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The procedural legal status of migrants transported by smugglers in European jurisprudence

ABSTRACT: In this paper, we present the approach of criminology and criminal procedure law to migrant smuggling, a phenomenon that is also significant at the European level. The characteristics of migrant smuggling as defined by the UN Protocol are presented, followed by the responses at the European level and the most recent statistics. The procedural status of smuggled persons, their status as victims, witnesses or perpetrators (suspected or accused), and the approach taken by the different branches of law are also discussed. After that, we summarize the results of our research conducted in the spring of 2024 with the cooperation of EUROJUST and Legicoop members. The following research questions were formulated, concerning the procedural status of migrants transported by smugglers in their countries

- In criminal cases of migrant smuggling, what is the procedural position of the person transported by the migrant smuggler? (victim, witness, instigator, abettor)
- Are there any individual criminal proceedings or other (i.e. administrative, misdemeanour) procedures against the person transported by the migrant smuggler?

In most European countries, migrants are considered victims of migrant smuggling and in the criminal proceedings that have been initiated, they take the position of victims: at most they are questioned as witnesses. Due to illegal border crossing, no separate criminal proceedings are usually initiated against them, most of the time these cases are resolved within the framework of public administrative proceedings.

KEYWORDS: migrant smuggling, victim, witness, criminal procedure, administrative offence, Legicoop, Eurojust.

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1. Introduction

There is a link between illegal migration and migrant smuggling, despite the fact that one is a social phenomenon and the other a crime. A smuggler provides assistance to cross the border illegally.¹ (Sometimes smugglers work together with traffickers, which is another crime: trafficking in human beings. Migrant smuggling is a crime that takes place only across borders, while human trafficking can occur internationally and nationally/domestically.) Irregular migration as a phenomenon is generally defined as a petty offence in the European Union; however, there are other Member States that solve the problem on the level of administrative law.²

The characteristics of migrant smuggling as defined by the UN Protocol are presented, followed by the responses at the European level and the most recent statistics. The procedural status of smuggled persons, their status as victims, witnesses or defendants, and the approach taken by the different branches of law are also discussed. After that, we summarize the results of our research conducted in the spring of 2024 with the cooperation of EUROJUST and Legicoop members. The following research questions were formulated, concerning the procedural status of migrants transported by smugglers in your country:

- In criminal cases of migrant smuggling, what is the procedural position of the person transported by the migrant smuggler? (victim, witness, instigator, abettor)
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In most European countries, migrants are considered victims of migrant smuggling and in the criminal proceedings that have been initiated, they take the position of victims, and at most they are questioned as witnesses. Due to the illegal border crossing, no separate criminal proceedings are usually initiated against them, and most of the time these cases are resolved within the framework of public administrative proceedings.

Recently, more and more surveys have focused on the situation of the victim, but few studies deal specifically with the procedural status of victims of human smuggling. News about crimes affects us every day.

¹ See in more detail Zsirai, 2019, pp. 35-45.

² Bartkó, 2024, p. 33.

Migrants are victims of such crimes every day, often with severe psychological, social and financial consequences.

Among the other transnational organised crimes, migrant smuggling is also a problem in European countries at both regional and EU levels. Migrant smuggling is a profitable activity for transnational criminal organizations³, which therefore raises a number of procedural, criminal and security issues.⁴

According to the UN Migrant Smuggling Protocol 'Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.'⁵ Since 2000, this Protocol has aimed to prevent and combat the smuggling of migrants and to promote cooperation between the States Parties to this end, while protecting the rights of smuggled migrants. This Migrant Smuggling Protocol only applies to the conduct described if it is transnational in nature and involves an organised criminal group.⁶

Human smuggling (migrant smuggling in international terms) has been a major challenge for EU policymakers over the past two decades. Its political and social consequences and causes have all required solutions, to which only temporary responses have been found. International and European law criminalise a number of behaviours as migrant smuggling. This behaviour ranges from organised crime to exploitation and violence, humanitarian aid and illegal entry, and recently there have been calls for trafficking in human beings to be treated as a crime against humanity.⁷

According to the Migrant Smuggling Protocol, 'Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth'.⁸

2. Migrant smuggling in the EU

The 2015 summit was also the result of a 'more distant' political change in Europe, which showed that in our globalised world there are no longer

³ Staiano, 2022, p. 17; Europol, 2022.

⁴ See in more detail Farkas and Jánosi, 2013; Mitsilegas, 2019.

⁵ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing The United Nations Convention Against Transnational Organized Crime, Art. 3 a).

⁶ Staiano, 2022, p. 18.

⁷ See in more detail Mitsilegas, 2019.

⁸ Art. 5 and see Schloenhardt and Hickson, 2013.

distances, and that the consequences of certain social and environmental disasters can be felt within a very short time at the borders of European countries. Many studies have been published on the 2015 crisis⁹, and various European (not only EU) countries have given and will continue to give different responses to it in 2024, albeit with some variations, in line with the political and economic 'climate' at home.

Smugglers use land, sea and air routes to facilitate illegal migration both to and within the European Union.

The European Agenda on Migration, which was adopted by the European Commission on 13 May 2015, identified the fight against migrant smuggling as a priority, to prevent the exploitation of migrants by criminal networks and reduce incentives to irregular migration. The European Agenda on Security, adopted by the Commission on 28 April 2015, also singled out cooperation against the smuggling of migrants inside the EU and with third countries as a priority in the fight against organized crime networks (followed by an EU Action Plan against migrant smuggling – 2015-2020).¹⁰ Taking into account the results of targeted consultations with stakeholders as well as the public consultation, the renewed EU Action Plan against migrant smuggling (2021-2025) sets out the main pillars and concrete actions needed to fight and prevent migrant smuggling and to fully protect migrants' fundamental rights.¹¹

The renewed EU action plan against migrant smuggling (2021-2025) is built on the following main pillars of action:

- (1) Reinforced cooperation with partner countries and international organisations,
- (2) Implementing the legal frameworks and sanctioning smugglers active within and outside the EU,
- (3) Preventing exploitation and ensuring the protection of migrants,
- (4) Reinforcing cooperation and supporting the work of law enforcement and the judiciary to respond to new challenges, and

⁹ See in more detail Hautzinger, 2019, pp. 159-160.

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Action Plan Against Migrant Smuggling (2015 - 2020), (COM/2015/0285 Final).

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Renewed EU Action Plan Against Migrant Smuggling (2021-2025), (COM/2021/591 Final).

(5) Improving knowledge on smugglers' modi operandi.

According to the Eurojust Annual Report 2023, migrant smuggling is a global criminal activity that often disrespects human life and impacts the internal security of the EU in the pursuit of profit. Smuggling networks, often part of organised multinational criminal networks, frequently take advantage of migrants' vulnerability, leading to violence, abuse, exploitation and loss of life.¹² In 2023, more than 280,000 irregular border crossings were detected at the EU's external borders. More than 90% of the irregular migrants who reach the EU arrive via smugglers. It is a shocking fact that since 2014, over 60,000 migrants have lost their lives or gone missing during smuggling operations.¹³

According to the Eurojust Annual Report 2023, Greece opened the largest number of migrant smuggling cases at Eurojust during 2023, followed by Hungary. Bulgaria and Germany are the European countries that were most requested to participate in the Agency's cross border migrant smuggling cases in 2023, while the United Kingdom and Serbia were the most requested third countries to contribute to international investigations in this area. In 2023, Eurojust continued to be actively involved in the EMPACT Operational Action Plan on Migrant Smuggling, ensuring the judiciary's perspective was represented. Eurojust participates in nearly all operational actions in this area and co-leads 11 of them.¹⁴

Case study: A criminal network is suspected of smuggling up to 10,000 Vietnamese nationals across the English Channel. Migrants are transported to the United Kingdom in small motorised boats supplied from Germany. An international operation is carried out by authorities in several countries, including Belgium, Germany, the Netherlands and the United Kingdom, with the support of Eurojust and Europol. During the action day on 5 July 2022, 39 people are arrested and over 50 searches are carried out simultaneously in several countries. Thanks to the intensive cooperation and exchange of information prior, during and following the joint operation, the authorities involved are able to deal a severe blow to one of the most significant crime groups involved in cross-Channel migrant smuggling. JUSTICE DONE: On 18 October 2023, the Belgian Court of Bruges

¹² See in more detail Bast, 2023.

¹³ Eurojust, 2023.

¹⁴ Eurojust, 2023.

*sentences 20 suspects to prison terms ranging from 30 months to 11 years for their involvement in migrant smuggling. They are ordered to pay fines of up to EUR 80,000.*¹⁵

The law enforcers and the decision-makers of the European countries are trying to fight together against an international, cross-border crime, with different approaches, legal views, and different criminal law regulators at the local level.¹⁶

Smuggled persons (migrants) have a lot of information about the network, its stages, the system of payments etc.¹⁷ This information is crucial to the law enforcers' ability to stop the smuggler groups.

Following an aforementioned peak in 2015, there was a sharp drop in numbers, followed by a further rise in 2022.

In 2023, 275,049 illegal immigrants were registered. In January 2024, 13,595 illegal arrivals were registered. European countries encounter smuggling in different ways depending on their geographical location, with the Eastern (Balkan) and Western (maritime) routes being the most infested, with most migrants arriving along these routes, based on three major routes.

The experience of different European countries shows that smuggling networks have different structures depending on the routes used.¹⁸ This may also mean that countries involved in different routes approach their migrant smuggling phenomenon differently.¹⁹

3. Our research

In the National Institute of Criminology²⁰ we have a research project entitled "The procedural status of migrants transported by smugglers in European case law".

The following research questions were formulated in the spring of 2024:

¹⁵ 20 migrant smugglers sentenced to prison in Belgium with Eurojust support. [Online]. Available at: <https://www.eurojust.europa.eu/publication/20-migrant-smugglers-sentenced-prison-belgium-eurojust-support> (Accessed: 1 February 2024).

¹⁶ Campana, 2018, p. 490.

¹⁷ Campana, 2018, p. 493.

¹⁸ Campana, 2018, pp. 483-484.

¹⁹ See in more detail Comparing Notes: Perspectives on Human Smuggling in Austria, Germany, Italy, and the Netherlands.

²⁰ National Institute of Criminology, 2024 work plan. [Online]. Available at: <https://en.okri.hu/index.php/research/work-plan> (Accessed: 1 February 2024).

- In criminal cases of migrant smuggling, what is the procedural position of the person transported by the migrant smuggler? (victim, witness, instigator, abettor)
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We have sent these questions to two different bodies.²¹ First of all, to the Ministry of Justice of Hungary who is part of the so called Legicoop network: the network for legislative cooperation between the ministries of Justice of the European Union (ENLC). (It was created in 2008, by a resolution for the Council of the European Union 2008/C 326/01. It was inaugurated in Paris on 19 June 2009. Legicoop is the online forum of this network. It facilitates exchange of information between national correspondents on legislation, judicial systems and implementation of European regulation in the Member States. As a European cooperation instrument, Legicoop contributes to the quality of legislative production, the improvement of mutual trust and the dissemination of law.

Secondly, we have sent our research questions to the Hungarian National Desk of EUROJUST who distributed among them the Member States' National desks and for the Focus groups' members. The Migrant Smuggling Focus Group is an informal network of judicial practitioners specialised in migrant smuggling from all EU Member States and some non-EU States. It serves as an important hub to regularly connect national judicial actors working in this area.

Members of the Focus Group provided expert input to Eurojust's overview of EU legislation on the Legal Definition of Migrant Smuggling and/or Facilitation of Irregular Migration²². This publication serves as a useful reference for judicial practitioners working on migrant smuggling cases.

²¹ Special thanks to Ákos Kara, Eszter Köpf, Gábor Schmidt and László Venczl for their help in the further distribution of the questionnaires and to the representatives of the Member States who responded to the questionnaires.

²² Eurojust, 2024.

4. Findings

The members of each board could voluntarily answer the questions we sent out. We received responses from Legicoop, Eurojust, the Focus Group, from a total of 15 countries.

4.1. Austria

The offence of migrant smuggling is to be found in Section 114 of the Austrian Alien Police Act. Para 5 of this Section prohibits a *smuggled person to be prosecuted* for aiding or abetting the smuggling offence regarding themselves. They participate as witnesses in this criminal proceeding. According to Section 120 of the Austrian Alien Police act, an illegal stay in the territory of Austria is an administrative offence punished with a fine.

4.2. Bulgaria

Concerning the procedural status of migrants transported by smugglers, these migrants are always considered victims of the crime while also having the status of witnesses. Their status as *victims* of the crime entails a whole set of rights set out in the Criminal Procedure Code of the Republic of Bulgaria.

General provisions: the victim is an individual who has the capacity of being a victim. According to Article 74 of the Bulgarian law the person who has suffered material or immaterial damages from the criminal offence shall be a victim. After the death of such persons, this right shall pass on to their heirs. The accused party shall not exercise the rights of a victim within one and the same proceedings.

The victim shall have the following rights in pre-trial proceedings: to be informed of his/her rights in criminal proceedings; to obtain protection for his/her safety and that of his/her relatives; to be informed of the course of criminal proceedings; to participate in the proceedings as specified by this Code; to make requests, comments and objections; to appeal against decision which lead to the termination or suspension of criminal proceedings; to have legal counsel; to be accompanied by a person of their choice; to obtain a written translation of the decision to terminate or suspend criminal proceedings if he/she does not speak Bulgarian; to request the acceleration of pre-trial proceedings in the cases provided for by this Code. The Requests, observations, objections and appeals against acts leading to

the termination or suspension of criminal proceedings may be made electronically, signed with a qualified electronic signature. The authority which initiates the pre-trial proceedings shall immediately notify the victim thereof if he/she has indicated an address for summoning in the country or an electronic address.

The victim shall exercise his/her rights if he/she explicitly requests to participate in the pre-trial proceedings and indicates an address in the country for summoning and notification of the proceedings. With the explicit consent of the victim, which may be withdrawn at any time, summons and notification may also be made at an electronic address indicated by the victim. The victim may not be accompanied by a person appointed by him/her if this contradicts the interests of the victim or may hinder the criminal proceedings.

Individual criminal proceedings or other/administrative proceedings may be initiated against the person transported by the migrant smuggler, i.e. the migrant himself, in the Bulgarian criminal justice system, and on this basis, they may be held criminally liable.

According to the Bulgarian penal code, anyone who enters or crosses the border without a permit from the competent authority, or with a permit, but not through the places designated for this purpose, is punished with imprisonment of three to six years and a fine ranging from one thousand to five thousand leva.

4.3. Czech Republic

The criminal legislation of the Czech Republic contains *four criminal offences* that are closely related to illegal migration. These are the offences of violent crossing of the state border pursuant to the Criminal Code, organising and facilitating unauthorized border crossings, aiding and assisting in unauthorized stays within the territory of the Czech Republic and illicit employment of foreigners.

The perpetrator of organizing and facilitating of unauthorized crossing of the state border may be a natural or legal person. This offence punishes so-called smuggling. Therefore, the perpetrator cannot be a person who illegally crosses the state border or transports himself across the territory of the Czech Republic after illegally crossing the border. The smuggled persons therefore act as *witnesses* or *victims* in criminal proceedings. However, they are liable for the illegal border crossing under administrative law.

The crime of organising and facilitating the illegal crossing of a state border is often linked to inhuman or degrading treatment of migrants, and this aspect should not be overlooked. Inhuman or degrading treatment is treatment in which the perpetrator, by his or her conduct, subjects another – intentionally or negligently – to physical or mental suffering as a result of the mode of transport across a border or national territory, as a result of lack of food, liquids or inadequate sanitary conditions.

At the same time, a procedure can also be initiated against the person transported by the migrant smuggler. According to the provisions of Sec. 17(3), a natural person commits an offence if he/she crosses the state border during the temporary protection of the state border – either outside the place designated for border crossing or at a place designated for that purpose but at a time other than the prescribed time, or intentionally evades control at a place designated for border crossing. The offence is punishable by a fine of up to CZK 50,000, and a fine of up to CZK 5,000 may be imposed by an on-the-spot order. However, in view of the Czech Republic's accession to the Schengen area, this provision *applies only to external borders* within international airports and the possible temporary introduction of internal border controls.

4.4. Denmark

The criminal procedural position of the person transported depends on the specific circumstances in connection with entry into Denmark, and the person in question may thus be arrested, charged and/or questioned as a *witness*, depending on the circumstances. Foreigners who enter or stay in Denmark without permission cannot be prosecuted if the person in question has approached the Danish authorities without delay in order to seek asylum, Article 31 of the Refugee Convention. Furthermore, a foreigner who has been assessed as a victim of human trafficking will be offered a prepared repatriation, including a reflection period, during which the foreigner has the right to procedural residence in Denmark.

An alien may be *punished* for violating the Danish Aliens Act if the person in question has entered Denmark illegally. It should be noted that the migrant may be punished for illegal entry regardless of whether it has taken place with the assistance of a migrant smuggler.

4.5. Finland

In Finnish criminal proceedings, the status of the person transported is a *witness*. In the Finnish criminal process, it is possible to conduct a preliminary investigation and thus focus the criminal process on the imported person.

It is not common for criminal investigations to progress in state border offences, because Finnish legislation prevents the sentencing of a person seeking asylum. Generally, smuggled persons immediately apply for asylum if they are taken into custody by the authorities upon entry into the country.

As a result of administrative procedure, an imported person can be deported from the country. The conditions of foreign nationals' right of residence in Finland are described in the law. If these conditions are not met, the foreign national in question does not have the right to stay in the country. The police and border control authorities have a legal duty to take steps to ensure the refusal of entry, denial of admittance or stay or the deportation of an alien, or present a requirement to leave for another EU Member State pursuant to the Finnish Aliens Act, if the alien does not satisfy the conditions for entry to or residence in the country

4.6. France

In French law, the offence of facilitation of unlawful entry, movement and residence is. Depending on the circumstances of the case, migrant smuggling may be qualified as human trafficking. The smuggled persons could be victims of human trafficking, to whom special treatment rules apply.

The *victim* role of migrants is also emphasized by the following rule: the offence is aggravated, if it is committed in circumstances that directly expose foreigners to an immediate risk of death or injury likely to result in permanent mutilation or disability have the effect of subjecting foreigners to living, transport, work or accommodation conditions incompatible with human dignity.

4.7. Iceland

Usually, the person transported would have a status as a *witness*, in Icelandic criminal procedure. However, if there is suspicion of an independent violation by the transported person (forged documents for example) the person could get a status as a *defendant* for that offence. If

there is a suspicion of trafficking in human beings the person always has status as a victim.

There are no special proceedings against that person unless, as stated above, the person is suspected of having committed an independent offence, like document forgery. This doesn't affect the person's chances of applying for protection.

4.8. Lithuania

Depending upon the situation in the case under investigation i.e. if such persons apply for asylum or temporary protection at the time of their detention or immediately afterwards, they usually have the status of *witnesses* in pre-trial investigations for illicit smuggling [of people]. Moreover, foreign nationals who are smuggled illegally across the territory of the State of Lithuania (as a transit country) from one EU State to another EU State shall also have the status of a witness in criminal proceedings.

Foreign nationals who are smuggled illegally have the status of a *suspect* in criminal proceedings in cases when they unlawfully cross the state border of the Republic of Lithuania (external EU border) from a foreign state and do not apply for asylum in Lithuania or for their legal protection.

4.9. Netherlands

The procedural position of a person transported by a migrant smuggler in criminal cases can vary but generally they are regarded as *victims*. They can also have the opportunity to cooperate with law enforcement as *witnesses* in prosecutions against the smugglers.

In general, the primary approach is to treat individuals transported by migrant smugglers as victims but there could be circumstances where they might be subject to individual criminal, administrative, or misdemeanour procedures based on their actions or legal status. (For instance, if they are found to have committed crimes unrelated to their status as migrants or if they are suspected of being involved in the smuggling operation willingly.) However, the Netherlands also adheres to the Convention relating to the Status of Refugees in which article 31 states that the contracting country shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the

authorities and show good cause for their illegal entry or presence. This means that when a migrant invokes Article 31 of the Refugee Convention, in principle no prosecution will take place.²³

4.10. Poland

In Poland, illegal border crossing is criminalized as a misdemeanour or a criminal offence. According to the law “Whoever crosses the border of the Republic of Poland in violation of the law shall be punished by a fine.” Illegal border crossing will be crossing the border at an unauthorized location, as well as at an authorized location, but in violation of the regulations governing its crossing, as normalized in Article 14 (1) of the Law of October 12, 1990 on the Protection of the State Border. This may involve violations such as lacking a valid travel document or a document authorizing the crossing of the border, not having a valid visa if required, failing to justify the purpose and conditions of the planned stay, or not having sufficient means of subsistence. Border Guard officers are authorized to impose a fine for an offense under Code of Petty Offences. The permissible amount of such a fine by way of a penalty ticket is up to PLN 500.

4.11. Portugal

Usually in the Portuguese criminal proceedings, the status of the person transported is a *witness*.

A citizen who remains irregularly in Portuguese territory is subject to an administrative procedure.

4.12. Slovakia

Pursuant to the Slovak Criminal Procedure Act, the transported person is included in the proceedings as a *victim* and can be questioned as a witness in the criminal proceedings against the smuggler.

In parallel with the criminal proceedings, administrative proceedings may also be initiated against the person transported by the migrant smuggler.

²³ See in more detail van der Woude and van der Leun, 2017.

4.13. Spain

In Spanish criminal proceedings, the smuggled person is a *witness* and could also be a *victim* depending on the circumstances (as migrants are sometimes threatened or /and physically abused by smugglers).

Migrants cannot be prosecuted for the illegal entry unless they use forged documentation, the illegal entry itself is not a criminal offence according to the Spanish Law, but they are administratively liable according to the Aliens Act, and this administrative file leads to the repatriation to the country of origin (if possible).

4.14. Sweden

Normally in Swedish criminal proceedings, the person transported by the migrant smuggler has the procedural position as a *witness*.

No legal action is taken against the smuggled person. The person may be subject to police procedures according to the Aliens act.

4.15. Switzerland

In Switzerland, migrants have two different statuses: in the proceeding against the smuggler, they will be considered as *victims* and interviewed as *witnesses* or persons providing information. As for the offence usually committed by entering the country without the required authorization, they will be considered as suspects and will be prosecuted. As a general rule and for the unlawful entry in Switzerland, migrants will be prosecuted and sentenced with a penalty order. They will be subject to an administrative proceeding by the competent migration office with regard to their return to their home countries.

5. Summary

Migrant smuggling is a cross-border crime that endangers the lives of migrants, disregards human life and dignity for profit, and undermines the EU's migration management objectives and the fundamental rights of those affected. Migrant smuggling is linked to the facilitation of illegal migrants and the encouragement of illegal border crossing, while criminal law and administrative law react differently to these two phenomena.

According to Bartkó, irregular migration as a phenomenon is defined in different ways by the Member States. Most of them give an administrative legal answer to the problem. However, it can be underlined that

criminalization is not a widespread response; illegal border crossing and illegal residence are not considered criminal offences in western European countries.²⁴

While the EU has made significant progress in recent years in the fight against migrant smugglers, challenges remain and new ones have emerged that require strengthened action and a renewed comprehensive approach. This applies both to our work with partner countries and to the fight against criminal networks within the EU and its Member States, to enhancing cooperation and supporting the work of law enforcement agencies to combat migrant smuggling.

We found no difference in the case of those crossing the external or internal borders of the EU,²⁵ or in the case of secondary movement, despite the fact that migrant smuggling within the EU, on secondary movements, remains one of the key threats for the EU.²⁶

In most European countries, migrants are considered victims of migrant smuggling and in the criminal proceedings that have been initiated, they take the position of victims, and at most they are questioned as witnesses. Due to the illegal border crossing, no separate criminal proceedings are usually initiated against them, and most of the time they are decided within the framework of public administrative proceedings.

The status of victims of criminal offences has been a major political issue in the European Union, and as such, it has been given particular attention in recent years.²⁷

Assistance in the context of committing migrant smuggling is to be interpreted extremely broadly, the behaviour of the offender can be considered as assistance, from transportation through the provision of technical conditions to advice on the route given for crossing the illegal state border.²⁸

As Ákos Farkas said,²⁹ with migrant smuggling, crimes either have victims or not. A migrant can only be a victim in criminal proceedings if a crime is committed against him during the journey. In this case, she/he will

²⁴ Bartkó, 2024, p. 33.

²⁵ See more: Comparing Notes, 2006; van der Woude and van der Leun, 2017.

²⁶ Europol, 2022, p. 10.

²⁷ See in more detail Kara et al., 2020, pp. 303-341.

²⁸ Zsirai, 2019, p. 45.

²⁹ Kiss interview with Ákos Farkas.

also be questioned as a witness. If the migrant has not offended, she/he can still be a witness in the case of migrant smuggling.

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