

POLITICAL AND LEGAL ASPECTS OF REGULATING TRANSNATIONAL LABOUR MIGRATION

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ABSTRACT

The article is devoted to the study of political and legal aspects of the regulation of transnational labour migration. The study is based on the analysis of a significant amount of literature. The essence of migration, its processes under the influence of various factors, are considered, to distinguish various classification options for this phenomenon, the varieties of international migration are highlighted, and the factors of labour migration are analyzed. The authors highlighted the trends in the field of migration processes, the general trends of external migration in Ukraine and proposed legislative improvements to the migration legislation of Ukraine in the direction of the European context.

Keywords: emigration, immigration, legislative improvements transnational labour migration

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1. INTRODUCTION

Throughout their evolutionary development, migratory movements have been one of the most effective ways for humans to achieve better living conditions. However, at the present stage, against the backdrop of globalization, improving the transport and communication environment, the number of people seeking and able to move to other states has increased significantly.

The increasing mobility of the population in the era of globalization has significantly increased the migration factor in politics, the global economy and international relations [13-14; 28]. The arising varieties of international migration, based on the interaction between countries, significantly affect the socio-cultural integrity of both host and directing societies.

Such intensification of international migration processes, on the one hand, has opened up new opportunities and prospects, and on the other, has posed new problems for states around the world.

The presence in the host and sending societies of a system of cross-border social relations enables migrants to improve education, increase their social status through higher-paid employment and the realization of human potential. Cross-border relations are a resource for the social adaptation of labour migrants and are an instrument for improving the quality of life of societies while reducing social tension.

When it comes to modern labour migrants, the most relevant are issues related to the political and legal regulation of their work.

2. THEORETICAL STUDY OF THE REGULATION OF TRANSNATIONAL LABOUR MIGRATION

2.1. Literature Review of the on the Regulation of Transnational Labour Migration

If in Europe comparative studies of migration processes and integration of migrants into the host society have been conducted for more than 50 years, Ukrainian political science is at the very beginning of this path. Among domestic and foreign researchers today, we can distinguish the following authors:

- the specifics and factors of migration are reflected in the works of M. Piore [22], E. Lee [16], O. Stark [26];
- the concepts of assimilation and acculturation of migrants by M. Gordon [9], H. Gans [6], K. Oberg [19], S. Eisenstadt [4], and H. Esser [5] contributed to the development of theories of migration;
- problems and critiques of the policy of multiculturalism are considered in the works of W. Kymlicka, K. Banting [15], B. Parekh [20];
- analysis of migration from the standpoint of transnational interaction is reflected in the works of E. Giddens [7], R. Robertson [24], M. Castells [2];
- N. Glick Schiller [8], L. Guarnizo [10] and S. Sassen [25] analyzed the formation of transnational social networks of migrants and society;

- P. Patricia and S. Mahler [21], Weiner [30], A. Zolberg [32] studied international migration;
- the role of the nation-state in the epoch of transnational migration is considered in the works of S. Vertovek [29], S. Castles [3], R. Baubock [1] and A. Portes [23];
- incorporation theories describe F. Kasinitz [11], E. Morawska [18].

Among Ukrainian scientists, we can highlight the works of O. Krause [12], O. Malinovska [17], K. Szymanska [27], B. Yuskiv [31] and others.

2.2. Theoretical Aspects of Transnational Labour Migration

The term "migration" (from the Latin *migratio* – relocation, resettlement) was first used in the works of an English scientist, one of the founders of the theory of "population migration" E.G. Ravenstein in 1885 to denote a permanent or temporary change of residence.

According to this theoretical concept, migration processes are carried out under the influence of various factors following 11 migration laws, including:

- most migrations are carried out over short distances;
- migration processes are not dynamic and unfold in stages;
- long-distance migration flows are directed to large commercial or industrial centres;
- the majority of migrants are adults;
- the scale of migration increases with the development of industry,
- trade, transport, etc.

In turn, it is possible to allocate various options of classification of the given phenomenon:

- on the distance of moving: intrasettlement, intradistrict, intraregional, interregional, international;
- "time of absence": "return" "episodic migrations - changes in the location of a person, made by him for a certain period, without any temporal regularity (business trip), pendulum migrations - regular movements (daily or weekly), related as a rule, with labour activity, seasonal migrations - change of residence for a long period during the year, also related to labour activity, "irreversible";
- according to the direction of movement, the most common is the division of migration processes into the following types: "village - village", "village - city", "city - city", "city - village";
- by the composition of participants. Among the most common qualitative features of this typology are: marital status (single and married), ethnic composition, professional and social composition, gender and age structure of migrants;
- for reasons: deportation, mobilization, isolation from society, hostilities and riots, natural disasters, natural and human-made disasters, political and religious persecution, economic, social, religious, environmental, medical indications, psychological discomfort, family circumstances, personal reasons.

Also, based on the reasons for relocation, voluntary migration as a consequence of democratic decision-making, forced migration due to the threat of violence, persecution, environmental motives, and forced migration (deportation, trafficking) are distinguished.

There are the following types of international migration (Fig. 1).

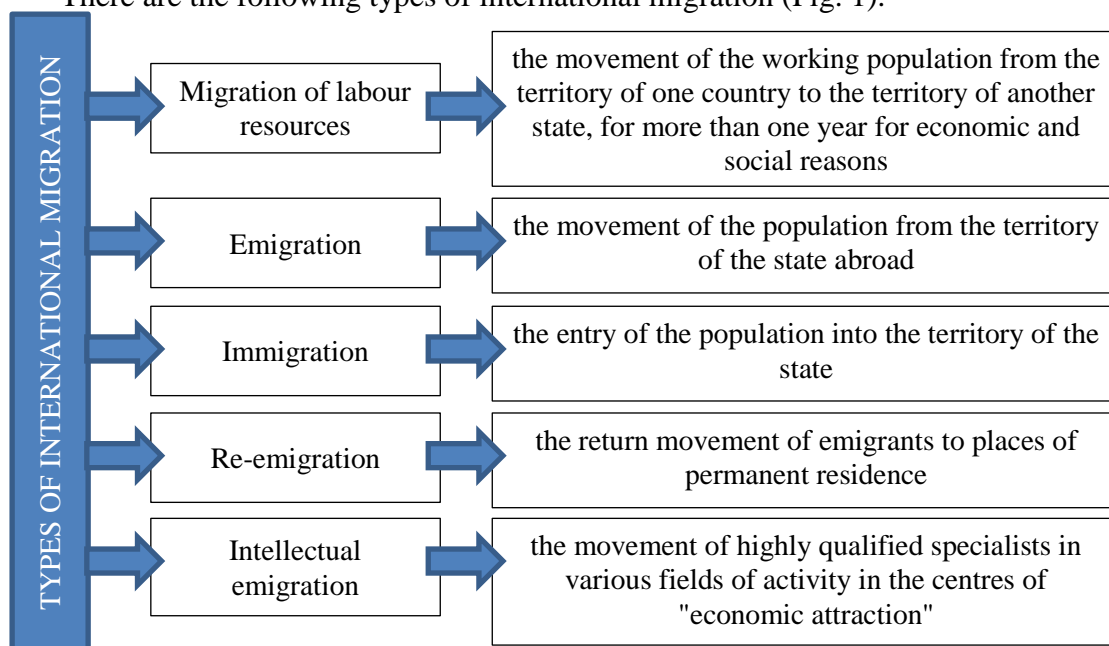


Figure 1 Types of international migration

Labour migration, in turn, is one of the varieties of international migration and is influenced by the following factors:

- *economic factors* (the differential level of economic development of regions of the world, the degree of "social expectations" of a migrant, an indicator of the social well-being of the receiving party, human capital, development and the size of the labour market);
- *demographic factors* (demographic balance, gender and age and marriage structure of society, including the share of the population of potential migrants of working age);
- *social factors* (the composition of social ties and relations of migrants, integration into network relations, social status of migrants, the peculiarity of the social structure of the host society, interaction with organizations and public institutions);
- *socio-cultural factors* (presence and ability to maintain and maintain identity, social solidarity, indicators of mutual tolerance and favourable conditions between members of the host society and migrants, tolerance);
- *political factors* (algorithm for ensuring and monitoring employment, insurance support, the availability of social guarantees and a developed legislative framework for migrants and the local population).

Arising as a form of adaptation of the population to new socio-economic conditions, labour migration has become not only an effective means of preventing poverty. Still, it has gradually turned into a real and effective way to improve living standards and welfare for a particular part of the economically active population.

At the moment, the trend towards a constant increase in labour migration is a natural global process. The rapid "ageing" of the people of Western Europe leads to a permanent increase in the need to import labour resources from donor countries of developing and undeveloped economies of the world. Historical experience suggests that similar precedents have already taken place in the recent past. In particular, in the mid-1950s of the twentieth century in Belgium (for the first time in Western Europe), due to the increasing shortage of labour resources, borders were opened for migrant workers (German: *gastarbeiter*; literally:

“guest-worker”). This precedent was the starting point for the subsequent buildup of migration flows to other states of Western Europe, which, for various reasons, is acquiring a significant scale in the modern world.

To date, the following trends can be identified in the field of migration processes:

- acceleration of migration;
- the variety of forms of migration;
- globalization of migration;
- feminization of migration. In recent decades, the flow of migrant women has increased significantly.

2.3. General Trends of External Migration in Ukraine

It is difficult to talk in detail about the migration situation in Ukraine, in particular, international mobility. Most researchers base their calculations and conclusions on official generalized data from domestic government agencies and publications of the IOM Representation in Ukraine. However, foreign statistics sometimes provide much more informative data on internal migration (Fig. 2). Therefore, in some cases, it is more appropriate to turn to external statistics services and the international Eurostat system. The analysis of relevant sources showed that domestic and foreign data often differ significantly, and in some cases, reflect controversial information. Therefore, a thorough modern assessment of international mobility, the basis of which is currently labour, is an urgent task for the Ukrainian scientific community.

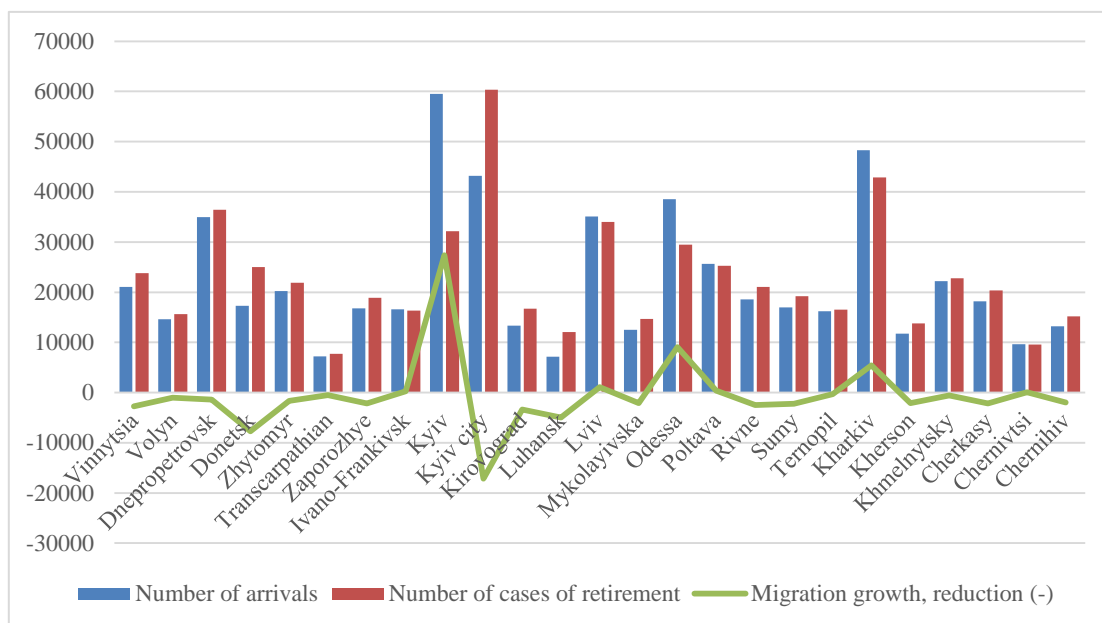


Figure 2 Migration movement of the population in Ukraine in 2019 (compiled based on official statistics)

The main body that processes and publishes data on internal and external migration in Ukraine is the State Statistics Service of Ukraine. Its main tool is the current accounting of data on registration/deregistration of persons at the place of residence by processing arrival/departure certificates, which are filled in at the time of registration in the State Migration Service (since 2016 registration is carried out by executive bodies of territorial units according to the Cabinet of Ministers of Ukraine). The strengths of current accounting are its consistency, coverage of the entire country, the unity of methodology. According to the

State Statistics Service, the population of Ukraine has been steadily declining since 1992. The main factor in this process is a stable, substantial natural population decline, the average of which was minus 287 thousand people annually for the period 1992-2008, and slightly decreased to minus 184 thousand persons/year for the last 2009-2019 years. Thus, during the period of independence, Ukraine lost more than 6.3 million population due to the prevalence of deaths over births.

In 2020, a population census was carried out, which showed that 37 million 289 thousand people live in Ukraine, excluding occupied territories and citizens living abroad.

3. POLITICAL AND LEGAL ASPECTS OF REGULATING TRANSNATIONAL LABOUR MIGRATION IN UKRAINE

Regulation of the general migration policy of the European Union is not limited to legal relations of an internal systemic nature between the institutions of the European Union and the Member States. It is also characterized by the presence of an external dimension, including the segment of cooperation of the European Union with third countries, including Ukraine, which is governed by the provisions of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states with other. In the general immigration policy of the European Union, the concepts of circular migration and mobile partnership play a crucial role; they are regulated by European Union secondary law. The unification of law provides for an international legal process to create the same rules and regulations in Ukraine and the European Union that are designed to regulate labour migration, which ensure the same legal conditions for applying the law. Although Ukraine did not feel the influx of migrants, and the demographic situation indicates the need to study possible challenges and respond adequately to them. This approach is entirely consistent with the provisions of the National Security Strategy of Ukraine.

Today, labour migration can be characterized by the following features:

- attraction to migration of all countries of the world;
- the response of migration flows to changes in the global economy and the emergence of better working conditions and their pay than in the host country;
- the growth of illegal migration;
- forced labour migration;
- increasing the importance of the influx of migrants for the recipient country;
- expansion of the scope of labour migration.

National labour markets are becoming open to the flow of migrants, and labour migration itself becomes systematic for the state. However, the current legislation of Ukraine has not been finalized and does not meet the existing challenges. The most important step towards solving the problems of administrative responsibility for violation of the legislation on labour migration was the establishment of administrative responsibility for violation of the rules for attracting and using foreign labour.

One of the important principles that should be taken into account in the application of administrative responsibility for violation of the legislation on labour migration is the principle of taking into account the mother tongue in administrative proceedings with the participation of a foreign citizen. This provision is based on ensuring the right of a foreign citizen to speak and give explanations in his native language. Unfortunately, many labour migrants, being in Ukraine for some time sufficient for adaptation (several years), are not able to fully understand the Ukrainian language. However, the procedure for issuing, renewing and

revoking a permit to employ foreigners and stateless persons provides for the obligation of foreign citizens to obtain a temporary residence permit, residence permit, work permit, to confirm their knowledge of the state language, knowledge of the history of Ukraine and the fundamentals of Ukrainian legislation. Therefore, this principle is of particular importance.

For an administrative offence in the field of labour migration, a mandatory sign is the social danger of such an act, the legal expression of which is its wrongfulness. An administrative offence in the field of labour migration is a socially dangerous, unlawful, guilty action (inaction) of an individual or legal entity that infringes on social relations related to the regime of a foreign citizen or stateless person working in Ukraine, for which administrative responsibility has been established.

The Code of Administrative Offences of Ukraine (hereinafter – the Code) establishes the offences in the field of labour migration: violation by officials of enterprises, institutions and organizations regardless of ownership, including foreign business entities that operate in Ukraine, the established procedure for employment, adoption for training foreigners and stateless persons, providing them with housing, as well as other violations if they in any way contribute to foreigners and stateless persons evading departure from Ukraine after the end of their stay or sent to their illegal registration, registration of residence documents. Considering the features of the composition of these offences is advisable to note that the objective side can be expressed both in action and inaction. For example, in the activities of Ukraine by a foreign citizen or stateless person in the absence of an appropriate permit or patent or violation of the established procedure and (or) the form of communication of the territorial executive body authorized to exercise control and supervision functions in the field of migration, about the conclusion or termination (termination) of the employment contract.

4. RESULTS AND DISCUSSION

In the field of labour migration, the object of the offence is public relations arising from the exercise by a foreign citizen of his right to work in Ukraine, and connection with the restriction of the rights of foreign workers in the implementation of certain types of activities. The subject, as a foreign worker, as a general rule, is a foreign citizen who has reached 18 years of age. The employer may be legal entities, individual entrepreneurs or individuals. The subjective side of the offence in the field of labour migration includes guilt in the form of intent or negligence. For example, according to Article 204 of the Code, a foreign citizen performed work, knowing that he needed a work permit, but did not receive it or lost and did not restore it, hoping to prevent negative consequences, or, more often in practice, a foreign citizen intentionally did not receive permission to work and hid his absence from the employer, realizing the unlawful nature of his action (inaction). As sanctions for offences in the field of labour migration, an administrative fine is provided, or administrative expulsion from Ukraine.

On May 9, 2016, the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine concerning the Improvement of the Provisions of the Judicial Protection of Foreigners and Stateless Persons and Settlement of Certain Issues Related to Countering Illegal Migration” introduced significant changes to the current legislation, primarily the Administrative Procedure Code of Ukraine, that so far has not been reflected in departmental regulatory documents of the State Migration Service of Ukraine and the National Police of Ukraine. The illegal actions of foreign citizens (Article 203 of the Code) include actions or inaction of foreign citizens:

- violation by foreigners and stateless persons of the rules of stay in Ukraine that is, living without documents for the right to reside in Ukraine, according to invalid documents or documents whose validity period is over;

- employment without an appropriate permit, if the need for such a permit is provided for by the legislation of Ukraine;

Given the current legislation of the Member States of the European Union, it is advisable to supplement the Code with new compositions in the field of labour migration, which establish administrative liability with a fine (Fig. 3).

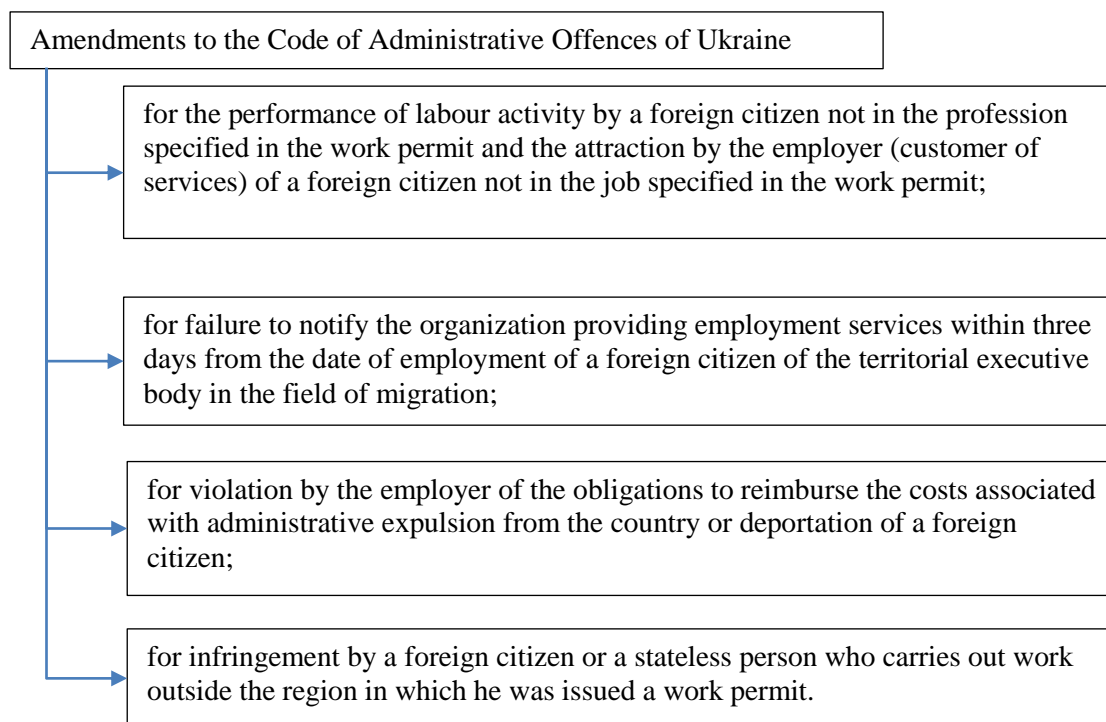


Figure 3 Proposed amendments to the Code of Administrative Offences of Ukraine in the field of labour migration

It is advisable to consider applying to employers who have violated the obligation to reimburse the costs associated with the administrative expulsion of the country or deportation of foreign nationals involved, in addition to the penalty of an administrative fine such as administrative suspension of the legal entity.

Harmonization of migration legislation provides for the need to further systematize the legislation on administrative offences in the field of labour migration legislation, in particular, the feasibility of combining all the structures enshrined today in various sections of the Special Part of the Code into an independent – Administrative offences in the field of protection of the State Border and violations of migration legislation – to provide administrative liability for violation of the legislation on labour migration (Fig. 4):

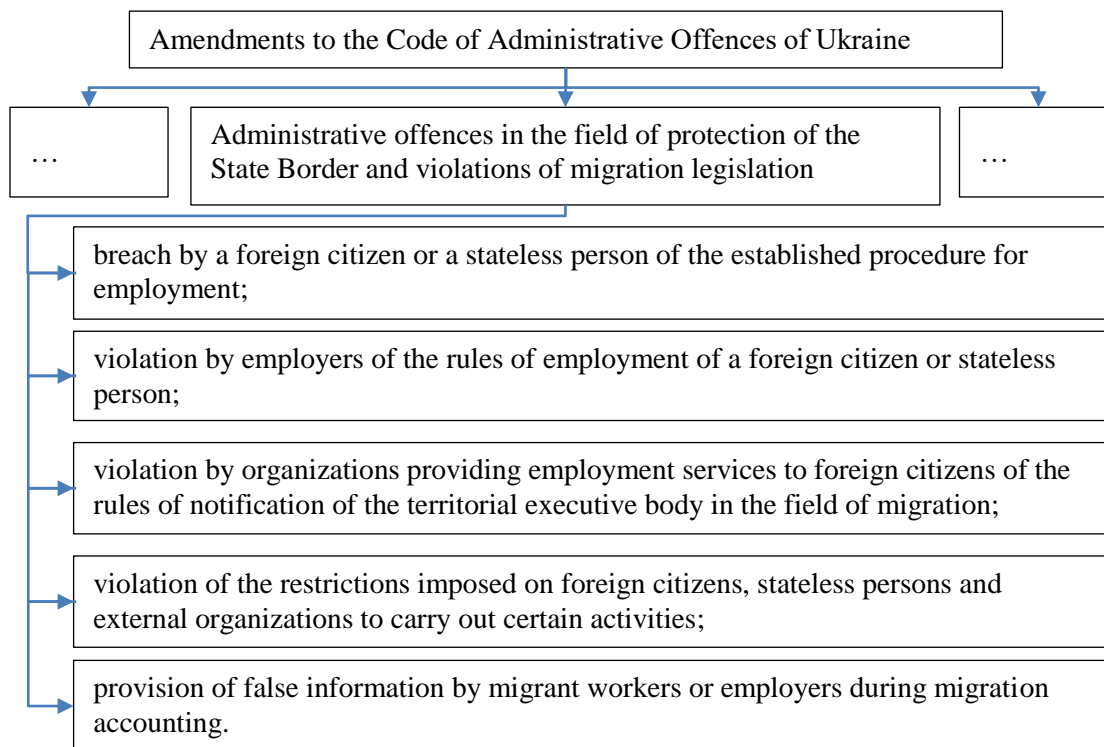


Figure 4 Proposed amendments to the Code of Administrative Offences of Ukraine in the field of labour migration

This classification is based on the object of encroachment and the subject composition. This classification allows to identify problems of legislation on administrative offences in the field of labour migration and find ways to improve it. It should be noted that the National Action Plan for the implementation of the second phase of the Action Plan on visa liberalization by the European Union for Ukraine, approved by the Cabinet of Ministers of Ukraine dated December 30, 2015, No. 1432-r, provides for amendments to existing migration legislation.

5. CONCLUSION

Summarizing the above, we can state that labour migration is the process of moving foreigners and stateless persons across the border of Ukraine within the statutory administrative regime to conclude an employment contract with the employer to work within the procedures and terms established by the state. For an administrative offence in the field of labour migration legislation, the obligatory sign is the public danger of the act, the legal expression of which is its illegality, guilt of the act (inaction) of a natural or legal person encroaching on public relations related to the regime of a foreign citizen or a stateless person of labour activity in Ukraine, for which the Code of Ukraine on Administrative Violation establishes administrative liability. Harmonization of migration legislation provides for the need to further systematize the legislation on administrative offences in the field of labour migration legislation and to supplement the current administrative legislation with new administrative torts used in the European Union.

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