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ABSTRACT

The presumption of innocence is one of the most important guarantees of respect for the rights of the suspect and the accused in the criminal process. The article examines the domestic criminal law ban on illicit enrichment, as well as the previous version of the norm, in the context of clarifying its compliance with the principle of the presumption of innocence. It is substantiated that Article 368-5 "Illicit Enrichment" of the Criminal Code of Ukraine, which replaced the previous unconstitutional edition, is consistent with the principle of presumption of innocence.

A peculiar limitation of the specified principle, by proportionally shifting the burden of proof to the accused person, does not violate its essence and scope, and is a fully justified limitation of it, which is connected with a legitimate goal, social necessity, a high level of corruption and is proportional in view of the goal, which is achieved through this.

Keywords: *illicit enrichment, principle of presumption of innocence, criminal liability, principle of proportionality, burden of proof.*

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FUNCTIONS OF THE STATE MIGRATION SERVICE IN COMBATING THE OFFENSES OF FOREIGNERS IN UKRAINE

Світлана Рижкова. ФУНКЦІЇ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ У БОРОТЬБИ З ПРАВОПОРУШЕННЯМИ ІНОЗЕМЦІВ В УКРАЇНІ. У статті проаналізовані функції Державної міграційної служби України як суб'єкта протидії вчиненню адміністративних правопорушень іноземцями. Наголошено, що функціям управління властивий дуалізм – поряд з їх статичним характером, їм властива динаміка, що в процесі здійснення публічного регулювання сферою міграції, завдання, мета діяльності та компетенція суб'єктів владних повноважень у цій сфері можуть трансформуватись, що обумовить певні зміни у переліку його функцій. Відповідна зміна функцій відображає їх динаміку, тобто зміна напрямків діяльності суб'єкта владних повноважень у сфері міграції викликає зміну основних функцій його управлінської діяльності. Підкреслено, що функції ДМС України, зокрема ті, що спрямовані на протидію адміністративним правопорушенням іноземців в Україні знаходяться у фазі трансформації, що обумовлюється як внутрішніми (короткий термін від створення ДМС України як виду державної служби) так і зовнішніми факторами (розвиток і оновлення доктрини адміністративного права), в тому числі діяльність ДМС як суб'єкта протидії вчиненню адміністративних правопорушень іноземцями в

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умовах введення правового режиму воєнного стану.

Акцентовано увагу, що функції ДМС України можна вважати різновидом управлінських функцій органів виконавчої влади, напрямками (видами) її внутрішньої та зовнішньої організаційної адміністративної діяльності, спрямованими на сприяння формуванню та реалізацію державної політики в сферах міграції (імміграції та еміграції), у тому числі протидії нелегальній (незаконній) міграції, громадянства, реєстрації фізичних осіб, біженців та інших визначених законодавством категорій мігрантів.

Визначено, що функції ДМС України відповідно до аналізу Положення про Державну міграційну службу України, зокрема, можна класифікувати на цільові та організаційні. Запропоновано, виходячи із завдань покладених на ДМС України, виділити такі спеціальні функції щодо протидії: 1) запобіжна, спрямована на профілактику і припинення адміністративних міграційних правопорушень та відвернення їх негативних наслідків; 2) захисна, спрямована на затримання і перебування у спеціальних установах іноземців (осіб без громадянства), які вчинили адміністративні міграційні правопорушення; 3) забезпечувальна, націлена на реалізацію виконання рішень щодо іноземців (осіб без громадянства), які вчинили адміністративні міграційні правопорушення.

Ключові слова: функції, Державна міграційна служба, іноземці, адміністративні правопорушення, нелегальна міграція, міграційне законодавство, протидія.

Relevance of the study. The State Migration Service of Ukraine is the leading subject of the implementation of state policy in the areas of migration (immigration and emigration), including combating illegal (unlawful) migration, authorized to perform a significant number of tasks, and the implementation of functions, the proper performance of which is associated with the use of effective and efficient means of influencing both foreigners and citizens of Ukraine who invite or receive them, and directly to employees of the migration service. In turn, the functions of the State Migration Service require their own definition, classification and detailed description of their content.

Recent publications review. The works of many leading domestic scientists V. Averyanov, M. Anufriev, O. Bandurka, and D. Bachrach are devoted to the theoretical and practical problematic aspects of the activity of the State Migration Service in Ukraine, including the improvement of legal regulation in the field of migration, Yu. Bytyaka, I. Golosnichenko, D. Holoborodko, E. Dodina, R. Kalyuzhny, L. Koval, V. Kolpakova, A. Komzyuk, E. Kubko, V. Malinovsky, T. Minky, V. Petkova, V. Opryshko, O. Ostapenko, O. Ryabchenko, O. Skakun, O. Yarmysha and others, however, in view of the above, the topic remains understudied legal analysis of the functions of the State Migration Service as a subject of combating the commission of administrative offenses by foreigners.

The article's objective is to analyze the functions of the State Migration Service of Ukraine as a subject of combating the commission of administrative offenses by foreigners

Discussion. According to the large explanatory dictionary of the modern Ukrainian language, "function" is understood in several meanings: 1) a phenomenon that depends on another phenomenon, is a form of its detection and changes according to its changes; 2) the work of someone, something, duty, sphere of activity of someone, something [1, p. 1335].

In management theory and administrative law, management functions are perceived as the most elaborated management factors, static categories that are reflected in normative legal acts. Although there is also an opinion about the mobility (dynamism) of this category.

We believe that management functions are characterized by dualism – along with their static character, they are characterized by dynamics. Our conviction is reinforced by the fact that in the process of public regulation of the migration sphere, the tasks, purpose of activity and competence of subjects of power in this sphere may transform, which will cause certain changes in the list of its functions. The corresponding change in functions reflects their dynamics, i.e., a change in the direction of the subject of authority in the field of migration causes a change in the main functions of his management activity.

In administrative and legal science, there is a widespread opinion that the functions of management (administration) play a key role in the formation of organizational structures of the management system, since the organizational structure of management acts as a social system. In turn, the functions reflect the administrative manifestation of the activity of the subject of power. The corresponding functions have a diverse orientation, but serve to achieve a common goal, a managerial effect (result).

In this aspect, S. Honcharuk defines management functions as the main directions of management activity that express its content, its specialized types [2, p. 25]. In turn, by such functions, O. Ryabchenko understands the leading areas of activity of state authorities and the

legal means (responsibilities and powers) used by them to achieve the goal of functioning. At the same time, each function as a certain type of activity of state authorities is characterized by independence, uniformity, and repeatability [3, p. 42].

V. Averyanov rightly emphasized that the functions of executive bodies are relatively independent and qualitatively homogeneous components of the activities of these bodies, which are characterized by target orientation [4, p. 262]. So, one can agree with the unifying opinion that management functions reflect certain components of activity, its conditional directions.

As for the classification of management functions, it should be noted that the demarcation of functions according to one or another criterion largely depends on their understanding. Below we will dwell on the positions of individual scientists. V. Averyanov and V. Malinovsky suggests distinguishing between the following types of management functions: a) general or basic functions; b) special or specialized functions that reflect the specifics of a specific management entity or managed object; c) auxiliary or service functions that support the performance of general and special functions [5, p. 148]. At the same time, relying on the criterion of compliance with the assignment of the management function, O. Bandurka proposes to distinguish among them target and organizational ones [6, p. 20].

On the basis of the above, it should be stated that there are different approaches to the classification of managerial functions. At the same time, in the theory of administrative law, the division of relevant functions into: a) general functions should be recognized as the most widespread and simple; b) special functions (reflecting the specifics of a specific management entity or managed object) [7, p. 263].

It is safe to say that the functions of the State Migration Service of Ukraine, in particular those aimed at combating administrative offenses by foreigners in Ukraine, are in a phase of transformation, which is determined by both internal (the short period of existence of the Security Service of Ukraine as a type of public service) and external factors (development and renewal of the doctrine of administrative law).

The adoption of a number of normative sources and the availability of draft laws aimed at the further development of the State Migration Service of Ukraine as a modern state institution of the European model should contribute to the transformation of the functions of this service.

In general, the functions of the State Migration Service of Ukraine can be considered a variety of management functions of executive authorities, directions (types) of its internal and external organizational administrative activity. Such functions are aimed at promoting the formation and implementation of state policy in the areas of migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of natural persons, refugees and other legally defined categories of migrants.

Based on the tasks of the State Migration Service of Ukraine, which are enshrined in the Regulations on the State Migration Service of Ukraine, in particular, it is possible to talk about the division of their functions into target (chapter 4) and organizational (Chapter 5) [8].

Among others, in our opinion, it is important to single out the function of the Ministry of Internal Affairs of Ukraine regarding the implementation of measures to prevent and counter illegal (unlawful) migration, other violations of migration legislation (chapter 4, paragraph 31), as well as the implementation of state control over compliance with legislation in the areas of migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, refugees and other legally defined categories of migrants in cases provided for by law, bringing violators to administrative responsibility (Chapter 4, item 33) [8].

With regard to the special functions of the State Migration Service of Ukraine in combating administrative offenses by foreigners, we consider it expedient to clarify their list. Based on the tasks assigned to the Internal State Migration Service of Ukraine, we propose to highlight the following special countermeasure functions:

- 1) Preventive, which refers to the prevention and termination of administrative migration offenses and averting their negative consequences;
- 2) Protective, aimed at the detention and stay in special institutions of foreigners (stateless persons) who have committed administrative migration offenses;
- 3) Enforcement, aimed at the implementation of decisions regarding foreigners (stateless persons) who have committed administrative migration offenses.

In view of the authority of the State Migration Service of Ukraine as a subject of combating administrative offenses, the above-mentioned functions can be characterized as follows: preventive function – in their administrative activities to ensure the protection of public order and public safety, employees of the Security Service of Ukraine have the right to demand

from citizens and officials who violate the established management procedure in the field of migration, termination of offenses and actions that prevent the exercise of the powers of the State Security Service of Ukraine, and in case of non-fulfillment of the specified requirements, take coercive measures; check foreigners' identity documents, as well as other documents necessary to clarify the issue of compliance with the rules of stay in Ukraine, draw up protocols on administrative offenses, carry out personal inspection, inspection of things, seizure of things and documents, use other provisions provided by law measures to ensure proceedings in cases of administrative offenses; in the cases stipulated by the Code of Ukraine on Administrative Offenses, to impose administrative fines; to conduct filming and photography, sound recording as auxiliary means of preventing illegal actions and uncovering offenses; carry out photography, sound recording, film and video recording, fingerprinting of persons detained for violating the rules of stay in Ukraine; protective function – the State Security Service of Ukraine ensures the temporary detention of foreigners (stateless persons) in special institutions until the completion of preparation for their administrative deportation; enforcement function – within its competence, the State Security Service of Ukraine carries out administrative fines, as well as court decisions (on forced deportation from Ukraine) made in accordance with the procedure established by law.

Therefore, the State Migration Service of Ukraine, as a subject of authority, opposes administrative offenses by foreigners. The functions assigned to the service are relevant taking into account the geographical location of Ukraine, which often acts as a transit state for illegal migrants to the states of the European Union. Certain regions also deserve increased attention, especially in the border areas, where the influx of foreigners, and therefore the statistics of their committing administrative offenses, is significantly higher than in other regions of Ukraine, which are not so attractive for their stay.

We agree with the opinion of S. Tishchenkova that the growing scale of international, especially illegal, migration has objectively led to the actualization of the issue of strengthening the role of the state in regulating its processes. Each country has the right to independently determine the directions and goals of migration policy. But the state apparatus, whose task is to settle this issue, quite often turns out to be insufficiently mobile [9, p. 104]. Based on the above, it is important to conduct a timely legal analysis of the problems of the activity of the State Migration Service, as a subject of counteraction to the commission of administrative offenses by foreigners, which inhibit the implementation of functions in the specified area, and the proper operational regulatory and legal regulation by the authorized subjects of the legislative initiative of certain changes for the effective operation of the State Migration Service in the specified field.

Note that while performing administrative functions, the State Police of Ukraine must stop administrative offenses regarding the rules of stay in Ukraine and transit passage through the territory of Ukraine of foreigners and stateless persons and carry out proceedings against them; to ensure, within the limits of their competence, measures to prevent and counteract illegal (illegal) migration, other violations of migration legislation, control compliance by citizens and officials with the rules of the passport system, entry, exit, stay in Ukraine and transit through its territory by foreign citizens established by law and stateless persons.

According to the indicators of the activity of the State Migration Service for 9 months of 2022, it was brought to administrative responsibility under Part 1 of Art. 203 Code of Ukraine on Administrative Offenses – 8516 people. Violators of the migration legislation were fined according to the protocols of the State Migration Service – UAH 2,386,7630. 4,138 illegal migrants were identified, of which 3,237 were men and 901 were women. A decision was made on the detained illegal migrants: on the forced return of 3,895 people; about the forced deportation of 172 people; about banning entry to Ukraine – 379 people. A decision was made regarding the detained illegal migrants by the territorial body of the State Migration Service to place 170 people at the point of temporary stay of foreigners and stateless persons illegally staying in Ukraine – 170 people.

It is worth noting that in connection with the full-scale military invasion of the Russian Federation on the territory of Ukraine, it is difficult to collect statistical information on the results of the activities of the territorial bodies of the State Migration Service in certain regions of Ukraine in the temporarily occupied parts of the territories of Donetsk, Zaporizhzhia, Luhansk, and Kherson regions [10].

Violations by foreigners and stateless persons of the rules of stay in Ukraine and transit through the territory of Ukraine, as well as violations by citizens and officials of enterprises,

institutions and organizations that invite or receive foreigners and stateless persons, are quite widespread, and countering these negative phenomena requires from the bodies and territorial divisions of the State Migration Service of Ukraine, the application of various measures.

Conclusions. Summing up, let's emphasize that the State Migration Service is an important subject of the authorities' powers to combat administrative offenses by foreigners in Ukraine. The activity of this body is aimed at preventing and countering illegal (unlawful) migration and other violations of migration legislation. Officials of the State Migration Service of Ukraine are empowered to apply administrative coercion to foreigners who violate domestic administrative migration legislation. The functions of combating administrative offenses of foreigners and stateless persons in Ukraine are not sufficiently covered in the legislation and do not take into account the specifics of the activity of the State Migration Service of Ukraine in the conditions of the introduction of the legal regime of martial law. A clear definition of the understanding and implementation of functions is the key to the effective activity of the State Migration Service of Ukraine as a subject of combating the commission of administrative offenses by foreigners.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article analyzes the functions of the State Migration Service of Ukraine as a subject of countermeasures against the commission of administrative offenses by foreigners. It is emphasized that management functions are characterized by dualism – along with their static nature, they are characterized by dynamics, that in the process of public regulation in the field of migration, the tasks, the purpose of activity and the competence of subjects of authority in this field may transform, which will cause certain changes in the list its functions. The corresponding change in functions reflects their dynamics, i.e., a change in the direction of the subject of authority in the field of migration causes a change in the main functions of his management activity. It is emphasized that the functions of the State Migration Service of Ukraine, in particular those aimed at combating administrative offenses of foreigners in Ukraine, are in a phase of transformation, which is determined by both internal (a short period of time since the creation of the State Migration Service of Ukraine as a type of public service) and external factors (the development and renewal of the doctrine of administrative rights), including the activity of the State Migration Service as a subject of counteraction to the commission of administrative offenses by foreigners in the conditions of the introduction of the legal regime of martial law.

Keywords: *functions, State Migration Service, foreigners, administrative offenses, illegal migration, migration legislation, countermeasures.*

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CURRENT EXPERIENCE IN THE FIELD OF PROTECTION AGAINST FAMILY VIOLENCE AND PECULIARITIES OF PREVENTION

Дмитро Цуркаленко. СУЧАСНИЙ ДОСВІД У СФЕРІ ЗАПОБІГАННЯ ДОМАШНЬОМУ НАСИЛЬСТВУ ТА ОСОБЛИВОСТІ ПРОФІЛАКТИКИ. У статті шляхом аналізу наукових публікацій та чинного законодавства надано авторське визначення терміна «профілактика домашнього насильства». Це дії державних та громадських інституцій, спрямовані на недопущення вчинення домашнього насильства та на підвищення рівня обізнаності суспільства щодо форм, причин і наслідків домашнього насильства, формування нетерпимого ставлення до насильницької моделі поведінки у приватних стосунках, небайдужого ставлення до постраждалих осіб, насамперед до постраждалих дітей, викорінення дискримінаційних уявлень про соціальні ролі та обов'язки жінок і чоловіків, а також будь-яких звичаїв і традицій, що на них ґрунтуються.

Досліджено питання нормативного врегулювання профілактики домашнього насильства в Україні. Наголошено на тому, що на сьогодні законодавець ретельно прописав усі необхідні інструменти протидії домашнього насильства. При цьому на перший план виходить питання профілактичної діяльності в досліджуваній проблематиці. Розглянуто суб'єктів у сфері протидії домашньому насильству. Це уповноважені державою суб'єкти профілактики адміністративних правопорушень, які реалізують профілактичну діяльність у зазначеній сфері за допомогою таких методів, як примус, заохочення та переконання.

Наголошено на актуальності проблематики профілактики домашнього насильства. Адже маючи усі можливі інструменти щодо запобігання та протидії цьому вкрай негативному явищу, ще й досі серед населення побутує думка стосовно того, що домашнє насильство є нормою, а звертатися

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