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From administrative detention to the criminal law assessment of directing an organized criminal group. The evolution of foreigner crime in Poland on the example of a case study of an Armenian citizen

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***Abstract*— The article analyzes the evolution of legal, criminal, and penitentiary liability of foreigners in Poland over the last three decades, with particular emphasis on organized economic crime. The research axis is a case study based on qualitative research (criminological interview) conducted by the author on May 18, 2026, at the External Branch in Bielsko-Biala of the Cieszyn Penal Institution with a 49-year-old Armenian citizen, validly convicted of, among others, an act under Art. 258 § 1 and § 3 of the Penal Code in conjunction with Art. 65 § 1 of the Penal Code. His criminal evolution in the Republic of Poland, from petty trade under the conditions of the Polish "bazaar economy" of the 1990s, through the phenomenon of criminogenic administrative detention, to co-directing a hermetic excise-related organized crime group, provides an excellent background for a multifaceted dogmatic analysis. The article critically evaluates the practice of using guarded centers as a quasi-penal substitute for isolation during the transformation period and demonstrates the adequacy of modern criminal law instruments for combating cross-border economic crime, utilizing criminological theories, including, among others, the differential association theory.**

Keywords— economic crime, organized crime, Art. 258 of the Penal Code, foreigner crime, administrative detention, differential association theory, fiscal penal law, bazaar economy, penitentiary law.

I. Economic Crime

Economic crime, much like the operational mechanisms of the economy, has a multifaceted dimension. Beyond its typical forms—such as tax crime, which includes tax evasion and the extortion of undue tax refunds by understating public law liabilities—it ranges from capital market crimes, offenses related to the banking and insurance markets, and public procurement and copyright crimes, to all activities and mechanisms aimed at generating profit through the illicit use of market mechanisms (Ministry of Interior, 2015a, p. 7). Economic crimes are committed both by organized criminal groups, which are often international in nature, and by individuals. Of all types of crime, it is economic crimes that cause the greatest losses to the State budget and the private sector. Poland's geographical location is also significant, as it facilitates crimes related to the violation of VAT or excise tax regulations (Ministry of Interior, 2015b, p. 157). Individuals engaging in this type of activity are highly capable of adapting to changing economic, social, or legal situations. At the same time, this is the most rapidly evolving form of criminal activity. Perpetrators of economic crime frequently weave fully legitimate entities into the structure of their illegal operations. This makes it difficult to identify the crime, as well as the scope and functions of the individuals participating in a given procedure (Cichomski and Dubis, 2015, p. 365). Until recently, perpetrators of economic crimes were associated with individuals of high social and professional status who utilized various types of privileges (including access to information) to commit numerous financial crimes (Grabarczyk, 2002, p. 36). American criminologist Edwin Sutherland first coined the term "white-collar crime" to describe such offenses during the American Sociological Association meeting in 1939

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(Federowicz and Kisiel, 2007, p. 68). Currently, we can speak of a certain "democratization" of economic crime, which is often committed by ordinary entrepreneurs who have no connection to big business, access to special information, or technical means. This is facilitated by a multitude of regulations where quantity does not equal quality, an inefficient control system, and the conviction that their actions have low social harm. The actions of criminals, as well as organized crime groups, are subject to continuous adaptation to the economic situation and the development of modern technologies, including the Internet. The development of the Internet has created new opportunities for fraud, abuse, and information gathering related to cyberspace. The global nature of cyberspace—which provides a relative level of anonymity and enables crimes to be committed in one country from the territory of another—currently facilitates the conduct of criminal activity (Ministry of Interior, 2015a, p. 8).

II. Illegal Trade in Tobacco Products

Crime associated with the illegal trade in tobacco products is one of the most profitable areas of economic crime. Three main categories of irregularities related to tobacco products can be distinguished (Mordwa, 2012, p. 99):

- Illegal importation: bringing cigarettes into the territory of the Republic of Poland without the required excise stamps, for the purpose of further domestic distribution or export to third countries.
- Illegal production: manufacturing cigarettes for domestic distribution, export to third countries, or marking them with counterfeit trademarks to introduce them into the legal market.
- Illegal trade: the illicit selling and buying of tobacco.

The high profitability of illegal activities involving tobacco products stems from the price differences of these goods, including excise duty rates both within the EU itself and between EU countries and non-Union states (Ministry of Interior, 2015a, p. 15). Poland's geographical location and its membership in the European Union make it not only a sales market for illegal tobacco products, but also a place of production and transit to Western European countries. During the illegal import of tobacco products into the territory of the Republic of Poland, excise tax is depleted due to the failure to declare the goods, as well as the lack of required excise markings. Budget losses are exacerbated by the non-payment of other public law dues in the form of VAT, customs duties, and income tax. The illegal production of tobacco products is carried out without appropriate permits, tax payments, or sanitary supervision, and bypasses quality standards. Simultaneously, the external appearance of the product is counterfeited, including its packaging and trademarks, which is a crime in itself. In addition to the trade in finished tobacco products, criminal groups also engage in the illegal trade of dried tobacco and the production of cut tobacco, which is used to manufacture cigarettes and distributed as smoking tobacco. All these activities lead to state budget depletions due to unpaid excise duty and result from evading the obligation to manufacture tobacco products in a tax warehouse, failing to mark cigarettes, dried tobacco, and smoking tobacco with excise stamps, or marking products with false tax bands (Mordwa, 2012, p. 105). Trade in illegal cigarettes takes place primarily in commercial squares, marketplaces, and bazaars; for other products (especially tobacco), the main transaction venue is the Internet (a phenomenon confirmed by the analysis of offers and transactions on online auctions, conducted by the Police and the National Revenue Administration). The distribution of illegal products is carried out utilizing postal and courier shipments. In 2019, the illegal production, smuggling, and distribution of tobacco products remained one of the most profitable activities for criminal groups, generating revenues comparable to drug trafficking. At the same time, the criminal liability for the illegal trade in tobacco products is disproportionately low compared to the achievable profits. Estimated tax-related budget losses for the Republic of Poland and the European Union in 2019 are evaluated at over 13 billion euros. The scale of crimes related to illegal cigarette production is evident in a 2015 operation conducted by the Vistula Border Guard Unit, which dismantled an international criminal group involved in cigarette smuggling, production, and distribution. During a "raid" on an illegal factory located near Grójec in Mazovia, officers secured (www 1):

- Nearly 2.5 million kilograms of illegal tobacco and cut tobacco (total value of 1.5 billion PLN).
- 20.5 million cigarettes without the required Polish revenue stamps (estimated value of 13 million PLN).
- Over 33 million PLN in cash hidden on the factory premises.

It was the largest illegally producing cigarette factory discovered and dismantled in Europe up to that point. In 2013, during the annual meeting of the Yalta European Strategy at the Livadia Palace in Crimea, Interpol Secretary General Ronald Noble presented data on the global scale of illegal tobacco trade and production. Almost 700 billion cigarettes are transported illicitly worldwide every year. Cigarette smuggling provides the organizers of this procedure with an annual revenue of 50 billion dollars. According to Noble's estimates, nearly 7 billion cigarettes are smuggled from Ukraine alone to neighboring countries (www 2). Currently, due to the ongoing invasion, and earlier military operations in Ukraine (*de facto* since 2014), the situation has changed, and more illegal factories are being relocated to the territory of the European Union, including directly to Polish territories. Equipment from Ukraine operates in these illegal factories, and Ukrainian citizens are utilized as the workforce. Recently, organized criminal groups engaged in the illegal manufacture of tobacco products may feel threatened. State authorities responsible for combating this type of crime are increasingly uncovering illegal factories and dismantling criminal groups (Ministry of Interior, 2015a, p. 28).

III. Armenians in Silesia (early 2000s)

When speaking about the presence of foreigners in Poland in the early 2000s, one must realize that the majority of foreigners working in Poland at the time were "invisible" to statistical research. The majority of them were Ukrainians who were circular migrants. A large group of EU member state citizens disappeared from statistical registers, as they did not have to apply for a residence permit. They were only obliged to register their stay, but this requirement was not enforced by any sanctions. Another group most frequently omitted from the statistics were the Vietnamese, who—according to officials—very often used forged documents. To sum up, official statistics fell far short of reflecting reality (Bieniecki and Pawlak, 2008, p. 7).The Silesian Voivodeship is one of the smallest Polish voivodeships (approx. 12 thousand sq. km), but it is the second-largest voivodeship in terms of population (approx. 4.9 million people). In 2007, the voivodeship's economy consisted of over 323 thousand companies, which employed a total of over 3 million people. The region accounted for 13.02% of all economic entities in Poland and 21.25% of all employed persons. Thanks to its relatively good infrastructure and a large number of economically active inhabitants, it was a very attractive region for foreign investors (Bieniecki and Pawlak, 2008, p. 62).Annually, around one and a half thousand settlement permits and several hundred (e.g., 320 in 2004 and 183 in 2005) fixed-term residence permits were issued in the Silesian Voivodeship. This is not much when considering the almost 5 million inhabitants of the voivodeship. Permits for citizens of Ukraine, Belarus, Russia, and to a lesser extent Armenia, predominated. Overall, not many foreigners lived in the voivodeship (Bieniecki and Pawlak, 2008, p. 62).In the area of culture, a considerable amount of activity by the Armenian minority could be observed in Silesia at the time (e.g., once a year in September, gatherings were organized in Gliwice, attended by the Ambassador of Armenia, where Armenian culture was showcased) (Bieniecki and Pawlak, 2008, p. 64).

IV. Introduction, Theoretical Framework, and Methodological Assumptions

The phenomenon of organized crime in Poland after 1989 underwent dynamic transformations. The opening of borders, free-market transformation, and the dramatic weakness of early state institutions struggling with a lack of appropriate legal frameworks created fertile ground for the development of criminal structures, including those involving foreigners (Szczepaniec, 2012, p. 9). The aim of this article is a legal and criminological analysis of the criminal path of a foreigner in Poland and to demonstrate the evolution of the Polish state apparatus's reaction to this practice. The empirical basis of the study is qualitative research based on the method of an in-depth interview (semi-structured), conducted on May 18, 2026, with an inmate in the External Branch in Bielsko-Biała (subordinate to the Penal Institution in Cieszyn). The subject is a 49-year-old male, a citizen of Armenia, residing in Poland continuously since 1995, validly sentenced to 3 years of absolute imprisonment for, among other things, participation in and direction of an organized criminal group (Art. 258 § 1 and § 3 of the Penal Code in conjunction with Art. 65 § 1 of the Penal Code and others). From the perspective of penal sciences methodology, acquiring research material directly from perpetrators occupying managerial positions constitutes a significant research challenge. It requires overcoming the barrier of distrust and taking into account the phenomenon of the so-called post factum rationalization (whitewashing one's own role by the perpetrator) (Błachut et al., 2001, p. 84). A phenomenological approach was adopted, allowing for the reconstruction of the perpetrator's subjective perception of the Polish justice system over the course of almost 30 years. The classic criminological theory of differential association by Edwin Sutherland was used to interpret the collected material. It assumes that criminal behaviors are not innate, but learned in the process of interaction with other persons, primarily within intimate personal groups (Sutherland, Cressey, 1992, p. 109). The criminal career of the subject is a model example of this theory – from assimilation in the criminogenic environment of the bazaars in the 1990s, through learning the smuggling ‘’trade’’, up to establishing advanced contacts during the first administrative detention.

V. Legal Status, the ‘’Bazaar Economy’’, and the Hermetic Nature of Diasporas in the 1990s

The legal and factual situation of foreigners in the territory of the Republic of Poland in the 1990s was determined by the legislative chaos of the transformation period. The surveyed Armenian citizen, arriving in Poland in 1995, entered a system characterized by bureaucratic paralysis. The legalization of stay and work was an extremely complicated process and, in practice, rarely fully realized by economic immigrants. The lack of a residence card pushed immigrants into the structures of the dynamically developing shadow economy. The axis of the subject's activity initially became the ‘’bazaar economy’’ – trading at Silesian markets and at the 10th-Anniversary Stadium in Warsaw (a European distribution center for smuggled and counterfeit goods) (Kurczewski, 1999, p. 143). It is worth noting here the criminological phenomenon of the hermetic nature of diasporas. Foreigner crime in that period rarely took on an open character. It was based on strict national and family ties, which for Polish law enforcement agencies (not yet having adequate operational facilities, e.g., translators or informants recruited within these environments) constituted an almost insurmountable barrier (Szczepaniec, 2012, p. 37). Ethnic trust replaced official civil law contracts. This environment functioned as a specific anomie zone, where the norms of Polish law did not apply, and conflicts were resolved within the diaspora. A turning point in the subject's account was his first contact with Polish state authorities shortly before 2000, in connection with the wholesale trade of smuggled spirit. Instead of standing before a criminal court, he was placed in a center for foreigners for 3 months. From the perspective of criminal law dogmatics, preventive measures under the Code of

Criminal Procedure must be clearly distinguished (requiring a court decision, the right to defense, and the substantiation of guilt) from administrative detention, which serves solely to secure the deportation procedure (Cora, 2018, p. 17). In the 1990s, law enforcement agencies, struggling with inefficiency and a lack of funds, massively resorted to so-called shortcuts. Detaining a foreigner-criminal in a closed center was treated as an informal penalty of isolation. As Witold Klaus points out, this practice constituted a glaring violation of constitutional standards (Art. 41 of the Constitution of the Republic of Poland) and human rights, depriving the perpetrator of the opportunity to prove their innocence in court (Klaus, 2017, p. 249). The consequences of such a policy were counterproductive. Instead of special prevention, a mechanism known in penitentiary law as criminal infection (the phenomenon of negative socialization under conditions of isolation) was triggered (Machel, 2003, p. 182). In accordance with the aforementioned Sutherland's theory, the stay in detention did not deter the subject, but allowed him to exchange know-how with other inmates, which in subsequent years resulted in a transition from trading at stadiums to the wholesale trade in tobacco products. Years of impunity in the shadow economy led the subject to build an advanced criminal structure consisting of (during the phase of valid conviction) over a dozen people, engaged in the illegal production of cigarettes and packaging for their distribution. The finale of his activity (a conviction sentencing him to an absolute penalty of 3 years' imprisonment under, inter alia, Art. 258 § 1 and § 3 of the Penal Code in conjunction with Art. 65 § 1 of the Penal Code) illustrates the professionalization of the contemporary justice system.

VI. Fulfilling the Elements of the Prohibited Act under Art. 258 § 1 and § 3 of the Penal Code

To attribute liability under § 3 (founding and/or directing), the structure must meet the criteria under § 1. An organized criminal group does not require a formal statute (like a criminal association), but "a certain degree of durable organization, discipline, and division of roles" (Kardas, 2003, p. 96). The production of cigarettes from cut tobacco required specialized machinery, warehouses, and sales logistics. Regarding the subjective aspect, the perpetrator had to act with direct intent (*dolus directus*). The court determined that the subject co-directed the group along with other individuals. Dogmatics unambiguously accepts such a model (collegial leadership). Jointly exercised authority over the group does not exclude liability under Art. 258 § 3 of the Penal Code, provided that the perpetrator was part of the so-called decision-making body, as repeatedly stated by the Supreme Court (including the judgment of March 21, 2007, ref. no. WA 12/07) (Giezek, 2021, p. 176). The court also correctly applied Art. 65 § 1 of the Penal Code as an aggravating qualifier for individuals making a steady source of income from a crime. Furthermore, the verdict also took into account Art. 8 § 1 of the Fiscal Penal Code (ideal concurrence of offenses). The leader was therefore assigned separate perpetration for directing the structure (a complex guaranteeing the existence of the Penal Code) as well as for excise extortion, illegal production (Art. 69a of the Fiscal Penal Code) and excise fencing (Art. 65 of the Fiscal Penal Code) (Razowski, 2013, p. 103).

VII. Penitentiary Law Aspect – Serving a Sentence in the External Branch of a Penal Institution

A significant research element is the fact that the interview with the leader of the organized criminal group was conducted in the External Branch of a Penal Institution (signifying a semi-open or open-type penal institution). From the perspective of penitentiary law (Art. 69 et seq. of the Executive Penal Code), this demonstrates the correct functioning of the progressive system of executing a sentence. The convict under Art. 258 of the Penal Code, after serving the initial phase of the sentence in a closed-type facility (a requirement for highly demoralized perpetrators), was reclassified due to maintaining correct discipline and posing no threat to the unit's security. Serving the remainder of the sentence in the External Branch is aimed at his gentle social readaptation and serves as preparation for potential conditional early release (Machel, 2003, p. 92).

VIII. Conclusion and Recommendations

The author's interview with a 49-year-old Armenian citizen reveals a dramatic transformation of an individual criminal path, conditioned by the systemic weaknesses of the early Third Republic of Poland, and subsequently strictly accounted for by the modern state apparatus.

The following research conclusions emerge from the analysis:

- The instrumentalization of detention is a criminological error:using administrative centers as arrests in the 1990s led to secondary criminalization. Foreigners, instead of effective resocialization and a criminal trial, experienced criminal infection there, establishing contacts that impacted their further criminality (in accordance with the differential association theory).
- Effectiveness of current regulations:the contemporary model of concurrence of common provisions (Art. 258, 65 of the Penal Code) and fiscal provisions (Fiscal Penal Code) works flawlessly. Law enforcement institutions (e.g., the Central Bureau of Police Investigation - CBŚP) have developed operational working methods penetrating hermetic national diasporas.
- Correct implementation of penitentiary goals:the fact that the co-leader of a criminal group is serving the final stage of a 3-year sentence in semi-open conditions proves that the Polish penitentiary system does not apply absolute retaliation (even against serious offenders under Art. 258 § 3 of the Penal Code), but applies a progressive model oriented towards resocialization.

De lege ferenda demands:

- It is required to introduce legal guarantees for the strict segregation of inmates in guarded centers for foreigners, preventing the mixing of individuals detained for visa violations with identified members of criminal circles awaiting deportation.

- It is necessary to expand the international mechanisms of extended confiscation of the assets of excise groups, which are often transferred to third countries outside the Schengen are a even at the stage of preparatory proceedings.
- It is recommended to expand the use of technical support measures in the operational work of law enforcement agencies (Police – CBŚP) when detecting the activities of organized criminal groups of foreigners in the territory of the Republic of Poland, and at the same time for these agencies to analyze the camouflage methods used by members of organized criminal groups during voice correspondence exchange (new tools, applications, etc.).

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