

**NAUKI PRAWNE / LEGAL SCIENCES**

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**MODUS OPERANDI OF PERPETRATORS  
(CRIMINAL GROUPS) SMUGGLING ILLEGAL  
MIGRANTS ACROSS THE BORDER****Introduction**

The organization and professionalization of criminal activities with the use of the latest technical achievements, knowledge of the methods and means of activities of law enforcement agencies indirectly define the profile of contemporary criminal groups. This state of affairs has become the basis for updating the knowledge about the method of operation of perpetrators of crimes under Art. 264 § 2 of the Criminal Code<sup>1</sup>. The aim of the article is to describe the tactical and technical methods of operation of criminals who organize travel and illegal border crossing for a fee. In legal terms, this study focuses on the form and methods of action of perpetrators of the crime under Art. 264 § 2 of the Criminal Code, i.e. illegal border crossing in cooperation with other persons. In this context, the concept of “interacting with other people” needs to be defined. In the simplest terms, it means various forms of cooperation of other people in committing a crime, and these people play various roles in this practice.

Crime related to the smuggling of irregular migrants is a serious problem. From the point of view of those involved in this practice, it consists of three separate procedures. The first is to facilitate illegal entry into another country. The second procedure is to create or provide a false identity document or passport. The third one – an illegal residence permit for a foreigner. The essence of the considerations is to show the methods of operation of people who organize the transfer of people across the border. In short, the operation is based on the fact that an organized group of people charges the migrants money for transporting them across the border to another country, thus bypassing the official entry requirements and border controls of the destination country. If migrants do not have money, the criminal group charges a fee in the form of valuable items that the migrants have. Observation of this practice reveals certain trends

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<sup>1</sup> The Act of June 6, *Penal Code*, „Journal of Laws” 1997, no. 88, item 553.

and methods. Unfortunately, the level of detection of perpetrators of this crime is alarmingly low. This state of affairs greatly affects the security of states and the sense of security of their citizens.

In the case of illegal migration of migrants, the knowledge of the methods of the perpetrators' actions may be used not only in preventing this type of crime. Knowing and using the *modus operandi* in criminal proceedings plays a key role. In order to create a profile and determine the methods of action of the perpetrators, there is a justified need to analyze this negative phenomenon.

The issue of the smuggling of illegal migrants and the use of the *modus operandi* of the organizers of this crime have not yet been elaborated on in a broader empirical way. Due to the secret nature of the practice, few publications dealing with the issue of people smuggling have appeared in the modern forensic literature. Therefore, it is worthwhile to thoroughly analyze the aspects related to the technique and tactics of the perpetrators. The more so as technological advances over the past decades, in particular the development of IT tools, have transformed the methods and tools used by the organizers of illegal migrant smuggling. In the fight against crime related to illegal border crossing, an important role is played by the knowledge of the perpetrators' conduct before, during and after the crime was committed. Comprehensive knowledge of all three stages allows you to create a comprehensive profile of the offender and define his methods of operation in carrying out the crime. In order to determine whether the law enforcement agencies dealing with the illegal smuggling of people across the border take into account the ways in which the perpetrators operate, an analysis of various methods of operation was carried out. The conducted analysis allows you to answer the following questions:

- Who are the perpetrators of crimes under Art. 264 § 2 of the Criminal Code?
- How do they organize the transfer of people?
- How do border controls overcome?
- How do they take advantage of loopholes in the law?
- What tools do they use?

Particular attention was paid to the tactical and technical elements of the perpetrators' actions. The effectiveness of these activities was assessed. An attempt was also made to answer the question of what influence the *modus operandi* has on the process of identifying and proving a crime.

The choice of the subject of the study was dictated by the need to analyze the use of *modus operandi* in the process of detecting perpetrators. For this purpose, the basic concepts related to the subject of this paper are explained and the causes of the contemporary migration crisis are discussed. The following describes the meaning and evolution of the term *modus operandi*. The methods and methods of operation of persons participating in the practice of illegal smuggling are presented in the last part of the study. A detailed analysis of the tactical elements of pre-travel activities, factors influencing the selection of the means of transport, the actions of the perpetrators during the transfer, as well as the as well as the tools and camouflage used.

## Key concepts / conceptual apparatus / definitions

The concept of the smuggling of migrants is associated with illegal border crossing with the help of an organized group of people dealing with the illegal transport of people from country to country. This means that the smuggling of migrants bears the hallmarks of organized crime, which the organizers profit from. Unlike human trafficking, which can take place both domestically and internationally, migrant smuggling is a crime that only takes place abroad. It consists in helping migrants to enter illegally or to facilitate their stay in a foreign country in order to obtain financial or material benefits. International law unequivocally criminalizes activities related to the smuggling of migrants, but does not require penalties to be applied to migrants who use the services of smugglers. As migrants consent to the smuggling venture and, mainly due to the lack of access to legal means of migration, voluntarily participate in it, they are not considered victims of crime. However, it should be emphasized that smuggled migrants are often exposed by smugglers to dangers and threats to their health and life, and are therefore potential victims of crimes during smuggling, including serious human rights violations<sup>2</sup>.

Taking up the issue related to the subject of this study requires the clarification of a few key concepts. These will, in particular, be the concepts of *modus operandi*, illegal migration, illegal stay and the transit of illegal migrants across the border. In the literature on the subject, you can find many definitions of the Latin term *modus operandi*. *Modus operandi* is literally “a mode of action”<sup>3</sup>. In legal terms, the *modus operandi* is a characteristic, typical and repeated manner of the perpetrator’s actions, consisting in selecting the same victims, using the same methods, tools and methods, and acting in a similar time, place and in similar circumstances<sup>4</sup>. According to some authors, the *modus operandi* is “a set of characteristic tactical and technical activities in the preparation, execution and final stages of a crime”<sup>5</sup>. “Regardless of the differences in definitions, however, the *modus operandi* aims to describe and organize the way a crime was committed. Knowledge of the methodology of committing crimes allows law enforcement agencies to select optimal methods in the process of identifying and catching the perpetrator. In order to understand the *modus operandi* of groups that move people across the border, it is necessary to understand the mechanism of activity and organization of these communities. This issue will be discussed later in the study.

Illegal migration is crossing a border that does not meet the administrative or legal standards of the country of origin, transit or destination<sup>6</sup>. In this

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<sup>2</sup> UNODC, *Human Trafficking and Migrants Smuggling*.

<sup>3</sup> M. Kulicki, V. Kwiatkowska-Darul, L. Stęпка, *Kryminalistyka*, Toruń 2005, p. 24.

<sup>4</sup> T. Hanausek, *Modus operandi i alibi*, „Studia Kryminologiczne, Kryminalistyczne i Penitencjarne” 1978, no. 8, p. 227.

<sup>5</sup> A. Solarz, *Zagadnienie przestępczości zawodowej w Polsce*, Warszawa 1967, p. 167.

<sup>6</sup> Definition and statistics on illegal migration, source: <<https://eur-lex.europa.eu/summary/PL/114508>>, see: 03.08.2022.

approach, “the main actors of illegal immigration are foreigners who illegally enter the territory of a given country by land, sea and air, which is done with the use of forged documents or through organized crime. However, a significant number of foreigners enter the country of destination legally, on presentation of a visa or using the visa-free system, and then illegally extend their stay or change its purpose without the consent of the authorities. Illegal immigrants also include asylum seekers who remain in the country despite a final negative decision on them”<sup>7</sup>. The term “illegal immigration” is also used to describe the various phenomena that accompany this process.

The definition of “illegal stay” is available in many legal acts of the European Union. According to the so-called the Return Directive, “illegal stay” means the presence on the territory of an EU Member State of a third-country national who does not or no longer meets the conditions for entry to an EU Member State, as set out in Art. 5 of the Schengen Borders Code, or other conditions for entry, stay or residence in that Member State<sup>8</sup>. Illegal stay is defined as the presence on the territory of an EU Member State of a foreigner who does not meet or no longer meets the conditions for entry to an EU Member State<sup>9</sup>, as specified in art. 5 of the Schengen Code. Illegal stay in Poland may constitute grounds for refusing to initiate proceedings or refusing to grant a residence permit. Therefore, it can be concluded that an “illegal” stay is not only the stay of a foreigner who does not have the appropriate permit or document (visa or residence card), but also the stay of a foreigner who has such a document, but does not have financial resources, or has been recognized as creating a security risk.

The concept of “migrant smuggling” is understood in two ways: as an attempt to cross the border individually or spontaneously and as an illegal crossing of the border with the help of third parties. Metastasis is also defined as the operation of an organized group of people resembling mafia structures, dealing with the illegal transport of people from country to country<sup>10</sup>.

### ***Modus operandi* – ways and methods of operation of people smugglers**

When analyzing the phenomenon of illegal migration in a global context, one may be tempted to say that today every country in the world plays one of the three roles. It can be a source of an influx of migrants, a transit country or a destination

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<sup>7</sup> R. Suduł, *Definicje i uwarunkowania nielegalnej imigracji*, „Roczniki Wydziału Nauk Prawnych i Ekonomicznych KUL” 2012–2013, vol. 8–9, part 1, p. 374.

<sup>8</sup> Directive 2008/115 / EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>9</sup> *Cudzoziemcy w Polsce. Podręcznik dla funkcjonariuszy publicznych*, ed. M. Łysienia, Helsińska Fundacja Praw Człowieka, Warszawa 2015, p. 10.

<sup>10</sup> K. Głabicka, *Przerzut migrantów do lub przez terytorium Polski*, Series: „Prace migracyjne” nr 22, Warszawa 1999, p. 48.

country. Reality shows that smuggling is increasingly characterized by an organized form and a professional approach. This activity is perfectly organized already at the stage of recruiting candidates for cross-border smuggling, as well as in the subsequent stages of smuggling: transport preparation, forging documents and receiving migrants in destination countries. In addition to activities facilitating illegal entry into the territory of a foreign country, organized crime groups increasingly resort to smuggling people as part of the so-called trafficking. This issue has been extensively treated in the monograph entitled *Trafficking in human beings – a legal and criminological study* by A. Łyżwa. In her study, the author analyzes crimes related to the use of people for forced labor or services of a forced nature. It describes the essence of forced labor, referring to all available legal definitions. It also identifies the factors that characterize forced labor and make it possible to clearly distinguish this practice from other types of violations, including violations of employee rights. It is worth emphasizing here that A. Łyżwa shows the phenomenon of trafficking in human beings in the context of its current trends – both globally and regionally. For this purpose, the author presents statistical data collected by the United Nations, the International Labor Organization, the International Organization for Migration and the European Commission. A. Łyżwa in his monograph stresses the fact that the actual scale of the crime of trafficking in human beings is unknown. The author devotes part of her considerations to the issue of trafficking in human beings in Poland, showing the scale of this practice. He also pays attention to threats related to trafficking in human beings on the Polish labor market from the perspective of foreigners. He analyzes the legal situation of citizens of Ukraine, Belarus, Moldova, India and other Asian countries. The subject monograph deals with the issue of the criminalization of the crime of trafficking in human beings. A. Łyżwa, emphasizes that within the structures of the National Prosecutor's Office there is a special Department for Organized Crime and Corruption, responsible for prosecuting trafficking in human beings. Additional support in these cases is provided by external departments operating within the Department of Organized Crime and Corruption of the National Public Prosecutor's Office, operating through local district prosecutor's offices, which also act as public prosecutors. In turn, in district public prosecutor's offices, coordinators of preparatory proceedings in cases related to trafficking in human beings were appointed. Their task is to collect data on all matters related to this category of crime<sup>11</sup>. However, this part of the study is an analysis of the methods of operation of perpetrators engaged in the transfer of people across the border.

In the author's opinion, the methods of operation of criminal groups are closely related to the territory in which the action of smuggling people is carried out. There is a simple typology of migrant smuggling in the border nomenclature,

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<sup>11</sup> A. Łyżwa, *Handel ludźmi – studium prawnokryminologiczne*, Olsztyn 2019, p. 352.

which is based on the route by which the illegal transfer of people across the border is carried out<sup>12</sup>:

- smuggling of migrants by land;
- smuggling of migrants by water;
- smuggling of migrants by air.

The methods and tools used by smugglers vary depending on the migration route and whether the people are transported by sea, land or air. Each of these roads has its own specificity.

There are two key stages in the process of migrant smuggling that do not need to be related to each other. The first stage focuses on recruiting people who want to travel to another country. For this purpose, the organizers of the transfer post announcements and publish information on the Internet, mainly in social media. They provide a contact phone number or an e-mail address registered on a foreign server. The second stage of smuggling is the physical transport of the acquired persons. The transport service is carried out mainly in transit countries. Finally, when reaching the border of the destination country, smugglers either corrupt border guards or use false documents, previously taking legal passports and personal documents from migrants.

Organizing migrant smuggling is a mix of activities: sophisticated operations to uncomplicated services, such as simply guiding migrants across the green border. The dominant view in recent publications is that migrant smuggling is a business dominated by organized crime groups that use known routes to smuggle drugs and weapons, but are able to use the same routes to smuggle migrants. Taking into account the different organizational features of these criminal groups, the United Nations (United Nations Office on Drugs and Crime) classifies migrant smuggling according to the following criteria:

- ad hoc service for migrants;
- smuggling of migrants in a systemic and organized manner;
- smuggling of migrants in an organized manner, broken down by phases.

In the case of an ad hoc service, migrants organize their own travel process. Migrants usually travel by public transport. Since they do not have documents, they seek help from criminals who can facilitate their entry into a foreign country. This type of smuggling is the cheapest and most popular.

The second type of smuggling is carried out with the use of false documents. It is where criminals sell migrants forged passports and visas. It is not easy to pass border checks with a false identity document, but migrants still risk it. The third type of smuggling is a carefully planned process. In this type of smuggling, migrants negotiate with local people linked to local criminals who give migrants an easy pass. This way of operating gives migrants a sense of security and a guarantee that thanks to the fee paid, everything will be organized in a professional manner. In this type of scenario, migrants are

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<sup>12</sup> UNODC, *Transnational Organized Crime Threat Assessment*, Chapter 3, Smuggling of Migrants, 2010, source: <[https://www.unodc.org/documents/data-and-analysis/tocta/3.Smuggling\\_of\\_migrants.pdf](https://www.unodc.org/documents/data-and-analysis/tocta/3.Smuggling_of_migrants.pdf)>, see: 05.08.2022.

accompanied by smugglers during passport control. Migrants who manage to cross the border expect another group of smugglers to be waiting on the opposite side to help them get to their destination.

The smuggling of migrants by air is combined with other forms of travel. The combination and selection of means of transport depend on the chosen route. Illegal migrants travel the first leg of their journey by plane, and the next sections between countries are traveled by land or sea. A very common way of smuggling migrants on such a trip is through the use of transit airports. After landing at the airport, migrants destroy documents and deliberately miss their next flight. Waiting at the airport until the smugglers will provide them with new documents, including new plane tickets. In such a scenario, the most important thing for migrants is that they have already passed the first passport control, because the documents they presented during this first control at the airport are usually documents of other people. This type of migrant smuggling is one of the most used as there is little risk for criminals who do not travel with the migrants.

Another way to smuggle migrants is through desert areas where many migrants are exposed to extremely harsh conditions. Even so, they are ready to take the risk and try their chances as migration is their only salvation. The condition and individual endurance of migrants in this type of journey is considered the most important factor. These people have a supply of food and cash with them because they know they will have to pay local smugglers. This fact makes them a potential target of criminals and victims of theft. Many migrants confirm that there are links between smugglers and common thieves. When traveling through the desert, many die or are abandoned and left unassisted during the journey.

A typical way of smuggling migrants by sea is to transport people using two boats. The larger boat transports the migrants to a specific location, and then the smaller boats take the migrants to their destinations. This scenario also abounds in cases where migrants are abandoned on islands where they have to wait for the next boat or ship to arrive. However, help does not always come on time. The total number of deaths among migrants attempting to cross the Mediterranean from Africa to Europe is unknown, but is assumed to be over 1,000 a year. It is certain that 20,000 migrants trying to reach Europe died over the two decades at the southern border of the European Union. In 2011 alone, 1,500 deaths were recorded following the outbreak of the Arab Spring<sup>13</sup>.

Migrant smuggling is a truly global problem and many of the countries affected are, as mentioned above, a place of origin, transit or destination. The actual size of this crime is difficult to assess due to its illegal nature. It is rarely possible to establish whether migrants are traveling on their own or whether illegal migration is facilitated by smugglers.

Migration routes to Europe change successively as smugglers modify strategies to bypass laws and border patrols. Their *modus operandi* depends largely on the

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<sup>13</sup> S. Czapnik, *Frontex i ludzie na przemiał. Europa a kwestia migracji*, Opole 2017, p. 141.

region in which they operate, the preventive measures taken by the relevant national authorities and the needs of migrants who pay for the transit service. Initially, the journeys of migrants from Turkey to the European Union across the Mediterranean Sea took place through the waters of the Aegean Sea towards the Greek islands. Illegal migrants traveled through small ships that could only carry a limited number of people. This strategy gradually changed over the course of 2014 as migrants leaving the Turkish coast began to be diverted to the Italian shores of the Ionian Sea. The means of transport were wooden fishing or sailing boats, which together could accommodate up to 100 people. At the end of September 2014, the first large cargo ship carrying migrants across the Mediterranean Sea was detected. Since then, there have been several dozen cases of human trafficking involving cargo ships, each of which could accommodate over 3,000 people. In all of these cases, the target was Italy.

The departure points of migrants vary, although most migrants depart from the Turkish port of Mersin on board fishing boats or small ships, from which they transfer to large cargo ships waiting in front of the shoreline. Similar smuggling operations are carried out from the vicinity of the Famagusta seaport, which is located in the northern part of Cyprus, not controlled by the authorities of the Republic of Cyprus. In practice, it is possible to detect only a few cargo ships, which send a message about failure or imminent danger to passengers within 100–250 nautical miles from the Italian coast. This is because dilapidated cargo ships with a length of 50 to 100 meters are most often used for the smuggling of illegal migrants, which can take 250 to 800 people on board at a time. It is known that each person on board such a ship paid for the journey from 5 to 7 thousand dollars.

In 2015, Frontex rescued the cargo ship *Ezadeen*. The rescue operation was called “Triton”. The cargo ship *Ezadeen*, flying the flag of Sierra Leone, was intercepted on 1 January 2015 by an Italian Coast Guard patrol 110 nautical miles from Calabria. The ship left Turkey on December 24, 2014 with 360 Syrian migrants of the board (232 men, 54 women and 74 children). Inside the cargo ship, which also transported animals, a smuggling net prepared rooms for the transport of people: a toilet and a makeshift kitchen. Lifeboats were missing on the ship, and engines and navigation systems were deliberately damaged to force the relevant border authorities to rescue migrants. During the rescue operation, two migrants were arrested and, in order to obtain a discount on the fare, agreed with intermediaries that they would take over the helm of the vessel. According to the testimonies of the migrants, the organizers of the smuggling abandoned the ship and left the passengers with two migrants as captains.

Crossing the border by the so-called the green border is carried out in different ways: by land (on foot), by water or by air. Only a small number of migrants make individual and independent attempts to travel the whole way to Western Europe. The others use the paid help of organized crime groups, which generate significant profits from the illegal smuggling of people across the border. The crossing of the green border often takes place near border crossings. The *modus operandi* of groups involved in the movement of people across the



green border is characteristic of the way organized crime structures operate. The main motive for action is profit, which is higher in the case of illegal human smuggling as compared to the smuggling of goods.

It should be emphasized that the purpose of the smugglers' activities is financial gain, and not the use of violence. Smugglers only use violence when migrants are late or to intimidate witnesses. The obtained income is most often invested in the further development of criminal activity, e.g. the purchase of vehicles used to transport foreigners and the necessary technical equipment. The preparatory proceedings carried out by the Border Guard show that international criminal groups are involved in the smuggling of migrants from Asian and African countries. They are based in the countries of the former USSR, as well as in South Asia and the Middle East. International crime groups are made up of representatives of many nationalities, and the main criterion for selecting members is the ability to perform specific tasks<sup>14</sup>. Groups are highly specialized, hermetic, and often related by family ties. There is also a tendency in the smuggling community to subordinate individual regions adjacent to the border and border crossings.

Criminal smuggling groups organizing illegal border crossings are made up of organizers with international contacts at the main destinations for refugees, recruiters, guides, people involved in facilitating border crossings and people who arrange accommodation. The guides make a prior diagnosis of border points, establish a transit route from specific regions of a given country to border points and further into the territory of a neighboring country. The entire process of organizing illegal border crossing also includes instructions on how to behave in the event of a border stop and the definition of permanent hiding points on migration routes. Smugglers scrupulously observe Border Guard officers and identify the most dangerous places. Often, the local population participates in the organization of illegal border crossing<sup>15</sup>.

As for Poland, it is a destination country for many nationalities. The most numerous group, more than half of all immigrants to Poland, are citizens of Ukraine. Other significant groups of foreigners are citizens of Belarus, Germany, Russia and Vietnam. There are also newcomers from China, Armenia and Georgia. It was characteristic for these groups of migrants that the vast majority of them have residence cards issued in the Czech Republic. Some of them stay in Poland without valid residence permits or use illegal documents. Most often they are young men aged 20–40. These men generally declare that they are unmarried and childless. They have primary or secondary education and usually work in manual work. Most of them give economic reasons and a desire to improve their financial situation as the reason for migration, as well as the need to support their family, who stayed in the country of origin.

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<sup>14</sup> K. Laskowska, *Rosyjskojęzyczna przestępczość zorganizowana. Studium kryminologiczne*, Białystok 2006, p. 39.

<sup>15</sup> M. Perkowska, *Problematyka nielegalnych rynków z perspektywy tzw. przestępczości transgranicznej*, in: *Nielegalne rynki. Geneza, skala zjawiska oraz możliwości przeciwdziałania*, ed. W. Pływaczewski, P. Chlebowicz, Olsztyn 2012, p. 51.

In the case of migrants who have found their way to Poland, the most common model of illegal border crossing is using the help of third parties. They are generally organized crime groups. Poles, Vietnamese, Lithuanians and Estonians dominate among the people organizing illegal border crossing<sup>16</sup>. Several models of illegal border crossing can be identified in Poland. The common denominator in almost all matters is that the journey begins in Moscow. It is a fairly old model of people smuggling, which has been functioning for every at least 20 years. A trip to Moscow costs about \$ 2,000. It is generally prepaid. In Russia, smugglers arrange false documents entitling them to legally cross the border. The next leg of the journey (from Moscow to the European Union) is more expensive. The rates range from \$ 3,000 to \$ 10,000 for shipping. Characteristically, smugglers are generally of a different nationality than the migrants. The Asians are most often helped by the Russians, Belarusians, Lithuanians and Poles<sup>17</sup>. Due to the lack of a common language, communication with the smugglers is often done in sign language.

The ways of getting into the territory of Poland are different. In one of the models, entry to Poland is carried out from the north. This means that foreigners illegally cross the border with Estonia, Latvia or Lithuania, and then are transported inside the European Union. The second method of operation is organizing transport from Moscow to Belarus, near the border with Poland. In the case of this *modus operandi*, foreigners are dropped off at a gas station where trucks going to Poland are parked. Migrants lie under the trailer of a truck and thus cross the border. Truck drivers say they do not know they are carrying hidden immigrants. The use of trucks is a characteristic feature of the Balkan route. That is why border authorities use a variety of devices to check whether people are hiding in the trailer. For this purpose, they use, among others, thermal imaging cameras or cell phone detectors<sup>18</sup>. Finally, the third, most popular model is to transport foreigners by buses to the Polish border (from Moscow to Ukraine or Belarus). Migrants get off the buses a few kilometers from the border and cross the green border on foot. The operation is well organized, as foreigners are led by smugglers to the very border, which they cross on special footbridges, leaving no traces on the plowed border strip. On the other side of the border, there is a transport waiting for migrants to transport them deep into Polish territory. Foreigners detained while crossing the border usually declare that they go alone, without a guide. It is unlikely<sup>19</sup>. Some foreigners detained on the territory of the Republic of Poland talk about guides taking them across the border<sup>20</sup>.

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<sup>16</sup> M. Górczyńska, *Polska jako kraj imigracji – kto i w jakim celu przyjeżdża do Polski? Fakty o migracjach na XXI wiek*, Warszawa 2020, p. 3.

<sup>17</sup> A. Sawicka, *Przerzut i migracja w percepcji nielegalnych migrantów*, „Prace Migracyjne” 1999, no. 23, p. 35.

<sup>18</sup> A. Górczyca, *Straż Graniczna*, Warszawa 2021, p. 20.

<sup>19</sup> W. Klaus, B. Woźniakowak-Fajst, *Przestępstwo nielegalnego przekroczenia granicy w ujęciu historycznym, teoretycznym i praktycznym*, „Archiwum Kryminologii Polskiej Akademii Nauk” 2015, vol. 37, p. 214.

<sup>20</sup> E. Pływaczewski, *Zapobieganie przestępczości i sprawiedliwość karna*, „Prokuratura i Prawo” 2015, no. 11, pp. 180–181.

## Summary

Migrant smuggling is a very profitable business and the criminals involved are not exposed to detection or punishment. As a result, the practice becomes more and more attractive to organized crime groups. Migrant smugglers create professional international networks and structures. The way migrant smugglers operate varies. The most sophisticated and costly are the document forgery or 'visa smuggling' services. Cheap methods of relocating people are also available, but these pose a high risk to migrants. In response to changing circumstances, migrant smugglers are constantly changing routes and methods of operation, often at the expense of migrants' safety. As migrants are treated like ordinary goods, they can suffocate in containers, die in the desert or drown in the sea. As a result of the deliberate negligence of smugglers, 20,000 people have lost their lives in the last decade.

Due to the fact that the crime is secret, it is difficult to obtain accurate data on the *modus operandi* of the perpetrators and the profits derived from this practice. However, it is estimated that the two main smuggling routes – from Africa to Europe and from South America to North America – generate an annual profit of \$ 7 billion. According to the author of the study, the information on the *modus operandi* of the perpetrators of the smuggling of illegal migrants is incomplete. It is impossible to determine the exact number of people smuggled each year, and the routes and methods used by the smugglers. The available evidence only reveals some trends and patterns typical of the *modus operandi* of perpetrators. Increasingly effective border controls are preventing migrants from trying to cross the border on their own. That is why they end up in the hands of smugglers. Criminals are increasingly providing smuggling services in such a way as to avoid border controls, circumvent migration regulations and visa requirements. It is well known that the majority of illegal migrants use the help of smugglers, but these people will not admit that they use the services of smugglers.

In the course of the conducted research, an attempt was made to establish as many behaviors as possible that characterize the perpetrators who deal with the transfer of people across the border. In the author's opinion, the most important principle in the process of determining the methods of action of the perpetrators was conducting the findings on the basis of multiple sources of information. The multiplicity and variety of *modus operandi* makes the characterization of the environment of people smugglers a great challenge. Their methods of operation and ways of forcing security are very diverse. The author analyzed individual behaviors and individual characteristics of the organizers and perpetrators of the smuggling of illegal migrants. Findings made on the basis of the *modus operandi* can be used in the detection process and can be used to profile and select the perpetrators involved in the transfer of people. There is no doubt that they are a valuable source of information on the *modus operandi* of criminals.

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**MODUS OPERANDI OF PERPETRATORS  
(CRIMINAL GROUPS) SMUGGLING ILLEGAL  
MIGRANTS ACROSS THE BORDER**

SUMMARY

One of the goals of criminology is to collect information on methods of operation and ways of dealing with offenders. Knowing about the *modus operandi* of the perpetrators makes it possible to combat or prevent certain types of crime more effectively. This aspect seems to be particularly important as it prevents the perpetrators from engaging in illegal behavior. This idea of getting to know and working out methods of operation also applies to criminal groups that organize the transfer of foreigners across the border. Migrant smuggling activities have a long history. There has never been a shortage of foreigners interested in finding a better and easier life. Against this background, a conflict arose, as many countries began to seal their borders for this reason. The situation got complicated in 1985 with the signing of an agreement known as the Schengen Agreement. It was a legal act abolishing checks at the internal borders of the signatory states. The Schengen Agreement guaranteed the free movement of people within the so-called Schengen area. Importantly, it concerned not only citizens of the signatory states, but also people of other nationalities who crossed internal borders in the area covered by the agreement. At various times, this phenomenon was on a massive scale, especially in territories affected by an armed conflict or an economic crisis. That is why the smuggling of migrants across the borders and territories of transit countries has become a criminogenic phenomenon. Recently, it also applies to Poland. This article presents an analysis of the *modus operandi* of perpetrators smuggling illegal migrants. The content of the study takes into account the problems related to the detection of this type of crime. The analysis of the literature on the subject was supplemented with statistical data on the scale of this type of crime. The aim of this study is to draw attention to the variety of strategies used by criminal groups that offer migrants a paid "service" to help them cross the border illegally.

**KEYWORDS:** law, crime, border, criminal group, illegal migration

