

**Mariana Balamush***Candidate of Science,**Odesa I. I. Mechnikov National University,**Odessa, Ukraine.**orcid.org/0000-0001-6764-2591*

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**MODERN STATE MIGRATION POLICY OF UKRAINE. GUARANTEE FOR PROVIDING LEGISLATION ON THE IMPLEMENTATION OF THE RIGHTS AND FREEDOM OF PHYSICIAN PROFESSIONALS IN THE MIGRATION SECTOR**

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***Abstract.** The article highlights the problems and important tasks facing the society and the state today, namely: ensuring effective legal regulation and public administration of migration processes, creation of conditions for unimpeded realization of rights, freedoms, legal interests of migrants and fulfillment of their statutory duties, strengthening social and legal protection of Ukrainian citizens who are or are working abroad, increasing the level of national security by preventing the emergence of nonconforming migration processes and elimination of their consequences. The current state and problems of the migration policy of Ukraine appeared a result of the imperfect strategy of the development of migration law in general and the absence of clear goals and principles of national migration and legal regulation. In the system of law of Ukraine, which is developing today under the influence of European integration processes, there are changes that significantly affect its structural division and affect the processes of formation of the categorical apparatus of legal science. The question arises about the effectiveness of Ukraine's migration policy and the regulatory and legal regulation of migration processes, which, in our opinion, require major changes, since the signing of the Association Agreement and visa-free regime between Ukraine and the European Union played a decisive role in the complicated demographic situation of the state.*

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**JEL Classification: K 23, O 38****Introduction**

Over the past decades, migration has become a hallmark of the global problem of the present [1, p. 87], and currently the issue of regulation of migration processes in Ukraine is acute and relevant. For a long time, the mass media duplicated data on the number of Ukrainians as of January 1, 1993, reaching 52 million. But significant geopolitical changes, economic instability and conflict in the East of Ukraine have affected all aspects of the society's life, including migration processes. The proof of this is the official data of the State Statistics Service of Ukraine (SSU) about 42.3 million people who are Ukrainian citizens, without taking into account the annexed territory of the Autonomous Republic of Crimea and Sevastopol, that is, the natural decrease of population is more than 160 thousand people per year. In addition, it must not be forgotten to forget about the eastern regions of Ukraine, where the operation of the Joint Forces of the Armed Forces of Ukraine takes place, since it is impossible to make the exact census of persons living in the occupied territory of the Donbas and therefore the SSU is guided by preliminary data concerning the population of this region.

These events could not but touch on internal migration, as a result of which the Law of Ukraine "On the Protection of the Rights and Freedoms of Internally Displaced Persons" [2] was adopted on October 20, 2014, which was recognized by international human rights defenders as complying with international standards for the protection of the rights of internally displaced persons and regulates the form and procedure of obtaining relevant documents for obtaining the special status of internally displaced persons, but also defines their basic rights. At the same time, this legal act has a number of shortcomings and does not disclose the entire list of rights and obligations of internally displaced persons, as evidenced by constant changes and additions by the legislature. Typically, the legal regulation of migration processes in the country is carried out as a reaction to the negative effects that have already occurred due to the lack of appropriate government influence from the state. Forecasts remain disappointing, as state authorities in their reports emphasize the strengthening of migration processes, and labour migration is considered to be main reason of them, as it is about more than 3.2 million Ukrainians who are constantly working abroad, and about 9 million Ukrainian citizens, having seasonal ill-treatment in neighboring countries, the main of which are Poland and Russia. Despite these problems, in Ukraine today there is no consensus on the place in the system of right of migration law, there is no clear idea of the correlation of the state migration policy and the migration regime of Ukraine, there is an unsystematic migration law and there are significant problems in the field of law enforcement. Moreover, the solution of these problematic issues is possible only in the complex. That is, initially, it is possible to improve national legislation on the basis of a holistic theory of migration and migration policy; in turn, systematized migration legislation will have a positive impact both on the activities of authorized bodies and on the exercise of the rights and freedoms of individuals in this area.

### **1. Migration regime and modern migration policy of Ukraine**

Taking the foregoing into consideration, the question remains as to the place of the notion of "migration regime" in the categorical apparatus of administrative law and its relation with such concepts as "migration law" and "state migration policy". After all, the concept of "migration law" and "state migration policy" are widely used both in scientific literature and in the current legislation, while the notion of "migration regime" is used in scientific literature and current legislation as an exception rather than a rule.

Based on the analysis of the ideas presented in the legal literature, one can conclude that two extremes are present in the research of social relations in the field of migration.

The first extreme is connected with the theorizing the problems of migration-right regulation, when the see problems of practical-applied nature. In the other words, it is about the attempts of some scholars to justify the need to allocate in the system of law of Ukraine such independent branch of law as a migration law, about artificial separation from constitutional or administrative legal relations, so-called migration legal relations, etc.

At the same time scientists sometimes do not notice their pernicious and devastating effects on the system of national law, since fragmentation of the law into smaller elements always leads to contradictions between them, and as a result, it can lead to the loss of its the main characteristic of the system of law of Ukraine - systemics. It should be acknowledged that in legal science repeatedly attempts have been made to develop the doctrine of the migration law of Ukraine, which would arm researchers with the necessary scientific methodology. However, we believe that attempts by scientists to improve migration policy and migration legislation in Ukraine by means of bringing the existence of such an independent branch of law as "migration law" is a way to go nowhere.

The second extreme in the research of migration processes in Ukraine is the analysis of empirical data in the field of migration without the application of general theoretical approaches. That is, when the conclusions and recommendations for improving the current migration law are made solely on the basis of statistical analysis without involving theoretical knowledge. Indeed, science, including the science of migration, is dead without practice, because science has arisen and exists to solve problems that arise in practice. At the same time, one should not forget that practice without science is blind, and therefore the development of migration legislation and improvement of the activities of subjects implementing the state migration policy is impossible without the development and systematization of scientific knowledge about migration, migration processes and migration relations. In our opinion, the concept of the migration regime as one of the types of administrative-legal regimes can become the theoretical basis that will give an impetus to the development of science in this area and will promote the effectiveness of both migration law and the quality of law enforcement activities of subjects of state migration policy.

When correlating the concepts of "state migration policy" and "migration regime" one should take into account the fact that there are, firstly, different approaches to determining the priority of one concept in relation to another, and secondly, different approaches to the definition of "state migration policy »

For example, Tsekalova N. I. notes that one of the forms of implementation of state regulation in the migration field is migration policy, and state regulation of migration is ensured through legal regulation, submitted by the rules of migration law [3, p. 8]. There are more artistic definitions of migration policy that we consider to be inadmissible in scientific literature. For example, Bublik M. P. describes the migration policy as a normative and legal reflection of the state's response to the spontaneous movement of people [4, p. 131-139]. That is, researchers consider migration policy only as a "form of implementation of migration-legal regulation" or as "a reflection of the legal-legal and institutional response of the state". In the writings of V. M. Snihur another position can be traced. He argues that: first, the main means of implementing the state migration policy is the migration regime; secondly, the migration regime itself is a kind of administrative-legal regimes of Ukraine; Thirdly, the migration regime is implemented through the administrative and legal

mechanism of ensuring the migration regime, which consists of a certain set of elements: 1) the system of legal acts, which is the basis of the functioning of this mechanism; 2) organizational and structural formation; 3) organizational and legal methods and methods that ensure the functioning of this mechanism [5].

V.M. Snihur proposed construction is also difficult to perceive, because on the one hand, the author asserts that the migration regime is a means of implementing the state migration policy, and, on the other hand, he states that the regime itself is implemented through a certain administrative-legal mechanism. So, in order to finally determine the priority of the concepts of "migration regime" and "state migration policy", it is necessary to refer to the clarification of the content of the state migration policy. If briefly (without citing the definitions) characterize the definitions of the state migration policy, which are presented in the legal literature, the following conclusions can be drawn:

- a part of scientists characterizes the state migration policy as "the state's influence on migration processes through their solution in a narrow and broad sense" (V.M.Moyseenko). What is the "broad and narrow regulation" of migration processes, unfortunately, this definition does not specify [6];

- a part of the scientists emphasizes the fact that the state migration policy is a system (a set of) measures carried out by the state or non-state institutions (Yvachniuk I. V., Kokorieva O.V., Olefir V.I., etc.) [7; 8; 9]. For example, V. I. Olefir argues that the state migration policy of Ukraine is a set of measures undertaken by the state to regulate migration processes, to create conditions for the implementation of the intellectual and labor potential of migrants, the construction of a democratic legal society, the provision of a proper social-economic and demographic development, the observance of the principles of national interests, security and territorial integrity of Ukraine [9, p. 452]. Unfortunately, this and other similar definitions do not focus on the list of measures that the state carries out in this area;

- the majority of scholars who study social relations in the field of migration determine the state migration policy through a list of measures that they consider to constitute its content (Malinovskaya O. A., Mosondz S. O., etc.) [10; 11]. For example, Mosondz S.O. defines the state migration policy as a complex of legal, financial, administrative and organizational measures, with the use of which the state deliberately influences the regulation of migration processes from the standpoint of migration priorities, the quantitative composition of migration flows and their structures in the field of public administration [11, with. 176]. These definitions of the state migration policy make it possible to consider legal regulation in the field of migration only as one of the directions of the state's activity. Therefore, we fully agree with the authors who define the migration regime (which, in our opinion, is a special legal regulation) as the most important means of realizing the state migration policy in Ukraine.

## 2. Objectives of migration policy and migration regime

The theme of the objectives of the migration regime is one of the problem and controversial in legal science. This is explained by the following factors.

Firstly, the low level of research as the objectives of migration policy in Ukraine, as well as the goals of national migration and legal regulation.

Secondly, our state and its population have not yet determined either with the strategy of their own development in general or with the strategic goal of migration policy in particular. Today, Ukraine spends a lot of money on educating and bringing up person (graduates of secondary schools, colleges, gymnasiums), a skilled and highly skilled specialist (bachelors, masters), but a large proportion of these young people are relocating to find work and life in other countries of the world. This is the result of not only failures in the economic development of Ukraine as a state, but also the short-sightedness of the country's migration policy over the past decades.

Thirdly, migratory law and migration law often operate on two concepts that are very interspersed with each other in the terms of content. This is the term "migration policy of the state" and "migration and legal regulation". It is clear that the state can not implement a policy without the use of such an effective means of influencing society the right, however, the right in its content always reflects the main components of state policy in a certain area of social relations. That is why scientific literature sometimes identifies the concepts of "the objectives of migration and legal regulation" and "the goals of the migration policy of the state" as well as the "principles of migration-legal regulation" and "principles of the state's migration policy" in the content of such concepts. Such identification can be regarded as a scientific and methodological error, but in the field of migration processes there is a close relationship between the goals and principles of state policy with the goals and principles of legal regulation.

That is, there is a need to clarify the question whether the objectives of the migration regime are solely for the purposes of migration legal regulation, or the objectives of the state migration policy can be attributed to such purposes. When characterizing the objectives of the migration regime it should be understood that it is not only about the presentation of one person or group of people about the future outcome that will come with effective legal regulation, but also about the goals of the state as a whole in a political form of organization of society. It is in this sense that we can speak about "the objectives of migration legal regulation" and "the goals of the migration policy of the state" as close to the content of the concept. Thus, we consider methodologically correct, the simultaneous coverage of the notion of "the purpose of the migration regime" in the two concepts "the objectives of migration legal regulation" and "the objectives of the migration policy of the state", because in our study research, their differentiation becomes practically impossible. In the course of the action and implementation of the rules of law, legal and non-legal objectives are resolved and satisfied. The latter, for example, include economic, political and other social goals. Right contributes to the achievement of such goals, not directly, but indirectly.

Therefore, right is not and should not be a means or a tool of economy, politics, ideology, etc [12, p. 65-70]. The objectives of legal regulation can be divided into close and finite, direct and indirect, and so on. But in general, in all cases, the goals of general legal regulation are: consolidation in the sources of the law of already existing social relations; stimulating the development of those social relations that already exist and meet the general interests of society; creation of conditions for the emergence and development of new forms of social relations; exclusion of socially dangerous relationships from the practice [13, p. 254]. All these goals are inherent in migration legal regulation as an integral part of the national law of Ukraine. Unfortunately, scientific literature on migration law does not pay attention to this issue at all. Only sometimes there are discussions about the goals of the state migration policy. At the same time, the majority of scholars who consider the issue of forming a state migration policy consider that the development of a competent migration policy of Ukraine is one of the priority tasks of our state (Malynovskaya O. A., Mosondz S. O., Olefir V. I. and etc.). It is in the framework of the state migration policy, in their opinion, the goals and principles of the state's migration policy should be envisaged. Thus, the policy should be aimed at protecting national interests, ensuring proper socio-economic, demographic, and scientific and educational development of the state.

V. I. Olefir proposed the expanded system of the objectives of migration policy in his writings. The author refers to such goals: ensuring effective state management of migration processes; ensuring sustainable demographic and socio-economic development of the country; ensuring the strengthening of national security; Integration into the European migration policy; creation of conditions for unimpeded realization of rights, freedoms and legitimate interests of migrants; the implementation of migration control aimed at preventing and overcoming the existing negative consequences of migration processes and preventing the violations of these rights, freedoms and legal interests of migrants and citizens of Ukraine [14, c. 48]. Agreeing with most of the goals of the state migration policy proposed by V. I. Olefir, we consider that two of them are not specific in content:

a) Integration into a pan-European migration policy should not be an end in itself, since national interests of Ukraine may be affected. For example, for European countries, the fact that people with a high level of education and qualification come from Ukraine for permanent residence is positive. For Ukraine, this fact is negative, because the outflow of skilled labor, firstly, leads to the degradation of human capital and the economy of the country, and secondly, creates the conditions for each next generation to study and absorb skills from people with lower qualifications. As a result, the country loses productivity, competition falls, the economy closes on the production of goods with low added value. To get out of the situation, much more resources will be required than for the creation of conditions for talented people while they are still in the country [15].

b) creation of conditions for the unimpeded realization of the rights, freedoms and legitimate interests of migrants, in our opinion, is also a goal that is abstract in its content. In

countries of the world (and Ukraine is no exception) "legal standards" that are common to a certain group of countries and which are used in a certain area of public relations have long been discussed. For example, in administrative law, standards are being developed for the provision of administrative services in the light of similar European standards [16, p. 257-274]. Therefore, I am convinced that when defining the objectives of the migration regime, it is necessary to speak not about creation of "conditions", but about creation of "legal standards". For example, the purpose of Migration Policy proposed by V. I. Olefir can be defined as follows: "Establishing legal standards for the implementation of migrants who are legally in Ukraine, their rights, freedoms, legal interests and duties".

Snihur V.M. when describing such an element of administrative-legal regimes as the intended purpose of the regime, essentially allocates four goals:

1) to ensure interaction between the public administration and individuals. Thus, the scientist notes that the administrative-legal regime is established in order to ensure the interaction of public administration and individuals on the basis of law, because it accompanies the activities of public administration bodies and officials in their interaction with citizens and organizations, as well as between its links in the implementation of their own functional duties [17, p. 74];

2) to restrict arbitrariness by public administration bodies in applying administrative coercion measures by consolidating legal procedures for the exercise of their authority;

3) for the legitimate interference of state power structures in areas which are under special protection of the state. Such an objective of an administrative-legal regime exists, if people can not take care of their own safety and well-being;

4) for the application of special and special measures of influence in a certain territory and in relation to a specific object or object. This objective of the administrative-legal regime is due to the need for the existence of a special administrative-legal regulation in relation to a specific territory of the state, to a specific object or object [5, p. 18-19].

The first two objectives of the administrative-legal regimes proposed by V. M. Snihur are inherent not only in the relevant regimes but also in the administrative law as a whole. Therefore, we believe that it is impossible to consider them as goals that are inherent exclusively in the administrative-legal regimes. The last two objectives of the administrative-legal regimes proposed by V. N. Snihur are inherent in the special regimes, which are established for the application of special and special measures of influence in a certain territory, in relation to a particular object or object (for example, the regime in points of entry through the state border of Ukraine). Therefore, we believe that it is also impossible to consider them as general objectives that are inherent to all without exception to the administrative-legal regimes. Determination at the objectives of the migration regime in the normative legal acts of Ukraine would lead to the subjects of law-making activity in further directions of improvement of the migration legislation of Ukraine. At the legislative level, attempts were made to consolidate the objectives of migration policy.

So in A Art. 5 of the Draft Law of Ukraine of 23.03.2004 "On the Basic Principles of the State Migration Policy of Ukraine" stated that the purpose of the state migration policy is to overcome the negative effects of spontaneous migration processes, ensure effective management of migration processes, create conditions for sustainable demographic and socio-economic development country, the proper realization of rights, freedoms and duties by migrants, strengthening of national security of Ukraine [18]. Later Art. 3 of the draft Law of Ukraine of July 14, 2010 "On the main principles of the state migration policy of Ukraine" stated that the purpose of the state migration policy is to: 1) strengthening national security and advocate for Ukraine's national interests in the field of migration; 2) protection of the Ukrainian labor market; 3) overcoming the negative consequences of uncontrolled migration processes and ensuring effective state management of migration processes, sustainable demographic and socio-economic development of the country; 4) prevention of the occurrence of uncontrolled migration processes and the elimination of their consequences; 5) social and legal protection of Ukrainian citizens who work abroad; 6) creation of conditions for the implementation of migrants who are legally in the territory of Ukraine, their rights, freedoms, legitimate interests and duties [19].

Unfortunately, the goals of the state migration policy were not mentioned in the Concept of the State Migration Policy, which was approved by the decree of the President of Ukraine of May 30, 2011 [20] and it was to determine the directions, strategic tasks of the state migration policy of Ukraine, principles and priorities of state bodies in the field of migration, directions of improvement of its legislative and institutional provision, as well as mechanisms of implementation of the Concept. Taking into account the views of scientists on the objectives of the state migration policy, as well as the content of bills in the field of migration, the following list of objectives of the migration regimes can be proposed:

1) provision of effective mechanism for the construction of a system of public administration bodies in the field of migration. The creation of the State Migration Service in Ukraine partially solved the problem of branching the powers of migration in between different public authorities, but there are still many problems in this area that are related to the division of powers between officials in the middle of the state body and the quality of the exercise of authority. in relation to individuals;

2) the establishment of legal standards for the implementation of migrants who are legally in the territory of Ukraine, their rights, freedoms, legal interests and duties. This should be a certain standard of behavior (model) of both as public administration bodies and migrants in their relations. That is, there should not be different procedures for the exercise of their rights and responsibilities for migrants who are equal in legal status, except when they choose another way of exercising their rights and responsibilities, which is also provided for by national legislation;

3) the establishment of legal standards for the social and legal protection of Ukrainian citizens who work abroad. It is impossible to stop the migration of skilled personnel, and therefore the state must adequately respond to the challenges associated with it, namely, to

create a legal basis for the social and legal protection of citizens who work abroad. A positive development in this area is the adoption of the Law of Ukraine "On Foreign Labor Migration" on November 5, 2015;

4) strengthening of national security and advocacy of Ukraine's national interests in the field of migration. Migration is a real or potential security challenge. In one way or another, it safety as a condition, and either it is consistent or not consistent with security as a goal [21, p. 98]. Uncontrolled processes in the field of migration are a real threat to the national security of Ukraine, as reflected in the Military Doctrine of Ukraine (paragraph 10);

5) protection of the Ukrainian labor market. First of all, there is a shortage of jobs and a high proportion of jobs with dangerous working conditions and low labor quality requirements, which is the result, including miscalculations in the migration policy of the state. In addition, the quality of supply of labor often does not meet the current requirements for its vocational education, labor and executive discipline, mobility and economic activity in general. The consequence of imbalances in labor supply with demand for it is the high unemployment rate, in particular hidden and partial [22];

6) overcoming the negative consequences of uncontrolled migration processes and ensuring sustainable demographic and socio-economic development of the country. The main indicators of the demographic crisis in the country are not only a reduction in the population, a decrease in the life expectancy, a decline in fertility, but also a negative balance of migration (more people than leave the country arrive in). In the country, the number of incapacitated persons is constantly growing in relation to the able-bodied population, which negatively affects the state's socio-economic policy. Today the state faces the problem of minimizing the negative consequences of uncontrolled migration processes;

7) prevention of the occurrence of uncontrolled migration processes and their consequences. Measures to prevent the occurrence of uncontrolled migration processes require from actors that implement state migration policy, coordinated work. Such coordinated work depends not only on the professionalism of managers, who are headed by the relevant authorities, but also on qualitative migration-legal regulation.

Thus, we can draw the following conclusion. The objectives of the migration regime are the final result sought by the actors of law-making activity, by laying down the relevant migration rules in the national legislation. In our opinion, the main goals of the modern migration regime should be: provision of an effective mechanism for building a system of public administration bodies in the field of migration; establishment of legal standards for the implementation by migrants who are legally in the territory of Ukraine, their rights, freedoms, legal interests and duties; establishment of legal standards of social and legal protection of Ukrainian citizens who work abroad; strengthening of national security and advocacy of Ukraine's national interests in the field of migration; protection of the Ukrainian labor market; overcoming the negative consequences of uncontrolled migration processes and ensuring sustainable demographic and socio-economic development of the country; preventing the occurrence of uncontrolled migration processes and eliminating their consequences.

### **3. Legal guarantees aimed at the support of the migration regime in Ukraine**

Almost all scholars who cover in their works the specifics of migration law in Ukraine are more or less affected by the issues of legal guarantees of the implementation of migration norms, guarantees of legality in the activities of migration authorities, legal guarantees for the exercise of the rights and freedoms of individuals in the migration field. In this case, the definition of legal safeguards is not necessarily provided and their system is offered. For example, in the determination of the administrative and legal aspects of the state migration policy, Mosondz S.O. does not address the issues of legal guarantees in the field of migration law regulation, but much attention is devoted to issues of administrative responsibility for violation of migration legislation [11, p. 154-175].

The same can be said about the study of Saiva S. S., who, when disclosing the administrative legal aspects of legal regulation of migration and registration of individuals in Ukraine, does not address the issues of legal guarantees, but details the content of administrative coercion in counteracting violations of migration and registration rules, and also describes measures of administrative coercion that are applied in this area [23, p. 127-174]. At the same time, the previously expressed opinion on the necessity of determining the legal guarantees of the migration regime as structural elements of the migration regime requires some argumentation. But in order to formulate the definition of legal guarantees and to reveal their interrelation with other elements of the structure of the migration regime, it is necessary to distinguish the most significant features that will indicate their originality and certainty within the framework of the migration regime.

Firstly, the legal guarantees of the migration regime are created by the state and fixed in the norms of the current legislation of Ukraine. Moreover, these legal guarantees are not set by the migration law, as the administrative law. For example, the grounds and procedure for the removal of foreigners and stateless persons who are illegally in the territory of Ukraine are regulated by the norms of the Ukraine Administrative Offences Code (UAOC) and the Ukraine Administrative Legal Proceedings Code, the grounds and procedure for bringing persons to administrative liability for violating the requirements of migration law are stipulated by the norms Code of Ukraine on Administrative Offenses, grounds and procedure for the application of other measures of administrative coercion provided in such sources of administrative law as the Laws of Ukraine "On the State Border Guard Service of Ukraine", "On the National Police", "On the Security Service of Ukraine", and etc. This, in fact, indicates that the migration regime is a kind of administrative-legal regimes.

Secondly, the legal guarantees of the migration regime are aimed, first of all, at ensuring the proper functioning of the migration regime itself. For example, Snihur V.M. notes that administrative coercion, the institution of a complaint, administrative and jurisdictional proceedings are administrative-legal measures of the migration regime, which guarantee "the support of this regime in the given parameters" [5, p. 23]. Mykolenko O. I., points out that legal guarantees as an element of the structure of the legal regime

should be considered as a set of legal means protecting and maintaining the legal regime in the "given parameters" [62, p. 300]. That is, the description of the goals, principles, subject and method of migration legal regulation, as well as the legal status of subjects of migration relations, gives us only an idea of the so-called regulatory norms of migration law. Security standards are not inherent in migratory legislation, but are, as a rule, in the administrative. The concept of "migration regime" and the description of elements of its structure provide an opportunity to reveal not only the specifics of migration law in Ukraine, but also through the description of legal guarantees, which are enshrined in the administrative law, to disclose the specifics of the legal protection of sustainable migration and legal regulation.

Thirdly, the legal guarantees of the migration regime are a system of legal safeguards. The system of legal guarantees always depends on the legal category or legal phenomenon in relation to which such a system is created. For example, the system of legal guarantees regarding the implementation of migration rights by individuals will be significantly different from the system of legal guarantees, which ensure the efficiency of the activities of state authorities in the field of migration. In the legal literature among the elements of the system of legal guarantees the rules of law and principles of law and legal procedures can be found, etc. For example, among administrative-procedural legal guarantees, Mykolenko O. I. allocates: 1) procedural rules that establish the rights and obligations of participants in the procedure; 2) the principles of the administrative procedure; 3) procedural institutes; 4) the administrative-procedural form; 5) the actions of participants in the administrative procedure; 6) the system of checking the legality and validity of the decisions; 7) a system of measures of procedural coercion and sanctions [24, p. 301-302]. That is, the list of legal safeguards in each particular case will depend on the purpose of their creation and scope. As it has already noted, the legal guarantees of the migration regime aimed, first of all, at ensuring the normal functioning of the migration regime itself, that is, the protection of the established migration and legal regulation. The law enforcement activity of authorized bodies is the sphere of their application. It is this approach that makes it possible to narrow the range of elements included in the system of legal guarantees of the migration regime.

Fourthly, the legal guarantees of the migration regime are a system of legal means, which consists of interdependent elements. For example, Snigur V.M. includes enforcement activities of executive bodies (including the use of state coercion), administrative and jurisdictional proceedings, judicial control over the activities of the administrative apparatus and the institute of administrative complaint to the guarantees of the migration regime [5, p. 23]. With this approach, you can only agree only in part. Law enforcement activity is one of the main forms of activity of public administration bodies. The existence of a public administration body without law enforcement activities cannot even be imagined. When it comes to legal safeguards, these are legal remedies that additionally help to function in a certain self-sufficient system. Migration and legal regulation can be implemented without legal guarantees of the migration regime, but subject to the law-abiding behavior of all

participants in the migration legal relationship. It is impossible to say this about law enforcement activities. Without law enforcement activities, public administration bodies generally lose meaning as subjects of migration legal relations, because law enforcement activities consist not only in the application of administrative coercive measures, but also in the provision of administrative services (issuance of a passport, registration at the place of residence, etc.). Also, some legal guarantees of the migration regime proposed by Snihur V.M. are duplicated in content, indicating that scientists use several criteria in determining the number of elements in the system of legal guarantees. For example, if such legal guarantees are issued as state coercion (which covers both administrative and jurisdictional activities that are implemented within the framework of proceedings on administrative offenses) and judicial control over the activities of the management apparatus (which is implemented within the framework of administrative proceedings) then why as an independent legal guarantee, to allocate administrative and jurisdictional proceedings, which include proceedings in cases of administrative offenses and administrative legal proceedings.

Among the general legal safeguards that ensure the implementation of the whole system of the law of Ukraine some scholars, called measures of legal coercion (control and supervision of the competent authorities, legal liability, etc.) and the institute of appeal in an administrative or judicial manner [24, p. 300]. This approach is considered most appropriate in determining the system of legal guarantees of the migration regime.

Among the measures, administrative and preventive measures, measures of administrative cessation and administrative penalties are allocated as a rule [23, p. 125-136]. Guided by this classification, among the measures of administrative coercion that ensure the functioning of the migration regime in Ukraine, should be allocated:

1) administrative and preventive measures - a set of means and methods of coercion, applicable to individuals in order to prevent possible violations. For example, today's police can use preventive measures, including for migrants: verification of a person's documents; poll of a person; Surface inspection and inspection; stopping a vehicle, etc. The administrative control measures include border control, which includes: 1) verification of documents; 2) review of persons, vehicles, goods; 3) verification of compliance by foreigners and stateless persons with the conditions for crossing the state border in case of entry into Ukraine, departure from Ukraine and transit through Ukraine; 4) the requirement to leave the place and restrictions on access to the specified territory; 5) restriction of movement of a person, vehicle or actual possession of a thing, etc.;

2) measures of administrative termination - a set of means and methods of coercive nature, which are used to terminate an offending offense already initiated and to prevent its possible harmful consequences, as well as to ensure the conduct of proceedings in an administrative dish. Traditionally, measures of administrative termination include the use of physical and special means. These are cessation measures, which on a general basis can be applied to all individual subjects of administrative law. If we describe the measures of

administrative cessation that are applied directly in the field of migration, one can distinguish administrative detention, which may be carried out by the Border Guard and the State Migration Service. Thus, the bodies of the frontier service can carry out administrative detention in the following cases: illegal crossing or attempt to cross the state border of Ukraine illegally; violation of the order of entry into and exit from the temporarily occupied territory of Ukraine; violations of the border regime, the regime at the points of entry through the state border of Ukraine or the regime rules at checkpoints of entry - exit; violation of the rules of residence of foreigners and stateless persons in Ukraine and transit through Ukraine. The officials of the State Migration Service of Ukraine have the right to apply administrative detention in violation of the legislation on staying in Ukraine of foreigners and stateless persons and transit through Ukraine (Article 262 of the UAOC).

We believe that administrative sanctions should include sanctions such as a compulsory return to the country of origin or the third country of foreigners and stateless persons who, contrary to the requirements (prohibitions) imposed in Ukraine, tried to enter Ukraine, and forced exodus outside Ukraine of foreigners and stateless persons who are illegally staying in Ukraine. The most thoroughly problematic issue of expulsion outside of Ukraine of foreigners and stateless persons was investigated in the works by of Palko V. I., who, before the advent of administrative justice in Ukraine, revealed the content of such an administrative sanction and suggested solutions to existing theoretical and practical problems in this area. The scientist argues that expulsion outside Ukraine, depending on the grounds for its application, can sometimes be regarded as an administrative and preventive measure (forced return), sometimes as a measure of termination (expulsion by a court decision in a certain period, but voluntarily), and in separate cases - as a measure of administrative punishment (deportation, that is, expulsion in a forced order) [25, p. 198-200]. Today, the current legislation has substantially changed both the grounds and the procedure for the enforcement of forced return and removal of foreigners and stateless persons beyond Ukraine. Although in Art. 24 of the UAOC there is still a provision that has nothing to do with the institute of administrative liability. Thus, the Ukraine Administrative Offences Code stipulates that the laws of Ukraine may provide for administrative deportation from abroad of foreigners and stateless persons for the commission of administrative offenses which grossly violate the rule of law. Regarding this provision, discussions have always been ongoing, since Art. 24 The UAOC provides for a system of administrative penalties that are imposed on persons who have committed administrative misconduct. The provisions concerning the expulsion of foreigners and stateless persons from Ukraine were given as a separate part, and therefore some scholars believed that expulsion was also an administrative penalty, while others stressed that expulsion was not an administrative penalty but related either to precautionary measures, or to measures of administrative termination [25, p. 13-30]. But the principle is that the Ukraine Administrative Offences Code does not provide for a mechanism for the implementation of this coercion measure.

The main sources of legislation that provide for a mechanism of the enforcement of forced return and the forced removal of foreigners and stateless persons are the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" and the Ukraine Administrative Offences Code(UAOC). The analysis of these normative legal acts makes it possible to conclude that compulsory return and forced removal of foreigners and stateless persons should be considered as measures of administrative termination. Such a conclusion is due, above all, to the purposes of applying these coercive measures, and not to the implementation procedure or to the subjects who have the right to make decisions on compulsory return and expulsion.

For example, if characterizing the compulsory return of a foreigner or stateless person, the main purpose of its application is to stop the illegal crossing of the border and illegal entry into the territory of Ukraine of an alien or stateless person. As a rule, this measure is implemented (applied) directly at checkpoints across the state border of Ukraine. Foreigners and stateless persons who are not allowed to enter Ukraine when attempting to enter Ukraine at a border crossing point across Ukraine do not cross the state border of Ukraine, and in the shortest time they return to the state from which they arrived or in the state that issued the passport document. Although there are cases of forced return of a person who crossed the border outside the border crossing point (for example, gathering mushrooms in a forest and finding him self in the territory of a neighboring state). In this case, it is important that a foreigner and a stateless person has no intention and evidence of a criminal offense.

If we talk about the expulsion of foreigners and stateless persons beyond Ukraine, the main purpose of its application is to stop the illegal stay of foreigners and stateless persons on the territory of Ukraine.

3) administrative penalties - a set of administrative sanctions provided for by law that apply to persons who committed an administrative offense. Not all types of administrative penalties provided for in Art. 24 of the UAOC, apply to violators of migration law. Analysis of the articles of the Special Part of the Ukraine Administrative Offences Code gives the possibility to include such penalties:

- warning (for example, for a residence without a passport of a citizen of Ukraine or without registration of place of residence - Article 197 of UAOC);

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

- administrative arrest (for example, for violating the order of entry into and exit from the temporarily occupied territory of Ukraine - Article 204-2 of the UAOC);

- confiscation of a vehicle (for example, for equipment owned by owners or drivers of vehicles in specially hidden or disguised places used for the transportation of illegal migrants - Part 2 of Article 206-1 of the UAOC).

The institute of appeals in administrative or judicial procedures, in our opinion, is also a legal guarantee of the migration regime of Ukraine. For example, the Constitution of Ukraine provides for the possibility for each person: 1) to challenge in court decisions, actions or inactivity of state authorities, local self-government bodies, officials and officers; 2) apply for the protection of their rights to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights; 3) to submit a constitutional complaint to the Constitutional Court of Ukraine; 4) apply for the protection of their rights and freedoms after the use of all national remedies to the relevant international judicial institutions or relevant bodies of international organizations, the member or participant of which is Ukraine (Article 55). The Law of Ukraine "On Citizens' Appeal" dated October 2, 1996 No. 393/96 provides for a procedure for appealing actions of officials, state and public bodies in an administrative procedure. These standards apply equally to citizens of Ukraine, as well as to foreigners and stateless persons who are in Ukraine.

In Ukraine, there is an administrative and judicial appeal procedure which is also inherent in public relations in the field of migration.

For example, acts and omissions of officials and officers who violate the procedure and time limits for processing cases of citizenship and execution of decisions on issues of citizenship can be appealed in court and administrative procedure (Article 27 of the Law "On Citizenship of Ukraine") [26]. A person who is denied the crossing of the state border has the right to appeal the corresponding decision in an administrative procedure, that is, according to the Law of Ukraine "On Citizens' Appeal", or appeal this decision to a court in the procedure of administrative legal proceedings (Part 3 of Article 14 of the Law "On the Border control"). A foreigner and stateless person against whom a decision on compulsory return has been taken may appeal it to court (Part 4, Article 26 of the Law "On the Legal Status of Foreigners and Stateless Persons" [27].

Thus, we can conclude that the guarantees of the migration regime are characterized by the following features: they are created by the state and are enshrined in the norms of administrative law; they are aimed at ensuring the proper functioning of the migration regime itself; they are legal means of protection character; represent a system of legal means, which consists of interdependent elements.

Legal guarantees of the migration regime should include: 1) measures of administrative coercion (control activities of the competent authorities, expulsion outside Ukraine, administrative liability, etc.); 2) the institution of appeal in administrative or judicial proceedings (for example, decisions on the compulsory return of foreigners and stateless persons can be appealed to the administrative court). Thus, the legal guarantees of the migration regime are the means of direct provision, use, compliance, implementation and correct application of migration rules established by the administrative law, which promote the preservation of the migration regime and its functioning.

## Conclusions

After the new policy of the state concerning the European integration of Ukrainian legislation, it became clear that the regulatory framework concerning migration problems is too outdated and has a number of shortcomings, but in modern scientific literature, more attention is paid to discussions on the separation of such a branch of law, such as migration law without taking into account the main problems. It is clear that Ukraine is experiencing the most difficult period of its independence, but it should not be forgotten that the correct policy of the state will be able to solve a number of important issues concerning the migration and migration processes of the state, first of all, it is necessary to define the goals set by the legislator. The cardinal decisions are needed to provide an effective mechanism for building a system of public administration bodies in the field of migration; establishment of legal standards for the implementation by migrants who are legally in the territory of Ukraine, their rights, freedoms, legal interests and duties; establishment of legal standards of social and legal protection of Ukrainian citizens who work abroad; strengthening of national security and advocacy of Ukraine's national interests in the field of migration; protection of the Ukrainian labor market; overcoming the negative consequences of uncontrolled migration processes and ensuring sustainable demographic and socio-economic development of the country; preventing the occurrence of uncontrolled migration processes and eliminating their consequences.

As regards the guarantees of the migration regime, it is clear that the Ukraine Administrative Offences Code, which needs to be changed in relation to actual problems, is the main act that regulates the provision, use, compliance, implementation and correct application of migration rules that promote the preservation of the migration regime and its functioning, which have arisen in society over the last years. But all attempts to implement administrative reform, unfortunately, remain unrealized.

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