

Riamzina Alina,Candidate of Juridical Sciences, Senior Researcher,
State Research Institute MIA Ukraine, Kyiv, Ukraine,
ORCID ID 0000-0002-6250-5296**CRIMINOLOGICAL CHARACTERISTICS OF ILLEGAL TRANSPORTATION
OF PERSONS ACROSS THE STATE BORDER OF UKRAINE (ARTICLE 332 OF
THE CRIMINAL CODE OF UKRAINE)**

The article examines an examination of the statistical data concerning criminal offences under Art. 332 of the Ukrainian Criminal Code, as provided by the General Prosecutor's Office of Ukraine, by conducting a comprehensive analysis of 261 court decisions of first instance for the period spanning from 1 January 2023 to 31 December 2023, encompassing the category of cases designated as "Illegal transportation of persons across the State Border of Ukraine", drawn from the official database entitled "Unified State Register of Court Decisions". It establishes the criminological characteristics with regard to a criminal committing illegal transportation of persons across the state border. In this study, the author analyses the socio-demographic characteristics of the offender, including age, gender, occupation, level of education, marital status, nationality and citizenship, recidivism and relapse, evidence of complicity, committing a crime under the influence of alcohol/drugs, and his/her moral and psychological characteristics, such as needs, interests, and motives.

Keywords: *illegal state border crossing, criminology, criminological characteristics of the offender, criminological portrait of the offender, Article 332 of the Criminal Code of Ukraine, russian-ukrainian war, evasion of mobilization, martial law.*

Statement of the problem. With the outbreak of hostilities on the territory of Ukraine, the characterization of criminal offenses under Article 332 of the Criminal Code of Ukraine "Illegal transportation of persons across the State border of Ukraine" has changed. Thus, in the context of the ongoing military conflict in Ukraine, a decree has been issued prohibiting male Ukrainian citizens aged between 18 and 60 from travelling abroad while martial law remains in effect within the nation. Concurrently, these individuals are being conscripted into the armed forces with the objective of safeguarding Ukraine's territorial integrity. However, a proportion of these men are expressing a desire to depart the country, citing a range of motivations, including the desire to avoid conscription.

Analysis of recent research and publications. Research in the field of illegal border crossing in Ukraine is focused on the contributions of prominent scholars such as O.F. Bantyshev, L.V. Dorosh, S.A. Kuzmin, T.E. Ognev, A.M. Prytula, Y.P. Stepanova, E.L. Streltsov, V.V. Fedoseev, and M.I. Khavroniuk.

The primary objectives of the article are twofold: firstly, to analyse court verdicts under Article 332 of the Ukrainian Criminal Code, and secondly, to establish a criminological profile of individuals who commit the crime of illegal border crossing in Ukraine.

Results. According to the official statistics of the Prosecutor General's Office, in 2023, 2301 criminal offenses were registered under Art. 332 of the Criminal Code of Ukraine. 783 people were notified of suspicion [1].

The Unified State Register of Court Decisions contains 261 verdicts of the court of first instance for the period from 1 January 2023 to 31 December 2023 throughout Ukraine in the category of cases "Illegal transportation of persons across the state border of Ukraine" [2].

The criminological characterization of a criminal's personality is revealed through a complex set of characteristic individual traits and properties in interaction with the life factors underlying criminal behavior. The qualities of a person that give his or her behavior a criminal character are most often divided into socio-demographic, criminal law and moral and psychological groups of features.

The socio-demographic characteristics of the offender's personality mean information about gender, age, occupation, level of education, marital status and other components of the social status of a person, which allow to form his generalized criminological profile and determine which segments of the population should be primarily targeted by measures to prevent criminal acts.

By gender, the composition of those convicted under Art. 332 of the Criminal Code of Ukraine coincides with the general composition of criminals in the country: 93.74% of them are men, and 6.26% are women. Usually, women can either create smuggling groups together with men or only facilitate them.

The most criminogenic age range is 29-39 years old: 35.25% of convicts belong to this category. The proportion of people aged 18 to 28 is 28.3%; people aged 40 to 54 - 26.86%. At the age of 55-59, 4.56% of people committed a crime; 60 years and older - 4.31%. Only 0.72% committed a crime between the ages of 16 and 17. Given the mobilization of men of conscription age (18-59) and their desire to avoid mobilization by traveling abroad, a significant number of persons committing a criminal offense under Article 332 of the Criminal Code of Ukraine are aged 18-54, namely 89.83%. Thus, the main economically active part of the population is mainly involved in the illegal transportation of persons across the state border of Ukraine. Persons under the age of 18 and over the age of 60 commit a criminal offense in the form of aiding and abetting. Accordingly, 3 criminal offenses were committed with the participation of minors.

A considerable amount of attention is typically devoted to the marital status of offenders when assessing their socio-demographic characteristics. The proportion of married and unmarried persons is almost the same: 48.8% and 51.2% respectively. The distribution of convicts with dependent minor children is somewhat less even: 40.4% of those who have them versus 55.6% who do not have such dependents. It is commonly believed that the presence of a family and normal relations with relatives can reduce a person's criminality [3]. However, in the current circumstances in which men of military age find themselves, being in a family relationship is not a criminogenic factor that restrains the level of criminal offenses under Article 332 of the Criminal Code of Ukraine.

Therefore, the data on employment and occupation of those convicted under Article 332 of the Criminal Code of Ukraine is particularly noteworthy. Almost 65.23% of the offenders,

all of whom are able-bodied persons, were neither employed nor studying at the time of the smuggling. 3.6% of them were officially registered as unemployed. At the time of the smuggling, 1 person was a member of the local council; 1 person was a civil servant of category B. In addition, 3 lawyers, 1 National Police officer, and 5 employees of the State Border Guard Service were detained for smuggling across the state border in 2023. 10 servicemen were detained, including 3 officers; 1 non-commissioned officer; 3 contract servicemen; 1 mobilized serviceman; 2 conscripts. In addition, 1 person was detained – a participant of the russian-ukrainian war, combat actions related to the aggression of the russian federation against Ukraine. The number of students is insignificant – 2 people.

The level of education is closely related to labor activity. The data on the educational level of the accused indicate a predominance of people with basic secondary education – 55%, and higher education – 27.3%. Vocational education was received by 13.2% of the perpetrators, primary education was received by 2.4%, and no education – 2.1%. As is evident, the illicit trafficking of persons across the Ukrainian border is perpetrated by individuals who have been educated to a sufficient level to comprehend the severity of the offence.

Another component of the socio-demographic group of characteristics is the distribution of persons convicted under Art. 332 of the Criminal Code of Ukraine by citizenship and nationality. The share of Ukrainian citizens among those accused of such crimes in 2023 was 95.2%; foreign citizens – 4.6% – Armenians, Georgians, Moldovans, Hungarians and representatives of other nationalities; 1 stateless person.

Concurrently, as Kibalnyk, S.O. has observed, the actual number of foreigners among those who smuggle people across the state border is considerably higher than the aforementioned figures. However, it should be borne in mind that the majority of those convicted under Article 332 of the Ukrainian Criminal Code were either directly involved in the transfer of migrants across the border or were apprehended while transporting them for this purpose. According to journalists, it is easy to find a guide from among villagers who are familiar with the area, even in the market of any border town, while foreigners usually concentrate in large cities with a wider range of economic opportunities, not settling for long in the border area. As a result of this avoidance of the most risky activities in terms of detection and apprehension, they have a significantly higher chance of being overlooked by law enforcement agencies. At the same time, there are also observations by law enforcement officers that there is a certain “division of labor” in this industry on a national basis: while criminal networks at the international level are supported by people from the Caucasus region (Georgia, Azerbaijan, Chechnya) or Central Asia (Tajikistan, Uzbekistan), many of whom have Ukrainian citizenship, “technical” roles are mainly filled by Ukrainians – local residents of the border area [3].

In the course of the study of criminal law features concerning the personality profile of an offender committing trafficking in persons across the border of Ukraine, the following aspects received priority: repeated offending and recidivism. A significant proportion of the convicted individuals, specifically 92.6%, had no prior criminal convictions. The proportion of individuals who, at the time of the crime, had unexpunged convictions under other articles of the Criminal Code (mercenary and violent crimes, crimes in the field of drug trafficking and against public order) is 3.4%. Furthermore, 4% of individuals have been previously convicted,

but their convictions have since been expunged.

Complicity in the crime is absent in 66.2% of the total number of cases and proceedings, 33.8% of crimes were committed by prior conspiracy by a group of persons. With regard to the role played by the offender among the accomplices, the specificity of the construction of the disposition of Part 1 of Art. 332 of the Criminal Code is that the perpetrator of this crime is recognized as both the person who directly carried out the transfer and the person who facilitated its commission. Moreover, complicity is not required for organizing or directing such actions (such as developing plans, determining the place and time of the crime, giving certain commands, etc.) [4]. Actions as part of an organized criminal group or criminal organization were established in only 5% of cases. Obviously, these results are highly distorted by the level of latency of the phenomenon under consideration. In addition, cases of qualification of acts under Art. 332 of the Criminal Code of Ukraine as committed by a group of persons by prior conspiracy, even in the presence of all the necessary signs of an organized criminal group, are not uncommon in court practice. On the other hand, the literature has recently suggested that associations with a stable hierarchical structure are not typical for organized crime in the field of trafficking in persons across the borders of many states. Europol experts argue that powerful transnational criminal groups nowadays often consist of relatively isolated groups, without a clear command structure and with less obvious connections between them, which are constantly interrupted and re-established [5].

In 2023, there was no recorded occurrence of criminal offences falling under Article 332 of the Ukrainian Criminal Code, perpetrated while influenced by alcohol and/or drugs.

The structure of the offender's personality also includes a block of moral and psychological characteristics: needs, interests, motives, intellectual and volitional qualities, moral and value orientations, behavioral attitudes, emotional characteristics, etc. Since the inception of the study of this phenomenon in English-language criminology, the personality of the trafficker has been conceptualized as a type of violent extortionist. Thus, the characteristic moral and psychological traits of such persons should be aggressive audacity, ruthlessness, deceitfulness, parasitism, selfishness, and sometimes hatred or contempt for their victims [6]. The aforementioned identification has become a firmly established point of view, resulting in its subsequent reproduction in numerous scientific works across the globe, irrespective of the specific geographical location. This uncritical reproduction has led to the formation of a stereotypical view that is pervasive within the scientific community. However, in modern realities, the psychological portrait of a criminal in the studied category of criminal offenses has changed. In the current context, individuals are being smuggled illegally across the border of Ukraine with the intention of evading the ongoing mobilization for the country's armed forces. Persons of conscription age who are not removed from the military register commit this criminal offense with the motive of leaving for residence in another country.

If the offender and the migrant are not closely acquainted with each other, the "services" of smuggling abroad are usually provided with full prepayment by the "client".

The level of intellectual development of traffickers varies significantly depending on the complexity of the crime. For example, individuals with higher education are often involved in the illicit practice of smuggling, often using documents that may be forged or false. On the

other hand, a much lower educational level is characterized by criminals who resorted to the simplest actions from a technical point of view – first of all, making holes in engineering and technical barriers with the help of brute force [3].

Conclusions. The analysis of the criminological characteristics of individuals involved in the illicit smuggling of persons across the Ukrainian state border facilitates the creation of a generalized portrait of such individuals. As a rule, these are middle-aged or young men (18-59 years old), Ukrainians, citizens of Ukraine, with secondary education, who at the time of the crime were not working or studying anywhere, not convicted, and do not abuse alcohol or drugs. Perpetrators of human smuggling across the state border possess such character traits as determination, balance, prudence and coolness in an extreme situation (except for isolated cases of impulsive acts committed by persons whose household plots directly face the border). In the absence or unreliability of corrupt connections, criminals may need weeks and months to wait for the most convenient time to cross the border or to find the least protected section of the border – under the constant risk of detention by law enforcement agencies as a result of an inspection of a building where migrants are temporarily accommodated or a vehicle stop while transporting them from one settlement to another. The necessary qualities for this are prudence and self-control, along with the ability to carefully plan the mechanism of committing a crime and concealing it. There was no evidence of a tendency of the convicts under Article 332 of the Criminal Code of Ukraine under the influence of alcohol or taking drugs, nor of any mental disorders.

REFERENCES

1. Ofis Heneralnoho prokurora. Pro zareiestrovani kryriminalni pravoporushennia ta rezultaty yikh dosudovoho rozsliduvannia. "Prosecutor General's Office. On registered criminal offenses and the results of their pre-trial investigation". Official website. URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kryriminalni-pravoporushennia-ta-rezultaty-yih-dosudovoho-rozsliduvannia-2> (Date of Application: 02.09.2024) [in Ukrainian].
2. Yedynyi derzhavnyi reiestr sudovykh rishen. "Unified State Register of Court Decisions". Official website. URL: <https://reestr.court.gov.ua/> (Date of Application: 02.09.2024) [in Ukrainian].
3. Kibalnyk, S.O. (2019). Osobystist zlochyntsia, shcho vchyniaie nezakonne perepravlennia osib cherez derzhavnyi kordon Ukrainy. "The personality of a criminal who commits illegal smuggling of persons across the state border of Ukraine". *Scientific Information Bulletin of Ivano-Frankivsk University of Law named after King Danylo Halytskyi: Journal. Law Series*, 7(19), 137-144. URL: <https://visnyk.iful.edu.ua/wp-content/uploads/2019/08/137-144-719-1.pdf> (Date of Application: 02.09.2024) [in Ukrainian].
4. Naukovo-praktychnyi komentar Kryriminalnoho kodeksu Ukrainy. "Scientific and practical commentary on the Criminal Code of Ukraine" / edited by M.I. Melnyk, M.I. Khavroniuk [9th ed., revised and supplemented]. K.: Yurydychna Dumka, 2012. 1316 sheets, 957 p. [in Ukrainian].
5. Bilecen, B. (2009). Human smuggling networks operating between Middle East and the European Union: evidence from Iranian, Iraqi and Afghani migrants in the Netherlands. Bielefeld: Centre on Migration, Citizenship and Development. 16 sheets, 10 p. URL: https://www.researchgate.net/publication/292988196_Human_Smuggling_Networks_Operating_Between_Middle_East_and_the_European_Union_Evidence_from_Iranian_Iraqi_and_Afghani_Migrants_in_the_Netherlands (Date of Application: 02.09.2024) [in English].

6. Kolodiaznyi, M.H. (2010). Nasylnytski vymahannia maina v Ukraini. "Violent extortion of property in Ukraine: criminological characteristics, determination and prevention": monograph / edited by V.V. Holina. Kharkiv: Crossroad. 288 sheets. P. 94-95 [in Ukrainian].

УДК 343.9:343.6

Рямзіна Аліна Юріївна,
кандидат юридичних наук, старший науковий співробітник
ДНДІ МВС України, м. Київ, Україна,
ORCID ID 0000-0002-6250-5296

**КРИМІНОЛОГІЧНА ХАРАКТЕРИСТИКА НЕЗАКОННОГО
ПЕРЕПРАВЛЕННЯ ОСІБ ЧЕРЕЗ ДЕРЖАВНИЙ КОРДОН УКРАЇНИ
(СТАТТЯ 332 КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ)**

У статті досліджено статистичні дані кримінальних правопорушень, передбачених ст. 332 КК України, надані Офісом Генерального прокурора України, та проаналізовано 261 вирок суду першої інстанції за період 01.01.2023–31.12.2023 по всій території України в категорії справ «Незаконне переправлення осіб через державний кордон України», вміщених у офіційній базі «Єдиний державний реєстр судових рішень». Встановлено кримінологічну характеристику злочинця, який вчинює незаконне переправлення осіб через державний кордон. Вивчено соціально-демографічні ознаки особи злочинця: вік, стать, рід занять, рівень освіти, сімейний стан, розподіл за громадянством та національністю, вчинення злочину повторно та рецидив, дані про співучасть, вчинення злочину в стані алкогольної/наркотичної залежності, а також його морально-психологічні ознаки: потреби, інтереси, мотиви.

Дослідження кримінологічної характеристики особи злочинця, який вчинює незаконне переправлення осіб через державний кордон України, дало змогу створити його узагальнений портрет. Як правило, це чоловіки молодого або середнього віку (18–59 років), українці, громадяни України, із середньою освітою, які на момент вчинення злочину ніде не працювали і не навчалися, не судимі, спиртними напоями та наркотичними засобами не зловживають. Вони володіють такими рисами характеру, як рішучість, урівноваженість, обачливість і холонокровність в екстремальній ситуації (за винятком одиничних випадків імпульсивного вчинення особами, присадибні ділянки яких безпосередньо виходять до лінії кордону). За відсутності або ненадійності корупційних зв'язків злочинці можуть тижнями або ж місяцями очікувати найбільш зручного часу для переходу кордону або відшукувати найменш захищені його ділянки – в умовах постійного ризику затримання правоохоронними органами під час огляду будівлі, де тимчасово розміщуються мігранти, або зупинення транспортного засобу в процесі перевезення останніх з одного населеного пункту до іншого. Необхідними для цього якостями є виваженість у діях та витримка, поряд із здатністю до ретельного планування механізму вчинення злочину та його приховування. Схильності засуджених за ст. 332 КК України до пияцтва чи наркотизму не виявлено, як і наявності в них відхилень і розладів психічної діяльності.

© Riamzina Alina, 2024

DOI (Article): [https://doi.org/10.36486/np.2024.3\(65\).17](https://doi.org/10.36486/np.2024.3(65).17)

Issue 3-4(65-66) 2024

<https://naukaipravookhrona.com/>

Ключові слова: незаконне переправлення осіб через державний кордон, кримінологія, кримінологічна характеристика особи злочинця, кримінологічний портрет злочинця, ст. 332 Кримінального кодексу України, російсько-українська війна, ухилення від мобілізації, воєнний стан.

Отримано 10.09.2024