

The return of illegal migrants as a strategic task for the implementation of the state policy of Ukraine in the field of integrated border management

Andrii Mota

Doctor of Law, Professor, Head of the Department of Administrative Activities
Faculty of Law Enforcement, National Academy of the State Border Service of Ukraine
named after Bohdan Khmelnytskyi, e-mail: atom_75@ukr.net, Khmelnytskyi, Ukraine

Abstract. *Illegal migration remains a widespread problem. Among a wide range of various ways of solving it, the final migration result can guarantee the return procedure. Their relevance is related to the introduction of an effective border policy as a tool for creating a territory of freedom, security and justice with respect for basic human rights.*

The meta-study of the return of illegal migrants took place in its established purpose and the current status of legal regulation in the general system of integrated border management.

The return of illegal migrants is characterized taking into account methodological approaches about the obligation of coercive measures, the relationship with the protection of the state border and the humanization of its implementation. Systemic-structural and functional methods contributed to the study of the status of subjects authorized to ensure forced return and reproduction, regulatory and legal provision of cooperation in the implementation of coercive measures against foreigners and stateless persons. The comparative legal method was used to characterize the social conditioning of the application of return to combat illegal migration in different socio-political conditions in comparison with the foreign experience of border management.

Conducting the forced return and removal of foreigners (stateless persons) of the object also characterizes the administrative and jurisdictional content of the procedural activity. Making a decision on the application of return has been transferred to the purely administrative sphere of competence of individual bodies, in particular, state border protection bodies. Judicial control is carried out for the detention of illegal migrants with the provision of enforcement of diversion.

The evaluation of the effectiveness of the return policy of illegal migrants is based on the indicators of the fulfillment of the goals of the integrated border management strategy. It is proposed to highlight the legal, qualitative and psychological components of such efficiency.

Keywords: *administrative-jurisdictional activity, illegal migrant, integration of border management, judicial control, reproduction, return.*

Introduction

Movement in space has become an outstanding feature of human existence. Migrating from place to place in search of means of subsistence or avoiding a powerful enemy, people have spread over most of the earth's surface since ancient times. Human migrations within recorded history have



transformed the entire aspect of lands and continents and the racial, ethnic, and linguistic composition of their populations (Britannica).

Current estimates of IOM are that there are 281 million international migrants globally (or 3.6 % of the world's population). While the vast majority of people in the world continue to live in the country in which they were born, more people are migrating to other countries, especially those within their region. Global displacement is at a record high, with the number of internally displaced at around 71.2 million and the number of refugees and asylum seekers at 40.7 million (World Migration Report 2024).

The diversity of ideas about migration leads to its classification and typology. In the context of ensuring border security, it is important to establish among possible migration processes those that should be considered illegal. The complexity of the situation lies in the fact that illegal migration has not been overcome, but is taking on new manifestations. The geopolitical outlook with potential implications for European border management is deteriorating, and developments in the Middle East have added to an already long list of concerns. The war in Ukraine and the prospect of renewed hybrid threats on the Belarusian border continue unabated, in fact the latter has been complemented by a rising threat on the Russian-Finnish border (Annual Risk Analysis 2024/2025).

A typology based on a legal principle is very important for migration. Official and legal status means access to the labor market in the host country, the right to social and medical assistance, as well as certain civil rights. In contrast, irregular migrants may face detention, removal, deportation, prosecution, and an increased risk of rights violations. Legal regulations can vary from country to country, with differences in employment rules, citizenship and naturalization policies, as well as refugee status determination or family reunification. The migration policy of one or another state may differ depending on objective circumstances, as well as subjective perceptions. Ultimately, this affects the determination of the illegality of the relevant migration acts.

Among a wide range of various methods of influence aimed at combating illegal migration, a special purpose belongs to measures of administrative coercion. They turned out to be a universal means of response to this problem, which became widespread. The procedural procedure for the application and implementation of forced restoration by the state border protection authorities of the state violated by illegal migration is poorly studied due to its ambiguous legal nature.

The chosen European integration course encouraged Ukraine to implement the European practice of border management. An innovative way to ensure border security in Europe has become integrated border management, part of which is recognized as the return of third-country

nationals in respect of whom there are return decisions issued by a member state of the European Union.

The purpose of the article is to study the return of illegal migrants, according to its purpose and the current state of legal regulation in the general system of integrated border management. The main tasks of the work are subordinated to this goal: clarifying the destination of the return of illegal migrants as a component of integrated border management; analysis of regulatory and legal support of return procedures in Ukraine and the status of subjects authorized to carry them out; determination of indicators of the effectiveness of the return policy of illegal migrants.

The methodological basis of the conducted research was the system-structural and functional methods, on the basis of which the content of the regulatory and legal support for the return of illegal migrants as a strategic task in the field of integrated border management was clarified. The comparative legal method was used to characterize European approaches to the use of return in countering illegal migration.

The article focuses on the study of the current state of legal regulation of the return of illegal migrants and related changes to the legislation on the legal status of foreigners and integrated border management that occurred in the period starting from 2023.

The main part

In accordance with the Treaty of Lisbon, the gradual introduction of integrated border management (hereinafter – IBM) is envisaged as a tool for creating an area of freedom, security and justice with respect for fundamental rights, as well as various legal systems and traditions of the EU member states (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007). At the current stage of EU development, integrated border management has been defined in accordance with secondary legislation - Regulation (EU) No. 2016/1624 of September 14, 2016, which reorganized the European Border and Coast Guard (hereinafter – FRONTEX). According to this document, IBM is an extremely multifaceted concept, as evidenced by the fact that it covers 12 components according to art. 4 of the specified regulation.

The development of border policy in Ukraine is associated with the introduction of European mechanisms of integrated border management (Nikiforenko, 2020). In accordance with the current legal regulations, integrated border management is a coordinated activity of the competent state bodies of Ukraine and military formations, aimed at creating and maintaining a balance between ensuring the appropriate level of border security and maintaining the openness of the state border of Ukraine for legal

cross-border cooperation, as well as for travelers. The strategy of integrated border management, first of all, reflects the European integration aspirations of Ukraine, as it is aimed at fulfilling national obligations for the implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (Strategy of integrated border management for the period until 2025).

The trend of the last period in the national legal mechanism has become regulatory regulation of the basic principles of integrated border management as part of security legislation. The strategy of integrated border management is included in the list of long-term planning documents in the spheres of national security and defense. An important rule has been formulated, according to which the Strategy of Integrated Management of the State Border of Ukraine is developed on behalf of the Cabinet of Ministers of Ukraine by the central executive body implementing the state policy in the field of protection of the state border of Ukraine, after the approval of the National Security Strategy of Ukraine (Law of Ukraine of July 16, 2024 No. 3858-IX).

The defined approach generally corresponds to global ideas about border management and its purpose in ensuring national security in the face of migration challenges. At the end of the 20th century M. Weiner emphasized the fact that with the end of the Cold War, the notion of "security" has taken on an entirely new dimension. Both states and regimes can be made insecure by factors other than the threat of armed attack, and among these is clearly an unwanted population influx. The hopes of millions of migrants and refugees for a better life and freedom from violence and repression are matched by the fears of many governments and their citizens that a massive influx of newcomers will impose strains on the economy, upset a precarious ethnic balance, weaken the national identity, and threaten political upheaval (Weiner, 1996).

The desire to combine international migration and security (securitization migration) arises when large groups of ethnically, racially, and culturally different immigrants (from Asia and Africa) appear in developed countries (in particular, Europe). Cultural differences are indicated and not only national identity in general, but ethno-cultural identities of both the indigenous population and immigrant groups are called into question (Rovenchak & Yavorskyi, 2013).

As a result, F. B. Adamson points to two areas in which migration influences state capacity and autonomy are border control and national identity. The ability of states to maintain control over their borders and to formulate a coherent national identity are arguably necessary preconditions for the maintenance of state security in other areas (Adamson, 2006).

Return of third-country nationals for whom there are return decisions issued by an EU member state has become a separate component of European integrated border management (Regulation (EU) No 2016/1624). In this way, the European return policy demonstrates the inextricable relationship between the protection of the state border and the implementation of law enforcement functions in the migration sphere. Return decisions remain the sole responsibility of EU member states. It means an administrative or judicial decision or act that recognizes or declares the stay of a third-country national to be illegal and imposes or establishes an obligation to return. At the same time, FRONTEX is involved in return operations, which should provide Member States with technical and operational assistance and ensure the coordination or organization of return operations, including by leasing aircraft for such operations and organizing return by regular flights or other modes of transport (Regulation (EU) No 2016/1624).

The understanding of 'return' is related to a separate regulation, in accordance with Directive No. 2008/115/EC of the European Parliament and the Council on general rules and procedures to be applied in member states for the return of illegally staying third-country nationals. According to its provisions, 'return' means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted (Directive 2008/115/EC).

This document also distinguishes similar criminal procedural measures in the case of a criminal sanction that involves or results in return, in accordance with national law, or an extradition procedure. In fact, this Directive refers to the general standards and procedures to be applied in the member states for the return of citizens of third countries who are illegally present in their territories to the sphere of administrative and legal regulation (Directive 2008/115/EC).

Administrative coercion, aimed at directly combating illegal migration, is under the influence of one of the key tasks characteristic of the implementation of migration policy - eliminating the possibility of an unwanted person staying on the territory of the state. Achieving such a result is a criterion for selecting, firstly, measures of forced removal from the country (preventing an illegal migrant (potential illegal migrant) from the

country) and, secondly, measures calculated for a different result (punishment, termination, etc.).

Each of the types of measures of administrative coercion has its purpose, specifics, and at the same time general features that come from the state's authoritative nature of management functions. The following methodological principles should be taken into account when determining the administrative coercive measures used to combat illegal migration.

The method of influence is considered coercive if it is mandatory. It cannot be considered coercive measures when the persons to whom they are allegedly applied can evade them without any consequences. In this regard, A. T. Komzyuk, in defining the main properties of administrative coercion, emphasizes precisely the coercive nature of measures that are applied regardless of the will and desire of legally bound subjects (Komzuk, 2002).

Based on considerations of protection of the rights and freedoms of a person and a citizen, the legality of the application of a coercive measure is conditioned not only by certain (usually administrative-legal) regulation, but also by public interest. Characterizing the Austro-German concept of "free discretion" in the activity of administrative bodies, G. Y. Tkach points out that "where there is no legal restriction, the administration has freedom of action as a person", but its body "...must act as its official duty dictates" connection, in accordance with the public interest" (Averyanov et al., 2002). At the same time, the activities of the State Border Service of Ukraine are characterized based on "the need to ensure the protection and protection of the state border of Ukraine and compliance with the general legal principle of justice" (Snigeriov & Tsarenko, 2017), and the use of administrative coercion depends "on the legal status of the state border in order to protect the established state border of law and order" (Polovnikov, 2007).

The administrative nature of coercive measures in the field of migration is determined by industry regulations and not by the prevailing extrajudicial procedure for their application. Since forced return and forced deportation are interrelated according to the grounds for applying these measures, the subject composition of bodies authorized to initiate deportation is the same as that established for making decisions on forced return. Since 2023, Ukraine has simplified the procedure for the forced deportation of illegal migrants who are detained for illegally crossing the state border or other gross violations of Ukrainian legislation, by granting the right to make such decisions to the relevant state non-judicial bodies (the State Migration Service, the Security Service of Ukraine, state border protection bodies). Their powers in administrative proceedings regarding the application of forced return and forced deportation of foreigners and stateless persons are jurisdictional in their procedural nature and

interconnected in accordance with legal regulation (Law of Ukraine of September 22, 2011 No 3773-VI).

Local general courts as administrative courts are authorized to exercise judicial control and make decisions on the detention of foreigners (stateless persons) for the purpose of identification and/or ensuring forced deportation outside the territory of Ukraine, as well as alternative measures to detention (The Code of Administrative Proceedings of Ukraine of 2005). It is in this way that the provisions of Art. 29 of the Constitution of Ukraine, according to which no one can be arrested or detained other than by reasoned court decision and only on the grounds and in the manner established by law (Constitution of Ukraine of 1996). The administrative court preventively protects the rights and interests of the defendant (i.e., a foreigner or stateless person) if the claims are unfounded, although, at first glance, the application of coercive measures to natural persons does not correspond to the tasks of administrative proceedings (Smokovych, 2012).

The return of illegal migrants is considered not only as a coercive measure or a combination of them. There is talk of state, and in the context of Directive No. 2008/115/EU, even international return policy. It is in this sense that return is part of integrated border management and is oriented towards achieving a political result - maintaining a balance between the effectiveness of coercive measures and the protection of human rights (Judgment of the court (Third Chamber) 5 June 2014; The Recast of the EU Returns Directive: Human Rights Lost Again, 2019).

At the current stage, the national adaptation of the return policy of illegal migrants involves achieving the goals of the Integrated Border Management Strategy. It is in this relationship that its effectiveness should be evaluated. The legal component (criterion) of such effectiveness should be considered to be compliance with legal regulations and the achievement of the public interest - the migration legal order. A quantitative component (criterion) of effectiveness is an established mechanism of interdepartmental control of the migration situation, which ensures timely detection of illegal migrants, their identification and return to the countries of origin (arrival) and an increase in the share of illegal migrants who voluntarily left Ukraine in relation to those who were forcibly returned or expelled. The psychological component (criterion) of effectiveness consists in achieving the possibility of a clear understanding by potential migrants that the only way to take advantage of the benefits of immigration is to comply with the norms of migration legislation and, ultimately, in the opposite case, the return procedure is inevitable.

Conclusions and suggestions

The assessment of the danger of illegal migration creates the basis for the development of levers of influence characteristic of the state's security policy. Since migration is related to the movement of people from one country to another, the intensification of its illegal manifestations is recognized as one of the main threats in the field of state border protection. The implementation of key program tasks related to the protection of the border from all types of illegal activities that threaten national security, stability and development of the state takes place through the introduction of integrated border management.

Strategic planning and conceptual principles of border management in Ukraine are formed taking into account European approaches to the organization of management in the border area, complex and dynamic geopolitical environment. Taking this into account, the strategic goals and tasks for the implementation of state policy in the field of integrated border management are designed to improve the procedures for the return of illegal migrants. The trend of the last period in the national legal mechanism was the regulation of the basic principles of integrated border management as part of security legislation, which also reflects the interrelationship of security with the problem of migration and border protection.

The main measures for the return of foreigners and stateless persons who violated the legislation of Ukraine on border issues received administrative and legal regulation. The procedure for the forced deportation of illegal migrants has been simplified by granting the right to make such decisions to non-judicial bodies. Administrative courts, based on the claims of such state bodies, are authorized to make decisions on the detention of foreigners and stateless persons for the purpose of identification and/or ensuring forced deportation outside the territory of Ukraine, as well as alternative measures to detention.

The return of illegal migrants is considered in the context of state, or even interstate, return policies focused on maintaining a balance between the effectiveness of coercive measures and the protection of human rights. Evaluation of the effectiveness of the return policy is carried out on the basis of legal, quantitative and psychological components (criteria). Compliance legal regulation (legal criterion) precedes the achievement of an increase in the share of illegal migrants who voluntarily left Ukraine (quantitative criterion) and, ultimately, the development of a clear understanding by potential illegal migrants that the only way to take advantage of the benefits of immigration is to comply with the norms of migration legislation (psychological criterion). The proposed legal and psychological criteria complement the quantitative one, which is considered as an indicator of the

implementation of the strategic goal of implementing state policy in the field of integrated border management. The parameters of measurability of each of the proposed criteria as indicators of an effective policy for the return of illegal migrants are the subject of promising scientific research.

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