

Юрій КОРНЄВ
ЕФЕКТИВНІСТЬ ДІЯЛЬНОСТІ ДЕРЖАВНИХ ОРГАНІВ ВЛАДИ
В ГАЛУЗІ ОХОРОНИ ТА ВИКОРИСТАННЯ ЛІСОВИХ РЕСУРСІВ

Анотація. Метою зазначеної статті є встановити наскільки ефективно здійснюється державне регулювання та управління у сфері лісових ресурсів з метою забезпечення їх охорони, належного захисту, раціонального використання та відтворення. Визначити повноваження державних органів влади стосовно управління лісовими ресурсами. Встановити функції державного управління лісовими ресурсами. Здійснити аналіз основних завдань державного регулювання та управління у сфері лісових відносин.

Методика включає комплексний аналіз та узагальнення наявного науково-теоретичного матеріалу та формулювання відповідних висновків та рекомендацій. Під час дослідження використовувались наступні методи наукового пізнання: термінологічний, логіко-семантичний, функціональний, системно-структурний, логіко-нормативний.

В результаті проведеного дослідження встановлено, що в нашій країні дуже розгалужена система контролю державних органів за діяльністю в лісовій галузі. Але ефективність її низька, тому що масово здійснюються незаконні вирубки лісу, а органи які мають за цим слідкувати начебто нічого не помічають, або чиновники від яких залежить вирішення того чи іншого питання вирішують їх на свою користь, а не на користь держави – тобто чиновники самі здійснюють протизаконні дії. Нажаль такі випадки є непоодинокі – в більшості своїй масові. Тому виникає необхідність змінювати, удосконалювати і підвищувати ефективність контролю як безпосередньо з боку органів державної влади так і самих цих органів. Зволікання може привести до знищення лісів, тварин, екологічної мережі, що в свою чергу впливає на екологічне довкілля громадян та їх життя і здоров'я.

Наукова новизна: в процесі дослідження встановлено, що система державного управління лісовими ресурсами є неефективною і потребує удосконалення.

Результати дослідження мають практичну значимість та можуть бути використані у правотворчій та правозастосовній діяльності під час реалізації заходів охорони, використання та відтворення лісових ресурсів.

Ключові слова: ліс; лісові ресурси; державне управління; охорона лісів; використання лісових ресурсів; раціональне використання лісів; охорона лісів.

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INTERNATIONAL LEGISLATIVE BASIS OF SOCIAL WORK
WITH MIGRANTS AND REFUGEES IN GERMANY

Abstract. The article deals with an acute issue of legal basis of social work with migrants and refugees in Germany. The basis of the migration policy of this country is international and bilateral regulations. Among them, the author highlights the laws and regulations of the Council of Europe, the UN, ratified by the German government, such as the Universal Declaration of Human Rights, the International Convention for the Protection of All Migrant Workers and Members of Their Families, the Treaty establishing Rome, the Schengen agreement, the Hague Program, the Blue Card of the European Union, etc. In the article the bilateral European treaties between the member states of the European Union are also analyzed.

Keywords: international law, social worker, migrants, refugees, European Union.

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Relevance of the study. The activities of a social worker are multifaceted and multi-vector. It provides not only special knowledge, but also wide erudition, which will contribute to the implementation of socio-pedagogical research, the organization of complex social, medical, pedagogical, psychological and legal assistance to people. After all, the main purpose of a social educator is to be a mediator between the individual and the microenvironment, various social institutions in solving client's urgent problems and meeting pressing needs.

Today, according to the World Bank, more than 130 million people are outside their homeland, according to the International Organization for Migration – 192 million, which is 3 percent of the world's population. This means that about one in 35 people in the world is a migrant. From 1965 to 1990, the number of international migrants increased by 45 million, an annual increase of 2.1 percent. Labor migration in the world has become an integral part of socio-economic and geopolitical processes and is beginning to occupy a leading position in the policy of not only the G8 and many countries, but also such structures as the UN, UNESCO, US and others. Among European countries, Germany ranks first in the number of migrants or residents with migrant roots.

Germany's migration policy is primarily based on international legal instruments. That is why it is important for our scientific research to study international law concerning the rights and opportunities of migrants and refugees. Because the existence of legal provisions on this category and the peculiarities of working with it indicate the need to train professionals competent in working with migrants.

The points substantiated in international documents regulate the basic principles of activity and training of social workers in the context of work with migrants and refugees. They emphasize that regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, property or other status, everyone has the right to equal rights guaranteed by international instruments. The European Social Charter states that "migrant workers who are nationals of either Party and members of their families have the right to protection and assistance in the territory of the State of any other Party", as well as to the use of medical, social services and inclusion in the social security system [1].

Recent publications review. The main task of the state to provide quality social services is to create a valid legal basis for the work of social workers. Some aspects of the legislative provision of social work have been the subject of study by modern researchers. Among Ukrainian scientists, in our opinion, it is necessary to highlight T. Semigina, N. Sukhytska and A. Yaroshenko. They pay a lot of attention to the legal regulation of social policy, the main characteristics of the mechanism of human rights and international legal regulation of relations in the field of social policy.

Among German scholars, we highlight Professor Annegret Lorenz, who considers German civil and family law as the basis of social work with all categories of clients, including migrants and refugees. In addition, in the constellation of modern scholars who deal with the problem of legislative support of social work in Germany, we note Barbara Schermaier-Stöckl and Christof Stock. They highlight the legal aspects of social work and the right of immigrants to receive various social and financial assistance. Anna Müller points out the role of belonging to a certain social group of refugees in the light of the legal normative multilevel system and others.

The article's objective is to study, analyze and systematize international and European legal documents that provide social services to migrants and refugees in Germany.

Discussion. After analyzing the researches of native and foreign scholars, we came to the conclusion that the concept of social work with migrants and refugees in Germany is based on legal documents of various levels, which can be divided into international, bilateral, national and regional. In this article, we will consider in detail the first two groups of documents.

The first group includes documents of the world community. First of all, these are legislative and regulatory acts of the Council of Europe, the United Nations, ratified by the German government. It should be noted that at the international level the main document is the Universal Declaration of Human Rights of 1948, according to which the individual has the right to leave any state (including his/her own) and return to it (Article 13, Part 2). The right to seek asylum and the opportunity to use it is also enshrined (Article 14, Part 1). The provisions of the Declaration for States Parties are only for guidance [2]. The International Covenant on Civil and Political Rights of 1966 guarantees the possibility of the individual to leave any state, including his/her own (Article 12, Part 2). It prohibits arbitrary deprivation of the right to enter the country of origin (Article 12, Part 4) [3, p. 77].

International conventions are very important too. For example, the International Labor Organization (ILO) ratified the Migration for Employment Convention (1949), Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975). The provisions of the Migration for Employment Convention state that migrants and members of their families have the right to access social security, as well as to exercise their fundamental rights, freedoms, interests and religion, on an equal footing with the citizens of the country of residence to the extent that it does not contradict the norms of the legislation of the host state.

The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, provides for the unimpeded movement of migrants for the purpose of legal employment [4]. The protection of the rights and freedoms of migrant workers is the responsibility of the International Labor Organization (ILO) [5]. In order to combat illegal migration under the ILO Convention No. 143 on the Abuse of Migration, member states are obliged to take the necessary measures to stop the "secret" migration movement and the illegal employment of migrants [6]. The main international legal instruments protecting the rights of refugees are the Convention relating to the Status of Refugees and the Protocol Relating to the Status of Refugees, which obliges member states to cooperate with the Office of the United Nations High Commissioner for Refugees [7].

In the structure of organizations that regulate migration processes at the international level, an important role is given to the activities of the International Organization for Migration (IOM). Given decision has been made in 2016 at the 71st session of the UN General Assembly on the new status of IOM and its inclusion in the UN, it was planned that the organization within its competence will contribute to the development of a global agreement on migrants. As a result, in December 2018, the international community managed to agree on the Global Compact on Safe, Orderly and Legal Migration (hereinafter referred to as the Global Compact), which, although not a legally binding agreement, will reduce illegal migrants and increase legal displacement. In our opinion, the most constructive direction is "the introduction of a new mechanism that will establish the responsibility of Member States, partners in civil society and the UN system in situations involving large-scale displacement or long-term stay of refugees" [8].

It should be noted that in parallel with the international official documents to be executed by the states that have signed and ratified them, there is a set of bilateral legal acts that regulate and shape the migration policy of each state. We have conditionally allocated them to the second group of legal documents, which are the basis of the concept of social work in Germany with migrants and refugees.

We emphasize that in the context of our study of Germany as one of the leading members of the European Union, it is appropriate to highlight the fundamental provisions of the legal framework of the integration association, which currently faces external migratory pressures and related threats and challenges.

It should be said that the general migration policy in Germany is implemented taking into account the provisions of the Treaty of Rome "On the Establishment of the European Community" of 1957 (Article 63 as amended on April 16, 2003, Article 69c) with four basic freedoms: movement of capital, goods, services and freedom of movement of persons [9]. The purpose of the document is to support favorable living conditions for citizens who legally come to the member states of the integration association.

The Schengen Agreement of 1985, which provides for the waiver of passport and customs control at the internal borders of the integration association, was the main issue in simplifying the procedure for finding migrants in the EU. The Germans signed this document together with the Dublin Convention in 1990.

The Amsterdam Treaty on the Integration of the Schengen Achievements within the European Union of 1997 (Articles 61-63) sets out the fundamental provisions in the field of immigration, visas and the procedure for examining asylum applications [10].

According to this treaty, it is recognized that the interaction of courts and law enforcement agencies of nation states is the basis for internal security. An important provision of the document is the admissibility of the state to impose an exceptional restriction on the freedom of movement of persons for a certain period in the event of a threat to national security. The consent of other members of the integration association is a prerequisite for this procedure.

In order to develop the Amsterdam Treaty on the Implementation of the Concept of the

European Area of Freedom, Security and Order at the EU Extraordinary Summit in Tampere in October 1999, the task of adopting the Schengen requirements by Central and Eastern European candidate countries was set. This helped to reform the system of registration of entry documents for foreigners as an element in the fight against illegal migration. At the same time, the members of the integration association, including Germany, did not want to completely abandon control over migration and transfer this issue to supranational structures [11, p.4].

The next normative document according to the concept of social work with migrants and refugees in Germany is the Hague Program, within the framework of which it was planned to form a common EU policy on migration by 2010. In this program, the priority is to strengthen cooperation with third countries, regulate the procedure for protection of external borders and readmission [12].

Let us clarify that readmission is the transfer from the territory of the requesting contracting country and the admission to the territory of the requested contracting state of nationals of contracting states, third-country nationals or stateless persons on the grounds and in the manner prescribed by international readmission agreements [13, p.1].

Among other normative legal acts, it is expedient to single out Directive 2009/50 / EU 2009, which is an important document for the development of uniform criteria for the admission of labor to the EU internal market. The Directive points to the need to establish a control system for legal [14].

The introduction of the Blue Card of the European Union (analogous to the US Green Card) is important for the socialization and integration of migrants in the EU, and in Germany in particular. These are temporary residence permits and work permits. The priority is not only to invite qualified personnel for employment in one of the EU countries, but also to facilitate the relocation of specialists within the integration association with the subsequent return to the country of origin.

Each member state retains the right to regulate the number of highly qualified professionals from third countries, which indicates a lack of willingness of countries to transfer this issue to a supranational association. Directive 2009/52/EU of 2009 aims to combat employers who use illegal labor by imposing penalties.

A new period in European legislation on migrants and refugees is the entry into force of the EU Treaty (as amended by the 2007 Lisbon Treaty), which brings migration policy under a «common denominator» for all EU members. The following aspects of the document deserve attention. The joint competence of Brussels and the member states includes issues of migration, social sphere, security, which gives the right to make legislative decisions at national level in accordance with the general policy of the European Union (paragraph 2, Article 2). The policy on border control, asylum and immigration is set out in a separate section (Chapter 2, Section 5, Articles 77-80). A new legal category is formulated – "values of the union" (freedom, human rights, human dignity) [15].

The agreement pays special attention to the principles of solidarity and fair distribution of responsibilities between member states, including the financial aspect, and emphasizes the need to strengthen EU cooperation with neighboring countries (transit countries) to combat unregistered displacement. It should be noted that European states, when forming the internal migration legislation, usually rely on EU policy, coordinating its provisions with other member states. According to the expert E. Paveleva, in such a situation one of the main issues is the interdependence of state sovereignty and the supranational component in the framework of membership in the integration association in conducting migration policy [16]. On the one hand, states determine the procedure for admitting citizens to their territory, on the other hand, they transfer part of their rights to a supranational structure, which forces them to act together in resolving problems.

It is recognized at EU level that the existence of the above-mentioned Global Compact – a special mechanism – will further avoid a recurrence of the migration crisis of 2015-2016 and will help increase the security of cross-border movements and manage migration.

In the context of the development by EU member states of a set of measures to combat the initial stage of the migration crisis in 2015-2016, the European Commission's 2015 Action Plan to Combat Smuggling of Migrants 2015-2020, which aims to countermeasures (strengthening the fight against human trafficking, expanding cooperation with third countries, improving the mechanism of information collection and exchange, intensifying police and judicial cooperation between EU countries, readmission of illegally arrived in the country of

result) and a comprehensive approach to addressing the root causes of migration (formation of a system of legal and safe channels of movement towards the integration association, interaction with the countries of the result) [17].

In September 2019, Germany, France, Italy, Malta and Finland presented their Joint Plan. According to the provisions of the developed plan, it is planned to facilitate the distribution of African migrants who have recently arrived by sea among the EU countries. On the route through the western Mediterranean in 2019, 24 thousand 759 people came to Europe (2018 – 58 thousand 725 people) [18].

In the context of the current consequences of the migration crisis of 2015-2016, the issue of the division of responsibilities between EU member states for third-country nationals or stateless persons subject to deportation remains relevant. This has become an acute social problem that needs to be addressed not so much in each individual European country, but above all, at the international level. That is why Germany is promoting the reform of the Dublin Regulation (Convention). The task of adjusting the document during her tenure as President of the European Commission in the summer of 2019 was formulated by W. von der Leyen [19].

In the current reality, the "weakness" of the document is seen in one of the basic elements – to establish full responsibility for the refugee who arrived, the state in which the initial application for asylum was filed and personal data are retained. The solution also requires the issue of responsibility for those migrants who left the country of first entry on their own and moved to another.

In autumn 2020, the European Commission proposed a draft Pact on Migration and Asylum, which forms the overall responsibility of the integration association for migration policy on the basis of solidarity and equal responsibility. Previously proposed tools have been improved to "screen" refugees at the EU's external borders, interact with countries of origin, combat the root causes of migration, promote legal migration, and extend the mandate of Frontex (Agency for the Management of Operational Cooperation at the EU's External Borders) [20].

The novelty is as follows. First, as the migratory pressure on the integration association increases, the member state is not always obliged to "physically" receive those in need of refugee protection, but has the right to provide technical and material assistance to the return of illegal migrants for up to 8 months. Then it assumes responsibility for their placement and maintenance on its territory. In the event of a crisis, states accept refugees within the existing quota system.

Secondly, the EU member state, which has experienced increased migratory pressure over the last five years (in proportion to its population), is entitled to claim a 10% reduction in the existing quota under forced refugee accommodation.

In the conditions of necessity of realization of the mentioned "EU Action Plan to Combat Smuggling of Migrants 2015-2020" states, where the majority of refugees are concentrated, suggest actively using readmission procedures with third countries. They point out the expediency of developing common approaches to appealing against decisions on forced expulsion. Tough measures are proposed, for example, the use of the mechanism even in the absence of refugees' identification documents, the annulment of the limitation period and the implementation of the procedure at any time [21].

According to regulatory approaches, along with the EU as a supranational structure, individual states have the right to act as parties to a readmission agreement. It is allowed to form the necessary mechanisms for its practical implementation (reimbursement of deportation costs, creation of temporary accommodation for illegal migrants, observance of fundamental rights provided by international obligations).

A significant social and economic element of migration regulation is the "New Framework Partnership with Third Countries in the Field of Migration" initiated in 2016 by the European Council. In the short term, it aims to protect and further return migrants to their homeland. In the medium term its goal is to eradicate the causes of illegal movement of citizens [22].

Mechanisms for appropriate financial incentives for partnerships in the field of EU, member states and donor budgets have been launched (Refugee Assistance Fund in Turkey, Trust Fund for Assistance to African States, Marshall Plan, etc.) [23]. The provision of funds is accompanied by the launch of a dialogue process on the conclusion of readmission agreements between the EU and the countries of origin, which does not always receive a positive response.

EU donation can be interpreted as a desire to preserve potential migrants in the resulting state, preventing them from entering the continent.

Conclusions. We emphasize that these regulations reflect only part of a wide range of international and EU legislation in the field of migration. In our opinion, such international and bilateral agreements do not fully regulate certain aspects (the procedure and deadlines for identification of foreigners and preparation of the necessary documents on the line of the recipient state). The lack of specifics in the field of transport and logistics (rental of charter aircraft, use of commercial airlines) slows down the implementation of the return of illegal migrants and makes it difficult to provide quality social assistance to this category of the population.

Thus, the EU is in the process of finding effective approaches to implementing migration policy that would help eliminate the effects of the migration crisis of 2015-2016 and in the event of such a scenario would minimize possible risks.

Intensifying the implementation of readmission decisions, protecting the EU's external borders, eradicating the root causes of migration, and building ties with the countries of result, including through financial assistance programs, remain priorities. Despite the crisis, regulated cross-border movements of people and the practice of accepting refugees within the framework of the EU's legal and policy framework have been viewed positively. Illegal migration is a serious problem, which has a negative impact on the host society and the resulting countries, contributing to the formation of new risks to national security. As the 2015-2016 crisis has shown, the disorderly movement of people needs to be tackled at all levels, from the communal within a single state to the supranational.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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МІЖНАРОДНЕ НОРМАТИВНО-ПРАВОВЕ ПІДГРУНТЯ СОЦІАЛЬНОЇ РОБОТИ З МІГРАНТАМИ ТА БІЖЕНЦЯМИ В НІМЕЧЧИНІ

Анотація. Діяльність соціального робітника має багатоплановий і різновекторний характер. Вона передбачає не тільки спеціальні знання, а й багату ерудицію, що сприятиме здійсненню соціально-педагогічних досліджень, організації комплексної соціальної, медичної, педагогічної, психологічної та правової допомоги людям. На сьогоднішній день приблизно одна особа з 35 у світі є мігрантом, що породжує багато соціальних, релігійних та економічних проблем. Соціальний робітник допомагає мігрантам та біженцям при подоланні багатьох питань, у тому числі у правовій сфері.

Німеччина являє собою одну з найбільш розвинених країн світу та пропагує активно допомагати мігрантам та біженцям. Основою міграційної політики цієї країни є міжнародні та двосторонні нормативно-правові документи. Серед них автор виділяє законодавчі та нормативно-правові акти Ради Європи, ООН, що ратифіковані урядом Німеччини, наприклад, Загальна декларація прав людини, Міжнародна конвенція про захист прав усіх трудящих-мігрантів та членів їх сімей, Римський договір «Про заснування Європейського співтовариства», Шенгенська угода, Гаагська програма, «блакитна карта Європейського союзу» тощо.

У статті наголошено, що європейські держави при формуванні внутрішньої міграційної законодавчої бази, як правило, спираються на політику ЄС, узгоджуючи її положення з іншими державами-членами. Країни-учасниці Європейського Союзу разом також намагалися подолати міграційну кризу 2015-2016 років, корегуючи при цьому міграційне законодавство. Було запущено також механізми відповідного фінансового стимулювання партнерств по лінії бюджетних коштів ЄС, країн-членів та країн-донорів. Європейською комісією запропоновано проект Пакту з міграції та надання притулку, згідно з яким формується загальна відповідальність інтеграційного об'єднання за міграційну політику на засадах солідарності та рівної відповідальності.

Ключові слова: міжнародне законодавство, соціальний робітник, мігранти, біженці, Європейський Союз.