

Crimmigration and Individual Autonomy. Reflections on the Polish ‘Trial of the Five’ Case**

Abstract

The analysis of ‘crimmigration’ and individual autonomy concepts can be conducted from beginning to end *in abstracto*, or as demonstrated in this article, primarily within the framework of a specific case study; however, with the postulate that the conclusions may apply equally to future cases arising in similar circumstances. The main research objective of this paper is to determine whether the state authorities were justified in initiating proceedings and, at the same time, in interfering with the individual autonomy of those who provided assistance to migrants at the Polish-Belarusian border in March 2022. The study’s initial hypothesis, emphasised through the perspective of individual autonomy, is that acts of this nature, under the established circumstances, should neither be regarded as crimes nor prosecuted, and if charges are brought, they should be discontinued by the court.

Keywords: immigration, humanitarian aid, the Polish-Belarusian border crisis, individual autonomy, individual freedom, moral philosophy, human dignity, constitutional law, crimmigration, criminal law, enabling or facilitating illegal stay, organising illegal border crossing

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I Introduction

The concept of *crimmigration*, as included in the first part of the title of this paper, emerged from the fusion of criminal law and immigration law and – as the very name suggests – at its core lies the assumption that criminal law serves as one of the instruments of immigration policy. The described phenomenon has become more relevant in the last decades of the 20th century, particularly in the United States, as a result of a change in the perception of the proper place of criminal law in society.¹ In essence, when immigration became the subject of political debate in the aftermath of the civil rights movement, policymakers turned to criminal law. Not only has immigration law started to adopt measures typically associated with criminal law, but it has also introduced severe penalties for behaviour such as organising illegal border crossings and enabling or facilitating illegal stays.²

It appears, however, that the concept of crimmigration also has significance for volunteers and activists assisting migrants at the Polish-Belarusian border. Regardless of the state system in question, it seems rather evident that any statutory restriction on *individual autonomy* in providing assistance to foreign nationals must be necessary and proportionate.³ In other words, it must always be established whether state authorities are justified in interfering with the individual autonomy of persons who offer support to migrants on the grounds that such interference is intended to protect the autonomy of other citizens of the state and safeguard the integrity of the country's territory into which the migrants are entering.⁴ Considerations of this kind may, of course, be conducted from the beginning to the end *in abstracto*, or as demonstrated in this article, primarily within the framework of a specific case study; however, with the postulate that they apply to further cases arising in similar circumstances.⁵

¹ See César Cuatémoc García Hernández, 'Creating Crimmigration' (2013) (6) Brigham Young University Law Review 1457–1516, 1459.

² Włodzimierz Wróbel, 'Criminalisation of Immigration Law' (2023) 100 Studia Iuridica 301–319, 302 et seq. DOI: <https://doi.org/10.31338/2544-3135.si.2024-100.19>. It should be clarified in this regard, as the author of the quoted paper also notes on the following pages that the mere illegal stay of a foreign national in the territory of Poland does not constitute a criminal offence, although it may, in some cases, amount to a misdemeanour.

³ See Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Constitution of the Republic of Poland of 2 April 1997) (Dz.U. nr 78, poz. 483, z późn. zm.) ('Constitution of Poland' or 'Polish Constitution'), Article 31(3).

⁴ It must be noted that some might argue that the autonomy of other citizens should be protected, since the border may be crossed by individuals engaged in criminal activity. See the considerations in Subsection II concerning the criminalisation of enabling or facilitating illegal stay and illegal border crossing.

⁵ Further considerations do not contradict the *nullum crimen sine lege stricta* principle, which refers to the prohibition of analogy to the detriment of the perpetrators.

In March 2022, five people at the Polish-Belarusian border provided assistance to an Iraqi family with small children, and an Egyptian citizen.⁶ The activists' actions, which included offering aid to foreign nationals who had crossed the border from Belarus into Poland in search of shelter, food, and water, were deemed by the Polish prosecutor's office to constitute a criminal offence.⁷ After the indictment was filed and the first trial began, protests broke out in support of the defendants. On 28 January 2025, the first trial was held at the District Court in Hajnówka. None of the defendants who were present admitted to the alleged crime of enabling or facilitating illegal stay in the territory of the Republic of Poland.

One of the defendants emphasised that providing assistance to persons in need constitutes an integral part of his identity, and that his actions were neither politically motivated nor undertaken in search of recognition. Another defendant explained that at that time, in 2022, people living near the border began encountering numerous refugees, and that even on ordinary walks, they would come across migrants in need of humanitarian aid. Many people provided assistance; however, no one spoke openly about it, as they regarded themselves as witnesses to a humanitarian crisis. According to the defendant's explanation, the responsibility for the health of migrants rested entirely on the local community.

On 15 April 2025, the second trial took place before the District Court in Bielsk Podlaski, Seventh Criminal Division, located in Hajnówka. During the trial, the prosecutor filed an evidentiary motion to admit a disc containing screenshots of messages and voice recordings, intended to show that the defendants, acting jointly and in concert, had organised illegal border crossings and further transport to other states.⁸ The Court stated that the motion would be addressed at a later stage after reviewing the materials, and then proceeded to the evidentiary phase, during which witnesses were heard. The procedure

⁶ The circumstances of the case discussed in this paper were established on the basis of anonymised trial transcripts dated 28 January 2025, 15 April 2025, and 14 May 2025. The anonymised records were obtained pursuant to a public information request submitted by the author to the District Court in Bielsk Podlaski, 7th External Criminal Division in Hajnówka. For a non-governmental organisation's perspective on this case, see the Helsinki Foundation for Human Rights, 'I didn't think there was a law punishing the donation of food, drink, clothes and medicine to a person in need' – indictment against activists delivering humanitarian aid on the border' (Helsinki Foundation for Human Rights, 14 May 2024) <<https://hfhr.pl/en/news/-i-didn-t-think-there-was-a-law-punishing-the-donation-of-food-drink-clothes-and-medicine-to-a->> accessed 31 October 2025.

⁷ Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Act of 6 June 1997 Criminal Code) (Dz.U. 2025, poz. 383) ('Criminal Code' or 'Polish Criminal Code'). The main charge against the five concerned Article 264(a)(1) of the Polish Criminal Code. According to that provision, anyone who, for financial or personal gain, enables or facilitates another person's stay in the territory of the Republic of Poland in violation of the law shall be subject to imprisonment for a term of between three months and five years. However, during the trial on 15 April 2025, the prosecutor filed a motion for the admission of new evidence and asserted that the defendants should be found guilty of organising unlawful border crossing jointly and in concert with each other and with other unidentified persons, according to 264(3) of the Polish Criminal Code.

⁸ As indicated above, the prosecution sought a conviction under Article 264(3) of the Criminal Code, which provides that anyone who organises for other persons the crossing of the border of the Republic of Poland in violation of the law shall be subject to imprisonment for a term of six months to eight years.

of hearing the witnesses continued at the subsequent trial on 14 May 2025. At the most recent trial in September 2025, a judgment of acquittal was delivered in respect of the five defendants.⁹

The main research objective of this paper is to determine whether the state authorities were justified in initiating proceedings and, at the same time, in interfering with the individual autonomy of those who provided assistance to migrants at the Polish-Belarusian border in March 2022. As can easily be inferred from the emphasis on the individual autonomy perspective, the initial hypothesis of the study is that conduct of this kind, in the circumstances as established, cannot and should not be criminalised under the Polish Criminal Code. In other words, charges based on quoted provisions, in the circumstances as described below, should not be brought by the prosecution; if they are, they should be discontinued by the court on the grounds of the absence of a component of criminality.¹⁰ The primary research method employed in the analysis is the doctrinal method, which involves the exegesis of legal texts.

Without yet turning to the specific provisions, a first general conclusion may be that cases such as the one briefly described above reveal a collision between the legal rules (*lex*) and the overall principles and body of law (*ius*).¹¹ At first, an external observer may discern a tension between, on the one hand, the prosecution's alleged grounds for bringing charges, and, on the other, the individuals' exercise of their autonomy in providing humanitarian assistance to persons in need. In this context, this paper does not refer to the autonomy of migrants or the state, but rather to the autonomy of individuals who have decided to offer humanitarian assistance, as it is their conduct that is assessed for the purpose of this analysis. The concept of individual autonomy, therefore, encompasses not only the issue of free will and individual sovereignty but also constitutes an essential and indispensable element of individual freedom.

II Individual autonomy and crimmigration

As the very etymology of the word suggests, autonomy may be understood as self-government or self-determination, ie, the capacity to establish one's own rules of conduct (*autos* – self; *nomos* – rule, law). Without delving into the detailed discussions taking place in the foreign

⁹ The information on the acquittal does not originate from the official transcript, as the judgment of acquittal was delivered in September 2025, whereas the public information request had been submitted earlier. This information is current as of the date of drafting this article. The author has no knowledge of any further actions taken by the prosecutor's office.

¹⁰ See Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (Act of 6 June 1997 Code of Criminal Procedure) (Dz. U.2025 poz. 46 z późn zm.) ('Polish Code of Criminal Procedure' or 'Code of Criminal Procedure'), Article 339(3)(1) and Article 17(1)(2).

¹¹ However, as will be shown below, this assertion is incorrect, as the law does not criminalise such conduct; the acts under consideration cannot be regarded as criminal offences.

and Polish-language literature, the concepts may be systematised by stating that individual autonomy refers, in the aspect of *external independence*, to the independence of the human will or conscience from external factors that originate from organs of authority or other forms of power. Furthermore, this understanding implies that individual autonomy, as it concerns *internal independence*, is associated with the freedom to shape one's own path.¹²

It is also impossible to speak of individual autonomy without referring to Immanuel Kant's philosophy.¹³ In fact, the author's widely known categorical imperative, *to some extent*, reflects the essence of the actions of the five individuals who decided to provide humanitarian aid in March 2022 at the Polish-Belarusian border. Indeed, the categorical imperative 'act as though the maxim of your action were to become, through your will, a universal law of nature'¹⁴ could be applied to the altruistic actions of the five activists. The acquitted provided humanitarian aid because they held the belief that, if confronted with a similarly difficult situation, they themselves would wish for someone to offer them help. Furthermore, as can be inferred from their explanations during the trial in January 2025, they acted in the belief that providing such humanitarian assistance should be required by law.

It also seems that the formulation 'act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end and never merely as a means'¹⁵ equally applies to the behaviour of those who offered help. As they themselves stated, they did not act in order to be recognised as heroes, but out of noble intentions and inner conviction. In other words, they did not rely on mere feelings or the satisfaction that might have arisen from believing themselves to be virtuous, as is clearly reflected in the explanations they gave during the first trial.¹⁶ Moral norms stood above all else, even if a certain satisfaction from providing assistance followed. They did not act out of a 'good

¹² The aspects of the external and internal independence of individual autonomy constitute the author's own proposal for organising various concepts of individual autonomy found in the literature. All of them cannot be fully presented because of the limited scope of this work. Referring to foreign literature, attention is drawn to Stephen Darwall, 'The Value of Autonomy and Autonomy of the Will' (2006) 116 (2) *Ethics* 263–284, 265 DOI: <https://doi.org/10.1086/498461> and Mark Piper, 'Achieving Autonomy' (2018) 42 (4) *Social Theory and Practice* 767–792, 768. Among Polish scholarship, attention is drawn to Jolanta Blicharz's paper. The author aptly notes that under Polish law, the foundations of individual autonomy may be derived from Articles 31(1) and 47 of the Constitution of Poland. The former provides that human freedom shall receive legal protection, while the latter states that everyone shall have the right to legal protection of their private and family life, of their honour and good reputation, and to make decisions concerning their personal life. Jolanta Blicharz, 'Dyskusje na temat znaczenia autonomii jednostki (osoby) jako wartości aksjologicznej' (2011) 87 *Przegląd Prawa i Administracji* 11–19, 11.

¹³ Stanford Encyclopedia of Philosophy, 'Kant's Moral Philosophy' (Stanford Encyclopedia of Philosophy, 23 February 2004) <<https://plato.stanford.edu/entries/kant/>> accessed 31 October 2025.

¹⁴ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Jonathan Bennett tr, Early Modern Texts 2017) 24.

¹⁵ Kant 29.

¹⁶ As previously stated, access to the full explanations of the defendants was obtained as a result of a request submitted by the author under the public information procedure.

mood' or fleeting emotions, but from duty, and therefore, according to Kant's philosophy, they performed genuinely moral acts.¹⁷

It should be noted, however, that according to Kant's philosophy, norms should be formulated *a priori*, not *a posteriori* through empirical means. This somehow corresponds to the described situation, as at the moment when the five individuals undertook their actions, the imperative could have guided them *a priori*, without any reference to prior experience.

Yet, an attentive reader of the foregoing considerations might observe that to act morally does not necessarily imply acting in accordance with the law. Elaborating on this observation, according to Herbert L.A. Hart's philosophy, even though there are many different contingent connections between law and morality, there are no necessary conceptual connections between the content of the former and the latter. The validity of a legal norm is not grounded in morality, but rather in social, recognised criteria; hence, morally iniquitous provisions may be valid as legal rules or principles.¹⁸ In this sense, it could be claimed that morality 'waits about' for some positive law to be recognised in order to critique it or to endorse it.¹⁹

Considering the above, it should be noted that individual autonomy does not have an absolute character. In fact, constitutionally protected human dignity and autonomy do not stand on the same hierarchical level.²⁰ Nevertheless, the interference with the activists' autonomy was not connected with the protection of human dignity; on the contrary, the interference with their autonomy and the initiation of criminal proceedings resulted precisely from the fact that the persons involved acted with respect for the personal dignity of other migrants. This leads to the already indirectly formulated conclusion that, in this case, the recognised content of law coincides with the content of morality, and that the charges brought by the prosecution were indeed unfounded.

¹⁷ Kant's ethics is described as deontological.

¹⁸ Herbert Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994, Oxford) 268.

¹⁹ Accordingly, morality may be understood as the potential content, whereas law is the form. The form of law is sufficiently flexible to encompass any content, moral or not. See also David Gray Carlson, 'Hart avec Kant: on the Inseparability of Law and Morality' (2009) 1 (1) Washington University Jurisprudence Review 21–95, 29 et seq. As a side note, it should be added that Hart's positivism was contested by Dworkin's interpretivism. According to the latter author: 'The act of a legislature is not, as these descriptions suggest, an event whose force we can in some way measure so as to say it has run out at a particular point; it is rather an event whose content is contested in the way in which the content of an agreement to play a game is contested'. See Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977, Cambridge) 109. Because of the work's length limitations, the issue under analysis is not fully explored from a Dworkinian perspective.

²⁰ The significance of human dignity is determined, first and foremost, by its explicit emphasis in the Preamble to the Polish Constitution. It is also noteworthy that Article 30 is located as the first provision in Chapter II of the Constitution of Poland. Furthermore, pursuant to Article 233(1) of the Constitution of the Republic of Poland, a statute defining the scope of restrictions on the freedoms and rights of persons and citizens during martial law, or a state of emergency, may not limit the freedoms and rights specified in Article 30 of the Constitution.

While different schools of legal thought define the notion of a crime in various ways, for the purposes of analysing the conduct of the five activists, it is reasonable to assume that a crime constitutes human behaviour which: (1) must constitute an act undertaken in circumstances that allow for an alternative course of action; (2) violates a sanctioned norm,²¹ in the absence of circumstances excluding the unlawfulness of the act; (3) corresponds to the statutory description of an offence punishable under criminal law; (4) demonstrates a higher than insignificant degree of social harmfulness; (5) is committed in circumstances in which a person capable of criminal responsibility, mature and sane, could be expected to act in accordance with the command or prohibition arising from the legal norm.²²

The acts in question may, and indeed should be examined in light of all the aforementioned elements. Although certain doubts may also arise regarding, for instance, the degree of social harmfulness, because of the limited scope of this work, the following legal analysis will be limited to the issues of (2) unlawfulness and (3) punishability.

In the context of the unlawfulness of the individuals' acts, it should be noted that the norm prohibiting enabling or facilitating another person's illegal stay within the territory of the Republic of Poland protects a legal good in the form of the internal security of the state and its citizens – as it is assumed that the illegal stay of other persons in Poland may give rise to threats associated with international crimes and terrorism.²³ Similarly, in the case of criminal law provisions on organising illegal border crossing, the focus is placed on protecting the security and inviolability of the borders of the Republic of Poland against unlawful entry, which, in turn, also indirectly serves to safeguard the security of the state.²⁴

What may seem obvious, but in this context appears necessary to restate, is that for an act to be deemed unlawful, it must be recognised that the perpetrators' conduct was contrary to a sanctioned norm, and furthermore, that no circumstances excluding unlawfulness were present. It should certainly be argued that the acts committed by the five individuals were not unlawful, and such a statement, in turn, could be justified in two ways. First, it may be argued that there was no violation of a sanctioned norm and that providing humanitarian aid is an inherently lawful act, which does not even require reference to any excluding circumstances. Thus, one may claim that the legality of the conduct did not stem from a state of necessity, but simply from the fact that no sanctioned norm was violated, even

²¹ A 'sanctioned norm' is a norm of conduct that prescribes certain behaviour to a specific entity under specific circumstances and is linked (coupled) with another norm, namely, the sanctioning norm. See Sławomira Wronkowska, *Podstawowe pojęcia prawa i prawoznawstwa* (3 edn, Ars Boni et Aequi 2005, Poznań) 19.

²² In this regard, see Piotr Kardas, 'O relacjach między strukturą przestępstwa a dekodowanymi z przepisów prawa karnego strukturami normatywnymi' (2012) 4 (4) *Czasopismo Prawa Karnego i Nauk Penalnych* 5–63, 27 et seq.

²³ While the mere stay of a foreign national in Poland may only constitute a misdemeanour, enabling or facilitating illegal stay under Article 264(a)(1) of the Polish Criminal Code is considered a crime. The offence under Article 264(a)(1) is a crime of abstract danger. See Wróbel 309 et seq.

²⁴ See Wróbel 308.

if the *prima facie* linguistic interpretation of the norms could lead to different conclusions.²⁵ Second, it may be argued that the sanctioned norm was indeed violated, yet under a state of necessity.²⁶ In view of the considerations put forward in this study, I am inclined toward the former assumption – namely, that the individuals' actions did not entail a violation of the sanctioned norm in the first place.

This assumption is grounded in the constitutional protection of human dignity, as already quoted, which applies to every person, not only Polish citizens. In fact, the constitutional principle of human dignity serves as an interpretative directive, according to which all doubts arising associated with the present considerations should be resolved *in dubio pro vita humana*.²⁷ Furthermore, the argument that the absence of unlawfulness is evident even at the level of the non-violation of the sanctioned norm may also be derived from Article 40 of the Polish Constitution, which prohibits inhuman or degrading treatment.²⁸ Such inhuman or degrading treatment could occur if a prohibition were introduced against providing food, water, or other essentials to persons in need. As one of the defendants rightly pointed out during the trial, Article 162(1) of the Polish Criminal Code establishes an obligation to render effective assistance to a person in immediate danger of losing their life.²⁹

However, it is important to note that the groundlessness of the charges brought by the prosecution also stems from the conduct being inconsistent with the statutory description of the offence set out in Article 264(a)(1) of the Polish Criminal Code, according to which, anyone who, for financial or personal gain, enables or facilitates another person's stay in the territory of the Republic of Poland in violation of the law shall be subject to imprisonment.³⁰ This provision entered into force in 2004 as a result of the implementation of European directives.³¹ Pursuant to Article 1(1)(b) of the Council Directive 2002/90/EC, each Member State shall adopt appropriate sanctions against any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.³²

²⁵ See Agnieszka Barczak-Oplustil, Włodzimierz Wróbel, 'Udzielanie pomocy humanitarnej jako zachowanie (pierwotnie) legalne' (2022) 47 (1) *Iustitia* 14–20, 16.

²⁶ See Article 26(1) of the Polish Criminal Code.

²⁷ Barczak-Oplustil, Wróbel 17.

²⁸ See Article 40 of the Polish Constitution.

²⁹ However, it must be noted that Article 162(1) of the Criminal Code is not the source of the primary legality of providing humanitarian aid. The right to provide humanitarian aid is rooted in the Polish Constitution. See Barczak-Oplustil, Wróbel 18 et seq.

³⁰ See Article 264(a)(1) of the Polish Criminal Code.

³¹ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence [2002] OJ L328/1 ('Council Framework Decision 2002/946/JHA'). Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [2002] OJ L328/17 ('Council Directive 2002/90/EC').

³² It is *prima facie* apparent that the normative content of Council Directive 2002/90/EC refers exclusively to financial gain, and not to personal gain, which also raises doubts as to the compatibility of the Polish provision with what is stipulated in the quoted European act.

In the present case, the prosecution took the position that the ‘benefit’ referred to in Article 264(a)(1) of the Polish Criminal Code must be interpreted by reference to Article 115(4), that is, as a financial or personal benefit, obtained either for oneself or for another person.³³ Proceeding from that assumption, the prosecution asserted that the defendants acted with direct intent aimed at ‘obtaining a personal benefit for the migrants’.

This line of reasoning is, however, untenable. It is beyond dispute that any act of assistance, by its very nature, results in the recipient obtaining some form of personal benefit. Issuing a conviction on the grounds presented by the prosecution would lead to the erroneous conclusion that the prerequisites for criminal liability under Article 264(a)(1) of the Polish Criminal Code arise every time a person in need of assistance receives help, and that anyone providing humanitarian aid to another person could be subject to punishment.

Moreover, the perpetrator’s act described in this provision relates to ‘enabling’ or ‘facilitating’ another person’s stay in the territory of Poland ‘in violation of the law’. This means that the stay must be contrary to the provisions under which another person has no legal right to remain within the territory of Poland. Recognising that the objective components of the offence have been fulfilled therefore requires establishing whether the stay in the territory of Poland actually takes place in violation of the law, by reference, for example, to the Act on Foreigners³⁴ and the legal grounds for lawful residence in Poland specified therein.

However, it should be remembered that according to the international refugee protection system, a person without formal authorisation to enter a state may submit an application for international protection. When it is not possible to submit such an application at an official border crossing, it appears that the application may be lodged after crossing the border.³⁵ The assessment of whether an illegal entry has occurred cannot be made without considering the specific circumstances and must include whether, in a given case, there were real and practical possibilities to apply for international protection.³⁶

The conduct of the five individuals did not fall within the scope of Article 264(a)(1) nor Article 264(3) of the Polish Criminal Code.³⁷ The latter prohibits organising for other persons crossing the border of the Republic of Poland in violation of the law. It is generally considered that Article 264(3) of the Polish Criminal Code is directed against migrant smugglers,

³³ See Article 115(4) of the Polish Criminal Code.

³⁴ Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Act of 12 December 2013 on foreigners) (Dz.U. 2025, poz. 1079).

³⁵ See Wróbel 310 et seq.

³⁶ Ibid.

³⁷ See Article 264(3) of the Polish Criminal Code. This offence also contains the normative clause ‘in violation of the law’, which should likewise be assessed in light of the specific circumstances, *in concreto*, particularly whether, in a given case, there were real and practical possibilities to apply for international protection. As a side note, it could be noted that the act of illegal crossing itself does not constitute a crime but rather a misdemeanour.

especially those who treat the state as a 'transit stage', enabling passage to other countries.³⁸ Nevertheless, it is crucial to establish, in each instance, the precise circumstances under which cooperation in organising border crossings was undertaken. In other words, the involvement in the organisation of illegal border crossings, ie, in smuggling operations, requires conscious action and knowledge of the entire process. Meanwhile, in the case at hand, there was no evidence that the defendants had any direct contact with smugglers.

While the current wording of Article 264(3) stems primarily from the adoption of the Protocol supplementing the United Nations Convention against Transnational Organised Crime,³⁹ it may be important to consider Article 1(1)(a) of the Council Directive 2002/90/EC in the analysis. According to that provision, each Member State shall adopt appropriate sanctions against any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens. In fact, the discussion on assisting in illegal border crossings often overlooks the clause specified in Article 1(2) of the Council Directive 2002/90/EC, which states that any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice in cases when the aim of the behaviour is to provide humanitarian assistance to the person concerned. This is the so-called humanitarian clause, which, although not *expressis verbis* reflected in the statutory provision, should be transposed and applied in practice.

III Conclusions

Immanuel Kant articulates a conception of a world society composed of world citizens (*Weltbürgerrecht*), whose law is derived from a universal and interculturally recognised human dignity. Pursuant to the statement 'the law of world citizenship is to be united to conditions of universal hospitality', a visiting foreigner has the right not to be treated as an enemy (*Recht der Hospitalität*).⁴⁰ Denying entry is permissible only if such refusal does not entail fatal consequences for that person, and as long as they conduct themselves peacefully, they must not be treated with hostility.⁴¹ The cosmopolitan vision of world society focuses on persons, rather than on states, as the subjects of the international order, and presupposes the intrinsic value of its norms, even in the absence of a 'central legislator'.

³⁸ It may be stated that it shifts criminal liability to a much earlier stage than the actual border crossing, in fact, to the stage of preparation.

³⁹ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

⁴⁰ Immanuel Kant, *Toward Perpetual Peace: A Philosophical Sketch* (Jonathan Bennett tr, Early Modern Texts 2017) 11.

⁴¹ *Ibid.*

In line with the author's well-known concept, the migrants assisted by the five activists come under the protection of universally recognisable human dignity and ought to be treated in accordance with the right of hospitality. By providing humanitarian aid, the five activists exercised their individual autonomy, and their actions should be regarded as moral.

Furthermore, the analysis concluded that the Trial of the Five case is an example of unjustified interference by state authorities in the autonomy of activists providing humanitarian assistance to migrants. It would not be an exaggeration to state that such charges, in similar circumstances, should not be brought by the prosecution; otherwise, if pursued, they should be discontinued by the court on the grounds of the absence of a component of criminality. The acquittal delivered in September 2025 must be regarded as correct, although it should be questioned whether there were not already sufficient grounds, even at an earlier stage, to refer the case to a hearing and discontinue the proceedings. Indeed, it seems that even at the very beginning of the procedure, it was evident that the conduct of the five individuals was not unlawful, that is, it did not violate a sanctioned norm, nor did it correspond to the statutory descriptions of the acts prescribed by the Polish Criminal Code.