Criminal law in the margins: third country nationals as special penal subjects in Greece

EMMANUEL MELISSARIS*
Law Department, London School of Economics and Political Science

1. Introduction

This chapter will attempt to make a modest contribution to the growing and very important literature on the criminology of mobility. In particular, it will outline some aspects of the criminal law-related treatment of third country nationals without leave to remain (hereinafter third country nationals for brevity) in Greece.[1] It will then highlight some patterns emerging from the way in which third country nationals become subjects of the criminal law occasionally drawing some parallels to similar trends elsewhere in Europe.

I should emphasise from the outset something important about the chapter's methodology. Although I hope that it will add something to the study of criminalisation at the border, it does not take the *stricto sensu* criminological or sociological perspective of focusing on actual practices. It rather offers a theoretical discussion of the way in which

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[1] I use the term 'third country national' rather than 'aliens' in order to draw the distinction between EU and non-EU nationals. Nevertheless, the term is still wider than the category of people, to which the chapter refers. Some, for example those who seek asylum or those deserving of international protection, form subcategories of third country nationals and are excluded from the ambit of the provisions discussed here. Where this is the case, I will point it out specifically.

criminal law instruments are constructed and structured so as to organise the *normative* marginalisation of third country nationals from the political communities of Greece –although, almost certainly, the same argument can be made in other contexts too. This normative marginalisation by the criminal law contributes to and, to an extent, facilitates the physical exclusion of third country nationals and undermines their integration in networks of social relations with those with a right to be in the country. This, of course, does not cancel the independent significance of *real* practices of exclusion or inclusion.

2. 'Crimmigration' in Greece: implicating third country nationals in the criminal law

Let us start with a brief outline, without going into much technical detail, of some ways in which third country nationals in Greece are implicated in the criminal law and the ramifications of this implication for their status. The list that follows is by no means exclusive. It does, however, include some central criminal law institutions governing crucial junctures of third country nationals' existence in Greek territory.

Third country nationals tend to be treated as subjects of the criminal law as soon as they reach the country's physical border. The Greek Immigration and Social Integration Code (Law 4251/2014, hereafter ISIC), which consolidated and amended previous legislation and introduced a number of new provisions, provides –in-line with the Schengen Agreement and its Implementation Convention– that a third country national can be refused entry into the country.[2] Among other

[2] This does not apply to those seeking asylum or deserve international protection. In those cases, the procedure is governed by the Geneva Convention and Law 4375/2016, which implements Directive 2013/33/EU. Nevertheless, it is possible, and there have been such cases, that people who want to enter the country and join close relatives who have already been granted, often indefinite, leave to remain are refused entry on grounds of national security and public order on the basis of this article of the ISIC. Authorities tend to apply this extensively even in cases in which it is quite obvious that no threat to national security is posed (for example, elderly relatives have been known to have been refused entry because they ostensibly pose a threat to national security).

reasons, such as not possessing the appropriate documents, entry can be refused if the third country national is registered in the Schengen Information System as an unwanted alien or if she poses a threat to public order, national security, public health, or the international relations of an EU Member State. There is a presumption that such a threat is posed if the third country national is registered in the list of unwanted aliens (more on which below). Those included in the list must leave the country immediately. Otherwise, they are redirected either to the country of provenance or to a third country. The welcome amendment that the ISIC introduced in relation to previous legislation is that the executive is under an obligation fully and expressly to ground entry refusal decisions.

The same requirements follow third country nationals after they have already entered Greek territory. The ISIC maintains two central procedures from the relevant provisions of Law 3386/2005 for expelling third country nationals on the basis of their implication in the criminal law (alongside other grounds).[3]

According to Art. 82, a list of unwanted aliens is kept with the criteria of inclusion in the list being determined by the executive. These are currently: a previous administrative or judicial extradition order; the third country national's presence in the country posing a threat to national security or public order with the presumption that such a threat is posed when there are serious grounds for believing that he has committed serious criminal offences or in respect of whom there is clear evidence of an intention to commit such offences in Greek territory (this presumption is in application of Art. 96(b) of the 1990 Convention implementing the Schengen Agreement). Inclusion in the list creates the duty on the part of the third country national to leave the country within a deadline set by the executive. If she fails to do so, she may be subject to administrative expulsion.

[3] Third country nationals, with the exception of those belonging in 'vulnerable' groups, can also be expelled under Law 3907/2011, which implements the so called Return Directive 2008/115/EC.

Administrative expulsion can also be grounded directly on the third country national's criminal profile. According to Art. 76 of Law 3386/2005 (which remained in force after the introduction of the ISIC), those with custodial sentences of at least one year or with convictions for a range of serious offences independently of the sentence, those who breach any of the provisions of Law 3386/2005 which have remained in force after the introduction of the ISIC, those whose presence in the country poses a risk to public order or national security, and those posing a risk to public health may be expelled by police order. The third country national can be held in remand, if deemed a flight risk or a threat to public order. She may raise objections to the decision before an administrative judge but this is not a formal criminal appellate procedure. There is also provision for an appeal before the executive, with a five-day deadline, which suspends the execution of the expulsion but not of the custodial order.

Art. 83 of Law 3386/2005 makes it an offence for third country nationals to enter or exit the country or to attempt to do either (this is a complete attempt offence, *not* the inchoate offence of Art. 42 of the Greek Criminal Code). A pending prosecution or police investigation against the party or any outstanding duties, financial or otherwise, towards the state are aggravating circumstances, which double the fine to €3000 which may imposed alongside a custodial sentence of a minimum of 3 months.

Note that *being in* the country without the appropriate legal documentation is not in itself an offence. It is also generally accepted (despite a small body of jurisprudence to the contrary) that the offence of entering is instantaneous and its *actus reus* is completed as soon as the third country national has entered or attempted to enter the territory.[4] Although this does not mean that prosecution cannot begin at a later stage, it means that later arrests are not *in flagrante* and that the period

[4] This is largely grounded on a Prosecutor's interpretative opinion (although these are not formally binding, they are persuasive sources of legal interpretation for courts) delivered in 1996 in the context of an earlier version of the same law (3216/1996 Opinion of the Public Prosecutor of Thessaloniki).

of statutory barring begins at the time of completion of the offence, i.e. the time of entering the country. In reality though, labelling the crime as instantaneous is meaningless because the administrative expulsion process trumps, both in law and in practice, criminal prosecution. A third country national, who has illegally entered or attempted to enter the country, can very simply be expelled by police order (recall that Art. 76 applies to those who have breached any of the provisions of the statute as well as other criminal offences). It follows that statutory temporal barring or the *in flagrante* rule do not apply and the dominant position is that there are no limits to when administrative expulsion can take place. A further very important upshot of the construction of the Art. 83 offence is that another party cannot be complicit to a third country national's *presence* in the country.

Indeed, the administrative expulsion process of Art. 76 potentially trumps, and in practice does indeed trump, every other way of governing the presence of third country nationals in the country. But even if one's case takes the criminal procedure route, criminal prosecution for the offences of Art. 83 can be waived and substituted by judicial expulsion on the order of a Public Prosecutor (who, in Greece, are members of the judiciary). The Prosecutor communicates her decision to the relevant police or coastguard authority in whatever suitable and expedient means, therefore by-passing the need for any formal notification, so that the third country national be *immediately* redirected or, should this not be immediately possible, so that the expulsion process be commenced. But there is an interesting twist. I said above that the dominant interpretative view is that illegal entry is an instantaneous offence and one might expect that expulsion can only take place during the *in flagrante* period. However, much hangs on the interpretation of the immediacy requirement for the removal of the third country national if so ordered by a prosecutor who has decided to waive full-blown criminal prosecution. The removal can take place outside the *in flagrante* period (currently a maximum of 24 hours) to allow for contingencies such as transportation difficulties and so forth, so long as the state officials involved are not responsible, intentionally or negligently,

for the delay.

Articles 29 and 30 of the ISIC present us with a different but exceptionally interesting case, because they do not criminalise third country nationals but rather Greek citizens (or anyone else legally in the country). The offences introduced here are independent, that is not derivative of the offences committed by third country nationals outlined above.

Art. 29(6) conjunctively introduces a number of independent offences: i) facilitating the residence of a third country national in the country; ii) obstructing the police in a) tracking down, b) arresting, c) or expelling a third party national. Committing the offence for a profit is an aggravating circumstance. According to Art. 29(5) it is an offence to facilitate the a) entry into or b) exit from the country of a third country national who has not gone through the appropriate process (set in Art. 5 of the ISIC). Acting for a profit, professionally, habitually, or in collaboration with another or others are aggravating circumstances but do not have a bearing on the scope of application of the provision.

Art. 30 makes it an offence to transport third country nationals, who do not have the right to remain in Greece, either into, in, or out of the country and into another EU member state. The sentences range from 10 years in prison and a €10,000-€30,000 per person transported to life imprisonment and a fine of at least €700,000 per person transported depending on the presence of aggravating circumstances. The harsher sentences apply to traffickers but, as is the case in Art. 29, whether the defendant is a trafficker or a smuggler or neither does not have a bearing on the scope of application of the offence. The offences are independent from the defendant's ulterior intent.

A 2015 amendment to the ISIC consolidated and slightly expanded the defences to the Art. 30 offences in a rather interesting way. The offences are not committed when the acts are performed while rescuing people at sea, when the person transported is one deserving of international protection, and, importantly, in order to facilitate the third country national's subjection to the legal process of assessing her status in order for them to be granted leave to remain and only if the police or

the coastguard have been notified in advance. According to recent, though limited, first instance court jurisprudence the general necessity defence of Art. 25 of the Greek Criminal Code is not available to defendants under Art. 30.

3. Some emerging patterns

We should now have sufficient information to single out some patterns in the way that third country nationals are treated as subjects of the criminal law.

3.1 Selective inclusion in and exclusion from the criminal law

At various turns third country nationals are treated by the law as criminally liable, in domestic criminal law or in that of other jurisdictions. Imputing criminal responsibility to them subsequently *grounds* their coercive treatment by the host state. This, however, is not accompanied by the morally and legally necessary (I will have no time to discuss this claim in this context) increased protection that the criminal law typically affords defendants. Refusal of entry and expulsion decisions generally have to be properly grounded but they are either acts of the executive or acts of the judiciary which by-pass the penal procedure and defer competence to the executive to carry out the expulsion. This is so in all three broad categories of third country nationals without a right to remain in the country, with the differences between these three categories being ones of the degree of the asymmetry between the penally relevant behaviour for which third country nationals are held responsible and which carry severe consequences.

(1) The criminal profile of those who already carry criminal convictions from outside Greece may ground refusal of entry or expulsion as a threat to public order or national security. Since they are grounded in a judgement regarding criminal responsibility, these actions of the executive come as surplus punishment for crimes committed elsewhere. The issue here is not one of extra-territorial jurisdiction nor is it necessarily morally unthinkable for a state to hold one criminally responsible domestically for crimes committed elsewhere should these crimes have some impact within the state's territory (though, again, this is not

an argument I can develop here). It is that the in effect criminalisation of a certain course of conduct is not accompanied by any robust procedures, which are necessary prior to coercively bringing about consequences as a response to the violation of the criminal law.

This broadly mirrors a pattern identified by Catherine Dauvergne in relation to the intertwining between refugee law and international criminal law.[5] Non-implication in international law offences is generally an admission requirement of applicants asylum in domestic jurisdictions. This comes with some added twists. First, the definition of political crimes, which would enjoy differential treatment in international criminal law, is tweaked in the context of refugee law so as to exclude from the outset any reasonable claims to political crime defences. Secondly, there is an asymmetry between the lengthy and resource-intensive procedure of international criminal law and the assessment of asylum applications. Thirdly, and relatedly, the fair trial provisions that apply to international criminal law do not apply to asylum procedures.

(2) This asymmetry is even further pronounced in the second case, namely those who simply raise the suspicion of intending to commit criminal offences in Greece on the basis of any past conduct whether they have committed criminal offences elsewhere. Recall that the entry refusal or expulsion is based on criminally relevant behaviour. Once again, the problem here is not that this is necessarily *ex ante* criminalisation. It might not be altogether unjustifiable for a state to punish for manifest intentions if these have an external impact on the normative relations within the political community (this is not an argument that can be developed here further). The problem is located in the asymmetry between the criminal law grounds for holding the third country national responsible and the subsequent treatment of the person as an administrative subject.

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[5]C. Dauvergne, 'The Troublesome Intersections of Refugee Law and Criminal Law' in *The Borders of Punishment* (K. Franko Aas and M. Bosworth eds.) Oxford University Press 2013, pp.76-90.

Finally, (3) the pattern of not affording third country nationals the protection that the criminal law, both substantive and procedural, generally makes available to them persists in the case there of those who commit offences, either immigration-related or not, while already in Greece. This reaches its pinnacle in two moments. First, in the waiving of prosecution in favour of a prosecutorial expulsion order. What is defined in the law as a criminal offence is quickly turned into the administrative matter of processing the defendant. Secondly, in Art. 76(1)(c), which, reiterating the ubiquitous public order and security clause, gives the executive the freedom to override the requisite criminal procedure that accompanies the commission of criminal and proceed to administrative expulsion on the vague terms of security, a freedom of which the executive makes ample use in practice.

That the administrivisation of third country nationals leaves them at the mercy of often irrational and ungrounded decisions of the executive should be quite obvious. But it also exposes them to a subtler nexus of relative arbitrariness too. Recall that a third country national may be expelled if she has been handed a custodial sentence of a year or more. The key is what a one-year custodial sentence means. The Greek Criminal Code gives courts a great amount of discretion in sentencing. It is not uncommon for the prescribed penalty for misdemeanours to be imprisonment of a few months (the minimum is one month) and up to five years. Therefore, whether a third country national has been handed a prison sentence of one year might not have to do so much with the seriousness of the offence she committed but rather with the particular court's disposition and sentencing practice.[6]

The administrivisation of the penal subject at times also leads to outright incoherence. The one-year custodial sentence expulsion cases again provide a useful example. Motivated mainly by prison decongestion, the Criminal Code now makes the conversion of custodial sen-

[6] The range of penalties is currently under review by a criminal code reform committee but whether the current committee will succeed where its numerous predecessors have failed and whether a new code will be in fact be enacted remains to be seen.

tences of up to five years to a fine almost a routine practice. This has rather interesting implications. Someone with a nominal one-year custodial sentence or longer might not serve any of it, because it is assumed that the offence is not considered serious enough to necessitate the sentence actually being served or because the offender is not considered likely to reoffend (if the offender does pose such a risk, then the conversion is not made available to her), but might still be expelled from the country on the assumption that she poses a threat to national security or public order.

3.2 Third country national status as the actus reus of criminal offences

Greek law makes the citizenship status of third country nationals part of the *actus reus* elements of the offences of illegal entry or attempted entry in or exit or attempted exit from the country, and it is hardly unique in doing so. If one with leave to remain performed exactly the same acts, they would of course not be committing a criminal offence.

Citizenship status and *actus reus* are intermingled in other ways too across Europe. Let me draw a parallel to two characteristic examples. In some cases that an offence is being committed within the context of the process of immigration control, either by third country nationals or not, either renders the offence a *delictum sui generis* and/or aggravates it. For example, s.3 of the UK Borders Act makes assaulting immigration officers a specific offence incurring a heftier penalty than the basic s.39 assault of the Offences Against the Person Act 1861.

Very interestingly, one's third country national status is often used to justify her being governed by the criminal law while others engaging in exactly the same conduct would be treated in markedly different ways. The central and most representative example comes from Sweden. As Vanessa Barker has shown, there is a pattern of third country nationals who beg or engage in other "vagrant" activities to be involved in the criminal justice system rather than be afforded the provisions of the welfare state. Barker dubs this pattern 'benevolent violence' because it is grounded in the rhetoric of dignity and protection

of the *defendant* as well as, indirectly, the community as a whole.[7]

One might wonder why it might be remarkable that these offences include the status of the defendant in the *actus reus*. Alessandro Spena considers them to be manifestations of what he terms spurious *Täterstrafrecht*; whereas the offence ostensibly targets the defendant's actions, in reality it targets the defendants themselves, which are considered dangerous or essentially criminal precisely because of their status or one of its aspects.[8] Spena's claim is that criminalising the actor rather than the action is at odds with the point of the criminal law. Although this critical claim is correct, it is not entirely clear that the case of offences determined by one's citizenship status really are instances of *Täterstrafrecht*, spurious or otherwise. This would be the case if the inculpating element were an innate characteristic of the defendant. It is, however, obviously not uncommon for the criminal law to make a contingent, institutionally determined feature of the defendant's identity an element of an offence. The question then would be whether it is permissible to criminalise a certain act that could not have been committed had the defendant not borne that specific characteristic. This is a substantive and context-sensitive question, the answer to which does not depend on the form of the offence.

There are, however, two other noteworthy things about offences of this sort. First, one's status as a third country national without leave to remain is negative; it indicates a characteristic that one does *not* have. For it to become a positive legal status, a legal instrument must regulate it. Criminal laws which make entry without leave to remain illegal are such instruments. In other words, one's status as a third country national is determined, at least partly, by the prohibition of entering the country. Therefore, the offence both creates its subject and authorises the subject's coercive treatment. The criminal law, however, is meant coercively to regulate activities, which are possible independ-

[7] V. Barker, Crimmigration in Sweden: Bans on Begging, Deportation, and the Logic of Benevolent Violence, *European Journal of Criminology* (forthcoming).

[8] A. Spena, Iniuria Migrandi: Criminalization of Immigrants and the Basic Principles of the Criminal Law, *Criminal Law and Philosophy* (2014) 8, pp. 635–657.

ently from their regulation by the criminal law. This is different to the question of the permissibility of criminalising *mala prohibita*. That concerns a certain conduct's wrongfulness, whereas in the case at hand, it is a matter regarding the very conditions of possibility of the action. Nor should it be confused with omissions liability, for the obvious reason that it is not within the third country national's control to obtain leave to remain. Her citizenship status is determined by the criminal law as soon as she attempts to enter the country.

Second, including one's status as a third country national without leave to remain being an element of the *actus reus* of the offence of illegally entering the country is also normatively incoherent. I do not have time fully to develop this argument, which I hold to have general critical force, here but I will offer a very brief outline. To make one a subject of the criminal law amounts implicitly to recognising that one is already a member of the political community governed by the criminal law. This has at least the following central entailments: one owes certain duties to other members of the political community; state coercion is authorised if one fails to discharge at least some of these duties; this exercise of coercion is an affirmation of one's membership of the political community rather than an action of exclusion. It follows that illegal entry and other similar offences implicitly include the third country national in the political community and, at the same time, penalise her for not being a member of the political community.

3.3 Third country nationals always stranded at the border

Earlier on I tentatively introduced a distinction between third country nationals at the border and after having crossed it. It is now clear, however, that this distinction may hold in physical terms but, when it comes to their normative standing for the purposes of the criminal law, third country nationals *always* remain at the border.

Recall some of the penally relevant regulation of third country nationals: their entry and continued presence in the country depends on their criminal profile; entering into or exiting the country illegally is an offence; crucially, their presence *in* the country is not independently

criminalised; they are not treated as accomplices in the accommodation and transportation offences of Articles 29 and 30.

There might have been two possibilities of recognising the normative presence of third country nationals in the country. The first is would be through the instantaneous character of the offence of illegal entry. It could have been the case that the third country national commits an instantaneous crime entering the country but then gradually enters the political community as a subject of the law. The rest of the structure of related provisions, however, undermine this opportunity. Transforming the offence into an administrative matter through the expulsion process of Art. 76, waiving prosecution, prolonging the timeframe of judicial expulsion beyond the *in flagrante* period, contribute to keeping the third country national in the limbo of right less ness at the border.

The second way would be if they committed a different criminal offence while in Greece. This is precisely what Hannah Arendt talks about when she says the following about stateless people:

> "The best criterion by which to decide whether someone has been forced outside the pale of the law is to ask if he would benefit by committing a crime. If a small burglary is likely to improve his legal position, at least temporarily, one may be sure he has been deprived of human rights. For then a criminal offense becomes the best opportunity to regain some kind of human equality, even it is be as a recognized exception to the norm".[9]

Even this recognition through the exclusion of punishment, however, is not afforded to third country nationals in the way that is afforded to citizens. The commission of any criminal offence can, and routinely does, result in their administrative expulsion from the country. Therefore, violations of the criminal law on their part are only disruptions by someone who has no normative position in Greece. Their labelling as criminal offenders is only nominal.

[9] H. Arendt, *The Origins of Totalitarianism,* Harvest 1973, p.286.

Another way of looking at this is in terms of how the law cuts across the dimensions of existence of the third country nationals. Physically, they are in the country. Their spatial dimension, however, is severed from their temporality, which is substituted by and subsumed under the structure of legal provisions that grounds them at the threshold. The application of legal judgment to real world facts always presupposes a suspension of the latter's temporality. Criminal responsibility, for example, can only be apportioned with reference to an isolated temporal fragment; expand the timeframe and radical indeterminacy ensues because of the proliferation of causal relations between events and because of the increasing complexity of the psychological attitudes, which would constitute the defendant's *mens rea*. For it to be grounded, punishment must also assume the image of the defendant at the time of commission of the offence. In the case of all other criminal offences, however, this reduction of time to legal judgment, although detrimental, as is every instance of reduction, does not eradicate the offender's legal personality. It transforms it in significant respects but it does not deprive the offender of all normative membership in the political community. In the case of third country nationals, however, the judgment of the criminal law governs the entirety of their presence in Greece; their wrong is trying to enter the country and the response to this wrong is expulsion. This precludes every other instance of normative participation in the political community and its institutional structure. As legal subjects, third country nationals are *always* at the border.

3.4 Third country nationals excluded from the criminal law altogether

So far, I have highlighted the differential treatment of third country nationals as special subjects of the criminal law and the instrumental role that the criminal law plays in keeping third country nationals always at the border denying them membership of the political community. I will now turn to a pattern, which is even more worrying: third country nationals are *altogether* excluded from the ambit of the criminal law.

There is a worrying trend developing in Europe and elsewhere; a

trend of making third country nationals the objects of the criminal law but not its subjects. Mitsilegas gives a detailed survey of practices of employing domestic criminal law in order to prevent third country nationals even reaching the borders of European states. This is done mainly through legislation, which targets traffickers and smugglers rather than third country nationals themselves.[10]

But the pattern seems to be reaching the border too. Let us consider the offences of Articles 29 and 30 a little more closely. A central element of the *actus reus* is the very status of the person transported. Had the third country nationals been Greek or EU citizens or had other leave to be in the country, the acts of providing shelter transportation would have been innocent; indeed, admirable acts of hospitality. The third country nationals' citizenship status makes the very interaction with them in a non-harmful manner a criminal offence. The wrong is thus displaced from the actions of the defendant themselves to features of the object of the offence.

The primary (but not sole) targets of these offences are traffickers and smugglers. What is striking, however, is that on the construction of the offences their actions are not wrong because they exploit and endanger other human beings but because they facilitate the entry with people who do not have right of access to a territory. The third country nationals are therefore not constructed even as proper victims of the offence in the criminal law sense. Sure enough, there are other provisions for victims of trafficking. Art. 19A of the ISIC provides that victims of trafficking or a number of other offences may, for "humanitarian reasons" be granted leave to remain, which is however temporary (one year in the first instance) and heavily conditioned. Article 49 grants trafficking and smuggling victims a three-month period of 'deliberation' for them to overcome the trauma of their experience. This, however, can be withdrawn should it transpire that the victim has rekindled her relations with the traffickers/smugglers or "for reasons of

[10] V. Mitsilegas, *The Criminalisation of Migration in Europe: Challenges for Human Rights and the Rule of Law*, Springer 2015.

public order and security". Therefore, even the recognition of the victim hood of third country nationals as victims keeps them outside the realm of the criminal law. It is an administratively organised act of charity. Charity is an unequal relationship *par excellence* not only because of the inequality of resources between the charitable person and the subject of her philanthropy but also, and perhaps primarily, because the latter does not participate in the determination of the norms justifying and defining the charitable act. Therefore, recognising victims as the objects of charity again prevents third country nationals from being fully-fledged legal subjects of the law and therefore excludes them from membership of the political community.

This has another important ramification. We have already seen the variety of ways in which the structure of the provisions relating to the penal treatment of third country nationals normatively separate them from citizens or others with a leave to remain in the country. The radical exclusion from the criminal law goes even deeper than this, because it ruptures social and political relations. As the offences of Articles 29 and 30 are not sensitive to the motivation of the defendant, they apply not only to traffickers and smugglers but also to anyone performing the acts in question. This, of course, includes volunteers, of which there have been thousands, who provide assistance to third country nationals motivated by a sense of solidarity. This is not only a theoretical possibility; volunteers have in fact been prosecuted In mid-January 2016 five volunteers, members of NGOs were arrested and subsequently prosecuted for towing ashore refugees struggling in plastic dinghies off the coast of the Greek island of Lesvos. Similarly, in the summer of 2015 more volunteers were prosecuted for transporting refugees inland (these did not lead to convictions).[11]

So, the parties in these relations find themselves in an impossible tension between ways of relating to each other. Simply being in a cer-

[11] Note that arrests and prosecutions continued even after the introduction of the defences in 2015. The Greek Ombudsman has intervened on the matter: http://www.synigoros.gr/resources/150727-stp.pdf (in Greek).

tain place at a certain time reduces third country nationals to a miasma, and it is a crimen/κρίμα/haram, a sin for citizens to interact with them. The latter are treated by the criminal law in a way that undercuts their social relations with third country nationals. This penetration of the criminal law into social relations usually meets its limits at the point of harm or, at any rate, some manifest wrongfulness. Here, however, the overlap is complete. Citizens are faced with incompatible sets of reasons for acting towards third country nationals and their motivational disposition is similarly torn in two.

This culminates in the defence available to those prosecuted under Art. 30. Recall that one does not commit the offence, if one aims at facilitating the subjection of the third country national to the appropriate process of registration, asylum application and so forth. Volunteers are thus justified to interact with third country national only if they act as proxies of the state and participate in the rendering of the objects of the offence into administrative subjects-objects. The defence does not restore the possibility of social relations developing between those with leave to remain and those without; on the contrary, it deepens the rift because it makes citizens complicit to the administrativisation of the existence of third country nationals and their exclusion from the political community.

4. Conclusion

The aim of this chapter was primarily diagnostic. It abstracted from some central ways, in which Greek criminal law treats third country nationals without leave to remain as its subjects, to single out some emerging patterns. The central claim is that immigration-related offences are structured in a way that marginalises third country nationals both physically and normatively. However, I remained largely quiet on whether these patterns are justifiable or not. There are important questions to be asked regarding the grounds of the penal treatment of third country nationals but they will have to be addressed in a different context.