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CRIMINAL OFFENCE OF UNAUTHORIZED BORDER CROSSING OR OF THE BORDER LINE

Abstract

In modern times, criminal offence *Unauthorized border crossing or of the border line*, in most countries of the world, particularly in the Republic of Kosovo, as a consequence of the migration of our country's residents that has happened recently, a lot of cases of this form of criminal offence have been noted.

In this direction, it is worth mentioning that like any other form of criminal offence, also the criminal offence of unauthorized border crossing or of the border line, has its own specific *characteristics*.

So, since a lot of people have the tendency of crossing the border or the border line in an illegal and unauthorized manner, in the Republic of Kosovo there was a large number of persons identified who have been convicted of this criminal offence, as those of Albanian nationality as well as those who are not Albanians and they belong to another nationality.

Key words: Criminal offence; CCK; unauthorized crossing; defense object and basic characteristics.

1. Introduction

Unauthorized border crossing or of the border line, presents an act and quite frequent phenomenon experienced not only by the countries in the region, but in the whole world, since many individuals try to illegally enter in the territory of a state without respecting and fulfilling the criteria necessary for such a thing. This can be seen in the current time, where the level of this form of criminal offense is rising.

However, what is important in this direction, has to do with the fact that through such an action other illegal actions may also occur (criminal offenses), that follow because of the commission of such a criminal offense.

In the Republic of Kosovo the criminal offense of unauthorized border crossing or of the border line was foreseen since the entry into force of the Criminal code on 6th of April 2004. With the former criminal code, expressively, concrete forms of this criminal offense were foreseen. Whereas, with amending and supplementing the Code on 1st January 2013, this criminal offense continues to be a part of this Code, with some minor changes and corrections, that have supplemented and structured in a fairly right manner this kind of criminal offense.

Surely that the criminal offense of unauthorized border crossing or of the border line was committed by certain persons in the Republic of Kosovo, thus making it represent a fairly frequent form of criminal offense, and within this work we will present the number of persons convicted of this criminal offense during the period of 2010-2014 in the territory of the Republic of Kosovo.

2. Meaning and characteristics of this criminal offense

The criminal offense UBC or of the border line includes the act or conduct of certain persons with which the integrity and territorial indefeasibility of the territorial border in a particular state is violated and damaged.

UBC is a part of and is incriminated within the chapter XIV of the Criminal code of the Republic of Kosovo (CCK), respectively in the chapter named: *Criminal offences against the constitutional order and security of the Republic of Kosovo*. Therefore, the Criminal code of our country determines and regulates in a quite accurate and detailed way this form of criminal offense.

Like any other criminal offense that has its characteristics, the criminal offense of unauthorized border crossing or of the border line, also includes within itself some special characteristics.

These characteristics are: Defense object of this criminal offense; Act of perpetration; Form of guilt; Perpetrator of the criminal offense.

2.1. Defense object

Like any other criminal offence that has a defense object, respectively a good side that is defended by it, naturally this act also has a unique defense object determined within the provisions that foresee this act. Therefore from this we will notice that with this criminal offense the *integrity and territorial indefeasibility of the territorial borders of the Republic of Kosovo*[61]is defended.

So as you can see from what we treated in regards to this criminal offense, respectively in regards to the defense object, this form of criminal offense contains a special defense object, by making it separate and different from other criminal offences.

2.2. The act of perpetration

As far as the criminal offense, unauthorized border crossing or of the border line is concerned, there are several acts of perpetration. Actually as the perpetration acts of this criminal offense, are considered: *Border crossing* and *Entry into the territory of Kosovo*, even in the soil area, water or air. As border crossing and entry into the territory of Kosovo is also considered the plane flight, the sailing into the territorial

[61] Salihu, Ismet, Criminal Law (Special Section) College Fama, Pristina, 2009, pg. 42.

waters and any other form of crossing into the territory of the Republic of Kosovo. Regarding this matter, border crossing is also regulated with a lot of different international conventions and international laws[62]. However, this criminal offense is considered to have been committed even in cases when a person illegally enters in authorized state border crossings in the territory of the Republic of Kosovo e.g. by hiding in a compartment of a truck or any another transport vehicle, or by using the negligence or any other moment of distraction of the official person[63].

2.3. Types of guilt

Unlike some types of criminal offenses that may be committed in the two types of guilt, thus, willingly and recklessly, this criminal offense can only be carried out *intentionally*. Also the existence of this act does not require the presence and existence of any special motivation by the perpetrator, it is sufficient that the designated person to have crossed the border illegally.[64].

So, this characteristic shows a truly unique feature of this criminal offense, making it to be specific.

2.4. Perpetrator of this criminal offense

A perpetrator of the criminal offense of UBC, or of the border line can be any person. So, this type of the criminal offense takes part in the group of criminal offenses, *delicta communia*[65].

Afterwards, it should be noted that with regard to this form of criminal offense, there is a dilemma on how to qualify this illegal action, violation or criminal offense.

In countries of the region, but also beyond, unauthorized border crossing of the state is considered a violation. But, it was considered a violation even in the old legislation in force in Kosovo until the entry into force of the Provisional Criminal Code of Kosovo, respectively with the legislation of KSAK[66]. Whereas with the Criminal Code of the Republic of Kosovo, *unauthorized border crossing or of the border line* is incriminated and considered as a concrete and special form of criminal offense.

3. Incrimination of this criminal offense with the Criminal Code of the Republic of Kosovo

Criminal offense *of unauthorized border crossing or of the border line* was foreseen and determined with article 146, of CCK.

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[62] Ibid. (right there).
[63] Salihu, Ismet, Zhitija, Hilmi, Hasani Fejzullah, Comments of the Code of Criminal Procedure of Kosovo, Pristina, 2014, pg. 402.
[64] Salihu, Ismet, vep. e. cit., pg. 43.
[65] Salihu, Ismet, Zhitija, Hilmi, Hasani Fejzullah, vep. e cit., pg. 402.
[66] Ibid., pg. 401.

In this regard, with the provisions of CCK principally the standard form of this criminal offense is determined. So, it is emphasized that whoever crosses the border or the border line of the Republic of Kosovo in whichever place apart from the authorized border or the crossing line, is punished with two hundred and fifty (250) euro fine or imprisonment of up to 6 months[67]. So, this act constitutes the *basic or random form* of this criminal offense. Therefore, from this we can see that in the Criminal Code of the Republic of Kosovo, there is a tendency of more severe punishment politics, in regards to the random form of this criminal offense.

Furthermore, within the CCK, a *more severe form* of this criminal offense is foreseen. In this manner, it is determined that when the above mentioned criminal offense or the random form of this criminal offense, is committed by the perpetrator who is accompanied by a child or another person, he is punished with a fine up to two thousand and five hundred (2.500) euro or imprisonment of up to one (1) year[68].

Afterwards, in CCK other four *more severe forms* are presented, in regards to this criminal offense. In this regards it is declared that when the basic form or the standard form of criminal offense, unauthorized border crossing or of the border line, is committed by one or more persons because of below given circumstances, the perpetrator is punished with imprisonment of six (6) months up to three (3) years if: 1. The perpetrator has been previously convicted of the same criminal offense; 2. During the capture, the perpetrator escapes, tries to run or in another form resists the capture by the police or KFOR; 3. The crossing is performed between eight o'clock (8:00) in the evening to six o'clock (6:00) in the morning during the time period from 1st April until 30th September, or between six (6:00) in the evening to six (6:00) in the morning, during the time period of 1st October until 31st March; or 4. The perpetrator possesses a weapon, ammunition or military clothing, supplies or equipment[69]. So, from these we can see that with this provision more severe forms of this criminal offense are determined, if the perpetrator acts under specific circumstances indicated above, under aggravated and special circumstances.

A characteristic of this criminal offense is that with the provisions of the Criminal code of the Republic of Kosovo, even the tendency of perpetration of the criminal offense, unauthorized border crossing or of the border line[70] is punished

In addition, with the provisions of CCK, it is foreseen that the person is not criminally responsible regarding this criminal offense for passing on an unauthorized border crossing of the state border if the crossing occurred at a checkpoint that was temporarily established by the Commander of KFOR[71]. So, at this point of the Criminal Code of Kosovo, exclusion of criminal responsibility of the perpetrator in certain circumstances is determined.

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[67] Article 146 par. 1 of the Criminal Code of Kosovo.
[68] Article 146 par. 2 of CCK.
[69] Article 146 par. 3 of CCK.
[70] Article 146 par. 4 of CCK.
[71] Article 146 par. 5 of CCK.

In the end, it is determined that any criminal procedure that includes this criminal offense cannot be initiated against any refugee in trust or against any internally displaced person, that comes from a territory where his body or his freedoms or his fundamental rights are endangered, with the condition presenting himself to the police or KFOR, within a reasonable time frame and to present convincing reasons for unauthorized crossing of the border or of the border line[72].

In this regard, we initially estimate that by the Criminal Code of the Republic of Kosovo, respectively the legislator rightly incriminated Unauthorized border crossing or of the border line as criminal Offense, unlike from that what some Criminal Codes, and in this case even with the criminal Code of the Socialist Autonomous Province of Kosovo, this offense, respectively this illegal act was considered a violation.

We have to say that even though by nature and by the first look this criminal offense, leaves an impression that it does not belong to the above mentioned group of criminal offenses, incrimination or grouping of this criminal offense among the criminal offenses against the constitutional order and security of Republic of Kosovo, is justified. When we say this, we base it on two reasons: the first, since with such an act, a person even if he is a citizen of the Republic of Kosovo or a foreign citizen puts to risk the security, order and peace of the Republic of Kosovo and its citizens in this case, and the second, illegal or unauthorized crossing of an individual, not only that it endangers the integrity and security of a country and its citizens but with such an act it can destabilize and cause other acts by a person that is potentially considered as dangerous.

4. The incrimination of this criminal offense with Criminal Code of the Republic of Albania

In the Criminal code of the Republic of Albania[73] (CCRA), this kind of illegal act is considered as an act of violation. So, as it can be seen, the Criminal code of the Republic of Albania qualifies this form of illegal act as a violation. This act is incriminated within chapter VIII- *Crimes against the authority of the state*, section IV- *CRIMINAL OFFENSE AGAINST THE STATE SECRETS AND STATE BORDERS.*

Respectively, in relation to this illegal act it is emphasized that the illegal crossing of state borders, constitutes a criminal violation and is punished by a fine or imprisonment for up to two (2) years[74].

Furthermore with the provisions of CCRA, some more severe forms of this illegal act are foreseen. Therefore, it is determined that the housing, accompanying, putting in the disposal or the use of sailing equipment, flying equipment or other means of transportation or any other help for that matter, with the aim of illegal crossing of the

[72] Article 146 par. 6 i CCK.
[73] Ligji No. 7895, me datë 27.1.1995, Criminal code of the Republic of Albania, changed and amended with Law No. 10023, dated 27.11.2008.
[74] Article 297 of the Criminal Code of the Republic of Albania.

border of the Republic of Albania or for the illegal entry of a person into another country, without being its citizen or not having a permit to stay in that country, is punished by one (1) to four (4) years of imprisonment and with a fine of three (3) million lekë up to six (6) million lekë[75]. Further, with CCRA some more severe forms of this illegal act are determined, in which it is foreseen that when help is provided with an intent of gain, the punishment is imprisonment of three (3) to seven (7) years and with a fine from four (4) million up to eight (8) million lekë. Then, if this act is committed in cooperation or more the ones, or if it made bad consequences, is punished by imprisonment of five (5) to ten (10) years and with a fine of six (6) million up to eight (8) million lekë[76]. Also, with provisions of the Criminal code of the Republic of Albania, two more severe forms have been foreseen, respectively the most severe forms of this act of violation. So, when the act led to the death of the damaged party, it is punished by imprisonment of not less than fifteen (15) years or for life, as well as with a fine of eight (8) million up to ten (10) million lekë. If the act of violation, is committed through the use of the state function or public service, punishment by imprisonment and the fine are added with ¼ of the given punishment[77].

So, within this norm of CCRA, it is foreseen the help for illegal crossing of state borders by one person to another person that wants or has expressed the readiness to cross the state borders.

From what has been presented above, it can be seen that the Criminal Code of the Republic of Albania, has foreseen some acts of the commission of this form of violation act. Accordingly, with this Code, some other forms are explicitly defined of this (severe) criminal offense, such as aid, shelter, companionship or availability and use of transportation vehicles. Afterwards, the aid for profit purposes, when the act has caused serious consequences, and as a result of this act there has come to the death of the damaged party, and when this act of violation has been carried out by the misuse of a state function or public service, then these have justly been defined as severe forms of this violation.

5. The incrimination of this criminal offense with the Criminal code of Republic of Macedonia

In the Republic of Macedonia, the unauthorized border crossing or of the border line is defined as a criminal offense within the Criminal code of the Republic of Macedonia[78] (CCRM), in chapter XXXIII named as *Crime against public order*, respectively in article 402- *Illegal crossing of the state border*.

In this manner by CCRM it is foreseen that the person who, without a designated permit crosses or intends to cross the border of the Republic of Macedonia, armed or

[75] Article 298 of CCRA.
[76] Article 298 of CCRA.
[77] Article 298 of CCRA.
[78] Criminal code of the Republic of Macedonia, dated 1.11.1996, amended and supplemented in 2004, 2006, 2008 and 2009.

by the use of violence, is punished by a fine or imprisonment of up to one (1) year[79]. This makes *the first form* or *the random one* of this criminal offense.

Furthermore, with the provisions of the Criminal code of the Republic of Macedonia, it is foreseen that the person that conducted or is conducting the illegal transportation of other persons in the border of the Republic of Macedonia, or a person that for some other kinds of benefits enables the illegal crossing of the border, will be punished with imprisonment of six (6) months to five (5) years [80]. As it is seen, with this provision, *the severe form* of this criminal offense is defined, in which a punishment of those acts that assist and facilitate the unauthorized crossing of the state border is foreseen.

6. The incrimination of this criminal offense with the Criminal code of the Republic of Serbia

This criminal offense in the Criminal code of the Republic of Serbia[81] (CCRS) has been incriminated within chapter XXXI, that are known as *Crimes against peace and public order*, respectively in article 350- *Illegal crossing of the state border and human trafficking*.

In this relation, within the provisions of CCRS the *basic form* of criminal offense Illegal crossing of the state border is defined. By this, whoever tries to cross the state border without a requested or a needed permit, armed or by the use of force, is punished with one (1) year of imprisonment[82].

Then, by the CCRS it is foreseen that anybody who makes it possible for another person to illegally cross the state border or illegally stay or enables transportation through Serbia with a person who is not a citizen of this state, with the aim of personal or other benefits, will be punished with imprisonment of three (3) months up to five (5) years[83]. In this case, by this provision, we can see a form or a way of cooperation and help in the commission of this criminal offense by certain persons. So, here a *severe or qualified form* of a criminal offense of illegal crossing of the state border is defined.

Further, CCRS determines a *more severe form* of this criminal offense, where it is indicated that the above mentioned criminal offense was performed by an organized group, by the misuse of the state authority or in a way that puts into risk the life and health of other persons or with such an act the transportation or human trafficking is facilitated, in which case the person is punished with imprisonment of one (1) to ten (10) years[84].

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[79] Article 402 par. 1 of the Criminal code of the Republic of Macedonia.
[80] Article 402 par. 2 of CCRM.
[81] Criminal code of the Republic of Serbia, of the year 2005, GZ of RS No. 85/2005, 88/2005 and 107/2005, amended and supplemented in 2009 and 2012.
[82] Article 350 par. 1 of Criminal Code of the Republic of Serbia.
[83] Article 350 par. 2 of CCRS.
[84] Article 350 par. 3 of CCRS.

Whereas at the end of this provision of CCRS it is foreseen that the equipment and things used for the perpetration of the criminal offense are confiscated[85].

7. The incrimination of this criminal offense with the Criminal code of the Republic of Hungary

Criminal code of the Republic of Hungary[86] (CCRH) has also foreseen this criminal offense within its provisions. But it is worth mentioning that this code has implemented a different approach in relation to the incrimination of the illegal act of unauthorized border crossing or of the border line. Namely, this act is foreseen in such a way that it can be performed by the help of a third person, therefore, in the perpetration of this act the contribution of the third party is needed, respectively the illegal smuggling with emigrants, who is surely considered as a collaborator as well in the perpetration of this illegal act. Also, it is worth mentioning that this illegal act according to CCRH is defined as a criminal violation. Let us take a better look at the provisions of the Criminal code of the Republic of Hungary, and how this illegal act is determined.

This illegal act is determined in chapter XXXIV *Criminal acts in relation to administrative procedures*, in article 353- *Illegal smuggling with emigrants*.

Furthermore, CCRH says that any person that offers help to another person for crossing of the state border, in contradiction to the relevant legal provisions, is guilty in regards to this criminal act and is punished by imprisonment of up to three (3) years[87]. As always in the beginning of the relevant provision, even with this provision *the basic form* of this criminal act is foreseen.

Then, *a severe form* of this illegal act is foreseen. In this way, it is declared that the punishment by imprisonment will be from one (1) to five (5) years if the illegal smuggling with emigrants is: a) performed for financial benefits or any other form of advantages, or b) it is performed with the involvement of several emigrants[88]. So, this paragraph foresees two ways of the severe perpetration of this illegal act.

Also, with the provisions of the CCH another severe form of this act is foreseen. Namely, the punishment by imprisonment will be from two (2) up to eight (8) years if the illegal smuggling with emigrants was perpetrated by: a) torturing the smuggled person; b) holding or presenting a deadly weapon; c) using a deadly weapon; d) as a trading act and e) by cooperating as a criminal group.[89]

In addition within CCH it is foreseen that any person that is engaged in the preparation for illegal smuggling with emigrants, is guilty of a crime and is punished by the

[85] Article 350 par. 4 of CCRS
[86] Criminal code of Hungary, entered into force 1.7.2013, according to the amendment performed by the Parliament of the European Union.
[87] Article 353 par. 1 of Criminal Code of the Republic of Hungary.
[88] Article 353 par. 2 of CCRH.
[89] Article 353 par. 3 of CCRH.

imprisonment of up to two (2) years[90]. So, from this we see that the preparation for the perpetration of this criminal act is also punished according to the provisions of this Code.

8. The number of the punished for the criminal offence of unauthorized border crossing or of the border line in the Republic of Kosovo during the period of 2010-2014

In 2010 in the territory of the Republic of Kosovo, the number of punished perpetrators for the criminal offence of unauthorized border crossing or of the border line is in total 85, within competent courts for judging of criminal offenses (in this period the judicial system consisted of the Municipal Court and the District Court, competent for judging of the criminal offenses in the given regions).

Viewed by gender, out of 85 totally convicted in 2010, 78 were of male gender, while 7 others were of female gender. Afterwards, according to the nationalities of the convicted for the criminal offence of unauthorized border crossing or of the border line, 47 were Albanians, 18 Serbs and at the end 20 of the convicted were persons from foreign countries, from out of Kosovo. There were no convicted persons from the Turkish, Bosnian, Roma, Ashkalia and Egyptian nationalities. Viewed from the tabular segment, these statistics appear as follows:

Year 2010									
Criminal offense	**Number of the convicted**	**Gender of the convicted**		**Nationality of the convicted**					
		Male	**Female**	**Albanian**	**Serbian**	**Turkish**	**Bosnian**	**RAE**	**Foreigners**
unauthorized border crossing or of the border line	85	78	7	47	18	-	-	-	20

Table 1. Number of the convicted during 2010.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2010 and the author.

Further on, the number of the convicted in 2011, in the territory of the Republic of Kosovo for the criminal offence of unauthorized border crossing or of the border line

[90] Article 353, par. 4 of CCRH.

was 61 convicted in total, in certain courts that were competent at that time for the punishment of persons that perpetrated these criminal offenses (Municipal Courts and those of the District).

Viewed by gender, the number of the convicted persons for this criminal offense in 2011 was 58 of the convicted were of male gender, while only 3 of the convicted were females. In addition, according to the nationality of the persons convicted for the criminal offence of unauthorized border crossing or of the border line, 31 convicted persons were Albanians, 4 were Serbs, 3 were of Bosnian nationality, 23 were foreigners. Whereas, there were no persons registered of the Turkish and RAE nationalities. Viewed according to the tabular aspect, this data appears as follows:

Year 2011									
Criminal offense	**Number of the convicted**	**Gender of the convicted**		**Nationality of the convicted**					
		Male	**Female**	**Albanian**	**Serbian**	**Turkish**	**Bosnian**	**RAE**	**Foreigners**
unauthorized border crossing or of the border line	61	58	3	31	4	-	3	-	23

Table 2. Number of the convicted during 2011.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2011 and the author.

Afterwards, in 2012, the number of the convicted for this criminal offense in the territory of Kosovo, was 94 in total, in competent Courts, for judging the perpetrators of the criminal offense of unauthorized border crossing or of the border line (Municipal Courts).

If we analyze the number of the convicted for this criminal offense, according to gender, from a total of 94 convicted, 84 were of male gender while 10 others were females. Following the convicted by nationality, 71 convicted were Albanians, 3 Serbs, 3 of Bosnian nationality, while 17 others were foreigners. Whereas as far as the Turkish and RAE nationalities are concerned no persons were identified. Viewed according to the tabular aspect, this data appears as follows:

Year 2012									
Criminal offense	**Number of the convicted**	**Gender of the convicted**		**Nationality of the convicted**					
		Male	**Female**	**Albanian**	**Serbian**	**Turkish**	**Bosnian**	**RAE**	**Foreigners**
unauthorized border crossing or of the border line	94	84	10	71	3	-	3	-	17

Table 3. Number of the convicted during 2012.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2012 and the author.

In 2013, the total number of the convicted for this criminal offence: Unauthorized border crossing or of the border line, was 30 convicted, within all Basic Courts, in the territory of the Republic of Kosovo.

If we have a look at the total number of the convicted according to their gender, 28 of them were of male gender, while only 2 were females. Whereas according to the convicted by their nationality, 26 convicted were Albanians, 2 were of Serbian nationality, 2 foreigners and there were no convicted from the Bosnian, Turkish and RAE nationalities. Viewed according to the tabular aspect, this data appears as follows:

Year 2013									
Criminal offense	**Number of the convicted**	**Gender of the convicted**		**Nationality of the convicted**					
		Males	**Female**	**Albanian**	**Serbian**	**Turkish**	**Bosnian**	**RAE**	**Foreign**
Unauthorized border crossing or of the border line	62	57	5	51	4	-	-	-	7

Table 4. Number of the convicted during the year 2013.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2013 and the author.

Further on, the number of the convicted for the criminal offence of unauthorized border crossing or of the border line in 2014 was 102 convicted in total, in all Basic Courts in the territory of the Republic of Kosovo.

Reviewing the gender of the total number of the convicted for this criminal offense, 98 were of male gender, while only 4 were females. Further on, if we have a look at the nationality of the convicted for this kind of criminal offense, 63 were of Albanian nationality, 12 others were Serbs, while 27 were foreigners. During this year there were no convicted identified from the Turkish, Bosnian and RAE nationalities. Viewed according to the tabular aspect, this data appears as follows:

Year 2014									
Criminal offense	**Number of the convicted**	**Gender of the convicted**		**Nationality of the convicted**					
		Males	**Female**	**Albanian**	**Serbian**	**Turkish**	**Bosnian**	**RAE**	**Foreign**
Unauthorized border crossing or of the border line	102	98	4	63	12	-	-	-	27

Table 5. Number of the convicted during the year of 2014.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2014 and the author.

9. Types of punishment (sanctions) imposed by the competent court, towards the persons convicted of the criminal offence, Unauthorized border crossing or of the border line in the Republic of Kosovo, during the period of 2010-2014

In 2010, from the total number of 85 imposed convictions towards convicted persons, 33 or 38.82% of those were punished with fines, 11 or 12.94 % punishments were by imprisonment of 5-30 days, 2 or 2.35 % other punishments were by imprisonment of 2-6 months and 39 or 45.88 % other convictions were alternative punishments, respectively punished by probation. So, viewed from the tabular aspect these convictions appear as follows:

Year 2010					
Criminal offense	**Number of convictions**	**Imposed convictions towards convicted persons for this criminal offense**			
		Fine punishments	**Punishment by imprisonment 5-30 days**	**Punishment by imprisonment 2-6 months**	**Punishment by probation**
Unauthorized border crossing or of the border line	85	33	11	2	39

Table 6. Number and type of convictions in 2010.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2010 and the author.

Then during the year 2011 from the total number of 61 imposed convictions towards perpetrators of this criminal offense, 34 or 55.74 % were punished with fines, 3 or 4.92 % punishments were by imprisonment of 5-30 days, 3 or 4.92 % others were criminal sanctions – court notifications, 20 or 32.78 % of punishments were alternative punishments – punishment by probation and at the end 1 or 1.64 % of these convictions were measures of obligatory treatment. So, viewed from the tabular aspect these convictions appear as follows:

Year 2011						
Criminal offense	**Number of convictions**	**Imposed convictions towards convicted persons for this criminal offense**				
		Fine punishments	**Conviction by imprisonment 5-30 days**	**Court notifications**	**Punishment by probation**	**Measures of obligatory treatment**
Unauthorized border crossing or of the border line	61	34	3	3	20	1

Table 7. Number and the types of convictions in 2011.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2011 and the author.

In addition, during the year 2012, out of 94 Imposed convictions towards convicted persons for this criminal offense, 48 or 51.06 % of them were with fines, 2 or 2.12 % were convictions by imprisonment 5-30 days, 1 or 1.06 % were conviction by imprisonment of 1-2 months and 43 or 45.74 % were alternative punishments, respectively punishment by probation. So, viewed from the tabular aspect this situation appears as follows:

Year 2012					
Criminal offense	**Number of convictions**	**Imposed convictions towards convicted persons for this criminal offense**			
		Fine punishments	**Conviction by imprisonment 5-30 days**	**Conviction by imprisonment 1-2 months**	**Punishment by probation**
Unauthorized border crossing or of the border line	94	48	2	1	43

Table 8. Number and types of convictions in 2012.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2012 and the author.

So, according to the existing data in 2013, from a total number of 62 Imposed convictions towards convicted persons for this criminal offence unauthorized border crossing or of the border line, 25 or 40.32 % of them were with fines, 1 or 1.61 % were convictions by imprisonment 2-6 months, 3 or 4.84 % were convictions by imprisonment 6-12 months, 1 or 1.61 % were convictions by imprisonment of 1-2 years, 29 or 46.77 % others, were alternative punishments – probation and 3 or 4.84 %, were sanctions – court notifications. So, viewed from the tabular aspect this situation appears as follows:

Year 2013							
Criminal offense	**Number of convictions**	**Imposed convictions towards convicted persons for this criminal offense**					
		Fine punishments	**Conviction by imprisonment 2-6 months**	**Conviction by imprisonment 6-12 months**	**Conviction by imprisonment 1-2 years**	**Punishment by probation**	**Court notifications**
Unauthorized border crossing or of the border line	62	25	1	3	1	29	3

Table 9. Number and the types of convictions in 2013.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2013 and the author.

In 2014, from the total number of 102 Imposed convictions towards convicted persons for this criminal offense, 61 or 59.80 % of them were with fines, 1 or 0.98 % out of those, convictions by imprisonment of 1-2 months, 4 or 3.92 % were convictions by imprisonment 2-6 months, 3 or 3.92 % were convictions by imprisonment 6-12 months, 32 or 31.37 % others, were alternative punishments – probation and 1 or 0.98 % were sanctions – court notifications. So, viewed from the tabular aspect this situation appears as follows:

Year 2014							
Criminal offense	Number of convictions	Imposed convictions towards convicted persons for this criminal offense					
		Fine punishments	Conviction by imprisonment 1-2 months	Conviction by imprisonment 2-6 months	Conviction by imprisonment 6-12 months	Punishment by probation	Court notifications
Unauthorized border crossing or of the border line	102	61	1	4	3	32	1

Table 10. Number and the types of convictions in 2014.
Source: Kosovo Statistic Agency, Statistics of jurisprudence for adult persons of 2014 and the author.

10. A practical decision by which the criminal offense of unauthorized border crossing or of the border line was judged

P.no.____/_____

IN THE NAME OF THE PEOPLE

Municipal Court in Prizren, with the judge T. K., with the participation of A. S. practitioner of this court, in the criminal case against the defendant E. G. from the village. N. - K. R. e Sh. because of the criminal offense Unauthorized border crossing or of the border line, foreseen in the article 114, par.1 of CCK, according to the proposal indictment of the municipal Prosecutor of Prizren PP.no._____/_____ of the date __/__/____, after conducting the main public session, in the presence of the Municipal Prosecutor of Prizren, S. S., the defendants and their defense counsel, lawyer V. O. from Prizren date __/__/____ publicly, imposed this:

V E R D I C T

The defendant:

E. G. from the father R. and mother R. born M. who was born on __/__/____ in the village. N. - K. R. e Sh. where he has still been living, has finished primary school, is a driver, married and the father of one child, Albanian, citizen of the R. of A.

IS GUILTY

Because on __/__/____ at about__:__ o'clock in the vicinity of the state border Kosovo - Albania, on the exit of the border point in Vërmica, he was found without any travel documents and he was stopped by the police patrol whereby it was verified that the same had crossed the border outside the authorized checkpoint.

Therefore, he has committed the criminal offence - Unauthorized border crossing or of the border line that is punishable by article 114, par. 1 of CCK.

The Court in terms of the article 3, 5, 6, 34, 42, 43, 64 and article 114, par.1 of CCK, imposes to the defendant the following:

PUNISHMENT BY PROBATION

I confirm the punishment by imprisonment of 3 (three) months, the punishment that is not going to be executed within 1 (one year) from the day of entry into force of this verdict, if the defendant does not commit a new criminal act.

By the article 102, par. 4 of CCK, the procedural expenses are burden of the budget means of this Court, since the defendant is of a poor economic situation.

R e a s o n i n g

The municipal Prosecutor in Prizren, has presented the indictment proposal to this Court PP.no.__/____ on the date__/__/____ against the defendant E. G. from the village. N. - K. R. e Sh. because of the criminal offense: Unauthorized border crossing or of the border line, from article 114 par. 1 of CCK.

The defendant E. G., during the main hearing, stated that he pleads guilty for the criminal offense which is burdening him, according to the indictment proposal of the Municipal Prosecutor.

The court has verified such a factual state from the guilty plea of the defendant, who in the main hearing, voluntarily had accepted the guilt and because of this reason, the court has not administered the proof. According to the official duty, the Court, in compliance to article 154 of CCPK, did not find any unacceptable proof, also, the Court has verified in whole that the defendant had understood the nature and the consequences of pleading guilty for the criminal offence which is set on his burden. The acceptance of guilt was voluntarily done and without conditions and is backed up in facts and material evidence which have been presented in indictment proposal, for which the defendant was notified with all the material evidence. The Court has come to a conclusion that the guilty plea by the defendant, was done according to article 315 of CCPK and the facts that the indictment proposal contains, all elements of the criminal offense are formed in the actions of the defendant, Unauthorized border crossing or of the border line, that are foreseen in article 114, par. 1 of CCK and for this reason, the

Court has proclaimed the defendant guilty and has imposed the punishment of probation, previously by verifying his criminal law responsibility.

By imposing the verdict of the punishment towards the defendant, the Court has validated all circumstances, by the provisions of the article 64 of CCK, which affect in determining the type and the severity of the punishment, while not finding any aggravating circumstances. The admission of the guilt by the defendant was taken as a mitigation circumstance, then the correct behavior after the perpetration of the criminal offense, his family circumstances – he is the head of the family, which means he is the holder of the family, his deep regret, he has not been convicted so far, which means that he has not come face to face with the positive rules, therefore the court has imposed the punishment of probation because it considers that by threat of punishment the purpose of the punishment will be achieved, therefore it imposes the punishment with imprisonment of 3 (three) months, the punishment which is not going to be executed if within 1 (one) year, he does not commit a new criminal offence, while thinking that the imposed punishment corresponds to the degree of his responsibility. With this punishment the purpose of punishment will be achieved that he will in the future be more careful and refrain from such actions.

The decision on expenses and the court's lump sum payment, the Court has based on the understanding of the article 102 par. 4 of CCK.

MUNICIPAL COURT IN PRIZREN
P.no.___/_____ of the date __/__/____

Minutes taker **Judge**
A. S. **T. K.**

LEGAL INSTRUCTIONS: Since the parties in the proceedings, after the verdict, have renounced the right to appeal, the same on 23/08/2012 is final and fully in force.

11. Conclusion

1. The unauthorized border crossing or of the border line presents an illegal act which infringes and violates the integrity of borders or territorial boundaries of a particular state.

2. We estimate that regardless of the determination of whether this is a criminal offense, a violation or another illegal act, this act infringes and violates the important principles and values of the country and it represents a rather dangerous act, taking into account that with this illegal act, there is a possibility of causing other dangerous and illegal acts as well.

3. Generally, like every other form of a criminal offense, even the criminal offense of unauthorized border crossing or of the border line has its specific characteristics that give a character and a special nature to it, by making it

differ and distinguish from other criminal offenses, determined by the Criminal Code.

4. By the Criminal Code of the Republic of Kosovo, respectively the legislator, rightly has incriminated the unauthorized border crossing or of the border line as a criminal offense. So this illegal act, rightly, has been determined as a criminal offense with this Criminal Code. With CCK, in a very specific and detailed way, the unauthorized border crossing or of the border line is determined, by defining the elementary aspects in relation to this form of criminal offense.

5. It is also worth emphasizing that our Criminal Code, with the latest amendments rightly incriminates and punishes the tendency for committing this act and equals it to a perpetration of a criminal offense. The Criminal Code of the Republic of Macedonia and Serbia has acted in the same manner, compared to the Criminal Code of the Republic of Albania that does not do such a thing.

6. By the Criminal Code of the Republic of Albania, Macedonia and Serbia with a special emphasize to the one of Hungary, some acts and additional forms have been determined by which this illegal act can be realized.

7. As far as the punishment policy for this criminal offenseis concerned, we consider that CCK, which applies a very severe punishment policy for the perpetrators of this criminal offense and we estimate that it was rightly acted as such, because with the committing of this criminal offense the constitutional order of the Republic of Kosovo is endangered as well as its residents. We also need to emphasize that through this illegal act there is a possibility that such a person commits other illegal and dangerous acts such as: criminal offense of stealing from the forest, merchandise smuggling, import, export, supply, transportation, production, exchange, mediation or unauthorized sale of weapons or explosive materials etc.

8. Regarding the forms and manners of perpetration of this criminal offense that are foreseen in the Criminal Code of the Republic of Kosovo, we consider that some more forms should be foreseen such as: the aid to the perpetrator for the perpetration of the act, shelter, facilitating the perpetration of this criminal offense.

9. If we have a look at the number of the convicted for the criminal offence, of unauthorized border crossing or of the border line in the Republic of Kosovo, during the period of 2010-2014, we estimate that this is a relatively big number in relation to the small number of the population of our country.

10. During all this period, in the Republic of Kosovo we can notice a movement and irregular tendency in relation to this criminal offense, where the total number of the convicted is 404 persons, respectively in 2010 there are 85

convicted persons, in 2011 there are 61 convicted persons, in 2012 there are 94 convicted persons, in 2013 there are 62 convicted persons and in 2014 there are 102 convicted persons. From this general number in 2011 and 2013 the number of the convicted is smaller in comparison to the other years. Whereas, the number of the convicted for this criminal offense in 2014 is concerning, because that is higher compared to the other years.

11. If we look at the number of the convicted by gender, during the period of 2010-2014 in the Republic of Kosovo, there were 375 male persons or 92.82%, while 29 other convicted persons were of the female gender or 7.18%.

12. According to the nationality of the convicted persons, out of the total number, 263 persons were Albanians or 65.09%, 41 persons were of Serbian nationality or 10.15%, 6 were of Bosnian nationality or 1.48% and 94 were foreigners or 23.27%. There were no convicted persons from the Turkish and RAE nationalities.

13. Regarding the punishments imposed by the competent courts for the perpetrators of the criminal offense, Unauthorized border crossing or of the border line, out of the total number of 404, 364 of them or over 90 % were punishments with fines and the alternative punishment which is probation. Then, to 32 of them or 7.92 %, competent courts have imposed punishments by imprisonment, of short term duration from 5 days up to 2 years. At the end, to 7 of them or 1.73 % were imposed notices by the competent court and only in 1 case or 0.25 % case it was noticed that the court had to impose the measure of obligatory psychiatric treatment.

14. Even by the statistical data, as well as by the imposed convictions from the judicial practice of the competent Courts, it is noticed that the most common type of punishment is the alternative one, respectively conditional punishment and punishments with fines, as adequate punishments towards perpetrators of this criminal offense.

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II. Acronyms

CCK	Criminal Code of Kosovo
CCRA	Criminal Code of the Republic of Albania
CCRM	Criminal Code of the Republic of Macedonia
CCRS	Criminal Code of the Republic of Serbia
CCRH	Criminal Code of the Republic of Hungary
KAS	Kosovo Agency of Statistics
RAE	Roma, Ashkali and Egyptian