

УДК 351:314.15(477)

Oleksandra Palagnyuk PhD student at the Institute
of Public Administration Petro Mohyla Black Sea
State University

REFORMING STATE MIGRATION POLICY OF UKRAINE
AT THE TIMES OF WHOLE-EUROPEAN COOPERATION

Background: The article describes the current state of development of the state policy of Ukraine in the field of prevention of the illegal migration along with the main issues of the whole-European cooperation in the sphere of migration policy being revealed. Moreover, the need for further reformation and improvement of the aforementioned state program is justified.

Materials and methods: administrative, legal and institutional mechanisms for the reformation and improvement of the state migration policy in Ukraine serve as the basis for this scientific research.

Result: the main aim of the government of Ukraine in the sphere of reformation of the migration policy of the state should become the achievement of the highest level of so called "controlled openness".

Conclusion: Based on the analysis of a common EU migration policy and practical experience of managing the migration processes in individually selected countries of the European Union, one could argue that the most successful and effective application of the governmental and regulatory functions of the state in this area can be achieved only through creation of all necessary conditions, and providing legal safeguards for interested individuals in order for them to achieve legal migration.

Палагнюк О.В. Реформування державної міграційної політики України в умовах загально-європейського співробітництва

У статті висвітлено сучасний стан розвитку політики України у сфері протидії нелегальній міграції, охарактеризовано основні засади загальноєвропейського співробітництва нашої держа-ви у сфері міграційної політики та обґрунтовано необхідність подальшого реформування й вдо-сконалення вищезазначеної державної програми.

Ключові слова: нелегальна міграція, державна міграційна політика України, загальноєвропейське співробітництва у сфері спільної правової, гуманітарної та міграційної політики.

Палагнюк О.В. Реформирование государственной миграционной политики Украины в ус-ловиях общеевропейского сотрудничества

В статье рассматривается современное состояние политики Украины в сфере противодей-ствия нелегальной миграции, охарактеризованы основные принципы общеевропейского сотрудни-чества нашего государства в сфере миграционной политики и обоснована необходимость дальней-шего реформирования и совершенствования вышеупомянутой государственной программы.

Ключевые слова: нелегальная миграция, государственная миграционная политика Украины, общеевропейское сотрудничество в сфере правовой, гуманитарной и миграционной политики.

Introduction

Since gaining independence, Ukraine has begun its own way of building a democratic society and the formation of its legal system. Thus the main task was to harmonize the legislation of Ukraine in accordance with the principles and norms of international law, particularly in the area of human rights and freedoms. It should be noted that such measures have become one of the most important prerequisites for the integration of the state into the international community in general and the European Union in particular. Speaking about the place of Ukraine in the European migration processes it should be emphasized that since 1991 the country is one of the largest donors of labour

and illegal immigrants to Western Europe and the important corridor for the movement of refugees and asylum seekers from Asia to the EU. Thus, the need to improve and strengthen state control in the aforementioned area is connected with: first of all the urgency of the migration problems that Ukraine has been facing lately and secondly- optimization of migration flows as the important task of further successful social and economic development of the country. [5] All of these factors are essential for the intensification of international cooperation between Ukraine and the European Union in the field of common judicial, humanitarian and security matters and successful signing of the agreement of European co-partnership.

Analysis of recent research

The scientific basis for the study of administrative, legal and institutional mechanisms of reformation and improvement of the state migration policy in Ukraine is being contained in the works of Alexandrov, S. Alekseev, I. Veremyeyenko, B. Habrichydze, D. Kerimov, G. Kuragin, A. Leyst and others.

Statement of research objectives

Starting from 1991, when Ukraine had gained its independence, national legislation on migration and asylum had been designed according to modern requirements of democratic society and main norms of international law, but the process of creating an integrated system of governance of migration processes in Ukraine is, unfortunately, still in the state of reformation and active development. The question of its fastest completion and optimization is particularly acute due to the integration ambitions of Ukraine, as the aforementioned condition had been imposed at the very begging of the negotiations between Ukraine and the European Union in the framework of the «EU Action Plan on Justice and Home Affairs». An important step in building a democratic society and the final formation of a coherent legal system as an important precondition for Ukraine's accession to the European Union in accordance with the «Copenhagen criteria» is to improve the governance of migration issues and bring them in line with the international standards of the protection of human rights and freedoms [2].

Successful and most efficient use of empowering and regulatory functions in the migration regulation can be achieved only if the provision of legal guarantees and the creation of all necessary conditions for the legitimate movement across the state border are being created. Moreover, based on the European experience, the main aim in the reformation of Ukraine's migration policy should become the goal of achieving the highest level of «controlled openness» [6].

Statement of research objectives:

- To highlight the current state of things in the policy of Ukraine towards combating illegal migration;
- To describe the basic principles of international cooperation with the countries of the European Union in the field of common judicial, humanitarian and migration policy;
- To justify the need for further reform and improvement of the aforementioned state program.

Results

Already in the first years of independence the main directions of migration policy of Ukraine

had been formed. The most important document, which is regulating this aspect of social and legal relations is the concept of state migration policy of Ukraine, which had been approved by the President in May 30, 2011. According to the aforementioned state program migration policy of Ukraine has the following tasks and functions:

1) To ensure the application of the constitutional guarantee of free movement of citizens across the state border of Ukraine on legal grounds and the prevention of all precedents of illegal migration.

2) To achieve a comprehensive protection of rights and legitimate interests of Ukrainian citizens who are temporarily or permanently residing abroad.

3) To improve the judicial mechanisms and procedures for the immigration of foreigners into Ukraine and strengthen the legal status of foreign nationals who are legally residing in the country.

4) To enforce legal guarantees for asylum seekers, refugees and stateless persons arriving to Ukraine in accordance with the international legal obligations of the country [3].

Important to notice that the system of governance of migration in Ukraine is rather underdeveloped, endowed with significant gaps in the administrative and legal support, and thus needs further reform and improvement due to the aspirations of the state to bring its own legal system in line with international and European standards for the protection of human rights and freedoms.

Today the problems associated with the need to improve the state governance of migration flows in Ukraine are particularly acute. They are caused by numerous political, social and economic factors that influence the situation in Ukraine and in the whole world. Thus, the biggest among of which are of the following nature: the integration of Ukraine into the international labour market, accompanied by the significant outflow of labour force from the country to other regions and resulting the drastic reducing the population of Ukraine; active immigration policies of foreign countries, aimed at attracting foreign labour to their economies; discrepancy and incompetence of the Ukrainian legislature, particular the laws and norms regulating the labour and migration processes; insufficient legal instruments for the enforcement of the judicial guarantees in the area of protection of foreigners, refugees and stateless persons who are legally residing in Ukraine; the lack of competent, professionally-trained personnel, material and technical support of public authorities responsible

for the application and practical implementation of Ukraine's migration policy; imperfection of the national informational systems regarding the registration of citizens of Ukraine, foreigners and stateless persons residing or temporarily staying in Ukraine on the legal grounds [3, c. 2].

Based on the analysis of a common EU migration policy and practical experience of managing the migration processes in individually selected countries of the European Union, one could argue that the most successful and effective application of the governmental and regulatory functions of the state in this area can be achieved only through creation of all necessary conditions, and providing legal safeguards for interested individuals in order for them to achieve legal migration. Therefore, based on the European experience, the main purpose of reforming Ukraine's migration policy should become the idea of raising the level of so-called «controlled openness», that is ensuring maximum migration movements at the legislative level. Thus, according to author Plakhotnyuk, migration management at the present stage of socio-political development should be based on a deep understanding of the nature of this phenomena, the knowledge of its origins, causes, mechanisms and standard application schemes; consideration of the peculiarities of the socio-economic, political and demographic development of countries and the geopolitical situation in the entire region [8].

In order to improve the state migration policy of Ukraine we consider it to be appropriate for the state to take the following measures:

1) Improve the state border and customs control, which will significantly increase the level of state security through the prevention of all precedents of uncontrolled illegal immigration.

2) Establish a series of specialized training programs to the police, border and customs officers, designed to raise the awareness of the aforementioned state officials about the social nature of the migration phenomenon, understanding its origins, causes, mechanisms and standard schemes of implementation.

3) Strengthen cooperation between state bodies, local authorities and NGOs in the field of migration policy and human rights.

4) Perfectualize legislative guarantees of the rights and legitimate interests of foreign citizens residing on the territory of Ukraine.

5) Improve the legal framework for granting the asylum and refugee status to stateless persons in

accordance with the international legal obligations of Ukraine.

6) Maintain constitutional guarantees of the citizens of Ukraine on the freedom of movement including crossing of the state border in the cases foreseen by law, free choice of the place residence and so on.

7) Improve the government statistical reports in the context of monitoring the progress of migration processes that would enable more rapid, accurate and objective assessment of the situation in this area and help to prevent cases of latency.

8) Create effective mechanisms and favourable socio-economic conditions for the repatriation-return of the former citizens or those Ukrainians who permanently reside abroad to their homeland along with comprehensive incentives to reduce immigration flows in the future.

9) Increase the efficiency of the consular services abroad and improve their level of cooperation with each other in order to maximize the protection of the legitimate rights and interests of Ukrainian citizens temporarily or permanently residing in foreign states;

10) Strengthen the close cooperation between the state and civil society in the field of protection of human rights and freedoms in the era of international security threats.

11) Continue a throughout work on improving national legislation in the field of regulation of migration and its approximation towards international judicial norms, regulations, global principles and standards of human rights and freedoms.

12) Encourage further development and intensification of international cooperation of Ukraine with member countries of the European Union in the field of common judicial, security and humanitarian policy.

13) Adopt and actively apply the experience and achievements of the European Union member countries in the field of successful regulation of migration, especially taking into consideration the states which are bordering with Ukraine (particularly Poland, Hungary, Slovakia and Romania) and their subsequent involvement in the administrative and legal practices of suiting national interests and priorities.

14) Create an attractive internal labour market and thus stimulate the citizens of Ukraine to be employment inside the country, which in turn will contribute towards the sustainable demographic and socio-economic development of the state. In case

when citizens desire and intend to get employed abroad - to encourage them to emigrate on a legal basis.

15) Implement large-scale informational campaign with the aim of raising the general public awareness about all aspects and threats of illegal migration and human trafficking through a series of public lectures, seminars, provision of free legal advices and judicial aid.

16) To form the population and public tolerance towards migrants, combating all forms of racism, xenophobia and religious intolerance in society [3] [4].

Conclusions

In order to succeed with its EU integration ambitions, Ukraine should comply with the prerequisites of the Copenhagen criteria. Shaping an effective and progressive migration policy is certainly one of the most important prerequisites for strengthening of the international cooperation in the area of judicial, humanitarian and security matters between Ukraine and the European Union that should in turn contribute to the future successful integration of Ukraine into the European society. Based on the aforementioned information we can conclude, that reformation and improvement of the migration policy of Ukraine should find its practical application in the following measures taken by the state: raising the level of administrative and legal management of migration flows; significantly

improving the regulatory framework in the area; fight against illegal border crossing and the prevent the commitment of the crime trafficking in human beings; strengthening the legal protection of Ukrainian citizens residing abroad; improving legal guarantees for the protection of rights and lawful interests of foreign nationals residing in Ukraine along with the provision of judicial mechanisms for granting asylum and refugees statuses to individuals in need.

Analysis of the migration situation in the European member states and the formation of EU single migration policy should allow us to define the place of the international experience in the process of developing and reforming state migration management system in Ukraine, which is crucial in terms of Ukrainian policies aiming at European integration. Specific attention should be paid to the experience of Central European states, new EU members, which have achieved significant success in implementing European migration standards in their national legislation and administrative practices. Analysis of the theory and practice of the state migration management in the EU member states would enable us to conclude that at this point of time governmental control over border crossing in the independent states and the prevention of illegal migration could be successful only when all opportunities and judicial mechanisms for legal migration of personalities in question are created.

References

1. Constitution of Ukraine adopted on 28th of June 1996//Vidomosti Verkhovnoi Radu Ukrainu.-1996.- № 30. – C. 141.
About the Association Agreement between Ukraine and the European Union//Golos Ukrainu . - 2013 .- № 6.
Decree of the President of Ukraine № 622/2011 from May 30 2011 On the concept of the state migration policy [electronic resource]. — available under: <http://www.president.gov.ua/documents/13642.html?PrintVersion>
Decree of the President of Ukraine № 22/2001 from January 18th 2001 On strengthening of the measures for the combat of irregular migration // Ofizijnuj visnuk Ukrainu. – 2001. – № 3. – Ст. 59.
Babenko O. Migracijna polituka ukraiuskoi derzavu na suchasnomu etapi (geopolituchnij aspekt): dussertaizya kandudata uruduchnuh nauk/ Instutute derzavu I prava im. V.M. Koretskogo. – K.,1997. – 195 c.
Knush S. Osoblivosti miznarodno-pravovogo mehanizmu u borotbi z nelegalnou migracieu v suchasnuh umovah / S. Knush// Pidpruemnutstvo, gospodarstvo I pravo. - 2009. - №9. - C.22-24.
Mosyonz S. Protudiya nelegalnij migracii u konteksti zdijstnennya derzavnoi migracijnoi polituku / S. Mosyonz // Borotba z nelegalnou migracieu ta torgivleu ludmu / Y. Kondratyev, I. Rumarenko. – K., 2004. – PP. 57-60.
Plahotnyuk N. Miznarodno-pravovi aspektu spivrobotnutstva derzav u borotbi z nelegalnou migracieu (International-legal aspects of state cooperation in the struggle with illegal migration) in Golos Ukrainu. —№ 23. – P. 10.

