

SYMBOLIC CRIMINAL LEGAL TOOLS IN THE HUNGARIAN FIGHT AGAINST IRREGULAR MIGRATION

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Abstract

In the 21st century countries worldwide have had to face new security challenges. The fight against terrorism, the pandemic, migratory pressure and other issues, and furthermore political circumstances all over the world have spurred internal legislators to pursue more active legislation. In many cases, legislation has become symbolic and statutory definitions had been adopted and inserted into the system of the substantive criminal law that have caused serious concerns not only for theory but also for practice. There has been an increase in the number of crimes which are regulated by the internal criminal codes but either did not appear in the criminal statistics or turned up only at extremely low levels. Similar legislation can be seen in 2015 in Hungary, when the government decided on stopping irregular migratory flow by using criminal legal tools. Three new elements of crime analysed by the paper were inserted into the Hungarian Criminal Code whose application has only reached low levels in the last six years. These crimes are called “crimes against the border barrier” in the Hungarian criminal law, are the following: unlawful crossing of the border barrier, damaging the border barrier and obstruction of construction work on the border barrier. The aim of the paper is to present the legal situation and its anomalies as an example of symbolic criminal law.

Keywords: *symbolic legislation, Hungarian Criminal Code, irregular migration, crimes against the border barrier, principle of legality, Hungarian criminal statistics.*

1. Introduction

The continuous expansion of criminalisation, and in accordance with it the expansion of criminal liability, is hardly a new phenomenon in the Hungarian criminal law. In line with the international and European trends, meeting in part the constantly increasing international criminal legal requirements to define new crimes, a wave of creating new statutory definitions in the criminal law began in 1990, which –so far has not reached yet its resting point in Hungary. This trend has been enhanced in

the current decade, during which the European Member States have had to face demanding difficulties arising from irregular migration,¹ the pandemic and the Russian-Ukrainian armed conflict. In such circumstances, the main problem is the increasingly strong symbolic legislation, which can be linked to serious constitutional concerns.²

In 1995, the famous Hungarian criminal lawyer Ferenc Irk pointed out the content of symbolic legislation, interpreting it as an additional act of the state whose sole purpose is to convey the message to citizens

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¹ Galateanu, Oana, *Illegal Migration and the Migration Phenomenon at the Frontiers of Romania*, Contemporary Readings in Law and Social Justice, no. 9, vol. 2/2017, p. 601.

² Ferenc, Nagy, *Régi és új tendenciák a büntetőjogban és a büntetőjog-tudományban*, Akadémia Kiadó, Budapest, 2013, pp. 126-131.

that the state does everything to protect them.³ The problem, however, is on the one hand that these laws are not enforced in practice and on the other hand that the regulation is also characterised by disharmony.⁴ Therefore, symbolic legislation is a form of legislation that can be interpreted as a pretence, which is especially important to deal with if it prevails in the area of criminal law. In other words, the symbolic legislation results in at least two legal problems: the violation of criminal procedural principle of legality and the normative disharmony.

It shall be underlined that criminal law is not entitled to regulate such situations or elements of crimes in which the chance of “uselessness” can arise at the time of entering into force. Approached another way, the criminal law, as the last protecting line of the sanctions system, cannot have the task and the function only to reassure the citizens; furthermore, it cannot be a means of legislation for symbolising the state's “protecting umbrella” over its citizens. It must be emphasised that to regulate crimes for which either the intention for practical application or the potential possibility of it is already absent at the time of adoption is a situation to be avoided.

This study examines the question mentioned above from the perspective of the Hungarian criminal legislation aimed at curbing irregular migration, considering that in the last decade the examined symbolic legislation can be seen in the criminal steps. The study aims to shed light on the fact that despite the created new crimes, authorities use the tools of law enforcement⁵ rather than criminal law to react to irregular migration,

owing to its higher efficiency and cost effectiveness. In other words, the Hungarian authorities – and we hope this will be underlined by the data – prefer immigration enforcement tools to criminal legal measures. Using the Hungarian literature and the criminal statistical data, we will analyse evidence to support our claim that the regulation concerning the crimes against the border barrier is a pretence and can be considered as a good example of symbolic legislation.

In this paper, we will use statistical data to present the problem, based on information published between 2015 and 2023 by the Hungarian Police Force and the Unified Hungarian Statistics of the Investigation Authorities and the Prosecution. Although numerous studies deal with the dogmatics of crimes relating to the border barrier in the Hungarian literature, only a few emphasise their illusory nature. We would like to strengthen this list by showing that the statutory definitions created in the fight against irregular migration are the products of symbolic legislation, and in accordance with this fact they represent a serious constitutional problem in the substantive criminal legal system, mainly from the point of view of the principle of legality.

2. The Hungarian criminal legal framework and its antecedents

In 2015, when Hungary was in the centre of the migratory flow, a political decision on taking the necessary criminal measures to stop the irregular migrants was made by the Hungarian Government. In

³ Ferenc, Irk, *Súlypontok a kriminálpolitikában*, Kriminológiai Közlemények, vol. 52/1995. p. 131.

⁴ The products of the symbolic legislation are called redundant statutory definitions in the Hungarian literature. See: Erzsébet, Molnár, *Dogmatikai határozás. Dogmatikai és kriminálpolitikai elemzés a határozással kapcsolatos bűncselekményekről*, Állam- és Jogtudomány, vol. 4/2019, pp. 64-68.

⁵ In this paper, the law and border enforcement method means the measures of the Hungarian Police Force which can be considered as non-criminal procedural measures.

many European countries, including in Hungary, public opinion relating to irregular migration forced the legislators to take the necessary and effective measures against it. In Hungary the criminal law and the criminal procedure law have been the focus of these efforts. The Hungarian Criminal Code (hereinafter: HCC) was amended from 15 September 2015 with three new crimes: damaging the border barrier, unlawful crossing of the border barrier and obstruction of construction work on the border barrier. These crimes are called in Hungarian practice “crimes against the border barrier”. In this paper we are also going to use this phrase.

Irregular migration generally appears in the European internal legal systems as a misdemeanour, or a legal phenomenon which shall be handled on the level of the administrative law or by law enforcement tools. Considering that the public security can be influenced by this phenomenon, different legal measures have been adopted by the Member States to be able to control the irregular migratory flow⁶. However, it is necessary to emphasise that the degree of *de jure* criminalisation is limited in the European Union – in most Western countries illegal residence or irregular entry are not qualified as crimes⁷. However, irregular migration is often described as a threat to state sovereignty and to public security⁸. This unfavourable effect was recognised by

the Hungarian Government in 2015, and at the peak of the migratory pressure the government decided on using criminal legal tools in the fight against irregular migration. In Hungary – although irregular migration is a multifaceted phenomenon⁹ and therefore the legal responses affected many parts of the internal legal system – law enforcement, border enforcement and the criminal law were the main approaches used.

The first step was the construction of the physical border fence. As the Hungarian legislator pointed out in 2015, “the state borders can be protected only by the installation of ever more serious facilities. The function of these facilities is not only to complete the state's self-defense, but also to signal that the state has the right to self-defense, and that right must be respected by everyone”¹⁰. The first stage in the process for realisation of this legal policy was Government Decree No. 1401/2015, which set a deadline of 1 July 2015 to “prepare for the construction of a 4-meter-high border barrier on the Serbian-Hungarian border at about 175 km length”¹¹ and to make the necessary legal measures to protect it. The construction of the border barrier began in early July 2015, and it was completed on Monday, 14 September 2015. After the first step of the construction works were finished by the Serbian-Hungarian border, Hungary continued – as a second step – construction

⁶ Broaders, Dennis, Engbersen, Gottfried, *The fight against illegal migration. Identification Policies and Immigrants' Counterstrategies*, American Behavioral Scientist, no. 50, vol. 12/2017.

⁷ Guild et alii, *Irregular Migration, Trafficking and Smuggling of Human Beings: Policy Dilemmas in the EU*, CEPS Paperback, 22 February 2016, pp. 24-25.

⁸ Koser, K., *Irregular migration, state security and human security*, GCIM, 2005, pp. 10-11.

⁹ Máttyás, Hegyaljai, 2016: *Migráció, bűnügy, nemzetközi kitekintés*, in: Hautzinger Zoltán (ed.): *A migráció bűnügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, p. 12.

¹⁰ Part of the general legislative justification of Act CXL of 2015. This act was the legal tool with which the government tried to handle mass irregular migration in Hungary and which concerned not only the criminal law and criminal procedure law but also the civil law, the Act on State Borders and the refugee law.

¹¹ There were a number of legal measures promulgated in order to form the mentioned internal policy, for example: the following resolutions of the Ministry of the Interior: 50/2015. (IX.16.) BM r.; 51/2015. (IX.20.) BM r.; 56/2015. (X.17.) BM r.; 60/2015. (XI.16.) BM r.; 3/2016. (I.20.) BM r.; 6/2016. (II.18.) BM r.

works along the Croatian-Hungarian border¹².

As a third step the Hungarian Government declared the aim to protect the construction of the border fence. Due to this the Government adopted Resolution No. 213/2015 in August which punished by fine¹³ acts which violated partly the construction site of the border fence and partly its construction.¹⁴ An interesting fact is that the legislator in this period deemed the administrative law suitable for protecting the border fence, but after 15 September 2015 already not, and preferred the criminal law – without any appropriate reason – to the branch of law mentioned above.

After the completion of the construction works, the Hungarian Parliament adopted the legal framework on protection of the border barrier, by the Act CXL of 2015. The Hungarian legal response concerned widely the Hungarian legal system - among others - three new statutory definitions were inserted into the HCC: the unlawful crossing of the border barrier (Art. 352/A of HCC)¹⁵, the damaging of the border barrier (Art. 352/B of HCC),¹⁶ and the obstruction on construction work on

border barrier (Art. 352/C of HCC).¹⁷ The unlawful crossing of the border barrier is typically committed either by damaging the physical border fence – rarely by crossing it without using violence against it – or by entering unlawfully the border fence damaged earlier by someone else. Therefore, if a person is caught in the act by the authorities in territory of Hungary near the border fence, or not so far from it, there is reasonable cause to believe that this person entered Hungary irregularly – in violation of the border fence – and therefore committed the crime mentioned. As for the crime of damaging of the border barrier, the legal object protected by the legislator is not only the territorial integrity of Hungary, but also the protection of the border barrier. The reason for creating this crime is that it is required to punish the perpetrator who, with his conduct, endangers the protection function of the border barrier built by the

¹² Interestingly, after Hungary closed the Hungarian-Serbian border the number of the irregular migrants entering Hungary decreased to only 315 in November and to 270 in December 2015 (this document is available online at www.police.hu (last access: 20.03.2023)).

¹³ The fine – depending on its gravity – was from HUF 30,000 to 500,000.

¹⁴ The scope of these practices is set out in Sections 2 and 3 of the decree: (a) entry into the area of the temporary closing of border during its construction and maintenance; (b) obstructing construction work in any form; (c) introducing a drone or other unmanned remote control device into the construction site; (d) obstructing the access of persons working in the area of the closing of border; (e) obstructing the access of vehicles and means of transport to the area affected by the construction of the boundary lock.

¹⁵ Anybody can commit this crime who enters unlawfully – across the border barrier – the territory of Hungary.

¹⁶ “Any person who damages or destroys the border barrier and its devices” commits the damaging of the border barrier. The act is punishable in case the act does not result in a more serious crime. Therefore, in contrast to the unlawful crossing of the border barrier, this crime can be considered as a subsidiary statutory definition according to the Hungarian criminal law. However, there are three qualified cases which are linked to the statutory definition of unlawful crossing of the border barrier and to the crime of damaging of the border barrier. Both crimes are punishable more severely if they are committed by force or arms; or by deadly weapons; or as a member of a mass riot.

¹⁷ According to Art. 352/C of HCC “any person who obstructs the construction or the maintaining work of the border barrier” also commits a crime, insofar as the act did not result in another criminal offence. This crime is also a subsidiary statutory definition; however, it hasn’t got qualified case.

state.¹⁸ Furthermore, as for the last crime against the border barrier, it shall be underlined that any conduct by which the perpetrator can obstruct the works on the border closure may constitute according to the above-mentioned section.¹⁹ However, it shall be emphasised that the Hungarian legislator amended not only the Special Part of the HCC but also its General Part, concretely the rules of expulsion. According to Art. 60. par. (2a), the perpetrator who is guilty of a crime against the border barrier must be expelled from the territory of Hungary if he or she has been sentenced to imprisonment (it does not matter if the sentence is suspended one or not)²⁰.

As for the aim of the legislature, by creating these new crimes it endeavoured to enforce the political purpose not to let the mass movement of irregular immigrants threaten the state borders and Hungarian public security. To ensure the rapidity and efficiency of the criminal procedure relating to the crimes against the border barrier, the Hungarian legislature inserted a new chapter²¹ into the former Code on Criminal Procedure, which also entered into force on 15 September 2015. The criminal-political aim mentioned above was also important throughout the legislative procedure of the new Hungarian Code on Criminal Procedure (Act XC of 2017) and therefore these special criminal procedural rules are also part²² of

the new Criminal Procedure Code. The special criminal procedural legal regulations on crimes against the border barrier can be found between Art. 827 and Art. 836 of the new Criminal Procedure Code²³. The name “special criminal procedure” means that only special rules are regulated in this chapter, which are different than the general ones. Regarding the rules not regulated in the chapter mentioned above, the general procedural rules are to be applied.²⁴

3. The symbolic nature of the criminal legal regulations

After the amendments mentioned above entered into force, according to the report of the Unified Hungarian Criminal Statistics of the Investigation Authorities and Prosecution, the number of the registered unlawful crossings of the border barrier was in total 936 for the 2015–2016 period, while the number of the registered incidents of damaging the border barrier was in total 4386 in 2015–2016²⁵. Interestingly, no criminal procedure has been conducted for obstruction on construction work of the border barrier since its entering into force, in comparison with the thousands of irregular crossings that were prevented, and thousands of detained migrants were

¹⁸ Zoltán, Hautzinger: Bűntetőjogi tényállások a külföldiség és a migráció vonzásában. In. Zoltán, Hautzinger (edit.): *A migráció büntügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016. pp. 191-192.

¹⁹ Sándor, Madai: „A tömeges bevándorlás okozta válsághelyzet” kezelésének büntető anyagi jogi eszközei hazánkban. In. Hautzinger, Zoltán (edit.): *A migráció büntügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016. p. 253.

²⁰ There are some exceptions relating to this rule, for instance, refugees or perpetrators who have citizenship of one of the countries of the European Union.

²¹ This was the Chapter XXVI/A. of the Act XIX of 1998 (Art. 542/D -Art. 542/U).

²² Art. 827-Art. 836 of the Act XC of 2017 on Criminal Procedure.

²³ We do not wish to deal with presenting these procedural regulations because the symbolic legislation in the Hungarian substantive criminal law is the focus of our paper.

²⁴ We would like to point out that since the work deals with the symbolic nature of substantive criminal legal rules, we refrain from a detailed description of the rules of the special criminal procedure.

²⁵ Source: <https://bsr.bm.hu>.

redirected to the security gates.²⁶ Although the published statistics also include the migration data relating to the Russian-Ukrainian armed conflict, and concern not only the border barrier, but it can also still clearly show how the high level of the migratory pressure had affected the Hungarian border.²⁷

To ensure the rapidity of the redirecting processes²⁸, the Act on State Border was amended by the Hungarian legislator in 2016. According to this modification, if an irregular migrant is detained by a police officer within 8 kilometres of the Hungarian-Serbian or the Hungarian-Croatian border (the Schengen external borders), the authority shall redirect this migrant to the border barrier to ensure that the migrant returns to the country he or she unlawfully entered from. If we look at the statistical data, we can see how the migratory routes have changed²⁹ because of creating the border barrier and how the number of criminal procedures has changed for the past years in the context of the legal amendment mentioned above.

As we mentioned, the Hungarian Police Force published weekly the data relating to the irregular migratory situation between 2017 and 2022. The data published concerned not only the number of irregular

crossings hindered, but also the number of detained migrants who were redirected to the gates established at the fence and the number of arrested migrants against whom criminal procedures had been started. According to the data there were far more crossings than there were people charged with crimes against the border barrier furthermore, it is not in accordance with the real content of the principle on legality. In contrast to the migratory data – mentioned in the footnote number 27 – in 2017 the number of the registered crimes against the border barrier was in total 885, till 1 July 2018 it was 91, and from that date till the writing of this paper (March of 2023) it is 494. It shall be emphasised that criminal procedures due to the obstruction of construction work on the border barrier have not been started between 2015 and March of 2023.³⁰ However, evaluating them, it is a problem that the data provided by the Hungarian Police Force, following different statistical criteria, differ from each other. Namely, there is another set of criminal statistics released by the Hungarian Police Force also available on its website, in which the data relating to the crimes against the border barrier can also be found. According to this, between January 2017 and September 2022 the number of these crimes is in total 50³¹. However, no

²⁶ This document is available online at <https://www.police.hu/hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa>. The data exceeds 20,000 only in 2016 (last access 20.03.2023.).

²⁷ For example, between 2017 and 2022 the Hungarian Police Force published weekly the data concerning the number of irregular crossings hindered by the authorities, migrants held up and redirected to the border gates, and captured and arrested migrants. The number of these migrants was in total: 19,524 (in 2017), 6507 (in 2018), 16,924 (in 2019), 46,335 (in 2020), 121,790 (in 2021), and 268,795 (in 2022). This document is available online at https://www.police.hu/hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa?weekly_migration_created%5Bmin%5D=2018-01-01+00%3A00%3A00&weekly_migration_created%5Bmax%5D=2019-01-01+00%3A00%3A00 (last access 20.03.2023).

²⁸ Róbert Bartkó, *Criminal Legal Tools in the Fight Against the Irregular Migration in Hungary*, Jog-Állam-Politika, vol. 2/2021, p. 103.

²⁹ In connection with this topic, see the data on detection of illegal border crossings in the EU between 2014 and 2019 published by FRONTEX. See *Annual Risk Analysis for 2015-2020* (<https://frontex.europa.eu>).

³⁰ This document is available online at <https://bsr-sp.bm.hu> (last access 20.03.2023).

³¹ The data is available at https://www.police.hu/sites/default/files/HatarrendeszetSK%202022_11_.pdf (last access 22.03.2023).

matter which one we take as a basis, it is clearly visible that the number of criminal proceedings initiated is not in accordance with the irregular migratory data, and due to this fact, this trend violates *the principle of legality* not only concerning the substantive criminal law but also the criminal procedure law.

According to the fundamental criminal procedural rule, the principle of legality, a criminal procedure shall be initiated and conducted, and the defendant shall be punished, if the act committed can be qualified as a crime, if the defendant is punishable. Namely, if there is a reasonable cause to believe that the act committed by the perpetrator could be qualified as a crime according to the Hungarian Criminal Code, the authorities must conduct the procedure, and must examine the elements of the crime committed. This means that the investigating authorities must investigate the circumstances of the crime, the prosecutor must arraign against the perpetrator – if there is not any other opportunity to carry out the criminal procedure – and the judge must sentence the defendant if the perpetration is proved, and the defendant is punishable.

If we look at the real meaning of the data published concerning the Hungarian migratory situation, a migrant who is detained or arrested or hindered during or after an irregular crossing of the border fence or is caught in the act during the attempt of crossing, commits at least the unlawful crossing of the border barrier which is qualified as a crime by the Hungarian Criminal Code. Otherwise, how could the irregular migrant get to the Hungarian territory within 8 kilometres of the border, if not by committing at least the crime mentioned above? Therefore, our

statement is the following: the amendment of the Act on State Borders caused changings in the authority's method, and it moved from the strict application of the principle on legality towards the law and border enforcement methods. From 2017 the Hungarian Police Force preferred mainly this way due to its rapidness, efficiency, and cost-effectiveness. Furthermore, if we add to this the fact that no perpetration had been detected due to the crime called obstruction on construction work of the border barrier, even the whole system of crimes against the border barrier can be questioned and can be considered as a symbolic one.

Considering the statistical data, one of the biggest weaknesses of symbolic legislation, the marginalisation of the principle of legality, can be clearly established. If we examine the number of irregular border crossing attempts published by the Police Force, as well as the number of registered crimes related to border closures in the recent years, the weightlessness of the principle of procedural legality is striking, and clearly shows not only the changing migratory routes but also the changes in the attitude of the authorities³². In addition to the data presented in our paper, the question rightly arises of whether it is justified to retain such elements of crimes in a system of the substantive criminal law in a case in which the authorities consider it more effective to use the law enforcement or immigration enforcement tools instead of the criminal legal ones, enforcing literally the principle of *ultima ratio*³³ with it.

At the same time, the quality of the legislation, and the jurisprudence developed along it, are a good example of the strong *normative disharmony* in these crimes presented by the paper. The legal approach

³² Zoltán, Hautzinger, *Idegen a büntetőjogban*, AndAnn Kft, Pécs, 2016, pp. 57-65.

³³ According to this principle, the branch of the criminal law can be applied only in such cases – as an ultimate tool – when the other branch of the law is ineffective.

of border crossings conducted by damaging the border fence is not related to the real intent of the perpetrators.³⁴ The crime of damaging the border barrier is completely unjustified in its current form³⁵ because the criminal legal protection of the border fence could also appear within the framework of other statutory definitions (e.g., vandalism). There is also no rational reason for regulating the obstruction of construction work related to the border barrier as a crime – not only since no criminal proceedings have been initiated against anyone for this act, but also because the legislature had already during the period of the previous construction works qualified the same act as a breach of rules subject to an administrative fine. Knowing these antecedents, its regulation in the HCC is not justified. Furthermore, considering the criticism expressed in the Hungarian legal literature, the interpretation of some elements such as "facility ensuring the order of the state border" or "mass riot" is also problematic during the application of these crimes³⁶. A similar dogmatic problem arises concerning the mandatory expulsion rule for this crime in the General Part of the HCC. According to this, the person who commits the crime related to the border barrier, as a "persona non grata", must be expelled from the territory of Hungary if the perpetrator has been sentenced to imprisonment³⁷, thereby

setting up an irrebuttable presumption. This is a worrisome rule based on not only the Hungarian Constitution but also on the HCC, because in these cases, the legislator does not expect the judge to examine the preliminary conditions of expulsion, although the judge should do so because the obligation on consideration clearly comes from the general rules and this sanction shall not be applied automatically.

4. Conclusions

In the paper, we tried to demonstrate the futility of the criminal legal rules regulated by the Hungarian legislator to stop irregular migration. After the entry into force of these statutory definitions, the authorities used the system of criminal legal measures in a relatively large number of cases during the fight against the migratory pressure. At the same time, it is clear from the statistical data that after the amendment of the Act on the State Borders, essentially from 2016–2017, the application of law enforcement tools prevails on the southern borders of Hungary. Criminal proceedings are initiated in a much smaller, even insignificant number, although, based on the numbers related to migratory pressure, much more should or could have been initiated. The authorities moved from the use of criminal legal tools towards the use of quick

³⁴ The Hungarian literature takes a unified position regarding this. According to this statement, if the perpetrator commits the illegal crossing by damaging the border barrier, this conduct cannot be evaluated as a multiple offence. The act can be qualified as only damaging of the border barrier. Regarding this see the following publications: László, Király Balázs, *Gondolatok a határárral kapcsolatos bűncselekményekről*, in Hautzinger Zoltán (ed.): *A migráció büntügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016. p. 280; Pál, Sinku, *A közigazgatás rendje elleni bűncselekmények*, in Belovics Ervin, Molnár Gábor, and Sinku Pál, *Büntetőjog II. Különös Rész, Nyolcadik hatályosított kiadás*, HVG-ORAC Lap-és Könyvkiadó Kft, Budapest, 2021, pp. 659-662.

³⁵ The qualifying circumstances regulated in connection with this crime are also very hypothetical ones. For instance, there is no reasonable cause to believe that this crime can cause death on the basis of the causal relationship between the damaging and death.

³⁶ Sándor, Madai, 'A tömeges bevándorlás okozta válsághelyzet' kezelésének büntető anyagi jogi eszközei hazánkban, in Hautzinger, Zoltán (ed.), *A migráció büntügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016, pp. 250-252.

³⁷ See Art. 60 par. (2a) of the HCC.

law enforcement tools, in line with efficiency and cost-saving aspects, thus abandoning the principle of legality, which is one of the most important principles in criminal procedure law. In addition, the regulatory anomalies that can be seen in the statutory definitions called crimes against the border barrier also result in serious normative disharmony.

Due to the omitted legal matters, the statutory definitions are burdened with several dogmatic problems, and these are – unfortunately – based on legal interpretation and demarcation difficulties. Therefore, it can be considered a normal reaction of the authorities to try to avoid the application of these statutory definitions in practice. The inapplicable elements of crimes challenge

the main substantive legal principle of legality and the command of procedural legality. If the criminal policy of the state constantly emphasises the importance and effectiveness of stricter and expanding criminal legal actions, it actually – paradoxically – sacrifices criminal legal legality on the altar of symbolic criminal legislation. In accordance with this, there is no use in for keeping these statutory definitions in the HCC and no legal reason to do so. Therefore, we trust that the criminal legal policy of the legislature will also change in the future, and after repealing these crimes it will give more space to law enforcement and immigration enforcement tools.

References

- Broaders, Dennis, Engbersen, Gottfried, *The fight against illegal migration. Identification Policies and Immigrants' Counterstrategies*, American Behavioral Scientist no. 50. vol. 12/2017;
- Erzsébet, Molnár, *Dogmatikai határzár. Dogmatikai és kriminálpolitikai elemzés a határzárral kapcsolatos bűncselekményekről*, Állam- és Jogtudomány, vol. 4/2019;
- Ferenc, Irk, *Súlypontok a kriminálpolitikában*, Kriminológiai Közlemények, vol. 52/1995;
- Ferenc, Nagy, *Régi és új tendenciák a büntetőjogban és a büntetőjog-tudományban*, Akadémia Kiadó, Budapest, 2013;
- Galateanu, Oana, *Illegal Migration and the Migration Phenomenon at the Frontiers of Romania*, Contemporary Readings in Law and Social Justice, no. 9, vol. 2/2017. pp. 600-608;
- Guild et. alii, *Irregular Migration, Trafficking and Smuggling of Human Beings: Policy Dilemmas in the EU*, CEPS Paperback, 2016;
- László, Király Balázs, *Gondolatok a határzárral kapcsolatos bűncselekményekről*, in Hautzinger Zoltán (szerk.), *A migráció bűnügyi hatásai*, Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016;
- Koser, K., *Irregular migration, state security and human security*, GCIM, 2005;
- Mátyás, Hegyaljai, *Migráció, bűnügy, nemzetközi kitekintés*, in Hautzinger Zoltán (szerk.), *A migráció bűnügyi hatásai*, Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016;
- Pál, Sinku, *A közigazgatás rendje elleni bűncselekmények*, in Belovics Ervin-Molnár Gábor-Sinku Pál, *Büntetőjog II. Különös Rész. Nyolcadik hatályosított kiadás*, HVG-ORAC Lap-és Könyvkiadó Kft, Budapest, 2021;
- Róbert, Bartkó, *Criminal Legal Tools in the Fight Against the Irregular Migration in Hungary*, Jog-Állam-Politika, vol. 2/2021;
- Sándor, Madai, *"A tömeges bevándorlás okozta válsághelyzet" kezelésének büntető anyagi jogi eszközei hazánkban*, in. Hautzinger, Zoltán (edit.), *A migráció bűnügyi hatásai*, Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016;

- Zoltán, Hautzinger, *Idegen a büntetőjogban*. AndAnn Kft, Pécs, 2016;
- Zoltán, Hautzinger, *Büntetőjogi tényállások a külföldiség és a migráció vonzásában*, in. Zoltán, Hautzinger (edit.), *A migráció büntügyi hatásai*. Magyar Rendészettudományi Társaság Migrációs Tagozat, Budapest, 2016.