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THE CRIME OF DOCUMENT FORGERY IN THE CONTEXT OF ILLEGAL BORDER CROSSING. THEORETICAL AND EMPIRICAL ASPECTS

Summary

The subject of the considerations in this article is the crime of forgery of documents, as defined in Art. 270 of the applicable criminal law in the context of an act of illegal border crossing. In accordance with applicable law, the so-called simple illegal border crossing is an offense specified in Art. 49a of the Code of Petty Offenses, while Art. 264 § 2 of the CC applies when the border is crossed contrary to the provisions in cooperation with other persons or with the use of violence, threats, deception, i.e., inter alia, in a situation where false documents are used to cross the border contrary to the law. They can also be a tool enabling the performance of the act specified in § 3 of the aforementioned art. 264 of the Penal Code, which penalizes the activity consisting in organizing the crossing of the border by other persons against the provisions of the law. The main purpose of the study is to draw attention to the crime of document forgery as a practice that allows for other legally prohibited acts. In this light, the thesis was formulated according to which forged documents are in many cases a tool used by foreigners to illegally cross the borders of the Republic of Poland, and thus the Schengen/European Union area. The thesis was confirmed in studies conducted on the basis of statistical data of the Border Guard Headquarters from 2016–2022. Their analysis is presented in the article

Keywords: forged documents, illegal border crossing, Border Guard, border, passport, visa, ID card

Introduction

Falsifications of documents are one of the basic criminal acts in the group of those that violate documents¹. They are cataloged in Chapter XXXIV of the Criminal Code (CC) entitled “Offenses against the credibility of documents” and may take one of two forms. The first is a material falsehood, as defined in article 270 of the c.c. The second type is intellectual falsehood, as defined in Article 271 of the Criminal Law. The provisions of the Penal Code in force, the doctrine of criminal law, the judicature

¹ J. Piórkowska-Fliieger, *Falsz dokumentu w polskim prawie karnym*, Kantor Wydawniczy Zakamycze, Kraków 2004, <https://sip.lex.pl> (accessed 19.07.2022).

as well as the opinions of commentators and forensic examiners indicate two forms of material document forgery. Article 270 § 1 of the CC precisely emphasizes that it may be committed either by forging or by forging a document². Crimes related to various forms of document forgery and their use for criminal purposes have been a common phenomenon for many years³. In this respect, criminal activities also target the credibility of travel documents. It should be noted that the travel document is usually a passport, but it can also be a national identity card and a residence permit issued to third-country nationals (in the case of using it in the area without internal border controls). An EU citizen may enter and leave the territory of the European Union / Schengen Area and certain third countries, using an identity document issued by a Member State⁴.

From a legal, forensic and criminological point of view, the forgery of travel documents is linked to a number of other types of crime, including those corresponding to illegal forms of border crossing. As Hubert KołECKI emphasizes, document forgery is a satellite forgery and often serves as a tool enabling the commission of other criminal

² The Act of June 6, 1997 Penal Code (consolidated text Journal of Laws of 2022, item 1138 as amended); see more: G. KOPCZYŃSKI, *Kryminalistyczne aspekty przestępstw przeciwko wiarygodności dokumentów w kodeksie karnym z 1997 roku*, „Nowa Kodyfikacja Prawa Karnego” 2000, no. 4, pp. 245–263; H. KOŁECKI, *Technicznokryminalistyczne badania autentyczności dokumentów publicznych nieniszczącymi wielospektralnymi technikami optycznymi za pomocą wideospektroskopu VSC-1*, Wydawnictwo Poznańskie, Poznań 2002, p. 29; T. TOMASZEWSKI, *Nowa metoda badania podpisów*, in: *Kryminalistyczna ekspertyza pismoznawcza a grafologia. Materiały z X Wrocławskiego Symposiumu Badań Pisma, Wrocław 19–21 czerwca 2002*, Uniwersytet Wrocławski, Wydział Prawa, Administracji i Ekonomii, Katedra Kryminalistyki, Wrocław 2003; idem, *Możliwości badań identyfikacyjnych wykonawców paraf*, „Problemy Współczesnej Kryminalistyki” 2001, vol. IV, pp. 287–302; M. GOC, *Badania autentyczności dokumentów jako przedmiot działalności szkoleniowej Polskiego Towarzystwa Kryminalistycznego*, „Problemy Współczesnej Kryminalistyki” 2008, vol. XII; W. WRÓBEL, T. SROKA, *Komentarz do art. 212–277d*, in: A. ZOLL (ed.), *Kodeks karny. Część szczegółowa. Tom II. Część II*, Wolters Kluwer Polska, Warsaw 2017; G.J. MATEREWICZ, M. MOZGAWA, P. KOZŁOWSKA-KALISZ, M. BUDYN-KULIK, M. KULIK, *Kodeks karny. Komentarz*, ed. M. Mozgawa, Wolters Kluwer Polska, Warsaw 2015; I. JANKOWSKA-PROCHOT, *Karnoprawne aspekty przestępstwa fałszerstwa intelektualnego*, „Journal of Modern Science” 2016, vol. 28, no. 1, p. 237; D. SEMKÓW, *Falsz materialny dokumentu. Aspekty prawne i kryminalistyczne*, „Przeegląd Prawno-Ekonomiczny” 2019, no. 46, pp. 40–54; M. GOC, D. SEMKÓW, *Public documents act and its role in preventing document forgery*, „Studia Iuridica Lublinensia” 2020, no. 4, pp. 85–99, <http://dx.doi.org/10.17951/sil.2020.29.4.85-99> (accessed 14.10.2022).

³ See more: M. GOC, *Przestępczość przeciwko dokumentom wciąż groźna*, „Człowiek i Dokumenty” 2016, no. 43, p. 29–36.

⁴ *Komunikat Komisji do Parlamentu Europejskiego i Rady, Plan działania na rzecz wzmocnienia europejskiej reakcji na przestępstwa przeciwko wiarygodności dokumentów podróży*, Bruksela, dnia 21.3.2017 r. COM(2016) 790 final/2, p. 2, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/PL/COM-2016-790-F2-PL-MAIN-PART-1.PDF> (accessed 20.10.2021).

acts⁵, which undoubtedly include the illegal crossing of the state border. Only in the first half of 2022, Border Guard officers detained 2,616 foreigners who crossed or tried to cross the border of the Republic of Poland in violation of the law, of which 914 cases were found to use false documents⁶.

The issue of illegal border crossing in the regulations and decrees of the President of the Republic of Poland in the years 1926–1956

The criminalization of an act consisting in the deliberate crossing of the border without documents, in a place not intended for this or despite the closure of border traffic, was introduced into Polish legislation in 1926.⁷ in the Ordinance of the President of the Republic of Poland of August 13, 1926 on foreigners⁸. This act was criminalized under point 3 of Art. 16. Point 4 of the aforementioned article provides for a criminal sanction if the foreigner presented an authentic document belonging to another person, and in relation to persons who gave their or a third person's authentic document to another person, who handed the document to the foreigner, and the document was used for his identification. In the perspective of this study, point 1 of the analyzed article is important, according to which the act of forging or altering documents, seals, official stamps and the deliberate use or delivery of such documents was also punished. Criminal liability was also foreseen for conduct consisting in submitting false testimony or evidence before the authorities. Legal sanctions were also imposed on those who kept silent about important circumstances concerning the conditions on which, inter alia, the obtaining an ID card or a permit, and the one who consciously used such documents obtained in the above-mentioned improper way. The provisions in question were then included in an almost unchanged wording in art. 22 points 1–5 of the Regulation of the President of the Republic of Poland of December 23, 1927 on the borders of the State⁹. However, their personal scope was extended, because the acts referred to in the regulation of 1927 concerned everyone. In an earlier legal act, this scope was limited to foreigners. Under the provisions of

⁵ H. Kolečki, op. cit., p. 33; see also: N. Nastula, *Falszerstwo dokumentów ze szczególnym uwzględnieniem przestępczości internetowej jako wyzwanie dla organów państwa*, "Polonia Journal" 2018, no. 8, p. 73.

⁶ „Informacja statystyczna za I półrocze 2022 roku”, p. 11, 19, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (accessed 08.08.2022).

⁷ W. Klaus, D. Woźniakowska-Fajst, *Przestępstwo nielegalnego przekroczenia granicy w ujęciu historycznym*, "Archiwum Kryminologii" 2015, vol. XXXVII, p. 194, DOI 10.7420/AK2015F. The authors indicate that sometimes the literature incorrectly states that this crime was introduced only in the Penal Code of 1969. Only then it became part of the provisions of the Code, but the penalisation of this act took place for the first time in 1926 e. – compare: M. Jachimowicz, *Nowe zasady odpowiedzialności za nielegalne przekroczeni granicy RP*, "Prokuratura i Prawo" 2006, no. 5, p. 50.

⁸ Journal of Laws of 1926, no. 83, item 465.

⁹ Journal of Laws of 1927, no. 117, item 996.

the Presidential Decree of September 15, 1948¹⁰ a change was made to the amount of the criminal sanction for the basic type of crime of illegal border crossing, increasing its upper limit from one year of imprisonment to three years. Penal provisions of the Decree of March 23, 1956 on the protection of state borders¹¹, more precisely, article 30, point 1 increased the penalty for crossing the state border without a permit to five years. However, in the event of a minor offense, the perpetrator was subject to arrest for up to one year or a fine.

Illegal border crossing in criminal laws

The first criminalization of the act of illegal border crossing in the penal code took place at the end of the 1960s¹² under the provisions of the Penal Act introduced in 1969¹³. Illegal crossing of the border in the wording identical to the Decree of the Council of State was included in article 288, chapter XXXVI, entitled “Offenses against public order”. The issue of the criminality of an act involving illegal border crossing has been more widely treated in the Criminal Code of 1997.¹⁴ The structure of the recipe has also been changed. Article 264 § 1 retained the basic type of this crime, the essence of which was the crossing of the border of the Republic of Poland in violation of the regulations, i.e. in a place not intended for that purpose or without appropriate documents authorizing entry into or exit from the territory of the Republic of Poland. Pursuant to § 2 of the aforementioned article, a qualified type was introduced, consisting in crossing the border using violence, threats, deception or in cooperation with other persons. An example of such an action is the situation where the border is crossed in a designated place, but in a hidden way – e.g. in a truck among the loads, without the required documents and without showing them to the services authorized under the law, or crossing it on the basis of falsified documents, using data and documents of another person and misleading officers as to the identity of the person crossing the border. Then it will be crossing the border using trickery¹⁵. For such behavior, imprisonment was provided for up to three years. The legislator punishes not only the act of illegal border crossing, but also the organization of crossing it, as expressed in § 3 art. 264. For its committing, a criminal sanction was provided for in the form of imprisonment from six months to eight years. Therefore, this crime is committed by taking actions aimed at creating conditions for illegal border crossing. The concept of organizing other persons to cross the border of the Republic of Poland contrary to the provisions of the law is very broad and also – as in the case of

¹⁰ Decree of September 15, 1948 amending the Ordinance of the President of the Republic of Poland of December 23, 1927 on state borders, Journal of Laws of 1948, no. 47, item 348.

¹¹ Journal of Laws of 1956, no. 51.

¹² M. Jachimowicz, op. cit., p. 50.

¹³ The Act of 19 April, the Penal Code, Journal of Laws of 1969, no. 94 with amendments.

¹⁴ Journal of Laws of 1997, No. 88, item 553 with amendments

¹⁵ M. Czeredys-Wójtowicz, M. Śliwiński, D. Gałek, *Odpowiedzialność karna za nielegalne przekroczenie granicy państwowej*, “Iustitia” 2022, no. 1, p. 22.

the act cataloged in § 2 article 264 of the Penal Code, it may be closely related to the preparation of false documents¹⁶.

Authors of comments on art. 264 emphasized that the scope of penalisation of the above-mentioned of acts was adapted to the needs of the time, which resulted both from the fact that Poland became to a large extent not only a destination country, but also a transit country for foreigners trying to get illegally to the European Union countries, and the fact that much more often than before cases of the so-called crossing the border by force¹⁷. As for the strictly mentioned § 3 of the analyzed article of the criminal act, it can be stated that it was introduced in order to enable more effective fight against the more and more frequent incidents of this type. As noted by the Supreme Court in its judgment of June 6, 2003 “organizing the crossing does not have to be connected with the illegal crossing by the perpetrator of the state border. Often it is only, for example, organizing means of transport, charging candidates for illegal entry into the territory of Poland, storing persons smuggled to or from Poland, or arranging for them to obtain appropriate documents”¹⁸. In 2004, a new article 264a of the Penal Code was introduced, according to which a person who, in order to gain financial or personal gain, enables or facilitates another person to stay in the territory of the Republic of Poland, contrary to the provisions of the law, is punishable¹⁹.

Legislative change introduced by the Act of April 22, 2005 amending the Border Guard Act and certain acts²⁰ made contraventionalization of the basic type of illegal border crossing (defined so far in § 1 Article 264 of the CC), which an act of crime has become an offense, stipulated since then in Article 49 a of the Code of Petty Offenses²¹. As a result of the introduced legal regulations, only special forms of crossing the border combined with the use of violence, threats of deception or involving cooperation with other persons remained a crime. The mildest form of this act, ie simply crossing the border, became, as already mentioned above, an offense for which a fine was imposed. The transformation of the basic type of crime into

¹⁶ See more: Ibid.

¹⁷ Z. Cwiakalski, in: A. Zoll, *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–277 k.k.*, ed. IV, Wolters Kluwer Polska, Warsaw 2013, art. 264, <https://sip.lex.pl> (accessed 18.04.2022).

¹⁸ M. Mozgawa, in: M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks wykroczeń. Komentarz*, ed. II, Wolters Kluwer Polska, Warsaw 2009, art. 49(a), <https://sip.lex.pl> (accessed 18.04.2022); Judgment of the Supreme Court dated June 6, 2003, file ref. III KK n 349/01, <https://sip.lex.pl> (accessed 05.08.2022).

¹⁹ The provision of Article 264a of the Penal Code introduced pursuant to the Act of April 16, 2004 amending the Act – Penal Code and certain other acts, Journal of Laws of 2004, no. 93, item 889.

²⁰ Journal of Laws of 2005, no. 90, item 757. These provisions entered into force on August 24, 2005.

²¹ The Act of May 20, 1971 – Code of Petty Offenses, consolidated text Journal of Laws of 2015, item 1049 with amendments; W. Klaus, D. Woźniakowska-Fajst, op. cit., p. 195; K. Banasik, *Penalizacja bezprawnego przekroczenia granicy państwowej*, “Studia Prawnicze. Rozprawy i Materiały” 2017, no. 1(20), p. 5.

a misdemeanor was, inter alia, reactions to the increasing number of cases of border crossing which formally only violate the Polish state border (people who leave Asia this way often want to reach the richer countries of Western Europe)²². The offense under article 49a is formal, i.e. it does not require effect, and is common, so it can be committed by any Polish citizen, foreigner, and stateless person, as long as he meets the conditions for liability for the offense. This offense may be committed by intentional or unintentional acts or omissions²³. From the perspective of the issues discussed in this article, the sentence of the Supreme Court presented in the judgment of 26 July 2001, according to which the moment of crossing the state border is the completion by an officer of the Polish Border Guard, of the activity consisting in checking the validity and authenticity of documents authorizing to cross the Polish border, seems to be significant. state border, while at the same time establishing the identity of the person who has these documents. Previous behavior may constitute an attempt to cross the border²⁴.

Pursuant to art. 49a § 2 of the CC. attempting to cross the border illegally and aiding in doing so are punishable by law. The authors of the comments to the article under analysis point out to a significant problem that may arise in the case of the practical application of Article 49a §2. This concerns doubts as to the qualification of the perpetrator's behavior as an auxiliary to the offense under Article 49a, and the serious crime which is an act of from Article 264 § 3 of the Criminal Code (organizing other persons to cross the border of the Republic of Poland against the regulations)²⁵. As indicated by theory and practice, the act specified in Art. 49a may be in conjunction with art. 270 of the Criminal code, when the perpetrator used a false document²⁶. As indicated by theory and practice, the act specified in Art. 49a may be in conflict with article 270 of the Criminal Code when the perpetrator used a false document. Emil Walenty Pływaczewski also emphasizes that the decriminalization of illegal border crossing has resulted in the fact that the conduct consisting in presenting passports containing forged border control stamps for border clearance is qualified only under the provision of Article 270 § 1 of the Criminal Code as behavior consisting in the use

²² T. Bojarski in: A. Michalska-Warias, J. Piórkowska-Flieger, M. Szwarczyk, T. Bojarski, *Kodeks wykroczeń. Komentarz aktualizowany*, LEX/el. 2021, art. 49(a), <https://sip.lex.pl> (accessed 18.04.2022); see more: M. Trybus, *Nielegalne przekroczenie granicy – aspekty prawnokarne*, "Studia Prawnoustrojowe" 2019, no. 46, pp. 439–451.

²³ W. Jankowski, in: T. Grzegorzczak (ed.), *Kodeks wykroczeń. Komentarz*, ed. II, Wolters Kluwer Polska, Warsaw 2013, art. 49(a), <https://sip.lex.pl> (accessed 18.04.2022).

²⁴ The judgment of the Supreme Court of July 26, 2001, V KKN 81/99, LEX No. 51670, <https://sip.lex.pl> (accessed 05.08.2022).

²⁵ Ibid. This wording of Article 49a § 2 of the Petty Offenses Code was introduced on 13.04.2007 by the act of April 13, 2007 amending the act on the border guard and some other acts (Journal of Laws no. 82, item 558). Before that, only the actual crossing of the border was punishable, while attempting to cross the border was not. After the amendment entered into force, attempting to cross the border also became punishable, T. Bojarski, op. cit.; W. Jankowski, op. cit.

²⁶ T. Bojarski, op. cit.

of a modified document Only in a few in cases, such acts were also classified under the provisions of article 49 a § or 2 of the Code of Petty Offenses. As the author of the above view points out, such a procedure is not appropriate, as in most cases the perpetrator does not have the authority to legally cross the border. This entitlement expires when the visa expires, which means that at the time of presenting a passport with an invalid stamp for inspection, there is at least an attempt to illegally cross the border²⁷.

The issue of documents authorizing to cross the state border was also emphasized in the Act of October 12, 1990 on the protection of the state border²⁸. Article 14 of this Act, which specifies the rules of legal border crossing in sec. 1. states that crossing the state border is allowed on the basis of documents authorizing to cross it. Pursuant to Article 14 (2) of the Act, documents authorizing to cross the state border are specified in separate regulations, including international agreements to which the Republic of Poland is a party, or the provisions of European Union law.

Summarizing the issue at hand, it can be stated that, pursuant to the applicable provisions of law, the so-called ordinary illegal crossing of the border of the Republic of Poland from August 24, 2005 constitutes an offense provided for in Art. 49a of the Petty Offenses Code and is punishable by a fine. As already emphasized, such a change in regulations is, inter alia, a consequence of the fact that in the years preceding the introduced change, the causes of illegal border crossing changed their nature and less and less of a political dimension, and more often connected with the efforts of emigrants from poor countries to find themselves more dignified living conditions. For comparative purposes only, it is worth noting that in the laws of the European Union countries neighboring Poland – in Germany, the Czech Republic and Slovakia – such acts are also considered a misdemeanor²⁹. Currently, § 2 of Article 264 of the Criminal Code is applicable when the border is crossed against the provisions using violence, threats, deception or in cooperation with other persons. On the other hand, in § 3 of the analyzed article, the legislator provided for the responsibility for organizing illegal border crossings for other people. In the context of the above, it should be noted that in recent years rapid changes in threats to the security of citizens, society and the state have become noticeable. Clear interactions take place, in particular, in the relationship between the security of citizens and the state and specific types of crime, including one can include: organized crime, terrorism, economic

²⁷ E.W. Pływaczewski, *Bezpieczeństwo obywateli – prawa człowieka – zrównoważony rozwój: polskie kierunki interdyscyplinarnych badań kryminologicznych nad bezpieczeństwem obywateli oraz w zakresie przeciwdziałania wykluczeniu społecznemu*, Temida 2, Białystok 2017, p. 422.

²⁸ Unit text: Journal of Laws of 2022, item 295; see also the regulation of the Minister of the Interior and Administration of August 13, 2008 on the method of determining the territorial range of border crossings, Journal of Laws no. 147, item 938.

²⁹ See more: Z. Cwiąkański, op. cit.

and common crime³⁰. This applies in particular to offenses against the credibility of documents. Documents very often serve both as an object and a tool in carrying out many crimes that significantly threaten the legal order, the security of citizens and the state³¹. Taking into account the scope of the analyzed regulations, it is worth pointing out that counteracting acts consisting in crossing the borders of the Republic of Poland in violation of the law has a significant impact not only on the level of national security and public order in Poland, but due to the fact that the border of the Republic of Poland is the external border of the European Union / Schengen Area, it also determines community security.

Falsification of documents in the context of illegal border crossing – empirical aspects

In Poland, the entity responsible for the protection of the state border is the Border Guard, whose tasks and powers are defined in the Act of October 12, 1990 on the Border Guard. In addition to the already mentioned obligation to protect the state border, this formation is also responsible for border traffic control and preventing and counteracting illegal immigration, identifying, preventing and detecting crimes and offenses as well as prosecuting their perpetrators, within the competence of the Border Guard, in particular crimes and offenses related to compliance. crossing the state border with regulations as well as crimes specified in Article 270–276 of the Criminal Code regarding the reliability of documents authorizing to cross the state border, documents authorizing to stay on the territory of the Republic of Poland or documents required for their issuance³².

Taking into account the previously analyzed legal regulations contained in the Penal Code and the Code of Petty Offenses, it should be emphasized that the illegal border crossing is carried out mainly with the participation of organized crime groups. Their members organize transport at all stages of the journey, temporary shelter in transit countries, and often forged or forged documents. Only a few migrants make an attempt to individually and independently reach the destination country. Illegal

³⁰ J. Murasicki, *Relacje między wybranymi kategoriami przestępczości a bezpieczeństwem obywateli*, “Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy” 2014, no. 12(03), p. 49; S. Pikulski, *Wybrane zagadnienia z problematyki badań dokumentów w świetle praktyki laboratoriów kryminalistycznych Policji*, in: J. Błachut, M. Szewczyk, J. Wójcikiewicz (ed.), *Nauka wobec przestępczości. Księga ku czci Profesora Tadeusza Hanauska*, Wydawnictwo Instytutu Ekspertyz Sądowych, Kraków 2001, pp. 120–121.

³¹ M. Goc, *Ustawa o dokumentach wciąż oczekiwana*, „Człowiek i Dokumenty” 2018, no. 50, p. 10–11.

³² Act of October 12, 1990 on the Border Guard, consolidated text Journal of Laws of 2022, item 1061, as amended, see too: Z. Rau, *Straż Graniczna*, in: Z. Rau (ed.), *Przestępczość zorganizowana w Polsce i jej zwalczanie*, Zakamycze, Kraków 2002, <https://sip.lex.pl> (accessed 20.04.2022); E. Zatyka, *Charakterystyka próby badawczej w drugim etapie badań*, in: E. M. Guzik-Makaruk (ed.), *Poczucie bezpieczeństwa obywateli w Polsce. Identyfikacja i przeciwdziałanie współczesnym zagrożeniom*, Wolters Kluwer Polska, Warsaw 2011, <https://sip.lex.pl> (accessed 09.08.2022).

migration has become one of the significant sources of income for organized crime groups, and the funds obtained from it are used to carry out criminal activities in other areas. Organized crime groups are creative and adapt quickly to new situations, so there is no single, typical *modus operandi* in this area. In addition, the abuse of procedures allowing stay in the territory of the Republic of Poland gives the appearance of the legality of the practice³³.

In recent years, Poland has been treated primarily as a transit country on the migration route to other countries in Western Europe and North America, as well as a country of destination migration. The main identified routes for the smuggling of illegal migrants by land are:

- the so-called Baltic route running through: Russia – Estonia – Latvia – Lithuania – Poland – other Western European countries;

- Russia – Ukraine / Belarus – Poland – Germany – other Western European countries;

- the so-called Balkan route covering countries such as: Syria and Iraq – Turkey – Greece – Macedonia – Serbia – Croatia – Hungary – Austria – Slovakia – Czech Republic – Poland and further to Germany, Sweden or Finland³⁴.

Additionally, air routes with various connection configurations are used on a large scale and with varying intensity. Foreigners arriving in Poland or another country belonging to the Schengen Agreement try to cross the border on the basis of false Polish visas, false documents (Polish and EU), as well as on the basis of documents belonging to other people. The phenomenon of illegal migration identified by the Border Guard can be divided into strictly illegal and quasi-legal. Strictly illegal is, for example, the use of the so-called green border; crossing the state border of the Republic of Poland on the basis of forged or forged documents authorizing to cross the border; modification of border control stamps in order to confirm the “legality” of the periods of stay in the territory of the EU and obtaining another visa; using the similar method, the so-called *look a like*³⁵, using documents (in particular Polish) be-

³³ *Raport o stanie bezpieczeństwa w Polsce w 2016*, Ministerstwo Spraw Wewnętrznych i Administracji, Warsaw, p. 97; zob. także: M. Kobylas, *Wykorzystanie analizy kryminalnej w zwalczaniu przestępczości zorganizowanej*, „Problemy Współczesnej Kryminalistyki” 2006, vol. 10, pp. 125–142; M. Michalski, P. Łabuz, *Karnopravna interpretacja „zakładania” zorganizowanej grupy przestępczej i „kierowania” nią*, „Problemy Współczesnej Kryminalistyki” 2015, vol. XIX, pp. 159–168; P. Chlebowicz, *Kryminologia i prawa człowieka wobec migracji w XXI wieku*, in: W. Pływaczewski, M. Ilnicki (ed.), *Ochrona praw człowieka w polityce migracyjnej Polski i Unii Europejskiej*, Uniwersytet Warmińsko-Mazurski, Olsztyn 2016, pp. 10–19; K. Bajda, *Criminological and forensic aspects of selected areas of organized crime in Poland*, „Studia Iuridica Lublinensia” 2021, vol. 30(4), pp. 33–47, DOI: <http://dx.doi.org/10.17951/sil.2021.30.4.33-47>.

³⁴ *Raport o stanie bezpieczeństwa w Polsce w 2016...*, op. cit., p. 97; see also: T. Góra, *Przestępstwa cudzoziemców*, „Problemy Współczesnej Kryminalistyki” 2021, vol. XXV, pp. 34–35.

³⁵ K. Laskowska, M. Perkowska, *Przestępstwo nielegalnego przekroczenia granicy w ujęciu empirycznym*, „Prawo w Działaniu. Sprawy Karne” 2020, no. 43, p. 13, DOI: 10.32041/pwd.4301.

longing to other people. On the other hand, quasi-legal migration consists in: abusing the possibility of entering the territory of the Republic of Poland under the pretext of studying, working, for tourist, business, cultural purposes, by using for this purpose false or false documents entitling to obtain a relevant visa; abuse of the refugee status granting procedure in the Republic of Poland; fictitious marriages of foreigners with Polish citizens³⁶.

It is worrying that the nature of crimes against the credibility of travel documents is changing rapidly. This issue is often raised by representatives of the European Union³⁷. Thus, the need to increase efforts to improve the security of travel documents issued to EU and third-country nationals is underlined, as the security of travel documents is treated as an important factor for better border protection and migration management and paving the way towards a real and effective Security Union³⁸. For many years, the need to improve the document security system has also been indicated by experts and specialists associated in the Polish Forensic Society, thus demonstrating numerous initiatives and undertakings aimed at the statutory regulation of the issue of public documents and protection of their credibility³⁹.

The above-mentioned necessity to strengthen actions for the credibility of documents, and thus to take actions aimed at preventing document forgery, including travel documents, is confirmed by the statistics of the Border Guard Headquarters showing the disclosed cases of crossing or attempting to cross the borders of the Republic of Poland in violation of the law, including those situations in which forged documents were used to illegally cross the border. The statistics of the Border Guard for the period from 2016 to the first half of 2022 were analyzed. Taking into account the scope of this article, the following issues were addressed to the interested party:

- the number of persons detained / disclosed in Poland at the external and internal borders of the EU for crossing or attempting to cross the state border in violation of the law (Table 1),
- the number of cases of disclosed document forgeries (Table 1),
- type and number of forged documents,
- the number of forgeries of documents with an indication of the citizenship of the person using them.

³⁶ *Raport o stanie bezpieczeństwa w Polsce w 2016...*, op. cit., p. 98.

³⁷ Komunikat Komisji do Parlamentu Europejskiego i Rady, *Plan działania...*, op. cit.

³⁸ Komunikat Komisji pt. „Realizacja Europejskiej agendy bezpieczeństwa w celu zwalczania terroryzmu i utorowania drogi ku rzeczywistej i skutecznej unii bezpieczeństwa” (COM2016 230 final, 20.4.2016).

³⁹ Zob. szerzej: M. Goc, *O projekcie ustawy o dokumentach publicznych uwag kilka*, „Człowiek i Dokumenty” 2017, nr 44, p. 17; idem, *Ustawa o dokumentach publicznych potrzebna od zaraz*, „Człowiek i Dokumenty” 2016 no. 41, p. 11; M. Goc, T. Tomaszewski, *Nowe kierunki badań dokumentów w projektach rozwojowych Uniwersytetu Warszawskiego i Polskiego Towarzystwa Kryminalistycznego*, „Problemy Współczesnej Kryminalistyki” 2014, vol. XVIII, pp. 25–38; D. Semków, *The scope of legal protection of documents and the security system of public documents in the Polish legal regulations*, „Studia Iuridica Lublinensia” 2021, vol. 30, no. 5, pp. 514–515. DOI: 10.17951/sil.2021.30.5.501-521.

In the first year of the analyzed period, the Border Guard revealed a total of 7,566 cases of crossings or attempts to cross the border in violation of the law. As a result of the detentions, 2,984 cases of document forgery were revealed, the vast majority of which were visas – 2,200, then: stamps – 490, passports – 107, ID cards – 78, residence permits – 52, documents classified as other – 26 and MRG cards in the number of 2. The citizens of Ukraine – 2,556 had the highest number of forged documents, followed by Turkey – 84, Russia – 59, Belarus – 53 and Albania – 23⁴⁰.

In 2017, the number of people apprehended fell slightly, reaching 7,285 cases. In total, Border Guard officers disclosed 2,700 forged documents, of which, similarly to the previous analyzed year, the largest collection was forged visas – 2,105, followed by: stamps – 303, identity cards – 121, passports – 84, residence permits 77 and documents marked with as others in the number of 10. Taking into account the citizenship of people using inauthentic documents, it should be noted that the largest number of such documents was used by the citizens of Ukraine – 2,093, Russia – 214, Belarus – 47, Turkey – 35 and Vietnam – 29⁴¹.

In 2018, the Border Guard detained a total of 5,524 people for crossing the border in violation of the law or for attempting to cross the border in violation of the law. The number of disclosed documents dropped to 1,697, including 1,222 visas, 15 counterfeit stamps, 86 clocks, 68 Internet documents, 34 documents, and 34 others. More information about crossing the border with the crossing of ID cards with the people of Ukraine – 1138 cases, Russia – 145 cases, Belarus 52, Syria – 47 and Iran – 40⁴².

In the next year of the analyzed period, the number of arrests slightly decreased and reached the level of 5188 cases, of which 1,200 cases of using false documents were recorded. In 2019, the long-standing trend was maintained, according to which visas were the largest number of forged documents – 802. Next, 102 forged identity cards, 96 stamps, 91 passports, 61 residence permits and 48 other documents were identified. Traditionally, people from Ukraine most often presented false documents – 826 cases, then Belarusians – 39, Georgians – also 39, Russians 34 and Turks – 34⁴³.

In 2020, Border Guard officers revealed 4,156 cases of crossing or attempting to cross the state border contrary to the provisions of the Act, including 1,863 cases of using false documents entitling to cross the border / stay on the territory of the

⁴⁰ “Biuletyn Statystyczny Straży Granicznej za 2016 r.”, Komenda Główna Straży Granicznej, Warsaw 2017, pp. 11, 19–20, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (accessed 12.09.2022). For the sake of clarification, it should be emphasized that in one document there could have been several false impressions of stamps. This situation applies to all analyzed years.

⁴¹ “Biuletyn Statystyczny Straży Granicznej za 2017 r.”, Komenda Główna Straży Granicznej, Warsaw 2018, pp. 11, 19–20, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (accessed 12.09.2022).

⁴² “Informacja Statystyczna za 2018 r.”, Komenda Główna Straży Granicznej, Warsaw 2019, pp. 12, 19–20, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (accessed 12.09.2022).

⁴³ “Informacja Statystyczna za 2019 r.”, Komenda Główna Straży Granicznej, Warsaw 2020, pp. 11, 19–20.

Republic of Poland. Among them: 1,284 documents with the “other” status, 348 visas, 36 stamps, 70 residence permits, 65 identity cards and 60 passports. The citizens of Ukraine – 1,423, Moldova – 139, Georgia – 70, Russia – 61 and Belarus 32 – had the highest number of forged documents⁴⁴.

A year later – in 2021, a record number of people crossing or trying to cross the border in violation of legal regulations was detained in the analyzed period. At that time, 10,458 such situations were revealed, including 4,460 cases of document forgery: 1,284 documents classified as “other”, 459 forged visas, 233 identity cards, 63 stamps, 100 residence permits, 77 passports, 2 MRG cards⁴⁵. The most frequently forged documents were used by the citizens of Ukraine – 3,325, Moldova – 351, Georgia – 259, Syria – 201, and Belarus – 63⁴⁶.

In the first half of 2022, 2,616 cases of arrests for crossing the border or attempting to cross the border in violation of the law were identified, including 914 cases of presenting false documents. According to the latest data, among them the following were disclosed: 662 documents with the status “other”, 72 passports, 62 false visas, 35 stamps, 59 identity cards and 32 residence permits. Taking into account the citizenship of the people using these documents, the following should be listed in the correct order: Ukraine – 648 cases, Georgia – 86, Syria – 38, Albania – 18 and Russia – 17⁴⁷.

⁴⁴ “Informacja Statystyczna za 2020 r.”, Komenda Główna Straży Granicznej, Warsaw 2021, pp. 11, 19–20.

⁴⁵ MRG card, local border traffic permit. Local border traffic is the regular crossing of the common border of the States of the Contracting Parties by residents of the border area of the State of the Contracting Party in order to stay in the border area of the State of the other Contracting Party for social, cultural or family reasons and for justified economic reasons which, according to the internal regulations of the other State Of a Contracting Party shall not be considered a gainful activity for a period not exceeding the time limits laid down in the Agreement, *Mały Ruch Graniczny – informacje ogólne*, <https://www.gov.pl>, <http://isp.policja.pl> (accessed 05.09.2022).

⁴⁶ “Informacja Statystyczna za 2021 r.”, Komenda Główna Straży Granicznej, Warsaw 2022, pp. 11, 19–20, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (accessed 12.09.2022).

⁴⁷ “Informacja statystyczna za I półrocze 2022 roku”, p. 19, <https://www.strazgraniczna.pl> (accessed 12.09.2022).

Tab. 1. Number of people detained / disclosed by the Border Guard for crossing or attempting to cross the border in violation of the law and the number of cases of using false documents in the procedure of illegal crossing of the Polish borders in 2016-2022

Year	Detained / disclosed by the Border Guard for crossing or attempting to cross the state border against the law	Forged documents disclosed by the Border Guard
2016	7,566	2,984
2017	7,285	2,700
2018	5,524	1,697
2019	5,188	1,200
2020	4,156	1,863
2021	10,458	4,460
First half of 2022	2,616	914
Total number	42,793	15,818

Source: own study based on data from the Border Guard Headquarters.

The analysis of the presented statistical data shows that every year there are many crossings or attempts to cross the borders of the Republic of Poland in violation of the law. Despite the downward trend in this regard in 2016–2020 and the lower intensity of this practice (by over 3,000), in 2021 the highest number of such cases was recorded in the analyzed period. With over 10,000 cases of nearly 7 thousand. it concerned incidents on the border with Ukraine or Belarus. The above allows to conclude that in this case the etiology of illegal border crossing should be seen in the situation that occurred in Belarus in connection with the civil war in Syria, as well as in the aggravating Russian-Ukrainian conflict at the end of 2021.

As already mentioned, the tool used to cross the border illegally is the crime of document forgery. This thesis is confirmed in the presented statistics. The cases of false documents, which have been systematically revealed over the years, prove that this crime is committed on a permanent basis, which opens the way to other criminal activities. It should also be noted that, in total, from 2016 to the first half of this year, Border Guard officers revealed about 16 thousand people at the borders of the Republic of Poland. false documents; using them – and thus introducing them to legal circulation – gives rise to a legal effect in the form of the acquisition of many rights by a person illegally using such a document.

Final conclusions

The Polish legal regulations currently in force provide for liability for crossing the border in violation of the law, both pursuant to Art. 264 of the Criminal Code and Art. 49a of the Code of Petty Offenses. The statistics collected by the Border Guard Headquarters confirm that every year there are many attempts to cross the border

contrary to the provisions of the law, and a significant number are those in which false documents are used to cross the border illegally, mainly visas, as well as, inter alia, passports, ID cards, residence permits.

Taking into account the thesis, according to which the forgery of documents allows for other criminal activities, and thus the commission of many acts important from the perspective of the security of the state and citizens, it can be concluded that document forgery also poses a significant threat to the stability and integrity of the legal system of the Polish state and the broadly understood security of the state and its citizens. In this process, it should also be borne in mind that after Poland joins the Schengen / European Union, the main burden of responsibility in the field of border control and protection of the state border rests on the eastern section of the state border, which is also the external border of the area. Thus, it should be emphasized that, according to statistics, the vast majority of people arrested for crossing the border or attempting to cross it in violation of the law were third-country nationals.

The issue of illegal crossing of state borders, which in the case of the Polish borders are also the external borders of the European Union / Schengen area, and the procedure of forgery of documents, including travel documents, is therefore closely related to the phenomenon of illegal immigration. The etiology of these phenomena is influenced by many factors, which undoubtedly include armed conflicts, including the civil war in Syria or the conflict in Ukraine initiated in 2014, with particular emphasis on its current phase of military operations, lasting from February 2022. In this context, it is necessary to point to the year 2021, which was a special year throughout the analyzed period. At that time, Border Guard officers recorded a record number of attempts to cross the border in violation of the law and the number of cases of using forged documents.

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Conflict of interest

None

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