

UDC 35.07 + 342.951

DOI: 10.31733/2078-3566-2020-5-114-118



**Svitlana RYZHKOVA**®  
Lecturer  
(Dnipropetrovsk State University  
of Internal Affairs, Dnipro, Ukraine)

### **COMBATTING ADMINISTRATIVE OFFENCES COMMITTED BY FOREIGNERS AS A COMPONENT OF ADMINISTRATIVE ACTIVITY OF STATE MIGRATION SERVICE OF UKRAINE**

**Світлана Рижкова. ПРОТИДІЯ АДМІНІСТРАТИВНИМ ПРАВОПОРУШЕННЯМ ІНОЗЕМЦІВ ЯК СКЛАДОВА АДМІНІСТРАТИВНОЇ ДІЯЛЬНОСТІ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ.** Досліджено особливості адміністративної діяльності Державної міграційної служби України у сферах міграції (імміграції та еміграції) та організації і функціонування системи підпорядкованих органів, підрозділів та установ у протидії адміністративним правопорушенням іноземців як складової адміністративної діяльності ДМС. Встановлено, що адміністративна діяльність ДМС України може бути поділена на внутрішньоорганізаційну діяльність та зовнішньоорганізаційну відповідно. Визначено, що адміністративну діяльність ДМС України можна поділити на адміністративно-наглядову, адміністративно-розпорядчу та адміністративно-юрисдикційну. Таким чином, адміністративна діяльність ДМС України може бути визначена як специфічна, врегульована переважно нормами адміністративного права, підзаконна, державно-владна, виконавчо-розпорядча діяльність, пов'язана з практичним здійсненням заходів, спрямованих на безпосередню реалізацію державної політики у сферах міграції (імміграції та еміграції) та організації і функціонування системи підпорядкованих органів, підрозділів та установ.

Запропоновано авторське визначення протидії адміністративним правопорушенням іноземців, як складової адміністративної діяльності ДМС України, яка являє собою різновид зовнішньоорганізаційної діяльності ДМС України, що полягає у врегульованій, переважно, нормами адміністративного права сукупності організаційно-правових заходів, які здійснюються ДМС України з метою запобігання, виявлення та припинення порушень міграційного законодавства з боку іноземців, притягнення винних осіб до адміністративної відповідальності, виявлення і усунення причин та умов, що сприяють їх вчиненню.

**Ключові слова:** Державна міграційна служба України, адміністративна діяльність, протидія, нелегальна міграція, іноземці, особи без громадянства.

**Relevance of the study.** Ukraine's choice of a democratic path of development has led to the establishment of ties with the high-developed states of the world and its gradual integration into European and world organizations. Accordingly, along with European integration, issues related to migration policy and migration processes in Ukraine, which take place in today's conditions and affect the effectiveness of combating phenomena that threaten Ukraine's national security, in particular, illegal migration, are becoming a cornerstone.

The pandemic of the acute respiratory disease COVID-19, caused by the coronavirus SARS-CoV-2, has affected all areas of public relations, both internationally and nationally, including a significant impact on migration processes. Therefore, in order to prevent the spread of COVID-19, government agencies have taken measures to close the borders and repatriate some foreign workers, terminate transport links between countries, and so on. On the one hand, the taken measures have reduced the number of offenses in the field of illegal migration. On the other hand, according to the head of the National Police of Ukraine Ihor Klymenko, fraudulent schemes have not disappeared. The attackers have either transferred their "activities" to Ukraine or are seeking to circumvent the current quarantine restrictions.

Only during January-August 2020 law enforcement bodies found 64 groups of illegal immigrants (compared to 123 groups in the same period in 2019) which included 282 foreigners (compared to 519 people identified for the same period in 2019). Thus, the level of illegal migration in Ukraine has fallen by half. However, it should be noted that there have been changes in the regions of the country where such groups were found. In particular, this year it

© Ryzhkova S. A., 2020

ORCID iD: <https://orcid.org/0000-0001-7549-7654>

revord@ukr.net

was only in Lviv, Zakarpattia, Chernivtsi, Volyn, Rivne, Zhytomyr, Kharkiv, Luhansk regions. Instead, in 2019, such facts were recorded in the city of Kyiv, in Kyiv, Vinnytsia, Odesa, Sumy and Kherson regions. Most foreigners came to our country (these are people who were found in groups of illegal migrants) from the following countries of origin: Afghanistan, Bangladesh, Sri Lanka, Turkey, India, Syria, Iraq, and Vietnam. In the past, the most common countries of origin for illegal migrants were Afghanistan, Pakistan, India, Bangladesh, and Vietnam. Regarding the channels of transit movement of illegal immigrants, in recent years the main channels for illegal migrants to enter Ukraine are Luhansk, Sumy and Kharkiv regions. Usually the city of Kyiv and Kyiv region, Odesa region, Zakarpattia region become places of temporary dislocation (transshipment, transfer) of illegal migrants on the way to EU countries. In addition, due to restrictive anti-epidemic measures, some foreigners released in 2020 from penitentiaries and temporary detention facilities for foreigners and stateless persons have become hostages of illegal stay and aimed at entering the EU illegally [1].

The problem of illegal migration of foreigners, who are mostly sent in transit through Ukraine to Western Europe, is quite serious. Although the number of migrants with unregulated status in Ukraine is incomparably smaller than in the EU. But war, economic problems and insufficient capacity of relevant institutions make it difficult to identify immigrants without proper status, their detention and deportation from Ukraine.

The State Migration Service of Ukraine predicts further intensification of activities of persons and organizations involved in making channels of illegal or covert migration from the territory of migration risk countries in Asia, the Middle East and Africa through Ukraine to EU countries.

It should be noted that the migration situation in Ukraine continues to be determined by two main factors: the migration crisis in the EU, which affects the formation of channels of illegal immigration in a number of regions, including in neighboring EU countries, and mass labor migration from Ukraine to other countries [2].

Despite the decrease in the number of cases of violation of migration legislation by foreigners and stateless persons, the risks of committing administrative migration offenses and administrative offenses of a general nature by foreigners staying in Ukraine remain pressing.

Thus, according to the statistical indicators of the State Migration Service under Part 1 of Art. 203 of the Code of Ukraine of Administrative Offenses (Violation by foreigners and stateless persons of the rules of stay in Ukraine and transit through the territory of Ukraine) for the 1-st half of 2020 5475 individuals were imposed to administrative liability [3].

Violators of migration legislation were fined UAH 13,940,341 under the State Migration Service regulations. Compared to the 1st half of 2019 under Part 1 of Art. 203 of the Code of Ukraine of Administrative Offenses, 12454 persons were brought to administrative liability [4]. In our opinion, the decrease in the number of violated migration legislation on the number of administrative protocols drawn up in 2020 was influenced by the worldwide spread of the incidence of COVID-19 caused by the coronavirus SARS-CoV-2. In this regard, due to the introducing of anti-epidemic restrictions, during 2020 the LCA together with the National Police in Ukraine did not conduct nationwide operational and preventive measures "Migrant", which aims to combat migration offenses of foreigners.

Prevention and combatting relevant violations, as well as elimination of their harmful impact on state-protected public relations is achieved through the functioning of law enforcement agencies, and especially – the State Migration Service of Ukraine, as a key actor in implementing state policy in the field of migration (immigration and emigration) including combating illegal migration, citizenship, registration of individuals, refugees and other categories of migrants specified by the legislation.

**Recent publications review.** The theoretical basis for writing this article were the works of domestic scholars in administrative legal sciences, in particular: O.O. Bandurka, M.M. Bohuslavskyy, I.K. Vasylenko, D.V. Holoborodko, V.K. Kolpakov, O.V. Kuzmenko, T.P. Minka, A.P. Mozol, S.O. Mosyondz, V.I. Olefir, O.I. Piskun, B.V. Proshchayev, A.A. Rubanov, N.P. Tyndyk, S.B. Chekhovych, etc.

**The article's objective** is to analyze the characteristics of administrative activity of the State Migration Service of Ukraine in combating administrative offense of foreigners as its component.

**Discussion.** The State Migration Service of Ukraine is a central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine [5], and the main task of the Ministry of Internal Affairs of

Ukraine, among other things, is the formation of state policy in migration (immigration and emigration), combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other categories of migrants specified by law [6]. Regarding the clarification of the peculiarities of the administrative activity of the State Migration Service of Ukraine and combating administrative offenses of foreigners as its component, we note that the administrative activity of the State Migration Service of Ukraine can be divided into internal and external organizational activities, respectively. Following a different approach, the administrative activity of the State Migration Service of Ukraine can be divided into administrative-supervisory, administrative-managerial and administrative-jurisdictional.

Further we'll consider in more detail each of the selected types of administrative activities of the State Migration Service of Ukraine.

Internal-organizational ones are such activities related to the functioning of the system, management within it. These include internal organizational changes in the structure of the State Migration Service of Ukraine, the issuance of orders, instructions, guidelines, etc., work schedule and so on.

This type of activity corresponds to administrative-managerial and administrative activities. Administrative activities within the LCA of Ukraine are aimed at organizing the work of structural units: departments (Department of Organizational Support; Department for Foreigners and Stateless Persons), offices (Office of International Relations, Office of Personnel), divisions (Division of International Cooperation and Organizational and Protocol support), sectors (Sector of organization and analysis of administrative proceedings; Sector "Training and Methodological Center", Sector for International Technical Assistance). It consists of defining the structure of the relevant units, its improvement, recruitment and personnel placement, planning and coordination, decision-making for a certain period or for specific activities, operations, providing practical assistance to subordinate units and employees, interaction with other services, generalization and dissemination of best practices of the central executive body, which ensures the implementation of state policy in the field of migration, control and verification of tasks, encouragement of employees, their certification, use of disciplinary practices, etc.

The effectiveness of the internal-organizational activities of the State Migration Service of Ukraine is a condition for successfully solving problems of implementing state policy in the field of migration (immigration and emigration), including combating illegal migration that occurs within the apparatus or the State Migration Service staff. The main areas of internal organizational administrative activities are: organizational and headquartering, staffing, ensuring legality and discipline and other areas of staffing; staff activities, in particular the deployment of forces and means, organizational and methodological work, control and inspection, information and analytical work, etc.

External-organizational one concerns the interaction with other actors. This includes public relations, other public administration bodies, public associations, etc. An example of this type of activity can be paragraph 10 of the above Regulation, that the State Migration Service of Ukraine, in accordance with its tasks carries out registration and issuance to citizens of Ukraine identity documents and confirm citizenship, temporarily detains and seizes such documents in cases stipulated by law [5].

The external administrative activity of the State Migration Service of Ukraine is aimed at detecting, preventing, and terminating administrative migration offenses and is in controlling the regime of staying of foreigners and stateless persons in Ukraine. In these cases, the State Migration Service of Ukraine enters into relations with officials of other institutions and organizations, as well as with citizens.

Administrative supervision is closely connected with external organizational activities. This type of administrative activity represents the managerial influence of the State Migration Service of Ukraine on public relations, the behavior of actors – participants in legal relations in the field of migration. And the more actively the State Migration Service of Ukraine uses the rights of administrative influence, the higher the effectiveness of the illegal migration combating, the less the conditions under which offenses can be committed by foreigners and stateless persons.

Thus, in order to prevent corruption offenses by employees of the State Migration Service of Ukraine during the performance of their duties, the anti-corruption program of the State Migration Service for 2020-2022 has been approved, related to the implementation of official activities by employees of the State Migration Service of Ukraine [7] the purpose of which is to take a set of effective means and to introduce mechaniState Migration Service of

integrity of civil servants related to the implementation of official activities by employees of the State Migration Service of Ukraine.

Administrative-jurisdictional activity is a relatively independent type of administrative activities which consists in the appropriately enshrined powers of the State Migration Service of Ukraine to examine and solve individual cases of conflict concerning its activities. These include the administrative consideration of complaints against illegal actions of employees of the State Migration Service of Ukraine, bringing persons who violated migration legislation to administrative liability, or the application of disciplinary measures against employees of the State Migration Service of Ukraine who have committed relevant disciplinary misconducts.

These types of work of the State Migration Service of Ukraine are separate vectors of a unified administrative activity of the State Migration Service of Ukraine.

Thus, the administrative activity of the State Migration Service of Ukraine can be defined as specific, regulated mainly by administrative law, bylaws, government, executive and administrative activities related to the practical fulfillment of measures aimed at the direct implementation of state policy in the field of migration (immigration and emigration) and the organization and functioning of the system of subordinate bodies, units and institutions.

In this regard, it should be emphasized that the basis of the content of combatting administrative offenses of foreigners as part of the administrative activities of the State Migration Service covers the use of coercive measures and proper organization of counteraction, namely: prevention and termination of administrative offenses committed by foreigners and stateless persons.

Studying the concept of combatting offenses, which undoubtedly include administrative migration offenses committed by foreigners and stateless persons, we propose to dwell on the views of individual scholars on this issue, which will allow to implement appropriate positions to formulate and justify their own definition.

In his own research, O.L. Hamaliy defines combatting offenses committed by foreigners in Ukraine as a system of various activities and complex measures carried out by a system of countermeasures aimed at preventing, eliminating, neutralizing and limiting (weakening) the factors determining the offenses of foreigners in Ukraine. This scholar notes that the term "counteraction" as fundamental in administrative law and criminology has received in the legislation of Ukraine both positive and opposite, negative contextual features. The components of the structure of combatting offenses committed by foreigners in Ukraine are only those activities that directly concerns foreigners [8].

In turn, measures to combat the offense are understood by V.Ye. Tambovtsev as the set of authoritative, restrictive in content physical or psychological actions used by officials of public authorities on the basis of administrative law that are measures of administrative coercion, including measures of administrative prevention; measures of administrative termination; administrative liability and organizational and legal measures to combat the offense [9, p. 42-43].

**Conclusions.** Summing up, we emphasize that combatting administrative offenses of foreigners can be considered in two aspects: a) as a component of administrative activity of the State Migration Service of Ukraine and b) as a task set by the State Migration Service of Ukraine in accordance with the regulation of this service.

The above analysis gives us the possibility to offer the author's definition of combatting administrative offenses of foreigners as part of the administrative activities of the State Migration Service of Ukraine. Thus, such counteraction is a kind of foreign organizational activity of the State Migration Service of Ukraine, which is regulated, mainly by the rules of administrative law, a set of organizational and legal measures taken by the State Migration Service of Ukraine to prevent, detect and terminate violations of migration legislation committed by foreigners, bring perpetrators to administrative liability, identification and elimination of the causes and conditions that affect their commitment.

#### References

1. Голова Національної поліції Ігор Клименко: «Кількість нелегальних мігрантів скоротилася вдвічі». URL : <http://migraciya.com.ua/news/NationalPoliceofUkraine/golova-naonalno-pol-gorklimenko-klkst-nelegalnikh-mgrantv-skorotilasja>.
2. Держміграційна служба виявила 3705 нелегальних мігрантів за 10 місяців року. URL : <https://www.radiosvoboda.org/a/news-nelegalni-migranty-v-ukraini/30999754.html>.
3. Показники діяльності ДМС за 1 півріччя 2020. URL : <https://dmsu.gov.ua/assets/files/statistic/year/2020.pdf>.
4. Показники діяльності ДМС за 1 півріччя 2019 р. URL : [https://dmsu.gov.ua/assets/files/statistic/year/2019\\_6.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2019_6.pdf).

5. Про затвердження Положення про Державну міграційну службу України: постанова КМУ від 20.08.2014 р. № 360. URL : <https://zakon.rada.gov.ua/laws/show/360-2014-%D0%BF#Text>.

6. Про затвердження Положення про Міністерство внутрішніх справ України : постанова КМУ від 28.10.2015 р. № 878. URL : <https://zakon.rada.gov.ua/laws/show/878-2015-%D0%BF#Text>.

7. Про затвердження Антикорупційної програми Державної міграційної служби України на 2020-2022 роки: наказ ДМС від 28.02.2020 № 61. URL : <https://dmsu.gov.ua/diyalnist/corruption/antikorupczijna-programa-dms.html>.

8. Гамалій О. Л. Адміністративно-правова протидія правопорушенням, які вчиняються іноземцями в Україні : автореф. дис. ... канд. юрид. наук : 12.00.07 / Харків. нац. ун-т внутр. справ. Харків, 2012. 20 с.

9. Тамбовцев В. Є. Адміністративно-правова протидія ухиленню від сплати податку на додану вартість та його незаконному відшкодуванню : автореф. дис. ... канд. юрид. наук : 12.00.07 / Держ. НДІ МВС України. Київ, 2010. 20 с.

1. Holova Natsional'noyi politsiyi Ihor Klymenko: «Kil'kist' nelegal'nykh mihrantiv skorotylasya vdvichy» [Head of the National Police Ihor Klymenko: "The number of illegal migrants has halved"]. URL : <http://migraciya.com.ua/news/NationalPoliceofUkraine/golova-naonalno-pol-gorklimenko-klkst-nelegalnikh-mgrantsv-skorotilasja>. [in Ukr.]

2. Derzhmihratsiyna sluzhba vyyavyla 3705 nelegal'nykh mihrantiv za 10 misyatsiv roku [The State Migration Service has identified 3,705 illegal migrants in 10 months of the year]. URL : <https://www.radiosvoboda.org/a/news-nelegalni-migranty-v-ukraini/30999754.html>. [in Ukr.]

3. Pokaznyky diyal'nosti DMS za 1 pivrichchya 2020 [SMS performance indicators for the 1st half of 2020]. URL : <https://dmsu.gov.ua/assets/files/statistic/year/2020.pdf>. [in Ukr.]

4. Pokaznyky diyal'nosti DMS za 1 pivrichchya 2019 r. [LCA performance indicators for the 1st half of 2019]. URL : [https://dmsu.gov.ua/assets/files/statistic/year/2019\\_6.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2019_6.pdf). [in Ukr.]

5. Pro zatverdzhennya Polozhennya pro Derzhavnu mihratsiynu sluzhbu Ukrayiny [On approval of the Regulations on the State Migration Service of Ukraine]: postanova KМУ від 20.08.2014 р. № 360. URL : <https://zakon.rada.gov.ua/laws/show/360-2014-%D0%BF#Text>. [in Ukr.]

6. Pro zatverdzhennya Polozhennya pro Ministerstvo vnutrishnikh sprav Ukrayiny [On approval of the Regulation on the Ministry of Internal Affairs of Ukraine]: postanova KМУ від 28.10.2015 р. № 878. URL : <https://zakon.rada.gov.ua/laws/show/878-2015-%D0%BF#Text>. [in Ukr.]

7. Pro zatverdzhennya Antykoruptsiynoyi prohramy Derzhavnoyi mihratsiynoyi sluzhby Ukrayiny na 2020-2022 roky [On approval of the Anti-Corruption Program of the State Migration Service of Ukraine for 2020-2022]: nakaz DMS від 28.02.2020 № 61. URL : <https://dmsu.gov.ua/diyalnist/corruption/antikorupczijna-programa-dms.html>. [in Ukr.]

8. Hamaliy, O. L. (2012) Administratyvno-pravova protydiya pravoporushennyam, yaki vchynyayut'sya inozemtsyamy v Ukrayini [Administrative and legal combatting offenses committed by foreigners in Ukraine] : avtoref. dys. ... kand. yuryd. nauk : 12.00.07 / Kharkiv. nats. un-t vnutr. sprav. Kharkiv, 20 s. [in Ukr.]

9. Tambovtsev, V. Ye. (2010) Administratyvno-pravova protydiya ukhlyennyyu vid splaty podatku na dodanu vartist' ta yoho nezakonnomu vidshkoduvannyyu [Administrative and legal combatting evasion of value added tax and its illegal reimbursement]: avtoref. dys. ... kand. yuryd. nauk : 12.00.07 / Derzh. NDI MVS Ukrayiny. Kyiv, 20 s. [in Ukr.]

*Submitted 09.12.2020*

#### **Abstract**

The article deals with peculiarities of administrative activity of the State Migration Service of Ukraine in the area of migration (immigration and emigration) and organization and functioning of the system of subordinate bodies, subdivisions and institutions in combatting administrative offenses committed by foreigners as a component of administrative activity of the State Migration Service.

There is the author's definition of combatting administrative offenses committed by foreigners as a component of administrative activity of the State Migration Service of Ukraine, which is a kind of external organizational activity of the State Migration Service of Ukraine.

**Keywords:** *State Migration Service of Ukraine, administrative activity, combating, illegal migration, foreigners, stateless persons.*