

I. Semenets, T. Shults, Students
I. Pavlenko, PhD in Law, Senior Lecturer, research advisor
S. Volkova, Lecturer, language advisor
National Technical University of Ukraine
«Igor Sikorsky Kyiv Polytechnic Institute»

DECRIMINALIZATION OF THE ILLEGAL CROSSING OF THE BORDER AS A POTENTIAL THREAT TO THE INTEGRITY OF THE STATE BORDER

Recent political events in Ukraine would be characterized with existing problems in terms of ensuring territorial integrity and, mostly, inviolability of state borders. Moreover, the inviolability of state borders is a guarantee of national security, law and order. Therefore, in Ukraine, the solution of important issues of ensuring the security of the state border is becoming more and more relevant.

Illegal crossing of the state border is a phrase that really provokes fear, and awareness which threat is created or could be created by such as action for a person, society and even for the whole state. Nobody could believe that it will remain criminally impunity. In fact, the harm would not be underestimated because the inviolability of state borders determines the security of citizens and the state as a whole. The existence and independence of the state depends on the state of security itself. On the contrary, in connection with the latest political events in our country, it would be necessary to enforce legal liability, namely the part of bringing to criminal liability.

It could be added that until 2004, the legislation of Ukraine for the illegal crossing of the state border is provided for criminal liability. However, according to the Law of Ukraine "On amendments to some legislative acts of Ukraine on crossing the border of Ukraine" dated May 18, 2004 №1723-IV, illegal crossing the state border of Ukraine was decriminalized. Since humanization of a crime had taken place so in our opinion, it is not normal because crimes against national security are the most social dangerous and their dynamics is constantly increasing, but the liability is not equal to a crime.

At present, these actions provide for administrative liability in the form of a fine or administrative imprisonment for a period up to fifteen days. Is it possible to understand if such a remedy against encroachments on the state border of Ukraine is effective? In our opinion such measures to prevent the illegal crossing of the border, which exist and namely administrative responsibility, are not capable to counteract such dangerous crimes at an appropriate level.

Therefore, there is the other issue: Is it correct that the state refused of criminal responsibility for the actions, which have real threat to national security?

We could mentioned that the lack of equal responsibility for illegal border crossing is one of the grounds in order to neglect established rules. As a result, it is created the base for committing other crimes in future, e.g. acts of terrorism, sabotage, smuggling weapons, espionage, etc.

We would notice, each state tries to provide the most effective protection of its border from violations and external attacks. Therefore, we believe that it is necessary to pay attention to the practice of the European Legislation regarding responsibility for illegal crossing of the border.

Firstly, in the Criminal Code of Lithuania stated that illegal crossing of the border is a crime which is set criminal liability as a fine, arrest or imprisonment for up to two years. Secondly, legislation of Poland follows the same position and provides a criminal responsibility for citizens from other countries who illegally are in Poland or illegally have crossed the border of Poland. Moreover, illegal entry and illegal stay in Germany by citizens from other countries entails punishment in the form of imprisonment for up to a year or monetary penalties. [2]

Therefore, we could see the above stated countries use criminal measures to prevent negative consequences that could threat territorial integrity of the state because of illegal crossing of the border.

Based on the analysis of modern situation in our country, which is caused by hidden military aggression neighbouring state, terrorists', separatists' and extremists' activities against our country, it would be essential to admit that the changing of criminal law is obvious because it could enhance security of our state and its borders of potential threats.

Finally, the Criminal Code of Ukraine was supplemented by Article 332-2, which established liability in the form of imprisonment for up to three years for the Ukraine state border crossing in order to cause damage to the interests of the state or by a person who is prohibited from entering the territory of Ukraine or by representatives of divisions of armed forces or other law enforcement agencies of the aggressor state. [1]

On the one hand, it may seem that this is the first step to ensure the integrity of the state border. On the other hand, if you look at the extraordinary events which occur in our country and what kind of people causes these events, so it is clear the position of the legislator regarding a very limited number of possible violators of the state border. As a result of such acts, damage to the territorial integrity of Ukraine is not only possible by the representatives of the armed forces or other law enforcement agencies of an aggressor state, but also it seems that the legislator should carefully review the content of this norm in order to eliminate the discrimination signs and establishment of criminal liability for illegal crossing of the state border of Ukraine for all persons, regardless of the state of origin.

At the same time, it would be advisable to make adjustments to the article 332-1 Criminal Code of Ukraine. It is unclear why only temporarily occupied territory Ukraine is put under the criminal legal protection. We consider that it is not the only district, the crossing of which is threat to territorial integrity and integrity of our state. The whole territory of Ukraine needs to be protected, not only its separated parts.

To sum up, understanding the relevance of the problem of protection territorial integrity and integrity of state borders, we believe that the right way of the protection sphere of the national security is in the following: the amendment the Code of Ukraine about administrative offense, Article 204, and simultaneously reversion of criminal responsibility for illegal crossing of the border with the aim of damaging the state.

Moreover, it should be provided for each person who commits actions that will contain signs of this crime.

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