the book's part VI that contains four more contributions on good law enforcement practices concerning crime committed by foreigners. Piotr Chlebowicz and Wojciech Filipkowski point to various modes of strategic criminalistics analysis in investigating trafficking, Małgorzata Makarska writes about the preparatory proceedings by Border Guards, Katarzyna Płończyk writes about operational-investigative actions in the preparation of procedural material in criminal cases involving foreigners, Paweł Golonka writes on operational-investigative actions and the preparation of procedural material in cases against perpetrators of human trafficking. So striking is the content contrast between the penultimate and the ultimate part of the book that one wonders whether these four articles could be fully appreciated despite their extremely useful thematic. As "down-to earth" texts, they bring into the book technical "tools of trade" in border and internal law enforcement for countering crime by foreign perpetrators. Quite rightly therefore the book's subtitle mentions "legal, criminological and practical aspects" (emphasis added) of crime by foreigners, whereby the latter four articles well fit the last aspect.

This subtitled qualification of the book leads me to two questions on the book's crime prevention merits, especially where enhancing international cooperation for creating one culture of lawfulness is concerned. Its topicality has been signaled in this book by part V on the crime prevention questions, and part IV in which the afore-noted verdict of the Polish court is discussed. Both prompt the two questions

mentioned: First, how in any legal culture one may now respect a cultural identity tolerating human trafficking? Second, what should be done to incorporate the migrants, whose social capital is appreciated by the contributors to the reviewed book, successfully in a host society's fabric, despite the documented migrant crime paradox?

In asking the first question, we should be aware of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (Kyoto, Japan, 2020) topic "Multidimensional approaches by Governments to promoting the rule of law by, inter alia, providing access to justice for all; building effective, accountable, impartial and inclusive institutions; and considering social, educational and other relevant measures, including fostering a culture of lawfulness while respecting cultural identities(emphasis added), in line with the Doha Declaration"³.

This question is motivated by the prototype definition of culture of lawfulness (CoL), now under discussion by Member States of the United Nations. It emphasizes that "Culture of lawfulness means that the dominant or mainstream culture, ethos, and mindset (emphasis added) within a society supports the application of laws to societal activities and interactions, and believes that those laws should be applied without regard to an individual's family, ethnicity, race, gender and political or other status within the society"⁴.

There is no answer to this question in the reviewed book which otherwise very well caters to the topic of the Fourteenth United Nations Congress. Perhaps the Fourteenth United Nations Congress can find it?

Hence, also understandable is posting to the same addressee the second question on the documented migrant crime paradox. To answer this question, the Fourteenth Congress has not only the aforementioned Doha Declaration of its predecessor, but also the United Nations Sustainable Development Agenda 2016-2030⁵ and the 2018 "Global Compact for Safe, Orderly and Regular Migration" – both pivotal for managing the orderly, safe and responsible Global North-South movement of people.

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3 A/RES/70/174, Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, 17 December 2015, <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html> (01.05.2018).

4 Adapted from R. Godson, A Guide to Developing a Culture of Lawfulness, "Trends in Organized Crime" 2000, vol. 5 no. 3, pp. 92-93.

5 A/RES/70/1, Transforming our World: the 2030 Agenda for Sustainable Development. 25 September 2015, <http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html> (01.05.2018).