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FEATURES OF CRIMINAL LAW COUNTERACTION TO ILLEGAL MIGRATION

Illegal migration in Ukraine is becoming increasingly common phenomenon. Ukrainian gangs and every now and then transnational criminal organizations are using Ukraine as a transit area for smuggling citizens of underdeveloped and economically unstable countries to Europe. However, they do not ignore any illegal means, which are prejudicial to the interests of the state, rights and freedoms of citizens, and sometimes to their lives and health. Good resistance to illegal migration is provided for in legal norms of different branches of the legislation of Ukraine. Criminal liability is applied for the attempt with a high degree of public danger in this area. Thus, a group of offences against the order of crossing the border is assigned in Chapter XIV of the Special Section of the Criminal Code of Ukraine «Crimes in the sphere of state secret, inviolability of state borders, providing recruitment and mobilization».

Art. 332 «Illegal people smuggling across the state border of Ukraine», is applied more often for counteracting illegal migration; it establishes the liability for the organization of people smuggling across the state border of Ukraine, the leadership of such actions or assistance in their commission by giving advice, instructions, providing means or removing obstacles.

Particular attention when considering this category of crimes should be paid to the fact that most of these offences provided for in the Criminal Code of Ukraine are close to administrative offences because they do not have the degree and nature of public danger, typical for crimes. Administrative liability is directly provided for some of these acts in the Code of Ukraine on administrative offences, and in other cases, they are difficult to distinguish from related

administrative offences. Thus, in one case, the law recognizes the act as a crime, in another one - an administrative offence.

Despite the fact that according to Ch. 2, Art. 9 of the Code of Ukraine on administrative offences, administrative liability is applied only when relevant violations do not entail criminal liability, practice goes the other way. Based on the fact that certain acts under Art. 332 of the Criminal Code are examples of excessive criminalization of acts, when initiating criminal proceedings the provisions of Ch. 2, Art. 11 have to be taken into account, according to which an activity or inactivity, which formally contains signs of any act under the Criminal Code, but because of its insignificance is not a public danger, is not a crime.

If the law has established that in case of the competition of rules of Special Sections of the Code of Ukraine on administrative offences and the Criminal Code the liability is applied not under the Criminal Code, but under the Code of Ukraine on administrative offences - it means decriminalization of many acts, which are now treated as crimes, including those that are provided for the liability for illegal migration. The similar situation has already occurred to Art. 331 of the Criminal Code, which is decriminalized according to the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on crossing the state border of Ukraine», dated 18 May 2004, and the liability for such act is applied according to Art. 204-1 of the Code of Ukraine on administrative offences.

This issue is becoming more topical in the context of the necessity of the implementation of the institute of misdemeanors in criminal law of Ukraine.