

**CHAPTER 7.**  
**CURRENT STATUS OF ADMINISTRATIVE AND LEGAL**  
**COUNTERACTION TO ILLEGAL MIGRATION IN UKRAINE**  
**INTRODUCTION**

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**Abstract.** The article is devoted to the study of the current state of administrative and legal counteraction to illegal migration in Ukraine. The etymology of the concepts of «migration» and «migration policy» is studied. The views of scientists on state migration policy are analyzed. Migration policy in the scientific works of modern researchers is interpreted quite broadly and is a special type of state activity aimed at managing migration processes using various levers and methods. The current legislative acts of Ukraine, which constitute the legal basis of Ukraine's migration policy: international legal acts, the Constitution of Ukraine and national legislation in the field of migration and migration policy, are analyzed. It is studied that foreigners and stateless persons who are on the territory of Ukraine are subject to administrative liability on the same grounds as citizens of Ukraine. Issues of liability for administrative offenses committed on the territory of Ukraine by foreigners who, in accordance with the current laws and international treaties of Ukraine, enjoy immunity from the administrative jurisdiction of Ukraine, are resolved through diplomatic channels.

**Key words:** migration, state policy, migration policy, legislation, martial law, migration, law enforcement agencies.

**Introduction.** The numerous problems that countries face due to migration indicate that the mechanisms for regulating these processes formed by governments do not meet the needs of today. Global intensive migration movements are caused by various factors (security, political, economic, environmental), which form migration motives, cause national governments to develop appropriate migration policies. Modern Ukraine is no

exception as a territory of diverse, multi-directional and multi-scale migration flows (*Bilan, Melnychuk, 2023*).

With the beginning of a full-scale war, aggression against our country caused significant transformations in the life of our country. The negative consequences associated with hostilities affected all spheres of public life. During the active hostilities taking place on the territory of the country, the migration of Ukrainians increased significantly, since the war caused the displacement of a significant number of Ukrainian citizens not only within the country, but also beyond its borders.

Today, in the context of global migration processes and the active participation of the Ukrainian population in them, there is a growing need for effective state regulation of migration policy, which is a prerequisite for using the positive potential of migration for the purpose of development, minimizing its negative consequences, and ensuring the rights and freedoms of migrants and the population as a whole. In view of this, improving migration policy should be one of the priorities of state policy (*Lyuta, 2022*).

**The problem statement.** Despite the existing significant achievements of domestic and foreign scientists, a number of problems related to military operations, European integration and globalization processes remain unresolved. New challenges and tasks facing state migration policy necessitate a scientific search for solutions to these issues.

The armed aggression of the Russian Federation and its full-scale invasion of the territory of Ukraine forced the entire state apparatus and society as a whole to move to operational functioning under the legal regime of martial law. Ukraine, which is currently at the stage of the struggle for the above-mentioned values, has clearly outlined its European identity and European vector of development. By joining the Council of Europe in 1995 and ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, Ukraine has demonstrated its democratic choice. and intention to carry out reforms aimed at protecting human rights and strengthening democratic institutions (*Izbash, Polishchuk, 2023*).

In the context of the issue under study, it is worth noting that the military aggression of the Russian Federation in Ukraine has been ongoing since 2014, and on February 24, 2022, Ukraine faced new challenges and for the first time since Ukraine's independence found itself in a state of martial law, the legal regime of which covered the entire territory of our state and which became the reason for restrictions on human rights and freedoms.

In recent years, there has been an increase in social tension among the population, which occurs due to migrants' non-acceptance of the national way of life, established traditions and religious beliefs. Therefore, increasingly, issues of combating illegal migration attract the attention of the scientific community and become the main topic of heated discussions.

**Analysis of recent studies and publications.** The right to freedom of movement received international recognition with the adoption of the Universal Declaration of Human Rights. Namely, Article 13 of the Declaration indicates that everyone has the right to move freely and choose their place of residence within the borders of each state and everyone has the right to leave and return to any country, including their own. The development of the modern world is no longer conceivable without population migration processes. Migration in general has a positive impact on the socio-economic and political development of states,

contributes to the integration of the international community, the cultural rapprochement of peoples, and the development of productive forces.

Today, Ukraine lacks an effective set of actions capable of eradicating illegal migration. The growth of the scale of illegal migration is directly related to the threat to the national security of the state, which has been repeatedly emphasized by state institutions during meetings of the National Security and Defense Council.

### **1. Regulatory and legal support of Ukraine's migration policy in today's conditions**

Migration policy is a key element of migration management, its institutions and mechanisms are of significant importance in ensuring the interests of migrants, giving migration processes an organized, safe and institutional character (*Drakokhrust, 2021*).

The regulatory and legal basis of Ukraine's migration policy is international legal acts, the Constitution of Ukraine and national legislation in the field of migration and migration policy.

Regulatory and legal support of Ukraine's migration policy is guaranteed by the state and international legal norms. A number of international legal documents regulate migration processes, among which it is necessary to single out international acts ratified by Ukraine, namely: «Universal Declaration of Human Rights» (*Universal Declaration of Human Rights, 1948*), «Declaration of the International Labor Organization on Fundamental Principles and Rights at Work» (*Declaration of the International Labor Organization on Fundamental Principles and Rights at Work, 1998*), «European Convention for the Protection of Human Rights and Fundamental Freedoms» (*European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950*), «European Convention on the Legal Status of Migrant Workers» (*European Convention on the Legal Status of Migrant Workers, 1977*), «Convention on the Status of Refugees» (*Convention on the Status of Refugees, 1951*), «European Social Charter» (*European Social Charter, 1960*), «European Convention on the Legal Status of Migrant Workers» (*European Convention on the Legal Status of Migrant Workers, 1977*), «International Covenant on Civil and Political Rights» (*International Covenant on Civil and Political Rights, 1966*) and others.

The Constitution of Ukraine, which was adopted in 1996, initiated a new stage in the development of public relations in the field of migration policy, which are aimed primarily at establishing and ensuring the rights and freedoms of man and citizen, which meets international legal standards. The norms and provisions of the Constitution of Ukraine, which are specified in the Laws of Ukraine and a significant number of by-laws, form the basis of the regulatory and legal regulation of migration processes in Ukraine.

Article 3 of the Constitution of Ukraine determines that «a person, his life and health, honor and dignity, inviolability are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is responsible to a person for its activities» (*The Constitution of Ukraine, 1996*). According to the Constitution of Ukraine, citizens are granted the right to freely choose their place of residence and freedom of movement.

Among the articles of the Fundamental Law that enshrine and guarantee freedom of movement, free entry and exit from the country, protection of citizens abroad, and the rights of foreigners, it is necessary to pay attention to Article 33: «everyone who is legally on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence,

and the right to freely leave the territory of Ukraine, except for restrictions established by law». An important component is that citizens of Ukraine cannot be deprived of the right to return to Ukraine at any time (*The Constitution of Ukraine, 1996*).

The provisions of clause 10 of article 92 of the Constitution establish one of the fundamental duties of the state - the establishment and provision of human rights and freedoms. The right to freedom of movement and choice of place of residence are inalienable human rights and freedoms, which are determined by its nature and do not depend on the presence of a certain status of a person in the state.

In the context of the issue under study, it is worth noting that the declaration of martial law in Ukraine, the legal regime of which covered the entire territory of our state, became the cause of restrictions on human rights and freedoms.

The guarantee of Article 64 of the Constitution of Ukraine is that the constitutional rights and freedoms of man and citizen are not subject to restriction, but there is an exception to this norm, which has found normative consolidation in the Fundamental Law. The second part of this norm provides that in conditions of martial law or a state of emergency, some restrictions on rights and freedoms may be introduced, indicating the period during which such restrictions are in force, and a complete list of rights that are prohibited from being restricted during a war or a state of emergency (*Balamush, 2018*). In accordance with the current legislation, for the period of validity of the legal regime of martial law, the constitutional rights of man and citizen and freedoms provided for in Articles 30, 32, 33, 34, 38, 39, 41, 42, 43, 44, 53 of the Constitution of Ukraine may be restricted (*The Constitution of Ukraine, 1996*).

Thus, having determined the main legal principles of migration policy, the Constitution of Ukraine ensured the further development of the legal framework for regulating various internal and external migration processes, opened a broad legal field directly for migrants.

Considering that active hostilities are still underway on the territory of Ukraine throughout 2022, the current legislation of Ukraine regulating the issue of introducing the legal regime of martial law and the implementation of state administration under its conditions has undergone significant changes and additions.

The Law «On the Legal Regime of Martial Law» of May 12, 2015, which regulates the issue of martial law in Ukraine, established certain limits for restricting the constitutional rights and freedoms of a person and a citizen, the legitimate interests of legal entities, and recognized such restrictions as an integral part of the operation of the special legal regime (*On the legal regime of martial law: 2015*).

Legal analysis of the Decree of the President of Ukraine «On the introduction of martial law in Ukraine» dated 24.02.2022 No. 64/2022 (*On the introduction of martial law in Ukraine, 2022*), which regulates the list, conditions, terms and limits of restrictions on the constitutional rights of a person and a citizen, provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, and the legitimate interests of legal entities, allows us to assert that such a Decree is a legal basis for the implementation of restrictions on human rights in Ukraine under martial law. However, despite all the complexities of modern realities, human rights are subject to exclusive protection restricted (*The Constitution of Ukraine, 1996*).

Among the main subordinate regulatory legal acts that determine migration issues, it is necessary to highlight: the Laws of Ukraine «On Citizenship», «On Immigration», «On the Legal Status of Foreigners and Stateless Persons», «On External Labor Migration», «On Refugees and Persons in Need of Additional or Temporary Protection», «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine», «On Overseas Ukrainians», «On the Procedure for Exiting Ukraine and Entering Ukraine by Citizens of Ukraine», «On Freedom of Movement and Free Choice of Place of Residence»; Decree of the President of Ukraine «On the Concept of State Migration Policy»; Resolution of the Cabinet of Ministers of Ukraine approving the Regulations on the State Migration Service of Ukraine, Order of the Cabinet of Ministers of Ukraine approving the Strategy of State Migration Policy of Ukraine for the Period Until 2025; joint order of the Ministry of Internal Affairs of Ukraine, the Administration of the State Border Guard Service of Ukraine, the Security Service of Ukraine «On approval of the Instruction on the forced return and forced expulsion from Ukraine of foreigners and stateless persons».

When classifying the sources of migration legislation, they can be conditionally divided into types, depending on the body of adoption. We can distinguish: international regulatory legal acts ratified by the Verkhovna Rada of Ukraine; the Constitution of Ukraine; codes and laws of Ukraine; decrees of the President of Ukraine and resolutions of the Cabinet of Ministers of Ukraine; departmental regulatory acts of ministries, other central executive bodies; regulatory acts of local state administrations and local self-government bodies.

Given the regulation of certain migration institutions, general regulatory legal acts can be divided into acts that regulate relations arising from: acquisition, loss of citizenship of Ukraine; immigration to Ukraine; emigration from Ukraine; freedom of movement and free choice of place of residence or stay; acquisition of refugee status or a person in need of subsidiary protection; combating illegal migration, etc. (*Modern legal encyclopedia, 2015; Legal encyclopedia, 1998*).

Thus, the regulatory and legal support of migration policy is a considerable number of regulatory acts of administrative, criminal, criminal procedural, labor, financial, civil, civil procedural law of Ukraine. Separate norms that directly concern the regulation of migration legal relations have been introduced by the legislator into a number of other legislative acts of Ukraine. Each of these Laws of Ukraine deserves special attention, their norms are used in highlighting specific problems of legal regulation of migration processes and the practice of their application.

For a thorough study, let us turn to the genesis of the concept of «migration», which comes from the Latin word «migration», which means transition, moving, resettlement, from «migrare» - to move, relocate. Migration is the movement of the population across the border of certain territories within one country or from one country to another with a permanent or long-term change of permanent residence or with a regular return to it (*Yastremska, 2021*).

One of the defining categories of the study is the concept of «migration policy». Migration policy is considered in a broad and narrow sense. Migration policy in a broad sense is part of the socio-economic policy of the state, which concerns demography, economy, labor, employment, protection of human and civil rights. In a narrow sense, state

influence on the regulation of migration processes is aimed at changing the number, composition, direction of movement and settlement of migrants, influencing their integration, characteristics closely related to demographic and economic issues (*Yadlovskaya, 2022*).

According to Drakokhrust T.V., the state's migration policy is a set of theoretical provisions, goals and objectives, means and methods for regulating internal and interstate processes of population movement. Its nature and direction are determined by the socio-economic strategy of the state, as well as the content of foreign policy at a certain stage of development (*Drakokhrust, 2021*).

As Malinovska O.A. rightly notes, migration policy is an independent direction of state policy, which is closely related to its components of both internal and external nature. It is an element of population policy and one of the means of designing the size and structure of the population and labor resources, part of socio-economic policy, a tool for achieving its goals (*Malinovska, 2018*).

It is worth noting that migration policy in the scientific works of modern researchers is interpreted quite broadly and is a special type of state activity aimed at managing migration processes using various levers and methods. Therefore, when assessing the effectiveness of state migration policy, one should take into account not only its demographic results, but also the extent to which its implementation ensures the preservation of social cohesion in society. Migration policy can have several dimensions: economic, demographic, political, social, as well as a dimension reflecting national security considerations (*Migration Law of Ukraine, 2016*).

An analysis of the current legislation of Ukraine indicates that state migration policy is aimed at: regulating migration processes; preventing and averting threats to national interests; ensuring guarantees for the exercise of human and civil rights and freedoms regarding freedom of movement, choice of place of residence, the right to freely leave the territory of our country, except for restrictions established by law, as well as the right to enter Ukraine for its citizens; protecting the rights and freedoms and legitimate interests of foreigners and stateless persons; ensuring conditions for migrants to exercise their rights, freedoms and legitimate interests, and fulfilling obligations stipulated by law; preventing any manifestations of discrimination; combating illegal migration; employment of migrants and human trafficking; interaction and coordination of the activities of state bodies and public organizations in the field of migration at the state and international levels; preventing population migration processes both within the country and beyond its borders by supporting Ukraine's cooperation with partner states on migration processes through mutually beneficial cooperation in accordance with generally recognized principles and norms of international law.

The main components of the state migration policy are the following areas: state (state, state authorities, political parties), normative (norms, regulations, state programs), material (means for implementing the set goal), as well as the levels of its implementation - international, national, regional, local, (*Administrative and legal regulation of migration processes, 2012*).

Given this, Ukrainian migration policy requires significant transformations and further adaptation to European standards and recognized international mechanisms for regulating migration processes within the framework of the implementation of the European

integration strategy of Ukraine. Summarizing the above, it is necessary to strengthen the work of state authorities in improving migration policy: 1) clearly define the strategy and tactics in the formation and implementation of migration policy by state authorities, the strategy for training specialists in this area; 2) complete the formation of the regulatory framework in the field of migration policy, create legal and socio-economic principles for regulating labor migration; 3) develop an effective, adjusted concept of the state's migration policy, ensure its implementation and functioning; 4) reduce the number of migrants leaving Ukraine and facilitate the return of migrants who left earlier; mobilize the state's labor potential by stimulating immigration from abroad; ensure conditions for the effective use of temporary workers from abroad in the interests of the Ukrainian economy; protection of the rights and freedoms of migrants, including forced ones, and prevention of illegal migration; 5) deepen scientific research in the field of migration and improvement of migration statistics; 6) strengthen the development of international cooperation, cooperation with civil society, migrant associations in Ukraine and abroad (*Strelnikov, Danilenko-Negara, 2024*).

Migration policy should contribute to the achievement of the most important social goals, such as the development of market relations, building a democratic society, respect for human rights, integration into the international labor market, and strengthening the security of the country. At the same time, migration policy should not only be subordinated to the task of population planning in connection with socio-economic aspects, but should also take into account factors arising from international obligations undertaken and the conditions in which the state is located.

In conclusion, it should be noted that modern challenges and threats that affect state migration policy are determined by socio-economic and security aspects. The state migration policy of Ukraine under the legal regime of martial law is based on international and national legislation, which focuses on the formation of legal mechanisms for its implementation, and its successful implementation creates further political, socio-economic and cultural development of our state.

## **2. Legal basis of combating illegal migration in Ukraine and the place of administrative and legal norms**

In the context of modern threats and challenges, the study of the legal basis for combating illegal migration is relevant and requires further research. The integration of national legislation into international standards is aimed at increasing the effectiveness of combating illegal migration and ensuring the protection of human rights and freedoms.

Administrative legal norms occupy an important place among the legal bases for combating illegal migration in Ukraine. These norms regulate the activities of state bodies and institutions, as well as determine the rights and obligations of individuals and legal entities in the field of migration control.

Administrative legal norms ensure a correct understanding of the content and essence of regulatory legal acts and legal norms. A clear understanding of terminology provides a correct interpretation of legal documents, an unambiguous interpretation of their legal application. Administrative legal norms are the main tool for regulating the behavior of subjects of migration processes and ensuring compliance with the requirements of the law. Understanding administrative legal norms allows state bodies to correctly apply measures aimed at respecting human rights and freedoms and adhering to state policy on this issue (*Sokolovsky, 2022*).

Administrative legal norms, in accordance with the current legislation of Ukraine, are generally binding rules of conduct established and protected by the state that regulate relations in the field of public administration, which determine the rights and obligations of subjects of administrative law, forms and methods of public administration, the procedure for the activities of executive bodies and other subjects of administrative legal relations.

The main features of administrative legal norms are: firstly, the subject of regulation of administrative legal norms is social relations related to the functioning of executive bodies, local self-government bodies, other subjects authorized to perform public administration functions. Moreover, these relations require such regulation, which, on the one hand, will ensure the effectiveness of the activities of subjects of administration, and on the other hand, will create conditions for the objects of administration to exercise their rights and will enable the latter to resist abuse by government structures;

secondly, administrative legal norms reflect the method of administrative law, therefore, in most cases, such norms are imperative in nature. They determine what actions participants in the relations they regulate can take (contain permissions), what they should refrain from (establish prohibitions), and what they must take (fix prescriptions). Rules of conduct, established by administrative legal norms, must be performed by representatives of the authorities, individuals and legal entities, since failure to comply with legal requirements may result in the application of coercive measures by the state;

thirdly, administrative legal norms are often established in the process of implementing executive power directly by its subjects. The presence of the above feature is due to the fact that executive power is exercised in order to implement regulatory provisions, primarily fixed in the Constitution and laws of Ukraine. Bodies representing the specified branch of power are authorized to adopt acts in which legislative provisions are detailed and specified, and generally binding rules of conduct are formed, suitable for regulating relations that are the subject of administrative law;

fourthly, the nature of relations regulated by administrative legal norms determines their structure.

The application of administrative legal norms is the main form of activity of executive bodies, local self-government bodies, other entities authorized to perform public administration functions, since the result of such activity is the adoption by these bodies of individual legal and power decisions, that is, the exercise of direct managerial influence on the development of specific legal relations (*Textbook of Administrative Law, 2005*).

Administrative legal norms establish the rules for the entry of foreigners into Ukraine and exit from the country, including the need to obtain visas, check documents at the border, as well as the procedure for refusing entry. This allows you to control the flow of people crossing the state border and prevent the penetration of persons who may pose a threat to the security of the state. These norms also determine the procedure for controlling the stay of foreigners on the territory of Ukraine, in particular, registration of the place of residence, the duration of the permitted stay and the conditions for extending visas or residence permits.

One of the important aspects is the regulation of the procedures for identifying illegal migrants, their detention, administrative arrest and deportation. Administrative legal norms establish clear procedures that allow effective action in cases of detection of illegal migrants and ensure their return to their countries of origin.

Administrative legal norms establish administrative liability for violations of migration legislation, both for illegal migrants themselves and for persons who organize the processes of illegal migration. At the same time, the institution of administrative liability covers the definition of the concept of administrative liability, its content, functional purpose and role in the law enforcement activities of the state, the genesis of its formation and development, as well as the features of its current legislative regulation and practical application (*Bychai, 2023*).

Thus, administrative legal norms create a legal basis for effective management of migration processes, prevention and counteraction to illegal migration and are an important aspect of national security and law and order in Ukraine.

In addition, it should be noted that the significance of administrative legal norms in countering illegal migration is not limited only to establishing rules and sanctions. They also contribute to the development of an effective migration policy, taking into account economic, social and security aspects.

Administrative and legal norms are a fundamental component of the legal framework for combating illegal migration in Ukraine. They ensure the regulation of migration processes, monitor compliance with legislation, coordinate the actions of state bodies and international cooperation. Effective implementation of these norms contributes to ensuring national security, law and order and stability in the country (*Shaporenko, 2019*).

The legal basis for combating illegal migration in Ukraine is a set of regulatory legal acts that regulate the processes of preventing and combating illegal migration, which form the legal basis for the activities of entities combating illegal migration in Ukraine.

The main legal principles for combating illegal migration are defined by the Constitution of Ukraine. The adoption of the Constitution of Ukraine in 1996 became a new stage in the development of public relations in the field of migration policy, which are aimed primarily at establishing and ensuring the rights and freedoms of man and citizen, which meets international legal standards. The norms and provisions of the Constitution of Ukraine, which are specified in the Laws of Ukraine and a significant number of subordinate legislation, constitute the basis of the regulatory and legal regulation of migration processes in Ukraine.

The regulatory and legal support of the migration policy of Ukraine is guaranteed by the state and international legal norms. A number of international legal documents regulate migration processes, among which it is necessary to single out international acts ratified by Ukraine, namely: «Universal Declaration of Human Rights», «Declaration of the International Labor Organization on Fundamental Principles and Rights at Work», «European Convention for the Protection of Human Rights and Fundamental Freedoms», «European Convention on the Legal Status of Migrant Workers», «Convention on the Status of refugees», «European Social Charter», «European Convention on the Legal Status of Migrant Workers», «International Covenant on Civil and Political Rights» and others.

Among the main subordinate normative legal acts that determine the issue of migration, it is necessary to single out: the Code of Ukraine on Administrative Offenses (*Code of Ukraine on Administrative Offenses, 1984*), the Laws of Ukraine: «On Citizenship» (*On Citizenship of Ukraine, 2001*), «On Immigration» (*On immigration, 2001*), «On the Legal Status of Foreigners and Stateless Persons» (*On the legal status of foreigners and stateless persons, 2011*), «On External Labor Migration» (*On external labor migration,*

2015), «On Refugees and Persons in Need of Additional or Temporary Protection» (*On refugees and persons in need of additional or temporary protection, 2011*), «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine» (*On ensuring the rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine, 2014*), «On the Procedure for Exiting Ukraine and Entering Ukraine for Citizens of Ukraine» (*On the procedure for exiting Ukraine and entering Ukraine for citizens of Ukraine, 1994*), «On Freedom of Movement and Free Choice of Place of Residence» (*On freedom of movement and free choice of place of residence, 2003*); Resolution of the Cabinet of Ministers of Ukraine, which approved the Regulation on the State Migration Service of Ukraine (*The Regulation on the State Migration Service of Ukraine, 2014*); Order of the Cabinet of Ministers of Ukraine, which approved the Strategy of the State Migration Policy of Ukraine for the period until 2025 (*The Strategy of the State Migration Policy of Ukraine for the period until 2025, 2024*); Order of the Cabinet of Ministers of Ukraine «On approval of the action plan for 2024 and 2025 on the implementation of the Strategy of the State Migration Policy of Ukraine for the period until 2025» (*On approval of the action plan for 2024 and 2025 on the implementation of the Strategy of the State Migration Policy of Ukraine for the period until 2025, 2017*); Joint order of the Ministry of Internal Affairs of Ukraine, the Administration of the State Border Service of Ukraine, the Security Service of Ukraine «On approval of the Instruction on the forced return and forced expulsion from Ukraine of foreigners and stateless persons» (*On approval of the Instruction on the forced return and forced expulsion from Ukraine of foreigners and stateless persons, 2012*), Procedure for carrying out measures to supervise and control the implementation of legislation in the migration sphere, approved by a joint order of the Ministry of Internal Affairs, the Ministry of Social Policy and the Ministry of Education and Science (*Procedure for carrying out measures to supervise and control the implementation of legislation in the migration sphere, 2023*), etc.

The Law of Ukraine «On Immigration» defines the legal principles and procedure for implementing immigration control (*On Immigration, 2001*). The Law of Ukraine «On the Legal Status of Foreigners and Stateless Persons» regulates the entry, stay, residence and exit of foreigners and stateless persons from the territory of Ukraine (*On the Legal Status of Foreigners and Stateless Persons, 2023*). The Law of Ukraine «On Refugees and Persons in Need of Additional or Temporary Protection» determines the granting of refugee status and other protection, as well as measures to prevent illegal migration through the abuse of these mechanisms (*On refugees and persons in need of additional or temporary protection, 2011*).

The implementation of measures to implement the state migration policy of Ukraine should ensure an effective mechanism for combating illegal migration, liability for offenses related to it, and deepening international cooperation in combating this phenomenon.

The Code of Ukraine on Administrative Offenses determines administrative liability for violation of the rules for the stay of foreigners and stateless persons in Ukraine. Foreigners and stateless persons staying on the territory of Ukraine are subject to administrative liability on the same grounds as citizens of Ukraine. The issue of liability for administrative offenses committed on the territory of Ukraine by foreigners who, in accordance with the current laws and international treaties of Ukraine, enjoy immunity from

the administrative jurisdiction of Ukraine, is resolved through diplomatic channels (*Administrative and legal regulation of migration processes, 2012*).

The Criminal Code of Ukraine establishes liability for offenses related to the organization of illegal migration, including illegal border crossing, forgery of migration documents and trafficking in human beings.

Our state has signed many international treaties and conventions that regulate migration issues, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as readmission agreements with other countries. Government resolutions and decisions, such as regulatory legal acts of the Cabinet of Ministers of Ukraine, detail the provisions of laws on combating illegal migration, for example, in establishing the procedure for deportation of illegal migrants, regulating the activities of the State Migration Service of Ukraine and other executive bodies.

Thus, the legal framework aims to create an effective system of control over migration processes, ensuring state security and respecting human rights. Key aspects are the coordination of the activities of various state bodies among themselves, their cooperation with international organizations to jointly address the problems of illegal migration.

### **3. Administrative liability of foreigners and stateless persons in Ukraine**

Having set a course for European integration, Ukraine has chosen European legislation and international human rights standards as a model, the development of the national legal regime for the stay of foreigners, according to which the latter have, with the exception of certain restrictions, practically the same rights, freedoms and obligations as citizens of Ukraine. At the same time, the growth in the number of foreign citizens and stateless persons who stay for a long time

on the territory of Ukraine leads to a steady trend of increasing offenses committed by or against these persons, including in the administrative and tortious sphere (*Anina, 2014*).

According to the current Law of Ukraine «On the Legal Status of Foreigners and Stateless Persons in Ukraine», a foreigner is a person who does not have Ukrainian citizenship and is a citizen (subject) of another state or states; stateless person - a person, a person who is not considered a citizen by any state by virtue of the operation of its law (*On the legal status of foreigners and stateless persons in Ukraine, 2011*).

The modern dictionary of foreign words outlines the situation with the legal status of stateless persons as follows: «Stateless persons in international law have acquired the name «stateless persons» (derived from the Greek *patris* - homeland), that is, persons who do not have the citizenship of any state, their legal status is determined by the legislation of the host state and, with some exceptions, is equated with the legal status of their own citizens» (*Legal encyclopedia, 1998; Modern legal encyclopedia, 2015*). In order to provide stateless persons with the opportunity to enjoy fundamental rights and freedoms without any discrimination, the international community adopted the Convention relating to the Status of Refugees (1951) and the Convention relating to the Status of Stateless Persons (1954) [6]. In addition, in 1961, the Convention on the Reduction of Statelessness was adopted. Despite the terms used in international law, national legislation tries to avoid the use of words of foreign origin and operates with a more explanatory phraseology «stateless person».

Article 23 of the Constitution of Ukraine and Article 3 of the Law of Ukraine «On the Legal Status of Foreigners and Stateless Persons» stipulate that foreigners, stateless persons,

and citizens of Ukraine have the same legal personality (*Constitution of Ukraine, 1996*).

The Constitution of Ukraine stipulates that «foreigners and stateless persons are equal before the law, regardless of origin, social and property status, racial and national origin, gender, language, attitude to religion, type and nature of occupation, and other circumstances» (Article 26 of the Constitution of Ukraine). Ukrainian legislation stipulates that foreigners may enter Ukraine only with valid national passports or documents replacing them (Article 15 of the Law of Ukraine «On the Legal Status of Foreigners and Stateless Persons»). In this case, foreigners must obtain a Ukrainian visa, unless otherwise provided for by the legislation of Ukraine and its international obligations. The norms of the Constitution and other laws of Ukraine, generally binding rules regarding nature protection, sanitation, fire safety, public order, use of vehicles, entry and exit are equally binding for both foreign citizens and stateless persons.

According to Article 16 of the Code of Ukraine on Administrative Offenses, it is determined that foreigners and stateless persons are subject to administrative liability on general grounds. However, the specified norms do not determine an effective mechanism for bringing the specified persons to administrative liability (*The Code of Ukraine on Administrative Offenses, 1996*).

In general, the main restrictions for foreigners and stateless persons can be summarized as follows: 1) they do not have the right to hold certain positions (President of Ukraine, judge, to hold positions in sea and air crews, etc.); 2) they do not have access to civil servant positions; 3) such persons cannot serve in the Armed Forces of Ukraine; 4) restrictions on movement or stay in certain places may be applied to foreign citizens and stateless persons; 5) separate rules on the passport regime, admission to educational institutions, etc. have been established for such persons; 6) a separate, special administrative tort capacity has been established for foreign citizens and stateless persons.

The possibilities of conducting proceedings in cases of administrative offenses with the participation of foreigners and stateless persons are enshrined in the current Code of Ukraine on Administrative Offenses in a generalized form, without highlighting the specifics of such proceedings. In order to improve the administrative tort legislation of Ukraine, and bring it into line with European standards and use a single law enforcement practice, it is necessary to allocate a separate section in the Code of Ukraine on Administrative Offenses, which would regulate the participation of foreigners and stateless persons in administrative tort proceedings. This approach is due to the identification of the following features of the participation of the specified persons in cases of administrative offenses: acceptance of a statement from such persons about the committed offense; participation of foreigners, stateless persons as witnesses, victims, persons in respect of whom the issue of bringing to administrative responsibility is being resolved; providing them with a defender, representative, translator; applying administrative coercion measures, drawing up a protocol on an administrative offense; obtaining the consent of both a foreigner who has diplomatic or other immunity and the state that is determined to conduct procedural actions with his participation; executing a resolution on the imposition of an administrative penalty, etc.

When carrying out certain actions in the field of legal regulation of freedom of movement and choice of place of residence, citizens of Ukraine, foreigners and stateless persons must comply with migration legislation. This requirement is based on the provisions

of the Constitution of Ukraine. According to Article 68, everyone is obliged to strictly observe the Constitution of Ukraine and the laws of Ukraine, not to encroach on the rights and freedoms, honor and dignity of other people.

The implementation of measures to implement the state migration policy of Ukraine must ensure an effective mechanism for combating illegal migration, liability for offenses related to it, and deepening international cooperation in the fight against this phenomenon.

Foreigners and stateless persons staying in the territory of Ukraine are subject to administrative liability on the same grounds as citizens of Ukraine. Issues of liability for administrative offenses committed in the territory of Ukraine by foreigners who, in accordance with the current laws and international treaties of Ukraine, enjoy immunity from the administrative jurisdiction of Ukraine, are resolved through diplomatic channels.

Issues of administrative liability are regulated by the Code of Ukraine on Administrative Offenses of Ukraine. According to Article 9 of the Code of Ukraine on Administrative Offenses, an administrative offense (misdemeanor) is an unlawful, culpable (intentional or negligent) act or omission that encroaches on public order, property, rights and freedoms of citizens, on the established procedure of administration and for which the law provides for administrative liability.

Administrative liability for offenses provided for in the Code of Administrative Offenses occurs if these violations do not entail criminal liability in accordance with the law (*The Code of Ukraine on Administrative Offenses, 1996*).

Administrative liability in the field of migration is a relationship regulated by the rules of law between the state represented by the bodies of administrative jurisdiction and relevant officials and a person who committed an administrative offense in the field of migration, which is expressed in the application to the offender of an administrative penalty, which entails adverse consequences of a personal, property and other nature and the official condemnation of the guilty subject in order to prevent and stop administrative offenses, and which is executed by the offender.

Chapter 15 of the Code of Ukraine on Administrative Offenses, entitled «Administrative Offenses that Encroach on the Established Procedure of Management», contains a number of articles establishing administrative liability for offenses in the field of migration, namely:

residence without a passport of a citizen of Ukraine or without registration of the place of residence (Article 197);

violation of the border regime, the regime at checkpoints across the state border of Ukraine or the regime rules at entry-exit checkpoints (Article 202);

violation by foreigners and stateless persons of the legislation on the legal status of foreigners and stateless persons (Article 203);

failure to comply with a decision to ban entry to Ukraine (Article 203-1);

illegal assistance to foreigners or stateless persons in evading entry to Ukraine (Article 204);

illegal crossing or attempt to illegally cross the border of Ukraine (Article 204-1);

violation of the procedure for entry into and exit from the temporarily occupied territory of Ukraine (Article 204-2);

illegal transportation of foreigners and stateless persons through the territory of Ukraine (Article 206-1) (*The Code of Ukraine on Administrative Offenses, 1996*).

The social danger of the listed administrative migration offenses lies in the fact that their commission leads to a violation of public order, a threat to cultural heritage and traditions.

The illegality of an offense means the prohibition of actions stipulated by a specific administrative norm. That is, an offense that is directed against the norms of law that regulate the procedure for entry into Ukraine and exit from Ukraine by citizens of Ukraine, the entry of foreigners into Ukraine, their exit from Ukraine and transit through its territory, the procedure for the stay in Ukraine of foreigners and stateless persons, refugees, etc. This feature is due to the presence of regulatory grounds for liability. If there is no norm prohibiting certain actions of a person, then there is no administrative liability for their commission.

The purpose of administrative punishment (Article 23 of the Code of Administrative Offenses) indicates that administrative punishment is a measure of responsibility and is applied with the aim of educating a person who has committed an administrative offense in the spirit of compliance with the laws of Ukraine, respect for the rules of coexistence, as well as preventing the commission of new offenses by both the offender himself and other persons (*The Code of Ukraine on Administrative Offenses, 1996*).

The guilt of the subject who committed an unlawful act indicates that responsibility arises for an act in the form of intent and negligence. An administrative offense can only be a guilty act or omission committed intentionally or through negligence.

Persons who have committed administrative offenses are held liable from the age of 16. Subjects who commit such offenses can be divided into two groups: the first group is offenses committed by citizens of Ukraine; the second group is offenses committed by foreigners and stateless persons.

Protocols on administrative offenses have the right to draw up: officials authorized by executive committees (and in settlements where executive committees have not been established, by executive bodies exercising their powers) of village, town, city councils (Article 197); a member of a public formation for the protection of public order and the state border (Article 202); officials of the Security Service of Ukraine (Articles 203-1); authorized officials of the central executive body that implements state policy in the field of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of individuals, refugees and other categories of migrants defined by law (Article 204); authorized officials of the National Police (Article 204-1, Article 206-1 of the Code of Ukraine on Administrative Offenses); authorized officials of the State Border Service of Ukraine (204-1, 206-1). However, in cases expressly provided for by law, protocols on administrative offenses may also be drawn up by officials of other state authorities, local government bodies and representatives of population self-organization bodies (*The Code of Ukraine on Administrative Offenses, 1996*).

The executive committees of village, settlement and city councils are entrusted with considering a case on an administrative offense, which is provided for in Article 197, which provides for residence without a passport or without registration of residence (219 of the Code of Ukraine on Administrative Offenses).

The bodies of the State Border Service of Ukraine consider cases of administrative offenses related to violation of the border regime, the regime at checkpoints across the state border of Ukraine or the regime rules at entry-exit checkpoints, violation by foreigners and

stateless persons of the legislation on the legal status of foreigners and stateless persons, failure to comply with the decision to ban entry into Ukraine, violation of the procedure for entry into or exit from the temporarily occupied territory of Ukraine, as well as violation of the procedure for entry into or exit from the area of conducting an anti-terrorist operation (Articles 202-203-1 (regarding violations detected at a checkpoint (control point) across the state border of Ukraine, an entry-exit checkpoint or a controlled border area), Article 204-2).

In cases of violation by foreigners and stateless persons of the legislation on the legal status of foreigners and stateless persons, at checkpoints (control points) across the state border of Ukraine or entry-exit checkpoints, a protocol on an administrative offense is not drawn up, and cases under this article are considered by authorized officials of the State Tax Service of Ukraine. In other cases, authorized officials of the State Tax Service of Ukraine.

Cases of committed administrative offenses are provided for by Articles 204, 204-1 (illegal assistance to foreigners or stateless persons in evading departure from Ukraine (Article 204); illegal crossing or attempted illegal crossing of the border of Ukraine (Article 204-1) are considered by judges of district, city district or city district courts.

As for the system of administrative penalties for committing migration offenses, it should be noted that they differ little from ordinary ones. Thus, mainly as a punishment for committing migration offenses, a fine is applied, the amount of which depends on the degree of guilt and the social danger of the act. In addition, for certain offenses, the imposition of the following administrative penalties on the guilty person is provided: corrective labor for a term of up to two months and administrative arrest (Article 204 of the Code of Administrative Offenses), as well as confiscation (Article 206-1 of the Code of Administrative Offenses).

It should be noted that Article 24 of the Code of Ukraine on Administrative Offenses stipulates that the laws of Ukraine may provide for the administrative expulsion of foreigners and stateless persons outside Ukraine for committing administrative offenses that grossly violate the law and order, although no article of the Code of Ukraine on Administrative Offenses provides for the imposition of this type of administrative penalty on the offender.

Administrative expulsion of foreigners and stateless persons is divided into: voluntary return, forced return and forced expulsion.

Voluntary return of foreigners and stateless persons occurs on the following grounds: refusal to recognize a refugee or a person in need of additional protection; loss or deprivation of the status of a refugee or a person in need of additional protection; rejection of a complaint about the refusal to prepare documents to resolve the issue of recognition as a refugee or a person in need of additional protection; court decision confirming the decision to refuse to prepare documents to resolve the issue of recognition as a refugee or a person in need of additional protection in Ukraine. Voluntary return of foreigners and stateless persons is applied by the State Migration Service of Ukraine.

Forced return of foreigners and stateless persons occurs on the following grounds: violation of legislation on the legal status of foreigners and stateless persons; commission of an action that contradicts the interests of ensuring the national security of Ukraine or the protection of public order; if it is necessary for the protection of health, protection of the rights and legitimate interests of citizens of Ukraine. The forced return of foreigners and stateless persons is applied by the State Migration Service of Ukraine, the Security Service

of Ukraine and the State Border Guard Service of Ukraine.

The forced expulsion of foreigners and stateless persons occurs if the following grounds are present: failure to comply with the decision on forced return within the established period without good reason; if there are reasonable grounds to believe that the foreigner or stateless person will evade the implementation of the decision on forced return; if foreigners or stateless persons accepted in accordance with an international agreement on readmission do not have legal grounds for staying on the territory of Ukraine and if there is no agreement on readmission between Ukraine and the country of citizenship or the country of previous permanent residence of such persons; if a foreigner or a stateless person, in respect of whom a decision has been made to cancel an immigration permit, has not left Ukraine within a month from the date of receipt of a copy of such a decision, except for cases where the person has appealed the decision to cancel an immigration permit to a court, until the court decision enters into force. The forced expulsion of foreigners and stateless persons is applied by an administrative court.

The forced return of foreigners to the country of origin or a third country is carried out on the basis of a decision of the State Migration Service of Ukraine, the Security Service of Ukraine or the State Border Guard Agency on forced return or forced expulsion on the basis of a resolution of an administrative court on forced expulsion issued at the request of these bodies/units.

The decision on the forced return from Ukraine of a foreigner or a stateless person is prepared in two copies, one of which is issued to the foreigner in respect of whom it has been made, and the other remains with the body that made it. Such a decision must state the grounds for its adoption, the period within which the foreigner or stateless person must leave Ukraine, which should not exceed 30 days from the date of the decision, the procedure for appealing and the consequences of non-compliance. The territorial prosecutor shall be informed of the grounds for such a decision within 24 hours.

The decision on the forced return of foreigners and stateless persons may be accompanied by a ban on further entry into Ukraine for a period of three years. The period of the ban on further entry into Ukraine shall be calculated from the date of such a decision, and a note on the ban on entry shall be made in the foreigner's passport document.

A foreigner or stateless person shall be obliged to independently leave the territory of Ukraine within the period specified in the decision on forced return. In this case, the visa is canceled in the passport document of a foreigner or stateless person and the documents confirming the legal grounds for stay in Ukraine are withdrawn and the appropriate stamp is affixed.

In addition, the head of the territorial body, territorial unit of the State Migration Service of Ukraine and the body of the Security Service of Ukraine, which made the decision, sends a corresponding request to the Main Center for Processing Special Information of the State Border Service of Ukraine. Information in response to such a request, on the crossing of the state border by a foreigner to leave Ukraine, is provided within a month after its receipt.

Forced return does not apply to foreigners and stateless persons who have not reached the age of 18, to foreigners and stateless persons who are subject to the Law of Ukraine «On Refugees and Persons in Need of Additional or Temporary Protection».

Failure by a foreigner or stateless person to comply with a decision on forced return

within the established period may be grounds for filing a lawsuit with the court for forced expulsion.

Also, the possibility of appealing the decision on forced return to the court is provided.

The forced deportation of foreigners to their country of origin or a third country is carried out only on the basis of a court decision on the forced deportation of a foreigner and a stateless person from Ukraine, issued upon a claim by the State Migration Service of Ukraine, the Security Service of Ukraine or the State Tax Service of Ukraine.

Administrative cases on forced deportation are considered by the court with the mandatory participation of the parties within ten days from the date of filing the statement of claim. Appeals may be filed with the court of appeal within ten days from the date of their announcement. The court of appeal shall consider the case within ten days after the expiration of the term for appeal with notification of the participants in the case. No court fee shall be paid for filing statements of claim and appeals in such cases with the court.

Forced deportation provides for: identification of the violator; the possibility of placing him in a temporary residence point for foreigners and stateless persons who are illegally staying on the territory of Ukraine; documentation of forced deportation; further escort of a foreigner to the checkpoint across the state border of Ukraine or to the country of origin.

Summarizing the topic of the procedure for deportation (return) and expulsion of foreign citizens and stateless persons, it can be noted that these processes are important instruments of state regulation of migration. They ensure the security of the country, maintenance of law and order and protection of national interests. At the same time, the procedure for deportation (return) and expulsion must be carried out with respect for all human rights guaranteed by national and international legislation.

Compliance with procedural norms, ensuring transparency and fairness of the process, as well as providing opportunities for appealing decisions are key aspects that allow avoiding violations of the rights of deported persons (*Bachynsky, 2024*).

Thus, within the framework of the study, the concept and content of administrative liability are characterized, the procedure and legal regulation of bringing foreigners and stateless persons to administrative liability are determined. It has been established that foreigners and stateless persons are subject to the jurisdiction of Ukraine and are liable for offenses on an equal basis with citizens of Ukraine, however, there are specific features of the occurrence of administrative liability that are inherent only to such entities.

**Conclusions.** Migration policy is a key element of migration management, its institutions and mechanisms are of significant importance in ensuring the interests of migrants, giving migration processes an organized, safe and institutional character.

The regulatory and legal basis of Ukraine's migration policy is international legal acts, the Constitution of Ukraine and national legislation in the field of migration and migration policy.

Illegal migration is caused by different levels of development of countries, differences in the levels of prosperity of the population. Every country in the world at a certain stage of its existence faces this problem. The high standard of living, the stability of the political and economic system of developed countries attracts citizens of neighboring countries, who are eager to get there at any cost in search of a better fate. This circumstance entails the emergence of such a phenomenon as illegal migration. Illegal migration carries a number of

negative factors that pose a threat to the domestic economy, the national labor market, public order and public security.

The growth of the scale of illegal migration is directly related to the threat to the national security of the state. The issues of migration regulation in Ukraine currently continue to remain acute and relevant for Ukraine.

Illegal migration is a global world problem, which has recently attracted more and more attention from the community and requires the search for mechanisms for their solution. The negative consequences of illegal migration are felt by the whole society. To combat illegal migration, it is first of all important to ensure proper regulatory and legal support. Therefore, Ukraine pays special attention to the development of regulatory and legal support for combating illegal migration, taking into account international and European standards in this area.

In the context of current challenges, special attention needs to be paid to improving the legal support for combating illegal migration. At the same time, taking into account Ukraine's course towards European integration, it is necessary to take into account modern European and international standards in this area. It is important to ensure strict compliance with the requirements of the legislation by all entities combating illegal migration.

Within the framework of the implementation of the state migration policy of Ukraine, the most widespread are administrative methods, namely the methods of persuasion and coercion, which are organically combined with each other.

The persuasion method is implemented in the activities of entities through explanatory and educational work among citizens of Ukraine, foreigners, refugees and cooperation with public organizations.

Coercive measures are applied to that part of the participants in migration relations who violate the established norms and rules and are manifested in the application of administrative preventive measures, administrative termination measures or administrative penalty measures to them. The expulsion process is one of the main measures of influence on illegal migrants. It is the strengthening of borders, the strengthening of international cooperation in the context of the implementation of readmission and expulsion procedures that are among the most effective in modern Ukrainian realities.

In general, the effectiveness of combating illegal migration directly depends on the quality of the choice of forms and methods.

The article is devoted to the study of the current state of administrative and legal counteraction to illegal migration in Ukraine. The etymology of the concepts of «migration» and «migration policy» is studied. The views of scientists on state migration policy are analyzed. Migration policy in the scientific works of modern researchers is interpreted quite broadly and is a special type of state activity aimed at managing migration processes using various levers and methods. The current legislative acts of Ukraine, which constitute the legal basis of Ukraine's migration policy: international legal acts, the Constitution of Ukraine and national legislation in the field of migration and migration policy, are analyzed. It is studied that foreigners and stateless persons who are on the territory of Ukraine are subject to administrative liability on the same grounds as citizens of Ukraine. Issues of liability for administrative offenses committed on the territory of Ukraine by foreigners who, in accordance with the current laws and international treaties of Ukraine, enjoy immunity from the administrative jurisdiction of Ukraine, are resolved through diplomatic channels.

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