

How criminal courts blend punitive ends with immigration control aims: The decision-making process of the discretionary prosecution provision to authorise an administrative expulsion
Cómo las cortes penales combinan fines punitivos con objetivos de control migratorio: El proceso de toma de decisiones judiciales del principio de oportunidad penal para permitir la expulsión administrativa

Byron Villagómez Moncayo¹

Universiteit Utrecht & Universität Hamburg

ABSTRACT

The involvement of the criminal justice system in immigration control is nowadays a global phenomenon that has called the attention of academics and practitioners. The Spanish legal regime has not been immune to this occurrence, encompassing a series of situations in which criminal courts are required to make decisions that can have significant implications upon immigration law enforcement. One of the most noteworthy provisions in this regard is that by which criminal courts are allowed to exercise discretionary prosecution to authorise the administrative expulsion of a prosecuted foreigner (Art. 57.7 Aliens Act). Drawing on focused observation of a court setting and semi-structured interviews with judges, prosecutors, clerks, court personnel and defence attorneys, the main findings of this paper hover around the idea that expulsion is a court's culturally constructed punishment, defined more by the meanings attributed to it by court actors than by its formal legal categorisation.

¹ Corresponding author: Byron Villagómez Moncayo. Isla Floreana E7-27 y Fernandina, 170150, Quito (Ecuador). bevillagomez@gmail.com

Keywords: Crimmigration, expulsion and deportation, judicial decision-making, sentencing and punishment, discretionary prosecution, judicial culture

RESUMEN

La intervención del sistema de justicia penal en el control migratorio es actualmente un fenómeno global que ha llamado la atención de académicos y profesionales. El régimen legal español no ha estado exento de esta ocurrencia, contemplando una serie de situaciones en las que los tribunales penales deben tomar decisiones que pueden tener implicaciones significativas en la aplicación de la ley de extranjería. Una de las disposiciones más notables a este respecto es la que autoriza a los tribunales penales aplicar el principio de oportunidad para permitir la expulsión administrativa de un extranjero procesado (Art. 57.7 LOEX). Basándose en observación focalizada de un entorno judicial y en entrevistas semiestructuradas con jueces, fiscales, secretarios, personal judicial y abogados defensores, los principales hallazgos de este estudio se centran en la idea de que la expulsión es una pena culturalmente construida por los tribunales, definida más por los significados atribuidos a ella por los actores penales que por su categorización formal.

Palabras clave: Crimmigration, expulsión, deportación, toma de decisiones judiciales, juzgamiento y sanción penal, principio de oportunidad, cultural judicial

1. Introduction²

1.1. The Spanish provision to authorize the expulsion of a prosecuted foreigner

The Spanish immigration regime comprises a series of legal mechanisms which entail, in one way or another, an intertwining between immigration control and criminal law. One of them is the provision by which criminal courts are allowed to exercise discretionary prosecution to authorise the administrative expulsion of a prosecuted foreigner (Art. 57.7 of the Aliens Act³). Whilst in these cases criminal judges do not formally exercise immigration law prerogatives, they do make decisions that may have significant implications within the realm of immigration control. Specifically, criminal courts are required to decide whether a prosecution against a foreign defendant could be suspended in order to advance her/his administrative deportation. Consequently, if a court decides to suspend the prosecution, the

² This article presents partial results from the author's PhD dissertation, which consisted of a bigger qualitative case-study addressing the decision-making processes of the various instances in which immigration and criminal law intersect.

³ *Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.* (BOE n.º. 10, de 12/01/2000) and amendments, known as LOEX for its initials in Spanish.

defendant will immediately face the threat of expulsion from the Spanish territory; otherwise, the criminal proceeding continues, and the expulsion is at least delayed until the sentencing phase⁴.

The exercise of this prerogative is subjected to certain conditions. Specifically, it is admissible when a foreign defendant is ‘under investigation’ or ‘prosecuted’ for an offence or misdemeanour sanctioned with imprisonment of less than six years, or an alternative punishment, and this circumstance is accredited in the administrative proceeding. Certain offences are exempted from this measure⁵, and it is necessary that both the prosecutor and the defendant be heard before deciding.

Although the expulsion procedure is of an administrative nature, the decision to suspend the criminal prosecution is judicial and requires that judges comply with certain conditions. Specifically, the Constitutional Court of Spain (STC 24/2000) has compared the role of criminal judges in these cases with that of those who decide a *habeas corpus*, ruling that whilst the full legal oversight of an expulsion corresponds to administrative judges, criminal judges are expected to uphold their obligation in ensuring a defendant’s rights.

Criminal judges are therefore required to assess, although provisionally, the basis on which the administrative action that precedes their intervention is grounded. The Constitutional Court has also ruled that a person’s right to defence shall be guaranteed, asserting that the intervention of the criminal judge must be a way to strengthen the defendant’s legal safeguards. Yet, within this kind of proceeding judges are not explicitly required by law to justify their decision when they opt for the expulsion.

It should be noted that the prosecutor has a particularly decisive role in this proceeding. Within the Spanish legal system, prosecutors are responsible for public

⁴ According to the Spanish legislation (Art. 89 of the Criminal Code), a sentence of more than one year of imprisonment imposed on a foreigner can be substituted for the expulsion from the Spanish territory. In addition, deportation following a criminal conviction can also take place afterwards when the defendant becomes eligible for parole release.

⁵ According to Art. 57.7 c) of the Spanish Aliens Act, the following offenses are exempted from the application of this measure: illegal trafficking of labour, the employment of irregular immigrants, crimes against the rights of foreigners and promoting or being part of associations dedicated to human trafficking and ‘illegal’ or ‘clandestine’ immigration. In these cases, expulsion shall be executed once the eventual imprisonment punishment is served.

prosecution, which includes overseeing, initiating and advancing criminal proceedings. Therefore, when a prosecutor deems it unnecessary to indict or advance a case, it will most likely not be prosecuted. Likewise, when a prosecutor agrees with authorising an expulsion, s/he is showing her/his unwillingness to prosecute in such criminal case. Although the judge is not bounded by the prosecutor's criterion, if s/he dismisses the expulsion request, such decision requires justification, which in principle makes it easier for judges not to oppose the criterion of the prosecutor.

This mechanism seems to be linked in practice with the so-called 'qualified expulsions'. This is a term conceived in 2009 by the immigration police agency (BEDEX), which formally accounts for expulsions conducted on foreign offenders with 'numerous criminal and/or judicial records', related to terrorism, organised gangs, gender violence or any other serious criminal behaviour (Ministerio del Interior, 2010). However, its actual meaning is obscure: while the police use it to refer to the deportation of 'criminal foreigners' ordered by a judge, it is unclear whether this includes those convicted of a crime or also those who have been only prosecuted⁶. Anyhow, in practice the police report the number of expulsions classifying them within 'qualified' and 'non-qualified', in such a way that the former seem to correspond to 'non-criminal' and the latter to 'criminal' foreigners (García-España, 2017).

The following graph and table give a glance of the proportion of expulsions conducted in accordance to Art. 57.7 of the Aliens Act, and in relation with 'qualified expulsions'⁷:

⁶ In fact, recent journalistic investigations have revealed that between 2009 and 2016 the Spanish Police apparently reported data that inaccurately magnified the actual number of 'qualified expulsions'. See: Jara & Suárez, 2018.

⁷ The reported periods correspond to the first and last years with complete available official data on 'qualified expulsions'.

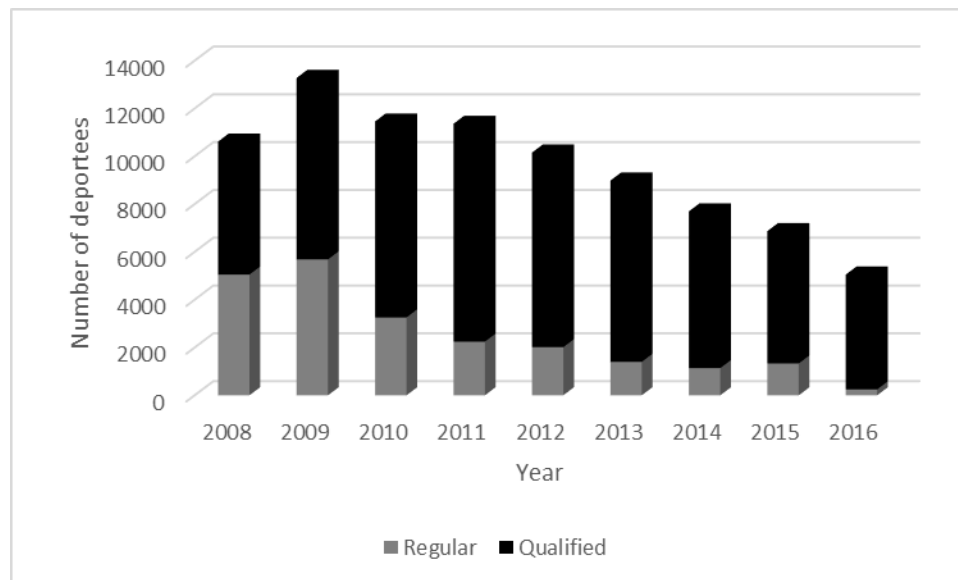


Figure 1. *Proportion of types of expulsions (2008-2016)*

Source:. Data for Regular and Qualified Expulsions from Ministerio del Interior (2011, p. 18; 2012, p. 12; 2013, p. 13; 2014, p. 13; 2015, p. 15; 2016, p. 15; 2017, p. 11).

Table 1.

Proportion of Art. 57.7 expulsions v. qualified expulsions (2009-2016)

2009	2010	2011	2012	2013	2014	2015	2016
1,988	3,249	3,284	2,382	2,573	2,685	2,391	1,468
7,591	8,196	9,114	8,140	7,582	6,557	5,539	4,803
26.2%	39.6%	36.0%	29.3%	33.9%	40.9%	43.2%	30.6%

Source: Data for Art. 57.7 expulsions from Fiscalía General del Estado (2017, p. 533), for Qualified expulsions from Ministerio del Interior (2011, p. 18; 2012, p. 12; 2013, p. 13; 2014, p. 13; 2015, p. 15; 2016, p. 15; 2017, p. 11).

These data show that in the mentioned period the great majority of expulsions in Spain have been based on a criminal conviction or record, at least according to the police. Moreover, it also seems that a significant proportion of such expulsions correspond to those based on Art. 57.7 of the Aliens Act. Therefore, this type of expulsion seems to have a particular relevance in terms of immigration law enforcement that merits further criminological inquiry.

1.2. The crimmigration framework

The measure in question embodies an intersection between immigration law and criminal justice. Specifically, criminal courts are in these cases involved in deciding whether the prosecution against a foreign defendant is suspended in order to pre-empt her/his deportation. This means that such courts are required to weigh out the merits and foreseeable outcomes of the prosecution, against the motives and goals of the deportation proceeding. In practice, this entails the exercise of decisional discretion by criminal courts in matters ultimately related to immigration law enforcement. This circumstance seems to embody substantial aspects of the socio-legal phenomenon commonly referred to as *crimmigration* (Stumpf, 2006).

In essence, the crimmigration perspective posits that the boundaries between immigration and criminal law have blurred, which can be evidenced on three fronts: “(1) *the substance of immigration law and criminal law increasingly overlaps; (2) immigration enforcement has come to resemble criminal law enforcement; and (3) the procedural aspects of prosecuting immigration violations have taken on many of the earmarks of criminal procedure*” (Stumpf, 2006: 14). Thus, as deportation has ostensibly become a major objective for policymakers, legislative and policy measures have been directed towards accelerating expulsion proceedings, while progressively eliminating judicial reliefs (Stumpf, 2011).

Although many immigration control subject-matters have been transferred to administrative officials (Bowling, 2013), there could still be an instrumental role reserved for the judicial system. Indeed, one of the most critical dimensions of crimmigration is the arguably instrumental use of the legal categories. Blurring the traditional boundaries of these fields of law may be useful to expedite expulsion and promote immigration control. Whether the criminal justice or the immigration system is used may depend on the circumstances of each case and the pathway that best serves the purported objective (Aliverti, 2012; Sklansky, 2012).

Sklansky (2012) has developed the concept of *ad-hoc instrumentalism* to describe the ways in which crimmigration operates in practice. This standpoint argues that criminal and

immigration law have become a set of tools to be conveniently used by enforcement agents, prosecutors and immigration officials, according to the particularities of each case, to favour the deportation of criminally involved foreigners. Consequently, crimmigration also conveys a wide scope of discretionary powers, which seems to make the system of immigration and criminal regulations highly unpredictable for immigrants (Aliverti, 2012).

Focusing on the Spanish system, the study of the interrelation between immigration control and criminal justice started many years before the surge of the crimmigration standpoint (e.g., García-España, E., 2001); subsequently, many scholars have explained it through the lens of the crimmigration framework. In terms of its practical effects, Monclús-Maso (2008) argues that in many aspects both immigration and criminal law are enforced by the same agencies of the criminal justice system, being oriented towards the expulsion of foreigners. According to this author, the intersection between these fields of law is observable in the preference for deportation within criminal proceedings and the resignation of the state punitive power.

Similarly, Rodríguez-Yagüe (2012) upholds that the deportation mechanisms incorporated into the criminal procedure makes criminal law a “*perfect complement*” to immigration law, in such a way that the punitive order plays a mere supportive role for immigration law enforcement. Navarro (2006) goes even further and argues that criminal law works as the “*armed wing*” of immigration policy. From a structural and cyclical point of view, Brandariz and Fernández (2017) speak of a “*crimmigration turn*” in the Spanish immigration policies during the last decade, highlighting that the renewed focus on expulsion based on criminal grounds reflects a policy change that can be explained through the lens of crimmigration.

The discretionary prosecution provision to authorise an administrative expulsion seems to be a concrete manifestation of this phenomenon. As said, one of the crucial aspects highlighted by the crimmigration perspective is the exercise of discretion by criminal justice agents. Nonetheless, despite its conceptual and practical relevance, empirical research regarding the decision-making process of such provision is scant. For instance, there is only one known undergoing study, consisting of an analysis of a sample of judicial records from

criminal courts of Madrid and Malaga (Contreras et al., 2015). This research is still in progress, but some results have already been presented, pointing towards the existence of inconsistencies in the application of this measure. This paper purports to contribute to fill that gap in the literature by analysing the decisional determinants and functional mechanisms of the mentioned provision.

1.3. Research questions and epistemological underpinnings

In order to comprehensively examine and understand the mechanics and intricacies of the decision-making process of the discretionary prosecution provision to authorise an administrative expulsion, the following research questions were proposed:

- *What are the meanings attributed by court actors towards immigration control within the cultural realm of criminal court decision-making practices and routines?*
- *What are the determinants, conditions and mechanics associated with immigration law implementation within the cultural realm of criminal justice decision-making?*
- *To what extent do immigration control objectives in regard to authorising an administrative expulsion are preferred over criminal justice purposes towards prosecuting and punishing criminals, within the Spanish judicial practice?*

The conceptual background of these questions is based on a cultural understanding of courtroom workgroups. Criminal courts are understood as a sort of community embedded in specific contexts (Dixon, 1995; Eisenstein & Jacob, 1977; Eisenstein et al., 1988; Myers & Talarico, 1987). Such communities are composed of participants coming from interrelated agencies, such as judges, prosecutors, attorneys, court personnel and others who participate in the judicial decision-making process. Through their working relationships and personal interrelation, court actors produce idiosyncratic symbols, jargon and patterned responses. They also share conflictive and/or consensual beliefs regarding law enforcement, punishment and justice, giving patterned meanings to their work (Hogarth, 1971).

The idea of a judicial culture is central to this perspective, which is intrinsically connected with the determination of the meanings attributed by court actors to expulsion within the realm of the criminal court. This is in turn intimately related with the decision-making determinants of those aspects. As explained by Garland (1991, p. 219), such culture is understood as an “*immediate framework of meaning*” within which the diverse practices, routines and procedures which make up the penal realm are undertaken:

[T]he loose amalgam of penological theory, stored-up experience, institutional wisdom, and professional common sense which frames the actions of penal agents and which lends meaning to what they do. It is a local, institutional culture—a specific form of life—which has its own terms, categories, and symbols and which forms the immediate meaningful context in which penal practices exist (Garland, 1991, p. 219).

In line with this framework, law is seen as a contested field, influenced by other substantive aspects that compose and affect the cultural dynamics of a given court. Besides, understood as a juridical field (Bourdieu, 1987), law in action can be conceptualised as a site of competition for the monopoly of the right to determine the law, a social space organised around the conversion of direct conflict into juridically regulated debate between professionals who work with the written and unwritten rules of the legal game. In consequence, “*the practical meaning of the law is really only determined in the confrontation between different bodies (e.g. judges, lawyers, solicitors) moved by divergent specific interests*” (Bourdieu, 1987, p. 821).

The emergence of patterned responses and the general prevalence of case disposition within the realm of judicial decision-making, involves adjudication processes, which require the development of simplifying strategies and techniques. These mechanisms may rely to some extent on causal attributions, based on stereotypes linked to case or individual features that are tangible, or more easily identified and symbolized (Albonetti, 1991; Carroll, 1978; Fontaine & Emily, 1978). Hence, the relative decisional discretion exercised by judges and court actors in their working routines may be influenced by such considerations.

2. Methods

To answer the proposed questions, this research embraced a criminological *verstehen*⁸ (Ferrell, 1997), so that the research methods and data collection were substantially traversed by an *ethnographic sensibility* (Ferrell, Hayward & Young, 2008; Ferrell, 2009). In this regard, this research was conceived as a case-study, which required the selection of a meaningful and representative court setting. Moreover, this study relied on two complementary methods: semi-structured interviews and focused observation. For these purposes, the courthouse of the Spanish southern city of Malaga was chosen. The research fieldwork was conducted between January and August 2016.

At the time of fieldwork, Malaga was the sixth biggest city of Spain and the second in Andalusia (INE, 2017). It is strategically located at the extreme West of the Mediterranean Sea, in the South of the Iberian Peninsula, at about 100 km East of the Strait of Gibraltar, and less than 200 km in a straight line facing the North African coasts. The courthouse of Malaga is a complex and big judicial setting, which comprises a variety of court offices and workgroups specialised in criminal, civil, administrative, and labour law, amongst others. During the year of fieldwork (2016), there were 360 cases of expulsion based on Art. 57.7 of the Aliens Act, comprising 25% of the national caseload (Fiscalía Provincial de Málaga, 2017).

Initial access to the settings was facilitated by the *Andalusian Institute of Criminology*, at the University of Malaga, which already had established links with some key court officers. In this way, I was able to conduct the first interview with a court clerk, who then helped me to contact other court personnel. Thereafter, a snowball sampling strategy was developed by gaining trust with subsequent respondents and making new contacts with their help.

⁸ As formulated by Weber, “*verstehen denotes a process of subjective interpretation on the part of the social researcher, a degree of sympathetic understanding between researcher and subjects of study, whereby the researcher comes in part to share in the situated meanings and experiences of those under scrutiny*” (Ferrell, 1997: p. 10).

Sampling was purposive because the intention was to reach informants who had the best knowledge concerning the research topic. Getting access and interviewing was in general not difficult because most court personnel showed willingness to collaborate with the research. Informed consent was obtained from all interviewees, and respondents were selected until the fieldwork reached the saturation point in which sampling more data would not lead to more information regarding the research questions.

2.1. Semi-structured interviews

This specific part of the study relied on in-depth semi-structured interviews with 71 professionals of the courthouse of Malaga, Spain. The following table comprises an overview of the respondents' affiliation and a detail of the total number of interviews:

Table 2.

Overview of the total number of interviews

Who?	Investigative Courts ⁹	Sentencing Courts ¹⁰	Court of Appeal ¹¹	Administrative Courts ¹²	Total
Judges	4	4	5	5	18
Clerks	10	9	2	1	22
Personnel	2	13	-	1	16
Prosecutors*	-	-	-	-	3
Lawyers*	-	-	-	-	12
Total	16	26	7	7	71

*Specialised in immigration matters

The interviews were semi-structured, entailing the use of a set of questions to guide the conversation, while allowing freedom to digress and probing (Berg, 2001, p. 70; Nagy &

⁹ Investigative courts are mostly in charge of the screening and prosecuting phases of criminal proceedings, as well as sentencing minor crimes and overseeing immigration detention.

¹⁰ Sentencing courts are mostly in charge of the trial and sentencing phases, and the responsibility of supervising the execution of punishments.

¹¹ Appeal courts resolve appeals and make decisions in regards to sentencing serious crimes.

¹² Administrative courts solve judicial actions proposed against decisions of the administration, including immigration law matters.

Leavy, 2006). For that purpose, a guiding schedule was developed, which was structured first by topical themes, then by focal matters and finally with specific essential questions. Probes and extra-questions were not pre-determined and instead developed during the interview and through the fieldwork process.

2.2. Focused observation

The second method for this research was focused observation of settings and relevant events. In contrast to the traditional participant observation, as an observer I did not become active part of the community under analysis. Instead, my role was of a third-party spectator of the actions and developments of the research subjects. This technique also incarnates the spirit of ethnography, denoting in-depth immersion and allowing the researcher to witness the process by which meaning is formed (Ferrell, Hayward & Young, 2008, p. 177).

Two major settings were chosen: court offices and courtrooms. Regarding the first site, the work consisted of observing the most relevant details of the court office's cultural and organisational components. Regarding the cultural facet, observation entailed focusing upon working relationships, the hierarchical distribution of labour, patterned behavioural and attitudinal responses, internal mechanics and work rationale and any other idiosyncratic factor emerging from the routine tasks of court workers. These observational procedures were conducted in the offices of sentencing, investigative, appeal, and administrative courts.

The second setting in which the observations were conducted was in hearings courtrooms. In these places the work was centred upon the procedural and decisional dynamics of trials. This involved in some cases maintaining informal conversations with judges, prosecutors and court personnel. The following table contains an overview of the hearings attended.

Table 3.*Summary of hearings*

Court setting	Events
Sentencing court	24
Administrative court	30
Investigative day court	7
Total	61

2.3. Data Analysis

Given the nature of the methods and epistemological foundations of this study, the appropriate approach towards data-analysis was ethnographic content analysis. As a first step, the process of analysis and coding involved the organisation of data (Berg, 2001, p. 240; Creswell, 2009, pp. 187-190). Therefore, data were converted into text form, using a software programme to do so in regard to interviews. Thereafter, the data were transferred and analysed using a specialised software package and the coding process was conducted. This involved a dynamic deductive-inductive process, in which theory guided the structural topics and data determined their specificities. Codes were then transformed into themes, identifying patterns, relationships and disparities. Finally, the refined materials were examined to isolate meaningful patterns and processes and then considering previous theoretical groundwork to develop renewed concepts (Berg, 2001, p. 240).

3. Results

In formal terms, expulsion is an administrative measure coming from the state immigration policy, intended in principle not to punish, but to manage migration flows. The question arises, however, when the decision to allow an expulsion is taken by criminal courts within a criminal prosecution. Although such courts are not entitled to fully assess the merits of an immigration proceeding, without their acquiescence the expulsion of a prosecuted foreigner cannot be executed. In practice, this entails the exercise of decisional discretion in immigration matters on the part of criminal justice actors. From the analysis of the data, a

series of noteworthy themes emerged regarding the decision-making determinants of this measure.

3.1. “Not my business”

From the interviews conducted with criminal court actors, it appeared that for most of them the decision to suspend the criminal proceeding with the purpose of authorising the administrative expulsion of a defendant “*is not their business*”. Indeed, the most common response was that this is an administrative matter and that they have nothing to do with its substance. The following excerpt from one sentencing court clerk is quite illustrative:

“It’s not our competence... but I believe that it’s still the State that has to see if the guy is really dangerous or not. Not because of the crime. If he is dangerous because he has not settled, or has no family, or has no ties, that is, he has dedicated nothing more than to pillaging. Well then, you ask me and I say ‘if not for you, for me less’. Now if you tell me that he’s a good guy, I can say, ‘Look, you’re telling me he’s good, and I say that the case is open here, for me, but I’m still saying the same thing, you have to decide, it’s yours’...” (Sentencing court clerk 1).

There are two important remarks from this statement. First, the interviewee explains how the police and the administration seem to try to force the responsibility of expulsion decision upon the criminal courts. However, the respondent emphasises that determining whether a foreigner deserves to remain within Spanish territory is an administrative matter, beyond her/his actual criminal liability. Furthermore, the interviewee links such determination to an assessment of the dangerousness of the individual, which goes beyond their actual criminal involvement and is more related to their belonging to the mainstream Spanish society.

Likewise, it seemed that it is not only that criminal courts consider expulsion an extraneous matter, but that the police apparently seek to attain judicial legitimacy in the expulsion of foreigners allegedly involved in criminal behaviours. Specifically, it appeared that in practice the police attempt to make the administrative expulsion decision look as if it were a judicial pronouncement. This is evidenced in the following account from a sentencing court servant:

“We don’t order that expulsion. If the police ask us for authorisation for the administrative expulsion of such person, we authorise that it can be done, but we don’t order it. It would be a serious error to put that we order an expulsion, because it is not a thing that comes from us... they are not really criminal expulsions, we simply authorise, it is said that there is no problem. I don’t know if in the statistics the police consider as criminal expulsions those cases in which they have had to ask the court, but really it is not, it is not an expulsion at the judicial level. They are administrative expulsions” (Sentencing court servant 1).

In her reasoning, the interviewee emphasises that the job of criminal courts is only to authorise, and not to decide, an administrative expulsion. However, the police may intend to make these expulsions appear as though they were judicial, endowing police action with a judicial façade. This could be a manoeuvre to achieve legitimacy, as a strategy to attain public and institutional support through the display of fairness and procedural justice in law enforcement (Sunshine & Tyler, 2003). As explained before, the police used to publicly report expulsions classifying them in ‘qualified’ and ‘non-qualified’, equating the former with those authorised by a judge upon ‘criminal foreigners’. It seems that a significant number of such expulsions correspond to those authorised in application of Art. 57.7 of the Aliens Act. In this way, law enforcers may purport to communicate the idea that most deportees are criminal, and that most expulsions are judicial and not administrative.

3.2. Contributing to the social construction of the ‘criminal immigrant’

Another significant theme to highlight is that the police and the administration may also use the intervention of criminal courts to operationalise the social construction of the “*criminal immigrant*” through the so-called “*qualified expulsions*”. As said before, such category is obscure because it does not solely account for expulsions of foreigners with criminal records, but also with “*judicial records*”, a notion that could be considered a veneer in which to disguise police records. In fabricating the “*criminal alien*”, the inclusion of judicial records may give the illusion of appearing more conclusive, given that while a police record may in principle only account for an arrest, a judicial record may appear to refer to a convicted person.

In practice, however, this is questionable because such an expulsion can take place at any time since the person has been put under investigation. Consequently, a criminal proceeding can potentially be dismissed at an early stage due to lack of evidence or merits and the person under prosecution may still be expelled based on a “*judicial record*.” The following excerpt from an immigration prosecutor as to whether they also review the police records is quite revealing:

“Yes, if he has records. I already tell you that, in those cases, in which the proceeding is not yet finished, but he has, is immersed in several proceedings that are being processed; in some he may be freed because maybe he has been confused [with someone else], but if you have several proceedings... it seems that, with statistics and the whole thing, not in every case you will be confused with someone else” (Immigration prosecutor 1).

This whole picture gives credit to the idea that there has been a crimmigration turn (Brandariz & Fernández, 2017) in the Spanish immigration policy. Specifically, as the results of this research reveal, such a policy orientation seems to be largely based on a specific way of socially constructing the “*criminal alien*” (Aliverti, 2012; Barbero, 2015; Tsoukala, 2005), by means of making a malleable use of the legal-procedural categories of prosecution and judicial records. In this way, the labelling process (Becker, 1963) is completed through the attribution of a criminal label to someone who, in some cases, could have been prosecuted only incidentally, or that could have been pushed to criminality by the exclusionary socio-legal mechanisms explained in detail by Melossi (2003)¹³.

The malleable nature of the procedural mechanics of this measure is reflected by the fact that the effective enforceability of an administrative expulsion is favoured and ensured by the internal logistics of the criminal proceeding and the bureaucratic culture of the criminal justice system. Specifically, the linkage of a potential deportee to a criminal prosecution seems to give the police time to arrange their resources to execute an expulsion in a more efficient and effective way. Moreover, this can also be linked with the similar use

¹³ In essence, Melossi (2003) argues that the disproportionate involvement and public representation of migrants regarding criminality is a social construct, embedded within the structure of social relationships of a certain context. This means that the likelihood of participation in a given crime is increased by the structure of opportunities available to certain groups, which also entails the higher likelihood of police focus upon them.

of pre-trial detention or immigration detention to keep the deportee locked up to ensure her/his eventual expulsion. The following statement from a sentencing court servant illustrates this point:

“Sometimes there is no hurry, but sometimes there is, because if the person is in an immigration detention centre (CIE) waiting for the courts... there are times that yes, there is a bit of a hurry because there is a maximum of sixty days for a person to be in a CIE... other times not... maybe they tell us, for example, in this case that they asked me about an expulsion, I asked them if it was something urgent or not, if he was in a CIE, and they said no, that he was at liberty, at home, so they have him more or less controlled, but there is no rush to expel him. In cases where the police directly arrest him in a cautionary way, take him to a CIE, and meanwhile they start asking the courts... whether they authorise or not, they have a bit of a limit because he cannot be more than sixty days [detained] and they have to look for the flight, that is, everything. Then, we cannot say to them on the 59th day, ‘ah yes,’ because previously they have to look for a flight to that country and have more or less everything done [for the expulsion]” (Sentencing court servant 1).

This reveals not only the habitual close communication between the police and criminal courts, but also the extent to which they collaborate to facilitate an expulsion when it is authorised. In this respect, it is crucial as to whether the defendant is detained in a CIE or not, since it means that the proceedings may need to be speeded up. Conversely, when a defendant is not detained but located by other means, the police and the court may be less pressured. For these reasons, it also seems that for law enforcers it could be more efficient to process a criminal charging than an administrative detention, which may explain why linking a potential deportee to a criminal prosecution could be in many cases a preferred pathway for the police.

There is another significant dimension of these procedural mechanics, which has to do with the subjugation of the defendant to a state of uncertainty as to whether s/he will be prosecuted or expelled (Aliverti, 2012). In fact, the bureaucratically patterned case processing of criminal courts makes it possible for the criminal prosecution to be active until the expulsion is authorised and executed. The following excerpt from a sentencing judge is illustrative:

“As a general rule, those [expulsions] that usually happen before trial are mostly in speedy trial.¹⁴ They are urgent proceedings, in which either the investigative court has ordered an immigration detention... which is something that I don’t understand, that they detain someone for expulsion and do not directly authorise the expulsion, but admit a speedy trial so that I later [judge it] ... maybe he is detained in a CIE, they prepare a proceeding for me, and yet perhaps it is quickly detained as something cautionary, that the administrative authority has requested because perhaps the administrative authority has not yet issued an expulsion decision” (Sentencing judge 1).

It becomes apparent that while the police are working on the expulsion of a defendant, investigative courts advance the screening phase of the proceeding, and if the expulsion is still not executed, the file is sent to the sentencing court for trial. In this way, investigative courts may avoid issuing an early authorisation for expulsion because perhaps the expulsion decision, or its execution, is still not confirmed or scheduled. Other interviewees explained that situations can arise in which an investigative court authorises an expulsion but will still send the proceeding to the sentencing court “*just in case*”. Indeed, it is not uncommon that by the time the trial hearing is ready to be held, the defendant has already been expelled.

Finally, it is worth commenting the decisive role of the specialised prosecutor within the procedural mechanics of these decision-making processes. The key role of such a prosecutor is largely related to the fact that they are the only specialised in immigration law within the criminal judiciary. For this reason, they are considered to be particularly knowledgeable in such field of law. Nonetheless, this may also have to do with the patterned decision-making mechanics of criminal courts, prompted by the legal regulation that requires specific justification only when it is not authorised. In practice, this could be a peculiar case of the so-called “*hydraulic displacement of discretion*” (Engen, 2008; Miethe, 1987), by which discretion is displaced from judges to prosecutors.

¹⁴ A speedy trial is a type of proceeding to quickly prosecute and sentence the most common crimes. It is applicable to offences sanctioned with less than five years of imprisonment, or under certain circumstances, to cases punished with up to ten years of imprisonment. In addition, it is necessary that those crimes be either flagrante delicto, or any of the following: domestic violence, robbery or theft of vehicles, traffic offenses, damage of more than €400 to property of others, drug crimes (drug cultivation), and crimes against intellectual and industrial property. Finally, the prosecution of such crimes must be ‘presumably simple’.

The determinant intervention of prosecutors in these cases is reflected by the fact that judges normally follow what they deem to be appropriate. The following remarks from an investigative judge are quite explanatory:

“There we always go in unison, always... because in this case, I have no reason to say no. I mean, what arguments do I have to say that you don't expel a foreigner... and accuse him here? ... If the prosecutor has no interest because he prefers [the defendant] to be expelled, I cannot continue... if the prosecutor tells me to file [the case], I have to file it. I cannot continue against a person that the prosecutor does not want. So if the prosecutor tells me to expel because he prefers to expel rather than to accuse him, I could not, I have no reasons to continue” (Investigative judge 1).

It seems that in these cases judges tend to follow the criterion of the prosecutor. However, as explained before, in authorising this type of expulsion, judges are required to at least roughly assess the basis of the administrative proceeding. It therefore emerges that the role of the judge is substantially superseded by that of the immigration prosecutor, who ends up being the ultimately decisive figure in authorising an administrative expulsion. Although judges are legally entitled to have the last word and assess the legal requirements for the suspension of a criminal proceeding to allow an expulsion, a patterned decision-making process has been developed by criminal courts, by which the criterion of the prosecutor has become conclusive.

3.3. The punitive character of this type of expulsion

The discretionary prosecution provision to authorise an administrative expulsion cannot be considered a formal method of punishment. Nonetheless, what if this measure is assessed by criminal courts as if it were a form of punishment? Despite being an authorisation for an administrative expulsion, the fact that it is issued by a criminal court within a criminal proceeding makes it plausible that its decision-making determinants are based upon criminal law considerations. This is also reinforced by the fact that it is administrative and not criminal judges who are entitled to fully assess the merits of the expulsion proceeding. Hence, the analysis and assessment of immigration law aspects by criminal courts should be minimal, if

not totally absent. The following statement from one very knowledgeable sentencing court servant shows the extent to which this seems to be case:

“There are times when the defence lawyers send a writ of allegations, opposing the expulsion, alleging issues of social ties. Well, I don’t know, that he has a son here, this and that. Many times that really is sent to us, but it cannot be taken so much into account here at the criminal level because it is more an administrative issue. That is to say, many times some of them what they do is that they appeal administratively, judicially, but at the administrative court level, they repeal that expulsion. And then it is there where, before an administrative judge, they do have to prove whether or not they have ties; or if, say, if the administration has dictated an incorrect resolution about their situation here. And we, really, sometimes they bring that to our attention, but it’s not determinant. Here what the prosecutor, the defence and the judge will consider is rather the type of crime he has, the punishment he has” (Sentencing court servant 1).

The fact that immigration aspects are not considered by criminal courts when deciding an administrative expulsion authorisation was widely acknowledged by most interviewees. Although they recognised that there have been exceptions in which such allegations were indirectly examined, those have been only a few, extraordinary cases. Therefore, it seems that the judicial decision to authorise an administrative expulsion is almost always solely based upon an assessment of criminal law considerations. Consequently, it is worth discussing specifically how these criminal law aspects are evaluated by criminal courts. The following excerpt from one sentencing judge is an illustrative overview of this theme:

“[The police] arrest a person, in a typical case, maybe a Moroccan, for a robbery, and it turns out that he is irregularly in Spanish territory. He is taken before the investigative judge... to request that the expulsion be authorised... If that foreigner, for example... instead of a theft is a homicide, then the court is going to oppose the expulsion because, it is going to say, ‘look, you have killed a person, homicide, you have to comply with the punishment; it is not acceptable that we put you in a plane and you go to your country of origin,’ with the trip, in quotes, paid, because he would go unpunished for the crime... The expulsion is authorised based on the severity [of the crime]; when the crime is not of a serious enough nature to justify the execution of the sentence in Spain instead of being expelled from the national territory... When the punishment is sufficiently serious, expulsions aren’t authorised because logically the State must also guarantee that the punishments are served...” (Sentencing judge 2).

It appears that the key aspect assessed when coming to a decision is the seriousness of the crime. In fact, the interviewee compares a theft with a homicide to exemplify how in the former the expulsion could be admissible, while not in the latter. Besides, he also explicitly links the gravity of the crime with the severity of the punishment, explaining that a crime sanctioned with a large penalty cannot be subject to an expulsion authorisation. It is also quite noteworthy how the respondent made a punitive assessment of expulsion, considering it appropriate in some cases and a pathway to impunity in others. It ultimately emerges that the meanings of expulsion attributed by criminal courts may be closely related with those of formal punishment.

Given the decisiveness of the specialised prosecutors, it is essential to examine the criteria they use to decide in these cases. Indeed, the prosecutorial office has issued specific guidelines (Circular 2/2006) for prosecutors to assess the merits of a request and submit either an endorsement or a rejection. Nonetheless, these guidelines are quite general and do not develop in detail specific standards regarding the admissibility of this expulsion authorisation in difficult cases. One experienced immigration prosecutor explained to me that the vagueness of the guidelines is rather appropriate because each case should be analysed in its specificities, giving prosecutors the necessary room for decisional discretion. Accordingly, the criteria to assess the admissibility of the expulsion authorisation have been developed by immigration prosecutors themselves over the years.

From the interviews with the specialised prosecutors, it was possible to ascertain some clues regarding these criteria; one of the most experienced explained to me that the assessment has more to do with the nature of the crime than with punishment and its severity:

“It’s not the punishment, but the nature of the crime... In a crime of drug trafficking, the expulsion is authorised, depending... because you say, ‘Man, what do you bring there? So many kilos of hashish, from Morocco’. Then, if you don’t oppose the expulsion, it can result in a call to crime... it can also entail an unequal treatment in relation to Spaniards, or European citizens, who commit the same crime... one is subjected to prison, and the other is even paid the return ticket...” (Immigration prosecutor 2).

This explanation introduces such key notions as the need to avoid the “*calling effect*”, the impunity result of an inadequate expulsion, the fact that an expulsion authorisation can in some cases be a benefit rather than a sanction, and issues of discrimination regarding Spanish and EU citizens. These aspects were further developed by this same interviewee:

“I think that the expulsion authorisation... is thought primarily for petty crimes, for unimportant crimes. The fact that the legislator has put a maximum of six years of prison seems to me an excessively high upper limit, because practically 90% of the crimes in the criminal code are punished with penalties that don’t exceed that amount. From the point of view of criminal policy, we must be very careful when authorising this type of expulsion, not only because of the calling effect, but mainly because it breaks with the principles of specific and general deterrence” (Immigration prosecutor 2).

In this excerpt, the interviewee introduces an essential concept: the suitability of the expulsion authorisation for petty crimes. This suggests that expulsion could be an even more appropriate solution for certain crimes, particularly in regard to those considered insignificant. Evidently, the administrative expulsion decision is formally issued because of a breach to the immigration law and not for the specific crime prosecuted. Yet, the expulsion can actually be used by the criminal courts as a means of fulfilling punitive purposes, such as specific and general deterrence. The following excerpt from this same respondent is revealing:

“For example, crimes of violence against women. Then, the nature of the act is greatly valued because they usually are crimes in which to give the victim more protection, what better than to distance the aggressor from the victim? So there, for example, with the expulsion... it can also have beneficial effects from the point of view of the criminal proceeding, because you give greater protection to the extent that he will not be able to get in touch with her” (Immigration prosecutor 2).

This statement highlights the significance of expulsion as an incapacitating measure for “*undesirable aliens*”. It is outstandingly clear from this example how the expulsion authorisation can have a punitive meaning and be used as a criminal sanction, if not as a form of punishment, to favour the achievement of a criminal law purpose. Moreover, in this example the conscious consideration of the criminal law goal of incapacitation is evident.

Although in this excerpt the interviewee seems to highlight the role of the victim, such figure appeared to be largely ignored or overlooked by criminal court actors.

Another less experienced immigration prosecutor confirmed those ideas:

“What does it mean? That someone, to avoid that, a Brazilian for example, who spreads the word in Brazil, or a Guatemalan spreads the word there, that if you go to Spain and get caught with the drug, the only thing that happens is that they expel you because the punishment doesn’t exceed six years... you are promoting a calling effect... You have to go through the dungeon, you have to be prosecuted, and once prosecuted... you can be expelled and that’s what is usually done... To avoid that calling effect, in drug crimes, which carry a significant punishment, there we oppose expulsion, even if it doesn’t exceed six years...” (Immigration prosecutor 1).

It is evident from this statement that deterrence is a major determinant within the prosecutorial decision-making rationale, and that expulsion would only be admissible if it does not compromise such a purpose. Furthermore, from the aspects highlighted in the previous excerpts, it is apparent that this type of expulsion, despite its administrative nature, has become part of the decision-making culture of criminal courts. In other words, such courts have given it a punitive meaning. Apart from the overt immigration law enforcement orientation of expulsion, it seems that when it overlaps with a criminal proceeding, a largely latent criminal justice rationale taints it with the colours of criminal law.

Retribution as a goal of punishment was also a significant theme emerging from this research. The analysis of the interviews reveals that for most court actors, expulsion tends to be regarded more as a benefit rather than as a penalty. Therefore, the rationale for keeping someone in prison before the expulsion would be, as many court workers have said, to make him “*pay for what he did*” and that “*it does not come for free*”. This means that although expulsion may adequately serve deterrent and incapacitation purposes, in the eyes of criminal court actors it may not be enough to fulfil the retributive aim of punishment. The following statement from a sentencing judge further clarifies this aspect:

“I believe that in those cases, execution is operative, in the sense that there come into play here; it would not be the retributive purpose of the penalty, since the retributive purpose of the punishment in those cases I see it more compromised. That you have to have that person

removed and you cannot give him the prize of taking away years of prison because you are going to expel him. To those other cases where the retributive goal is not so important, and you may be looking for more deterrent purposes, that with the expulsion you can attain, once you expel someone, you prevent the commission of new criminal acts” (Sentencing judge 1).

The core idea is that there seems to be a complex interplay between the different objectives of punishment, such as deterrence, incapacitation and retribution. Consequently, in some cases the incapacitating effect of expulsion may be more significant than deterrence or retribution. In others, deterrence, and even retribution, could be considered more important, leading to the dismissal of an expulsion request.

Therefore, it appears that in some instances it is the seriousness of the offence that requires a proportionate retribution, as in a homicide; and in others it is the nature and circumstances of the crime that make expulsion counterproductive in terms of general and specific deterrence. In contrast, while rehabilitation is the statutory goal of punishment according to the Spanish Constitution (Art. 25.2), it was barely mentioned by interviewees. In this regard, expulsion as an incapacitating or retributive measure would go against such principle.

In sum, the discretionary prosecution provision to authorise an administrative expulsion has in practice a punitive meaning for criminal courts, in the sense that despite its intrinsic administrative nature, it is assessed in terms of its appropriateness for achieving the functions traditionally attributed to formal punishment.

4. Conclusions

Three big themes have been noticed regarding the patterned organisational and procedural mechanics of the discretionary prosecution provision to authorise an administrative expulsion. First, a police tendency to seek legitimacy through the judicial endorsement of administrative expulsions was observed, which seemed to be functional for the social construction of the “*criminal immigrant*” through a surge in the so-called “*qualified expulsions*”.

Besides, the overlapping between administrative and criminal proceedings has been found to be favourable for the goal of expelling foreigners allegedly involved in criminal behaviours. It has become apparent that the police make use of the idiosyncratic features of criminal proceedings and criminal justice bureaucratic culture to advance their objectives, assured by their intimate working relationships with court members. Finally, it appeared that in most cases it is not judges, but immigration prosecutors, who in practice decide these cases.

The parallelism between the objectives of punishment and those of immigration law is one of the keystones of the crimmigration perspective. As explained by Stumpf (2006), both criminal and immigration laws create insiders and outsiders, as well as distinct categories of people such as the innocent versus guilty, admitted versus excluded or ultimately, “*legal*” versus “*illegal*.” In Stumpf’s view, both fields of law seem to be affected by a predominant retributive ideology instead of the rehabilitative model that was popular decades ago.

This tendency, which has evident connections with Garland’s portrayal of a contemporary *culture of control* (2001) and Feeley’s and Simon’s (1992) conceptualisation of the *new penology*, makes goals such as deterrence, incapacitation and retribution the preferred orientations for both criminal and immigration law. The results of this paper are consistent with these perspectives and reveal that the enforcement of immigration law by the criminal justice system is affected by such considerations. Ultimately, criminal courts seem to assess expulsion in terms of its capability to achieve such objectives, thus assigning it punitive meaning

5. References

- Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems* 38(2): 247-266.
- Aliverti A. (2012). Making people criminal: The role of the criminal law in immigration enforcement. *Theoretical Criminology*, 16(4), 417-434.
- Barbero, I. (2015). Scapegoat citizens in times of austerity: The impact of the crisis on the immigrant population in Spain, *Social Identities*, 21(3), 244-256.
- Berg, B. L. (2001). *Qualitative research methods for the social sciences (fourth edition)*. Boston: Pearson Education.
- Bourdieu, P. (1987). The force of law: toward a sociology of the juridical field. *Hastings Law Journal*, 38(5): 805-54.
- Bowling, B. (2013). Epilogue: The borders of punishment: Towards a criminology of mobility, in Franko Aas and Mary Bosworth, *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*: Oxford University Press.
- Brandariz, J. A. & Fernández-Bessa, C. (2017). La crimmigración en el contexto español: El creciente protagonismo de lo punitivo en el control migratorio. In López-Sala, A., and Godenau, D. (Coords.). *Estados de Contención, Estados de Detención. El Control de la Inmigración Irregular en España*, Barcelona: Anthropos Editorial.
- Carroll, J. S. (1978). Causal theories of crime and their effect upon expert parole decisions. *Law and Human Behaviour*, 2(4), 377-388.
- Contreras Román, M., García-España, E. & Rando Casermeiro, P. (2015, June). *Análisis Criminológico del Principio de Oportunidad Judicial del Art. 57.7 LOEX: Renuncia al Proceso Penal y Primacía de la Expulsión Administrativa*. Paper presented at the II Simposio Investigación Criminológica, Albacete, Spain.
- Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approach*. Los Angeles: Sage.
- Dixon, J. (1995). The organizational context of criminal sentencing. *American Journal of Sociology* 100(5): 1157-1198.
- Eisenstein, J. & Jacob, H. (1977). *Felony justice: An organizational analysis of criminal courts*. Boston: Little, Brown.
- Eisenstein, J., Flemming, R. B. & Nardulli, P. F. (1988). *The contours of justice: Communities and their courts*. Boston: Little, Brown.
- Engen, R. (2008). Have sentencing reforms displaced discretion over sentencing from judges to prosecutors? *The Changing Role of the American Prosecutor* Eds. Worrall & Nugent-Borakove.
- Feeley, M. & Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology*, 30 (4): 449-474.
- Ferrell, J. (1997). Criminological *verstehen*: Inside the immediacy of crime. *Justice Quarterly* 14(1): 3-23.
- Ferrell, J. (2009). Kill method: A provocation. *Journal of Theoretical and Philosophical Criminology* 1(1): 1-22.

- Ferrell, J., Hayward, K. & Young, J. (2008). *Cultural criminology: An invitation*. Los Angeles: SAGE.
- Fiscalía General del Estado. (2017). Memoria elevada al Gobierno de S. M. presentada al inicio del año judicial por el Fiscal General del Estado, Vol. 1. Retrieved from: https://www.fiscal.es/memorias/memoria2017/FISCALIA_SITE/recursos/pdf/MEMFIS17.pdf.
- Fiscalía Provincial de Málaga. (2017). Datos estadísticos de la Fiscalía Provincial de Málaga publicados en la Memoria 2017. Retrieved from: <https://www.fiscal.es/web/fiscal/-/fiscalia-provincial-de-malaga?cat=36745&uniProv=false#:~:text=Fiscal%C3%ADa%20Provincial%20de%20M%C3%A1laga,su%20sede%20est%C3%A1%20en%20M%C3%A1laga>.
- Fontaine, G. & Emily, C. (1978). Causal attribution and judicial discretion: A look at the verbal behaviour of municipal court judges. *Law and Human Behaviour Law and Human Behaviour*, 2(4): 323-337.
- García-España, E. (2001). *Inmigración y delincuencia en España: Análisis Criminológico*. Tirant lo Blanch.
- García-España, E. (2017). Extranjeros sospechosos, condenados y excondenados: Un mosaico de exclusión. *Revista Electrónica de Ciencia Penal y Criminología*, núm. 19-15, pp. 1-28.
- Garland, D. (1991). *Punishment and modern society: A study in social theory*. Oxford: New York: Clarendon Press Oxford University Press.
- Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.
- Hammersley, M. & Atkinson, P. (2007). *Ethnography: Principles in practice* (3rd ed. ed.). London: Routledge.
- Hogarth, J. (1971). *Sentencing as a human process*. Toronto U.P.
- INE-Instituto Nacional de Estadística. (2017). *Cifras oficiales de población resultantes de la revisión del Padrón municipal a 1 de enero*. Retrieved from: <http://www.ine.es/jaxiT3/Datos.htm?t=2882>.
- Jara, Y. & Suárez, C. (October 2018). *Los gobiernos de Zapatero y Rajoy inflaron las expulsiones de inmigrantes por delinquir*. Retrieved from: https://www.elconfidencial.com/espana/2018-10-11/interior-inmigrantes-expulsiones-policia_1628395/
- Melossi, D. (2003). 'In a peaceful life': Migration and the crime of modernity in Europe/Italy, *Punishment & Society*, 5(4), 371-397.
- Miethe, T. (1987). Charging and Plea Bargaining under Determinate Sentencing. *Journal of Criminal Law and Criminology* 78 (1): 155-76.
- Ministerio del Interior. (2017). *Balance 2016 Lucha contra la Inmigración Irregular*. Retrieved from: http://www.interior.gob.es/documents/10180/5791067/bal_inmigracion_irregular_2016.pdf/8a040aaf-a1b6-4493-9191-cf386fd31dd4.
- Ministerio del Interior. (2016). *Balance 2015 Lucha contra la Inmigración Irregular*. Retrieved from:

- <http://www.interior.gob.es/documents/10180/3066430/Balance+2015+de+la+lucha+contra+la+inmigraci%C3%B3n+irregular.pdf/d67e7d4b-1cb9-4b1d-94a0-9a9ca1028f3d>.
Ministerio del Interior. (2015). *Balance 2014 Lucha contra la Inmigración Irregular*. Retrieved from: <http://www.interior.gob.es/documents/10180/3066430/Balance+2014+de+la+lucha+contra+la+inmigraci%C3%B3n+irregular.pdf/4a33ce71-3834-44fc-9fbf-7983ace6cec4>.
- Ministerio del Interior. (2014). *Balance 2013 Lucha contra la Inmigración Irregular*. Retrieved from: http://www.interior.gob.es/documents/10180/1207668/balance_2013_inmigracion_irregular.pdf/132387b3-d93b-4485-8a5b-1a734359764c.
- Ministerio del Interior. (2013). *Balance 2012 Lucha contra la Inmigración Irregular*. Retrieved from: <http://www.interior.gob.es/documents/10180/1208797/Balance+2012+de+la+lucha+contra+la+inmigraci%C3%B3n+irregular.pdf/94316449-f4d7-467a-84d5-3b192d1d9bc8>
- Ministerio del Interior. (2012). *Balance 2011 Lucha contra la Inmigración Irregular*. Retrieved from: <http://www.interior.gob.es/documents/10180/1209011/Balance+de+la+lucha+contra+la+inmigraci%C3%B3n+ilegal+2011.pdf/a26c72a6-0787-4440-9ddd-5221b72b446a>.
- Ministerio del Interior. (2011). *Balance 2010 Lucha contra la Inmigración Irregular*. Retrieved from: http://www.interior.gob.es/documents/10180/5791067/bal_inmigracion_irregular_2016.pdf/8a040aaf-a1b6-4493-9191-cf386fd31dd4.
- Ministerio del Interior. (2010) Dirección General de la Policía y de la Guardia Civil. *La Bedex de la Policía Nacional ejecuta las expulsiones de delincuentes ordenadas judicialmente*. Retrieved from: https://www.policia.es/prensa/100124_1.htm.
- Monclús-Maso, M. (2008). *La gestión penal de la inmigración. El recurso al sistema penal para el control de los flujos migratorios*, Editores del Puerto: Buenos Aires.
- Myers, M. A. & Talarico S. M. (1987). *The Social Contexts of Criminal Sentencing*. Research in Criminology. New York: Springer-Verlag.
- Nagy Hesse-Biber, S. & Leavy, P. (2006). *The Practice of Qualitative Research*. SAGE Publications.
- Navarro, F. (2006). “Expulsión penal” de extranjeros: una simbiosis de Derecho Penal “simbólico” y Derecho Penal del “enemigo”, *Revista de Derecho Penal y Criminología* 17(2).
- Rodríguez-Yagüe, C. (2012). El modelo político-criminal español frente a la delincuencia de inmigrantes, *Revista Electrónica de Ciencia Penal y Criminología*.
- Sklansky, D. A. (2012). Crime, immigration, and ad hoc instrumentalism, *New Criminal Law Review*, 15(2), 157-223.
- Stumpf, J. P. (2006). The crimmigration crisis: Immigrants, crime, and sovereign power, *American University Law Review*, 56, 367.
- Stumpf, J. P. (2011). Doing time: Crimmigration law and the perils of haste, *Ucla Law Review*, 58(6), 1705-1748.

- Sunshine, J. & Tyler, T. R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*, 37: 513-548.
- Tsoukala A. (2005). Looking at immigrants as enemies, in: Bigo D, Guild E, (eds.). *Controlling Frontiers. Free Movement into and within Europe*. Aldershot: Ashgate, 161–192.

Acknowledgments

I am very grateful to the two anonymous reviewers for their constructive and encouraging comments, which helped to improve the quality of the article. I would also like to thank Prof. Elisa García España and the Andalusian Interuniversity Institute of the University of Malaga, for their support in conducting the present research.

Funding

The research exposed in this paper was accomplished with financial support from the European Union's Education Audiovisual and Cultural Executive Agency's Erasmus Mundus Scheme Erasmus-Mundus.

Byron Villagomez Moncayo is a criminologist from Ecuador, currently serving as Research Coordinator at the Constitutional Court of that country. He graduated in 2019 as Doctor (PhD) in Cultural and Global Criminology from Universiteit Utrecht (Netherlands) and Universität Hamburg (Germany), which he pursued as an Erasmus-Mundus fellow. He also holds a M.A. in Criminology and Criminal Justice from the University of Maryland-College Park, US. (2013) and a B.A. in law from the Catholic University of Ecuador (2008). His main research interests include sentencing and courts, judicial decision-making, and criminal and immigration law.