

M.Sh. Jussupov, A. Bozhkarauly

*Ye.A. Buketov Karaganda State University, Kazakhstan
(E-mail: m-1372@mail.ru)*

Some aspects of illegal migration

Today, international migratory processes are the current issue of modern society. The use of migrant workers from other states plays an important role in the economy of the country. Also, when moving people between governments, the norms of international and intra-state and intra-state laws of the respective countries can be violated and harm is caused to various spheres by the public. Therefore, the purpose of the study is to develop international cooperation in the regulation, prevention and suppression of illegal international migration. The high level of illegal migration causes security in many countries of the world, as it entails a number of negative consequences and threats for society and the state. Improvements to the criminality of the world In the course of the study the following methods were applied: analysis, structural-functional method, sociological method, legal qualification, method of comparative analysis. As a result of the study, the following results were achieved: the definition of illegal migration and illegal migrants was determined; identified types of illegal migration; factors of the emergence of illegal migration; measures directed against boron with unauthorized migration. Thus, the emergence of illegal migration is associated with pushing factors (poverty, unemployment, crises) in the countries of origin of migrants and attracting in countries of destination (higher wages, employment opportunities, security).

Keywords: international migration, illegal migration, types of illegal migration, smuggling of migrants, illegal migrants, illegal stay.

International migration processes are an integral part of modern society. The use of labor of migrants from other states often plays an important role in a country's economy. At the same time, when people are moving between states, the norms of international and domestic law of the respective countries may be violated and harm is done to various areas of society. Therefore, of particular importance is the establishment of international cooperation in the regulation, prevention and suppression of illegal international migration.

Introduction

The high level of migration processes is an integral feature of modern human civilization. Almost all countries of the world are involved in migration processes. Millions of people move borders in search of search, study, rest, communication with relatives, as well as saving from various kinds of persecutions and emergencies. Analysis of migration processes allows us to conclude about the socio-political conditions in a particular state, the development of the economy, the level of security for living in a particular region of the planet. Migration movements are a response to differences in conditions and living standards, adverse environmental factors, and the needs of the world economy. From the point of view of the development of mankind, migration is a positive phenomenon, since it helps to overcome differences in the standard of living that meet the needs of the economy, there is a sociocultural exchange, spiritual mutual enrichment.

However, a feature of modern international migration is the high level of illegal migration. According to the International Organization for Migration, the total number of migrants is about 175 million people. No country in the world has direct methods by which it would be possible to determine the exact number of illegal immigrants in their possession for a given period of time. Considering that illegal migrants avoid any kind of accounting (which would inevitably entail the adoption of coercive measures towards them), their number can be estimated only with some degree of certainty. Therefore, indirect methods (administrative, expert assessments, selective studies, etc.) are actively used. According to the International Labor Organization, illegal migrants make up from 10 to 15 % of the total migration flows.

Illegal migration is the migration that occurs in violation of the legal rules adopted in a particular state and which establish the procedure for entry into the country, transit passage, stay and departure from the country of foreign citizens and stateless persons.

There are several types of illegal migration:

- by degree of organization: organized and unorganized;
- by the number of displaced illegal migrants: individual and group;

– according to the mode of entry into the country: carried out by illegally crossing the border on forged documents, across unguarded borders, or outside checkpoints across the state border and legal entry and exit after the permitted period of stay.

The emergence of illegal migration is associated with pushing factors in the countries of origin of migrants (poverty, unemployment, crises, etc.) and attracting in countries of destination (higher wages, employment opportunities, security, etc.). In addition, the existing framework and mechanisms of legal migration do not solve the problem of labor shortages in countries with developed and growing economies. In many countries where migrants seek to enter, labor markets are capable of absorbing a large number of illegal labor migrants. In this regard, the availability of employment opportunities and the willingness of employers to hire illegal migrants are the most important factors contributing to the growth of such migration. In addition, it is impossible not to take into account the activities of criminal gangs involved in the smuggling of migrants and receiving huge incomes.

The high level of illegal migration causes concern in many countries of the world, as it entails a number of negative consequences and threats to society and the state. The level of criminalization of society is increasing due to the presence among criminals hiding from the law of criminals, terrorists, rapidly developing corruption and organized crime related to the smuggling of migrants, the commission of crimes by migrants and in their regard, the increase in the level of «concomitant» crimes (trafficking in human beings, weapons, drug business, terrorism, etc.). In addition, the growth of the «shadow economy» and the expansion of the illegal labor market are noted, inter-ethnic tensions arise, new political and economic threats to the state appear.

The smuggling of migrants is the organization of the movement of people or the facilitation of their movement across state borders in violation of the procedure established by law in order to obtain financial or other benefits for persons and structures involved in the smuggling of migrants [1]. The greatest threat does not come from a migrant who has become an object of smuggling, but from strengthening organized criminal syndicates and their obtaining super-profits in an illegal way. The smuggling of migrants is an internationally organized criminal phenomenon with high profits and low risk. For example, the illegal transfer from China to the US by sea costs migrants 25–30 thousand dollars. For transporting illegal immigrants from Afghanistan, Vietnam, India and other Asian countries to Europe, intermediaries receive about 4–5 thousand dollars USA. This contributes to the growth of corruption among government officials, the «laundering» of huge sums of money, which represents a threat to the financial and economic system of the state, as well as the normal functioning of government bodies. The profits can be invested in the further expansion of the business of smuggling of migrants and other criminal activities.

The smuggling of migrants is carried out at various scales: small structures and large organizations that have connections in many countries and transport migrants along difficult routes (through several countries) using various types of transport and forged documents — passports, visas, permits. Migrant smuggling operations are characterized by a high degree of conspiracy, flexibility, and the ability to promptly adjust routes and strategies in accordance with changes in the security level at the main stages of the transfer.

Structures involved in the smuggling of migrants, skillfully carry out the education and training of clients. Migrants are instructed on how to dress, how to answer certain questions of officials of border or migration services, are taught various ways to obtain permission to stay in the country of destination, including using asylum procedures. There are also numerous cases of fraud, when, earning income for organizing the illegal entry of migrants to countries of destination, criminal gangs do not care about fulfilling their obligations to migrants.

The migrants themselves who have become the objects of smuggling are not criminals: they are responsible for violation of the migration laws of the country. Despite the fact that migrants themselves come into contact with persons carrying out their smuggling into other countries and pay for the transfer, they are often endangered and mistreated. There are numerous data on the death and serious injury of migrants when attempting to illegally enter by land or sea to various countries - Australia, USA, Western European countries, etc. One such example is the event that took place on June 19, 2000 in Dover, where in the back of the truck, 58 illegal migrants were found.

Methods and materials

In the course of the study, the following methods are used: analysis, structural-functional method, sociological method, legal qualification, method of comparative analysis. Measures aimed at combating illegal migration are a combination of effective migration legislation, preventive and law enforcement measures.

These measures are carried out both in individual states and at the global level. The international legal basis for combating illegal migration is the Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air. To counteract illegal migration, the state has two goals: to limit the number of illegal migrants and to stop the activities of criminal organizations involved in their smuggling.

Results

Various measures are applied to counteract illegal migration, the main of which are:

- strengthening measures of responsibility for organizing the smuggling of migrants;
- improving the work of border services;
- limiting cases of illegal employment by monitoring the labor market, applying administrative, criminal and civil sanctions against employers;
- sanctioning of carriers, i.e., transports companies that imported an illegal migrant by land, water or air;
- strengthening the responsibility of foreign citizens for illegal stay in the country;
- controlling the number of persons with illegal status through expulsion or migration amnesties;
- greater use of legal migration channels;
- strengthening international cooperation;
- rendering financial and economic assistance to countries of origin of illegal migrants.

The wide scope of illegal migration requires immediate and professional counteraction from law enforcement agencies, both nationally and internationally. Joint measures are much more effective than the actions of individual states.

The severity of the problem of illegal migration is connected, firstly, with the difficulty of determining the quantitative parameters of the phenomenon, which significantly exceed, according to estimates, officially recorded migration data; secondly, with the ambiguity and uncertainty of its consequences; thirdly, with the conceptual incompetence of the problem of illegal migration in the context of global restructuring of the world economy; and finally, fourthly, with the extreme difficulty of combating this phenomenon, which is associated with the instability of the socio-political and economic situation in the outflow countries, giving rise to new flows of migrants [2].

Discussion

At present, the process of rethinking the concept of both national and international security is underway in the world. The attention of the international community to non-military sources of instability, new threats to the security of states and society — violations of human rights, unemployment and poverty, ethnic conflicts, drug trafficking, international terrorism, environmental degradation, and, last but not least, illegal international migration is increasing.

In the context of the globalization of the XXIst century, illegal migration has become one of the main challenges of our time. This is a challenge for states, for interstate relations, a real threat to the stability of countries and regions of the world. At the same time, illegal migration is not only a threat in itself. It is closely related to such forms of cross-border crime as international terrorism, arms trafficking, drug trafficking and human trafficking.

The process of illegal international migration in one way or another affects the entire world community, influencing the economic, political, social spheres of society, as well as the fight against crime.

First of all, it should be established what content is embedded in the concepts of «illegal migration» and «illegal migrant» in the sources of modern international law, as well as in the works of scientists who have studied the problems of migration.

In Art. 1 of the Agreement on Cooperation of the Member States of the Commonwealth of Independent States in Combating Illegal Migration, which entered into force on June 14, 1999, illegal citizens include third-country nationals and stateless persons who have violated the rules of entry, exit, stay or transit through the territories of the Parties, as well as citizens of the Parties who have violated the rules of stay in the territory of one of the Parties, established by its national legislation.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime [1], speaks of the smuggling of migrants, which is understood as providing, in order to obtain, directly or indirectly, any financial or other material gain, illegal

entry into any State party of any person who is not his citizen or does not permanently reside on its territory. At the same time, «illegal entry» means crossing borders without complying with the necessary requirements for legal entry into the receiving state. Therefore, persons imported in this way enter the territory of the receiving state without its permission and are illegal migrants.

E.S. Krasinets, E.S. Kubishin, E.V. Tyuryukanova refers to illegal migrants of persons who illegally entered the state (crossed the border in unlawful places, with or without invalid documents or false documents), illegally staying in it (not properly arranged residence), and persons conducting illegal economic activity (in the number of perpetrators of «near economic» crimes, for example, the arms trade).

One cannot fully agree with the definition of the notion of «illegal migrant» given in the report on population migration in the countries of the Commonwealth of Independent States in 1997–1998, published by the International Organization for Migration. According to this definition, taken from the Program of Action of the International Conference on Population and Development, «irregular migrants are persons who are in an uncertain position and who do not meet the requirements for entry, stay or economic activity established by the state in which they are.

The term «illegal migrants» is used without prejudice to the determination of refugee status. «Firstly, it seems to be incorrect to state that illegal migrants are in an uncertain position in legal terms. In each state with a developed legal system, there are legal rules governing the legal status of foreign citizens, including those that violate the rules of entry or stay on its territory. Any specific exemptions should not affect the development of a general definition. The actual, rather than legal, uncertainty of the situation of illegal migrants can hardly serve as a criterion. Secondly, the above definition does not include the procedure for carrying out economic activity to the order of residence in the territory of the state, which, as already indicated, seems inaccurate.

The definition of illegal migrants includes the following categories:

- Foreigners entering the country or staying on its territory without identity documents, or with forged documents.
- Migrants, illegally suppressed state borders, as well as those whose right to enter is fabricated.
- Foreign citizens who are on the territory of the state with an expired visa, as well as foreign students who have not left the country upon expiration of their studies and workers with overdue employment contracts.

Children born to foreigners in the state (depends on the laws of the country: in particular, the child is recognized as a citizen, if at least one of the parents is a citizen of this country or both parents are foreigners, but their child is denied citizenship in the country, citizens which they are).

Thus, illegal (illegal) migration is one of the forms of territorial population transfer, the specificity of which is that in the process of such movement or stay of migrants (foreign citizens and stateless persons) in the host state violates international law and (or) domestic law of the countries concerned.

Conclusions

In particular, the rules establishing the order of, first, entry and exit from the relevant country or group of countries, including the visa regime, may be violated; secondly, stay in the territory of a foreign state; thirdly, the order of employment of labor, business and other standards [2].

As practice shows, a person can become an illegal migrant in several ways. The first is to cross the border illegally. The second is to come legally, but do not register or overdue visa. The third way is to come to study, and to engage in another type of activity (for example, work). In this matter it is difficult to find a common denominator - each country may have its own specifics of entry, order of stay and registration, obtaining a work permits for foreigners.

There is some confusion in the terminology of illegal migration in the science and practice of regulating migration. In particular, the term «illegal migration» was used in the traditional interpretation. In most documents, it is he who is used most often. However, the example of the countries of the former USSR shows that the majority of migrants (at least 75–80 %) who are illegally staying on the territory of the country arrived quite legitimately, under conditions of a visa-free regime. In the 1990s – 2000s the term «illegal», «undocumented», «unrecorded» migration has become more widely used in foreign and domestic science. The term was proposed by international organizations, including the IOM and the ILO, which supported the idea that many labor migrants who do not have work permits often arrive in the receiving countries on legal grounds. In this regard, these categories of migrants,

rather, can be called «illegal» or «undocumented». Gradually, this term was included in the regulatory and legal documents and the practice of regulating migration.

We assume that migrants who are in the country should be considered illegally in the context of the causes of their illegal status. First of all, it is necessary to distinguish three components of illegal migration: illegal entry, illegal stay, illegal employment. Under the illegal entry refers to the illegal entry into the territory of the country of foreign citizens or stateless persons, carried out in violation of the procedure for crossing the border, or with false or invalid documents. Obviously, this form of migration can be called illegal migration. This concept is narrower than illegal migration, because it includes only those migrants who crossed the border illegally, than initially condemned themselves to the illegality of the situation in the country. Most often, they took this step consciously, knowing that they were breaking the law.

Illegal stay is the lack of necessary registration documents. Often, migrants may legally enter the country, but them overdue a visa, do not receive the necessary documents, and do not go through the registration procedures established by law. Either migrant receive fake registration. There are a lot of such migrants, they come from the countries of the former USSR, with which the countries maintain visa-free regime. Often the illegality of the situation of such migrants is due to their poor awareness, lack of knowledge about the registration procedures in the country.

Illegal employment is the labor activity of foreigners not legally executed in accordance with the law in force and the rules for the use of labor of foreign workers in a given country. Lack of a work permit, a patent, and non-payment of taxes by foreigners in the territory of the state of employment can also be attributed to illegal employment. Studies show that many labor migrants who do not have relevant work permits in the country of residence and employment cannot or do not know how to obtain a work permit. With regard to this problem, it is caused by the inaccessibility of channels for obtaining work permits, their high cost, the existence of an extensive institute of intermediaries between migrants and the migration service.

But in relation to the second and third categories of migrants, the use of the term «illegal migrants» is not quite correct. Obviously, it is more reasonable to use the term «illegal migrants». This allows this group of migrants to be defined as a special category that does not pursue the goal of being in the country illegally, and is often artificially placed in such conditions as to be isolated from society. The main reason for this in the country is the economic interest of employers interested in using cheap and disenfranchised workers, for whom you do not need to pay pension and social contributions; you can exploit their work uncontrollably and with impunity, manipulate migrants.

A special form of illegal migration can be considered groups of migrants who have entered the country legally, are legally, but work illegally due to the fact that they are forced to break the law, which is extremely imperfect. This is a part of foreign students, who are forced to work, but arrived in the country on a student (study) visa and cannot formally do this.

Illegal migration is the entry into a particular country, the stay on its territory and exit from its territory of foreign citizens and stateless persons in violation of the legislation governing the procedure for entry, stay, transit and exit of foreign citizens; their arbitrary change of their legal status during the period of their stay on its territory, as well as their citizens leaving the territory of the country in violation of the legislation governing their departure.

Illegal migration in particular has serious consequences.

One of the most obvious consequences of illegal migration are:

- the creation of an extremely low standard of labor relations by employers hiring illegal immigrants;
- violation of the housing code, in other words, overpopulation of occupied residential areas, as illegal immigrants or their contractors try to save on rent;
- the destruction of families, as migrant workers have to stay away from their families for a very long time.

The economic burden for taxpayers, since immigrants have to use medical services in public medical institutions, their children attend public schools, increase the costs of municipalities to maintain law and order, etc.

Among the factors of illegal immigration are the following:

- the economic lag of the countries «suppliers» of illegal immigrants from countries «consumers»;
- an attempt by an illegal immigrant to avoid criminal responsibility to which he should be involved in the territory of the country of which he is a citizen (especially when using false documents proving their identity).

The processes of illegal migration were influenced by factors related to globalization.

First, the strengthening of immigration control in many Western countries has reduced the possibility of legal entry, which affected the more active use of illegal channels.

Secondly, the informal economy makes ever-increasing demand for illegal foreign labor because of its cheapness and unpretentiousness.

Third, the business of smuggling people has become global.

Fourthly, with the abolition of emigration control, many states, especially the former socialist countries, became transshipment points for illegal migrants from foreign countries.

The study of the place of illegal international migration in the modern world, the search for forms and means for its prevention and suppression involve the analysis of a wide range of international legal and domestic legal norms. Focusing on the problems of international law arising from the prevention and suppression of illegal international migration, an attempt should be made to look at a new set of international legal norms concerning the international movement of persons, the visa regime, the right of asylum, international labor migration and some other issues. It is important to study the possible directions of development of such an institution specific to this field as the return of illegal migrants (readmission). Special attention should be paid to the study of the correlation of illegal international migration with certain types of activities of transnational organized crime, first of all, human trafficking and the smuggling of migrants.

The foregoing necessitates the study of the current state of the international legal regulation of interstate relations in the field of preventing and combating illegal international migration.

Population migration is one of those social processes that can have a significant impact on society, where they develop, and illegal migration can lead to various kinds of negative social, political, economic, ethnic, and inter-ethnic consequences. Thus, in the political sphere, illegal migration is a direct threat to the security of a country, its geopolitical interests and international image; in economic — contributes to the expansion of the shadow economy, developing outside of tax and other economic legislation, withdrawing from the financial turnover a significant share of funds, including by exporting them abroad, aggravating the situation on the labor market and squeezing out of it local firms and workers; in social — leads to increased social tension and xenophobia, greatly complicates the criminal situation.

Thus, the following definition will be more complete. Illegal (external) migration is the entry into a particular country, the stay on its territory and the departure from its territory of foreign citizens and stateless persons in violation of the legislation governing the procedure for entry, stay, transit and exit of foreign citizens; their arbitrary change of their legal status during the period of their stay on its territory, as well as their citizens leaving the territory of the country in violation of the legislation governing their departure.

References

1 The UN Convention of November 15, 2000, adopted by General Assembly Resolution No. 55/25 «Against Transnational Organized Crime» [Электронный ресурс]. — Режим доступа: https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf

2 United Nations Office on Drugs and Crime «Toolkit to Combat Smuggling of Migrants. Tool 1. Understanding the smuggling of migrants» [Электронный ресурс]. — Режим доступа: https://www.unodc.org/documents/human-trafficking/SOM_Toolkit_E-book_english_Combined.pdf

3 Красинец Е.С. Нелегальная миграция в Россию / Е.С. Красинец, Е.С. Кубишин, Е.В. Тюрюканова. — М.: Академия, 2000. — 96 с.

М.Ш. Джусупов, А.Божқараұлы

Заңсыз көші-қонның кейбір аспектілері

Қазіргі уақытта халықаралық көші-қон үдерістері бүгінгі қоғамның өзекті мәселесі болып табылады. Басқа мемлекеттерден келген еңбекші-мигранттардың еңбегін пайдалану ел экономикасында маңызды рөл атқарады. Сондай-ақ мемлекеттер арасында адамдардың көшіп-қону кезінде тиісті елдердің халықаралық және ішкі мемлекетаралық және ішкі заңдарының нормаларының бұзылуы және қоғамның түрлі салаларына зиян келтіруі мүмкін. Сондықтан зерттеудің мақсаты заңсыз халықаралық көші-қонды реттеу, алдын алу және жолын кесу саласындағы халықаралық ынтымақтастықты дамыту болып табылады. Заңсыз көші-қонның жоғары деңгейі әлемнің көптеген елдерінде қауіпсіздікті

тудырады, себебі бұл қоғам мен мемлекет үшін бірқатар жағымсыз салдар мен қауіптер тудырады. Қоғамның қылмыстық сипаты қылмыскерлердің, лаңкестердің, тез дамып келе жатқан сыбайлас жемқорлық пен ұйымдасқан қылмыс, мигранттарды заңсыз әкелуімен байланысты, сондай-ақ мигранттардың заңнан жасырынған мигранттар арасында қылмыс жасаған секілді себептері артып келеді. Зерттеу барысында келесі әдістер қолданылды: талдау, құрылымдық-функционалдық әдіс, әлеуметтік әдіс, заңдық біліктілік, салыстырмалы талдау әдісі. Зерттеу нәтижесінде келесідей нәтижелерге қолжеткізілді: заңсыз көші-қон және заңсыз көшіп-қонушылардың анықтамасы анықталды; заңсыз көші-қонның түрлері белгіленді; заңсыз көші-қонның пайда болу факторлары; заңсыз көші-қонға қарсы бағытталған шаралар. Осылайша, заңсыз көші-қонның пайда болуы мигранттардың шыққан елдерінде (кедейшілік, жұмыссыздық, дағдарыстар) және тағайындалған елдерге тарту факторларымен (жоғары жалақы, жұмысқа орналасу мүмкіндігі, қауіпсіздік) байланысты.

Кілт сөздер: халықаралық көші-қон, заңсыз көші-қон, заңсыз көші-қон түрлері, мигранттарды заңсыз әкелу, заңсыз мигранттар, заңсыз тұру.

М.Ш. Джусупов, А.Божкараулы

Некоторые аспекты незаконной миграции

Сегодня международные миграционные процессы являются одним из актуальных вопросов современного общества. Использование труда мигрантов из других государств играет важную роль в экономике страны. Также при перемещении людей между государствами могут быть нарушены нормы международного и внутригосударственного права соответствующих стран, и нанесен вред различным сферам общества. Поэтому целью исследования является налаживание международного сотрудничества в области регулирования, предупреждения и пресечения незаконной международной миграции. Высокий уровень незаконной миграции вызывает обеспокоенность во многих странах мира, так как влечет ряд негативных последствий и угроз для общества и государства. Повышается уровень криминализации общества, вследствие наличия среди мигрантов скрывающихся от закона преступников, террористов, быстро развивающейся коррупции и организованной преступности, связанной с незаконным ввозом мигрантов, совершением преступлений мигрантами. В ходе исследования были применены следующие методы: анализ, структурно-функциональный метод, социологический метод, юридическая квалификация, метод сравнительных анализов. В результате исследования были достигнуты следующие результаты: дано определение незаконной миграции и нелегальным мигрантам; выделены виды незаконной миграции; факторы появления незаконной миграции; меры, направленные на борьбу с незаконной миграцией. Таким образом, появление незаконной миграции связано с действием вытесняющих факторов (бедность, безработица, кризисы) в странах происхождения мигрантов и притягивающих в странах назначения (более высокий уровень оплаты труда, возможность трудоустройства, безопасность).

Ключевые слова: международная миграция, незаконная миграция, виды незаконной миграции, незаконный ввоз мигрантов, незаконные мигранты, нелегальное пребывание.

References

- 1 The UN Convention of November 15, 2000, adopted by General Assembly Resolution No. 55/25 «Against Transnational Organized Crime». *unodc.org*. Retrieved from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.
- 2 United Nations Office on Drugs and Crime «Toolkit to Combat Smuggling of Migrants. Tool 1. Understanding the smuggling of migrants». *unodc.org*. Retrieved from https://www.unodc.org/documents/human-trafficking/SOM_Toolkit_E-book_english_Combined.pdf.
- 3 Krasinets, E.S., Kubishin, E.S. & Tyuryukanova, E.V. (2000). *Nelehalnaia mihratsiia v Rossiiu [Illegal migration to Russia]*. Moscow: Akademia [in Russian].