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Arrangement of Illegal Immigration at the Northern Borders of Finland

Minna Kimpimäki¹

Abstract

The aim of this article is to evaluate the extent to which the 2015 migration crisis has led to criminal processes for arrangement of illegal immigration in northern Finland. Arrangement of illegal immigration refers to actions by which a person brings or attempts to bring to Finland a foreigner who does not meet the requirements for entry into the country. While acting on humanitarian motives does not meet the legal definition of arrangement of illegal immigration, not all acts of bringing asylum seekers to Finland are considered as being committed for humanitarian purposes. Even if, taken together, the acts of arrangement of illegal immigration committed at the abovementioned borders may seem quite minor in scope and unorganized by nature, they cannot be considered in complete isolation from organized, large-scale smuggling of migrants – which they may, either intentionally or unintentionally, promote.

Keywords: migration, state borders, Finland, Lapland, criminal law.

1. Introduction

The number of asylum seekers and other immigrants seeking entry into Finland has traditionally been relatively small (Lehti – Aromaa, 2002: 40–44). However, the 2015 European migration crisis made a difference in Finland and elsewhere in Europe. In 2015, the number of asylum seekers in Finland was 32,477 – low in European comparison, but clearly higher than in the years before or after that when the annual number of asylum seekers ranged between 1,505–5,988 people (Statistics Finland, Asylum-seekers and refugee quota, 2015–2020; Finnish Immigration Service, Old statistics, variably covering the years 2006–2015). Since 2022, the numbers are on a significant rise again because of the war in Ukraine and the subsequent wave of refugees.

The impact of the 2015 migration crisis is visible in judicial statistics as well. During the periods 2009–2014 and 2017–2020, in Finnish district courts 15–45 persons were convicted annually of arrangement of illegal immigration or of its aggravated form, whereas in 2015, the number was 70 and in 2016 it was as high as 98 (Statistics Finland, Sentences by district court and offence, 2016-2020; Statistics Finland, Sentences by offence, 2009-2018). This article examines how the situation in 2015 affected the occurrence of arrangement of illegal immigration at the northern borders of Finland. It was an exceptional period in that such offences have generally been rare in the courts of northern Finland. Therefore, this exceptional period of time offers an opportunity to

¹ University of Lapland, Finland, minna.kimpimaki@ulapland.fi

examine what the arrangement of illegal immigration in Finnish Lapland looked like at that time and how it was legally responded to. At a more general level, it is worth considering how the migration crisis influenced the way Finland looks at its geographical position and border security.

Northern Finland – Finnish Lapland – has borders with Sweden, Norway and Russia. The country's western and eastern borders are very different from each other. The Finnish–Swedish and Finnish–Norwegian borders have traditionally been characterized by openness, and the nationals of these countries have enjoyed, and continue to enjoy, a high degree of freedom of movement across the borders. Nowadays, this freedom and openness also applies to other nationals of the European Union, with the exception of the COVID-19 pandemic, which led to some temporary restrictions. The Finnish–Russian border, on the other hand, has a tight border control system. The border is carefully guarded, and persons crossing the border are required to present a valid passport and a visa or a residence permit. The instances of arrangement of illegal immigration considered in this article occurred at the Finnish–Swedish border (border crossing point in Tornio) and at the Finnish–Russian border (border crossing points Raja-Jooseppi in Inari and Kellosele in Salla).



Figure 1. Relevant border crossing points on a map. Map: Arto Vitikka, Arctic Centre, University of Lapland

2. Legislation

Arrangement of illegal immigration was criminalized in Finland in 1993. The main motivation for the criminalization was the significant increase in the attention devoted to the subject at the international and European level (Government bill 293/1992: 13). The provision dealing with arrangement of illegal immigration was originally located in the Aliens Act but it was transferred to the Penal Code in 1998. Since then the provision has been changed several times, for instance, in order to include acts not committed for economic gain, acts by which a person gives a travel document for the use of another person, acts connected to transit through Finland, and acts where travel documents used were received from an authority on false premises. The need for changes had also

emerged in legal practice, for example in cases decided by the Supreme Court, which involved giving false information to the authorities when applying for a visa (Supreme Court 2010:6) and transporting persons who had entered the country illegally through Finland to another country (Supreme Court 2012:24).

The applicable legislation covers acts where a person brings or attempts to bring to or transport through Finland a foreigner who has no adequate travel documents or whose documents are false, forged, issued to another person or received from an authority on false premises. The legislation also covers acts where a person arranges or provides transportation to Finland for a foreigner who has no adequate travel documents or gives a faulty travel document to another person for use in entry into the country.

“Penal Code, Chapter 17, Section 8 – Arrangement of illegal immigration

(1) A person who

(1) brings or attempts to bring to or transport through Finland a foreigner without a passport, visa, residence permit or other document comparable to a passport, that is necessary for entry into the country,

(2) brings or attempts to bring to or transport through Finland a foreigner whose document referred to in paragraph 1 is false, forged, issued to another person or received from an authority on the basis of essential information that is false or misleading, or by bribing the authority or violent resistance of the authority,

(3) arranges or, as an intermediary, provides transportation for a foreigner referred to in paragraph 1 or 2 to Finland, or

(4) gives to another person a document referred to in paragraph 2 for use in entry into the country, shall be sentenced for arrangement of illegal immigration to a fine or imprisonment for at most two years.²”

However, certain acts have been excluded from the scope of the provision. According to the second paragraph of the provision, acting on humanitarian motives does not meet the legal definition of arrangement of illegal immigration.

“(2) An act which, when taking into account in particular the humanitarian motives of the person committing it or his or her motives relating to close family relations, and the circumstances pertaining to the safety of the foreigner in his or her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangement of illegal immigration.³”

This paragraph restricting the scope of the provision is intended to apply only in exceptional situations (Government bill 164/2013: 16–17). The vulnerable state of the person transported or unsafe conditions at the place of origin do not automatically make arrangement of illegal immigration acceptable and justifiable. In contrast, if for-profit smuggling operations are performed under these kinds of circumstances, it may be indicative of particularly ruthless exploitation of persons in need. Therefore, not only the circumstances in the foreigner’s country of origin that are affecting their safety but also the actual motives of the perpetrator are considered. The mere fact that a person’s safety is threatened at the country of origin or that the person seeks asylum in Finland does not necessarily suffice to render arrangement of immigration acceptable. The professional nature of the arrangement or the aim to get economic benefits from it, for instance, might

²Translated from Finnish by the Ministry of Justice (https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf). Only Finnish and Swedish versions are legally binding.

³Translated from Finnish by the Ministry of Justice (https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf).

indicate that the needs of the persons transported were not the main motivator for the action (Government bill 164/2013: 16, 27; Kimpimäki, 2015: 249–252).

The Supreme Court of Finland has assessed the realization of humanitarian motives in a case where a person had brought five foreigners previously unknown to him from Russia to Finland in connection with his own illegal entry. The court emphasized that in order to fulfill the elements of arrangement of illegal immigration, the activity does not have to be planned or organized or committed for the financial benefit of the perpetrator. The Supreme Court also stated that a momentary decision to help people a person has met by chance and whose backgrounds she/he does not know, does not show strong humanitarian motives. (Supreme Court 2016:66, 6, 15, 20)

It can be stated that in the jurisprudence, the threshold for the application of the restricting paragraph has indeed been set quite high. The paragraph has most frequently been applied in cases where the person transported was a family member or a close relative of the perpetrator and the person's circumstances in the country of origin were proven unsafe. As a person's degree of safety in the country of origin and its significance to the case are assessed on a case-by-case basis, situations where the perpetrator assists persons previously unknown to him/her, and whose personal circumstances he/she is not familiar with, do not easily fall within the scope of the paragraph which is also confirmed by the Supreme Court in the judgement described above (Supreme Court 2016:66).

The arrangement of illegal immigration is considered as aggravated either where the act has serious consequences or the act is committed in the framework of organized crime, and – according to the typical wording of provisions dealing with aggravated forms of offences – the offence is aggravated also when assessed as a whole. The serious consequences on the basis of which an offence may be considered as aggravated are grievous bodily harm, serious illness, state of mortal danger or comparable particularly grave suffering.

Of the two criteria for aggravation, commission of the offence within the framework of an organized criminal group has been used more often than the criterion connected to the serious consequences of the act. According to Chapter 6, Section 5 of the Penal Code, the legal concept “organized criminal group” refers to “a structured association of three or more persons, existing for a period of time and acting in concert with the aim of committing offences that are punishable by a maximum sentence of imprisonment for at least four years.”

In its most organized form, arrangement of illegal immigration is a well-planned activity involving a variety of actors, activities and phases in the countries of origin, transit and destination. Organized smuggling of persons presupposes planning, financing, and arrangement of documents, transportation and housing, for instance (UNODC 2018: 6). Indications of the organized nature of the activity include e.g. the frequency, duration and scale of the activities, thorough planning and division of labor as well as high economic benefits. (So, for instance, District Court of Vantaa 06/391 – Helsinki Court of Appeal 06/1718; District Court of Vantaa 10/547 – Helsinki Court of Appeal 10/1835; District Court of Helsinki 10/1917 – Helsinki Court of Appeal 10/2736; District Court of Helsinki R 11/476 – Helsinki Court of Appeal 11/2840).

Arrangement of illegal immigration, together with drug offences, is one of the few offences in the context of which the organized nature of the acts has actually been used in court practice as a basis for conviction of the aggravated form of the offence (Palo, 2010: 196–198, 431–433). However, aggravated arrangement of illegal immigration is not a very common offence in Finland. During the period 2009–2020, Finnish district courts convicted 2–10 persons of aggravated arrangement of illegal immigration per year, the only exception being the year 2016, when 27 persons were convicted of this offence. On the basis of the cases collected for this article it seems quite clear that in the great majority of cases brought before the courts of northern Finland the activities constituting

arrangement of illegal immigration were not particularly large-scale, carefully planned or profitable.

3. Cases

3.1 Offences and penalties

For the purpose of this article, all judgements dealing with arrangement of illegal immigration and aggravated arrangement of illegal immigration given after 1 January 2014 by the District Court of Lapland, which nowadays also covers the former District Court of Kemi-Tornio, and the Rovaniemi Court of Appeal, were requested from the courts. The request yielded a total of 25 district court judgements with 39 defendants in them. Of these judgements 19 dealt with the Finnish–Swedish border, i.e. the border crossing point in Tornio, and 6 with the Finnish–Russian border, i.e. the crossing points Raja-Jooseppi in Inari and Kelloselkä in Salla. Most of the persons transported across the Finnish–Swedish border were Iraqis or Iraqi Kurds, and in single cases Syrians or Somalis. Those who were transported across the Finnish–Russian border originated from Afghanistan, Sri Lanka, India, Pakistan, Nepal or Cameroon. In all but one case, the acts considered were committed either in 2015 or in 2016. In one case, the indictments covered acts committed between December 2014 and March 2016.

In the district courts, 28 of the defendants were convicted of arrangement of illegal immigration (24 persons) or of aggravated arrangement of illegal immigration (4 persons). Charges against 9 persons were dismissed in district courts and the court of appeals dismissed charges against one more person. Charges against 2 persons were not considered because the suspects had not been reached and could not be summoned. Of the convicted persons 14 were sentenced to a fine, 7 to a suspended custodial sentence and 4 to an unconditional custodial sentence. Three convicted persons were left without punishment, but one of these cases was re-considered in the Supreme Court (Supreme Court 2016:66, 26) and one in the court of appeals, and as a result of that, the defendants were fined.

The practice followed in the courts of Lapland has been somewhat milder than in Finland in general as, according to statistics, conditional imprisonment has nationally been a more common punishment for arrangement of illegal immigration than fine (Statistics Finland, Sentences by district court and offence, 2016-2020). The Supreme Court has also ruled that arrangement of illegal immigration is typically punishable by a custodial sentence (Supreme Court 2016:66). A reason for this difference might be that, given the openness of the Finnish–Swedish border and the ease of crossing it, typical cases at the northern borders have been somewhat less organized than typical forms of arrangement of illegal immigration in other parts of Finland.

In most typical cases, one or more defendants were indicted for a single act by which one or a few persons without documents that are necessary for entry into the country were transported by the defendant(s) to Finland across the Finnish–Swedish border, and after that, the persons transported applied for asylum in Finland. The transported persons were often of Iraqi origin and also the defendants were often of foreign origin. In these most typical cases, the arrangement consisted of transport of the persons across the Finnish–Swedish border and there was no evidence of more far-reaching arrangement of other stages of the journey. In most cases, there was no evidence that a monetary reward had been paid for the transport. In these kinds of cases, defendants were usually convicted to pay a day-fine. Day-fine is a sanction in which the number of the fines is determined according to the seriousness of the act and the monetary amount of the fines on the basis of the defendant's financial situation (Lahti, 2021: 24–43). Suspended custodial sentences were imposed, for instance, in cases which showed signs of more organized activity or pursuit of profit.

3.2 Legal issues

In many cases, defendants based their defense on their humanitarian motives or lack of intent. Neither of these pleas was particularly successful. Charges were dismissed in whole or in part on the basis of humanitarian motives only for three persons who had helped their family members or close relatives (one defendant had helped his wife; one defendant had helped his mentally disabled brother and a cousin who travelled with the brother; and one defendant had helped his nephew) to enter the country. In cases where the defendant was involved in helping persons previously unknown him/her to enter the country, the claims that he/she had acted on humanitarian motives were not accepted even if the persons in question later applied for asylum in Finland. The courts took the stand that a decision based on compassion for unknown persons did not indicate sincere humanitarian motives within the meaning of the law.

The defendants who based their defense on lack of intent stated that they had been unaware of the fact that the persons in question did not have the necessary documents (mistake of fact) and that they had been unaware of the illegality of their actions (mistake of law). Both pleas were systematically dismissed by the courts.

A mistake of fact (The Penal Code of Finland, Chapter 4, Section 1, Mistake as to the definitional elements of an offence), if approved, removes the intentionality of the act, and arrangement of illegal immigration is punishable only if committed with intent. However, in the cases discussed here, the courts did not find this kind of erring plausible or justifiable.

“It is common knowledge that on arrival in a country other than the person’s home country, a person must, as a rule, have, at least, a travel document that entitles its holder to enter into the country in question, and a visa, except in the case of countries whose nationals can enter the country in question without a visa. At the time of the incident, a large number of asylum seekers who did not have appropriate travel documents had arrived in Sweden and Finland. [The defendant] has stated that he took Arabic-speaking persons previously unknown to him as passengers in his car. He must have known that the persons he was transporting quite likely were asylum seekers and that they should have had appropriate travel documents and a visa to enter Finland. He had not ensured that the persons he was transporting had appropriate travel documents, although in the light of the above considerations he should have done so. [The defendant] has thus deliberately neglected his obligation to request information. Therefore, no reasonable doubt exists concerning [the defendant’s] guilt.”⁴ (District Court of Kemi-Tornio 16/144259)

Mistake of law (Finnish Penal Code, Chapter 4, Section 2, Mistake as to the unlawfulness of the act) is rarely accepted as a defense in Finland (Kallio, 2016: 1–20). According to the law, the mistake must be based on specific reasons in order to be acceptable. Factors on the basis of which the act may be considered as excusable are the defective or erroneous publication of the law; the particular obscurity of the contents of the law; erroneous advice by an authority; or another reason comparable to these. In the cases examined here, there were no indications of such special factors and the erring regarding the unlawful nature of the act was not found justifiable.

In two cases related to crossing of the Finnish–Russian border, the person charged for arrangement of illegal immigration was an asylum seeker himself at the time of committing the act. In these cases, the district court found the defendants guilty but left them without punishment. The court justified this by stating that, in the situations in question, the acts were at least partly organized by Russian persons, presumably in positions of authority, and therefore the defendants probably had not been able to influence the fact who were travelling as passengers in the cars driven by them. According to the courts, in these kinds of situations, it was probably quite random who

⁴ Translated from Finnish by the author.

ended up being the driver of the car and who a passenger. Considering this fact and humanitarian reasons, the district courts left the defendants without punishment. (District Court of Lapland 16/106455 and 16/106458) However, the matter was considered differently later on by the Supreme Court (Supreme Court 2016:66) and by the Rovaniemi Court of Appeal (17/101979).

“25. Paragraph 3⁵ relates to the perpetrator's degree of culpability that is deemed to be low. The fact that A's intention was to assist other asylum seekers can be considered as a factor mitigating his culpability. On the other hand, there has been no immediate and compelling danger facing the passengers at the Russian border, nor has there existed such an element of surprise or coercion that would have made the act equivalent to an act of necessity within the meaning of Chapter 4, Section 5 of the Penal Code. Nor does the Supreme Court consider that the status of the perpetrator as an asylum seeker is a ground for considering that the imposition of a sentence is unreasonable within the meaning of paragraph 4⁶.⁷” (Supreme Court 2016:66, 25)

On these grounds the Supreme Court imposed a fine on the defendant and so did also the Rovaniemi Court of Appeal in another similar case (Rovaniemi Court of Appeal, 17/101979). The provision dealing with arrangement of illegal immigration differs in this respect from the provision dealing with state border offence (Penal Code, Chapter 17, Section 7) which provides that a person who seeks asylum in Finland is not to be convicted of a state border offence even if he/she has crossed the border in breach of the legislation (See, Kallio, 2016: 9). The Supreme Court has confirmed that the delimitation of criminal liability for illegal entry and stay in the country also extends, if the conditions are met, to the use of a false or forged document under the same circumstances. (Supreme Court 2013:21, 19) However, as the case discussed above indicates, arrangement of illegal immigration is evaluated differently as also a person who is him-/herself an asylum seeker can be sentenced for this crime, although his/her situation will be considered when imposing the punishment. (Supreme Court 2016:66, 25–26)

Defendants were charged for aggravated arrangement of illegal immigration in two cases, but they were convicted of this offence only in one of the cases (District Court of Oulu 17/115539). In this case, four defendants were convicted to imprisonment for aggravated arrangement of illegal immigration. This case was different from the others in the sense that the defendants had not only arranged the border crossing from Sweden to Finland but were also more widely involved in the transport of persons from Iraq via Greece and other European countries to Finland. In this case, there were two grounds for considering the acts as aggravated. First, the court considered that the crossing of the sea from Turkey to Greece had posed a mortal danger to some of the transported persons, and second, the acts were considered as committed within the framework of an organized criminal group. The offence was also considered as aggravated when assessed as a whole.

As the Supreme Court has stated, the legal elements of arrangement of illegal immigration cover a wide range of acts which differ greatly from each other in terms of reprehensibility. Therefore, the scale of sentences is also wide, ranging from fines to imprisonment of two years⁸ (Supreme Court 2016:66, 26). The diversity of criminal activity is also reflected in the case materials of this article. It seems that arrangement of illegal immigration at the northern borders of Finland has, for the most part, remained a quite small-scale and unorganized activity. Even though this study suggests that arrangement of illegal immigration during the last phase – the crossing of the Finnish–

⁵ Chapter 6, Section 12 of the Penal Code – Waiving of punishment. Paragraph 3 refers to special reasons due to which the act is deemed as comparable to an excusable act.

⁶ Chapter 6, Section 12 of the Penal Code. Paragraph 4 refers to circumstances on the basis of which punishment is deemed as unreasonable or pointless.

⁷ Translated from Finnish by the author.

⁸ In the case of aggravated arrangement of illegal immigration, the maximum punishment is six years in prison.

Swedish or the Finnish–Russian border – seems to be rather unorganized activity, it cannot be uncoupled from the wider context in which these phenomena take place. Persons crossing the border from Sweden or Russia to Finland have travelled a long way to reach these northern borders, and the previous phases of their journey have often included organized criminal activity, severe economic exploitation and dangerous practices. Arrangement of illegal immigration is therefore hardly a harmless phenomenon even if the defendants in Finnish courts have often considered themselves as selfless benefactors rather than criminal offenders.

4. Conclusions

Arrangement of illegal immigration is a hard case for criminal policy as many different, and at least partly contradictory, interests are associated with this phenomenon. If we look at the matter from the perspective of the transported person, it is often clearly in his or her interest to enter the destination country. Whether a person is fleeing from war, instability or persecution, or simply seeking a better life, these goals are humanly understandable, regardless if they are a legally acceptable basis for entry, asylum or residence.

If we consider the smuggling of migrants from a more general point of view, the overall picture is totally different. At worst, this activity is ruthless abuse of people in need which causes economic hardship, suffering and danger to the persons concerned. It is necessary to combat this phenomenon at all stages of the operation. Organized smuggling of migrants can only succeed with the cooperation of many people in different roles and at different levels. Even a person acting independently and in good faith may in practice become part of a wider smuggling network, even if he or she is not necessarily aware of or legally responsible for such a wider set of criminal activities (UNODC 2018: 7–9, 38–42, 51–52).

When it comes to state borders, ensuring order and security of society is also a relevant issue (Government Report on Internal Security, 2022: 30–37). Especially so as it would be naïve to claim that migration and migration flows cannot be used as a means to perform malevolent actions like trafficking in human beings, hybrid operations or terrorist activities. Events of 2015 as well as the incident of state-organized immigration at the Belarusian–Polish border in 2021 show that at its most large-scale, immigration can be a phenomenon that shakes the society as a whole. The immigration system must therefore be capable of operating even in extreme circumstances. The challenge is to reconcile the efficiency of the border control with the human rights of the individual persons and the international right to seek asylum.

This article shows that criminal law has its own role to play as a means of managing immigration. At best, it makes it possible to punish the perpetrators for offences already committed, which is especially important and necessary when it comes to the most serious incidents of smuggling of migrants, and to prevent at least some incidents of arrangement of illegal immigration. The deterrent effect of criminal law also contributes to achieving these goals: The criminal provisions enacted and sentences imposed aim to deter potential offenders from committing similar crimes. However, it is also clear that even in this area of life, criminal law cannot play a decisive role in solving societal challenges and problems.

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