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## FEATURES OF DEPORTATION IN UKRAINE

### **Abstract.**

*In the article the author explores the concept of deportation. The issue of the procedure of forced expulsion of foreigners and stateless persons from Ukraine is also being investigated separately.*

**Keywords:** *deportation, expulsion, expulsion (deportation) of foreigners and stateless persons, procedures of forced expulsion of foreigners and stateless persons from Ukraine.*

**Formulation of the problem.** Due to the fact that Ukraine is simultaneously a country of origin, destination and transit of migrants, a territory of different, diverse and large-scale migration flows, ensuring state regulation in the field of migration is a difficult task that requires a comprehensive, systematic approach, adequate funding, human and scientific provision [1].

At present, the territory of Ukraine is a buffer zone between the CIS countries and the European Union. That is why thousands of migrants from the former Soviet Union are trying to use this country to be able to live in the Schengen area. Most of these attempts are illegal, so deportation from Ukraine has become extremely common.

Having an international legal basis, deportation really functions as a complex legal institution and needs to be studied and improved in modern conditions COVID 19.

**Analysis of recent research and publications.** Various aspects of forced expulsion of foreigners and stateless persons from Ukraine have been repeatedly studied by such authors as: O. Voronyatnikov, R. Gavrrik, I. Gula, N. Demchyk, V. Zuy, O. Kuzmenko, C. Oliynyk, V. Olifer, A. Siver, N. Tyndyk, S. Chekhovych, M. Shulga and others. At the same time, it should be acknowledged that the conducted research does not cover all issues in this area, as there are a number of debatable issues, in particular, the procedure of forced expulsion of foreigners and stateless persons from Ukraine in a pandemic.

**The purpose of this article:** is to study the peculiarities of deportation in Ukraine.

To achieve this goal it is necessary to solve the following tasks:

- define the concept of "deportation";
- consider the procedure for forcible expulsion of foreigners and stateless persons from Ukraine

**Presenting main material.** Each country, depending on the existing legal system and historical features of development, has its own authentic, well-established mechanism for acquiring citizenship, procedures for issuing identity documents, registration of citizens, monitoring compliance with the rules of entry (exit) on (with) it territory, rules of stay of foreigners, refugees and stateless persons [2, p. 31]. However, as a result of violations of the rules established by the legislation of a state, a foreigner or a stateless person, the question of punishment, one of the main types of which is the expulsion or deportation of these persons from the country where the offense was committed [3, p. 169]. Specific features of expulsion (deportation) of foreigners and stateless persons are enshrined in the legislation of Ukraine.

Deportation in the theory of international law means the forcible transfer of part of the population of the occupied territory outside or the movement of part of its population to the occupied territory, and according to the Geneva Protocol, such actions are an international crime. In the Stakic case of 31 July 2003, the International Criminal Tribunal for the former Yugoslavia ruled that the crime should be interpreted as the forcible removal of persons through deportation or other acts of violence on grounds of international law from the area in which they are lawfully to the territory controlled by the opposing party. A crime also occurs if the civilian population moves for fear of death or other acts of discrimination. An almost identical definition of deportation is set out in paragraph 2 (d) of Art. 7 of the Statute of the International Criminal Court [4, p. 732–733].

Ukrainian law does not use the term "deportation", but uses the term "forced expulsion of foreigners and stateless persons".

Expulsion in legal science means "a measure of administrative and legal coercion, which consists in the

decision of a competent authority or court to deprive a foreigner or stateless person of the right to stay in the territory of the state, which obliges to leave its borders." The current Ukrainian legislation stipulates that the expulsion of a person from Ukraine can be carried out only by a decision of an administrative court [5, p. 43].

Since gaining its independence, Ukraine has adopted a number of legal acts aimed at forcibly expelling foreigners and stateless persons to their country of origin or third country. Such normative acts should include the Code of Ukraine on Administrative Offenses, the Code of Administrative Procedure of Ukraine, the Laws of Ukraine: "On the Legal Status of Foreigners and Stateless Persons", "On Immigration", "On Free Legal Aid", "On Refugees and Persons need additional or temporary protection", "On combating the spread of diseases caused by human immunodeficiency virus (HIV), and legal and social protection of people living with HIV", "On combating trafficking in human beings", "Instruction on forced return and forced expulsion from Ukraine of foreigners and stateless persons, approved by a joint order of the Ministry of Internal Affairs of Ukraine, the Administration of the State Border Guard Service of Ukraine and the Security Service of Ukraine" and other regulations.

According to the provisions of the Instruction on Forced Return and Forcible Expulsion of Foreigners and Stateless Persons from Ukraine, the terms "forced return" and "forced expulsion" should be understood as a system of administrative and legal measures aimed at forcing foreigners and stateless persons to leave Ukraine against their will. and desire [6].

Thus, foreigners may be forcibly returned to their country of origin or third country on the basis of a decision of territorial bodies, territorial divisions of the State Migration Service, state border guards and SBU bodies on forced return or forcibly deported on the basis of an administrative court ruling on forced expulsion.

According to the Constitution of Ukraine, foreigners and stateless persons legally staying in Ukraine are endowed with the same rights and obligations as citizens of Ukraine. The receiving State has the right to establish the conditions of "legality" of the stay of foreigners and stateless persons on its territory, in connection with which the stay is recognized as legal as long as the person fulfills these conditions. If certain grounds arise, coercive measures of deportation outside Ukraine may be applied to foreigners or stateless persons in appropriate cases.

The legal basis for the forced expulsion is the requirement of Art. 30 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", according to which forced expulsion may be applied if a foreigner or a stateless person has not complied with the decision on forced return within good time or if there are reasonable grounds to believe that a foreigner or a stateless person will evade such a decision, the State Migration Service of Ukraine, the Security Service of Ukraine, and in the case of foreigners and stateless persons detained by them within controlled border areas during an attempt or after illegal crossing of the state border of Ukraine - and authorities State border guards may file

an administrative lawsuit on the forced expulsion of such persons and their transfer to the border authorities of a neighboring state [7].

It follows from the content of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" that foreigners and stateless persons may be forcibly returned to their country of origin or a third country if:

- their actions violate the legislation on the legal status of foreigners and stateless persons;
- their actions contradict the interests of ensuring the national security of Ukraine or the protection of public order;
- it is necessary for the protection of health, protection of the rights and legitimate interests of citizens of Ukraine by decision of the central executive body that ensures the implementation of state policy in the field of migration, the Security Service of Ukraine or the state border guard (for foreigners and stateless persons detained by them within the controlled border areas during the attempt or after illegal crossing of the state border of Ukraine) [8].

That is, forced return involves the departure of a foreigner from Ukraine, by decision of the central executive body that ensures the implementation of state policy in the field of migration, the Security Service of Ukraine or the state border guard (for foreigners and stateless persons detained by them at controlled border districts during the attempt or after illegal crossing of the state border of Ukraine), with further notification within 24 hours to the prosecutor of the grounds for such a decision with the relevant documents, bringing to the foreigner the obligation to leave Ukraine within the period specified in the decision and further control upon fulfillment by the foreigner of this obligation.

Compulsory return does not apply to foreigners and stateless persons under the age of 18, to foreigners and stateless persons covered by the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection".

According to Article 31 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", it is prohibited to forcibly return and expel foreigners to countries:

- where their life or freedom will be endangered on the grounds of race, religion, nationality, citizenship (citizenship), belonging to a certain social group or political beliefs;
- where they face the death penalty or execution, torture, cruel, inhuman or degrading treatment or punishment;
- where their lives or health, safety or liberty are in danger as a result of widespread violence in situations of international or internal armed conflict, or systematic human rights violations, or natural or man-made disasters, or lack of medical treatment or life-sustaining care;
- where they are threatened with deportation or forced return to countries where these cases may occur [6].

It should be noted that the forced return of foreigners and stateless persons to their country of origin or third country is carried out at the own expense of the

foreigner or stateless person or international organization.

If there are reasonable grounds to believe that a foreigner or stateless person in respect of whom an administrative action for forced expulsion has been filed does not have a document entitling him to leave Ukraine, will evade execution of the decision on his forced expulsion, obstruct the expulsion procedure or there is a risk of his escape, the administrative court, at the request of the body (unit) that filed such a lawsuit, may take one of the following decisions:

1) take the person on bail of the enterprise, institution or organization;

2) oblige a foreigner or a stateless person to pay a pledge;

3) to detain a foreigner or a stateless person with accommodation to the point of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine [8, p. 254].

Bail and bail may not be applied to foreigners and stateless persons who have previously been subject to such measures and who have sufficient information about their involvement in the preparation and / or commission of terrorist activities.

The procedure of forced expulsion, in turn, provides for: detection of the violator, placing him in a temporary residence of foreigners and stateless persons illegally staying in Ukraine, documenting forced expulsion, further escorting a foreigner to a checkpoint across the state border of Ukraine or country of origin. Expulsion of foreigners and stateless persons from the territory of Ukraine is carried out exclusively on the basis of the decision of the administrative court [8, p. 254].

Foreigners and stateless persons who have no legal grounds to stay on the territory of Ukraine, detained in the prescribed manner and subject to forced deportation outside Ukraine, including those accepted in accordance with international readmission agreements of Ukraine, are accommodated in temporary stays of foreigners and stateless persons. citizenship illegally staying in Ukraine, for the period necessary for their identification and ensuring forced expulsion (readmission) outside Ukraine, but not more than for eighteen months.

If a person applies for recognition as a refugee or a person in need of additional protection in Ukraine during his / her stay in the temporary stay of foreigners and stateless persons who are illegally staying in Ukraine, he / she shall continue to be in the specified point until the final decision on statement.

Given that the decision to expel a foreigner and a stateless person is a legal act of individual action, it is subject to appeal to the administrative court at the place of residence (stay, location) of the plaintiff (Part 1 of Article 25 of the Code of Administrative Procedure of Ukraine) [9].

According to Art. Art. 32 and 33 of the Code of Administrative Procedure of Ukraine, cases of this category are considered and decided by a judge alone [9].

When considering this category of cases, the courts must carefully examine the grounds for the expulsion of a foreigner - whether they are reasonable and appropriate, whether they do not violate his rights and

freedoms. When considering a case of this category, if the person does not speak Ukrainian, according to Part 4 of Art. 15 and Part 2 of Art. 71 of the Code of Administrative Procedure of Ukraine by a court decision to participate in the case allowed an interpreter at the request of the person involved in the case, or appointed on the initiative of the court. The court provides the person with an interpreter if it concludes that the person will be deprived of judicial protection due to the inability to pay for the services of an interpreter [9].

According to Art. 288 of the Code of Administrative Procedure of Ukraine claims of foreigners and stateless persons to appeal decisions on their forced return to the country of origin or a third country, as well as claims of the central executive body that ensures the implementation of state policy in migration, its territorial bodies and units, bodies of state border protection or the Security Service of Ukraine on forced expulsion of foreigners and stateless persons outside Ukraine are submitted to the local general court as an administrative court at the location of the central executive body that ensures the implementation of state policy in migration, its territorial bodies and units protection of the state border or the Security Service of Ukraine or at the location of the temporary residence of foreigners and stateless persons who are illegally staying in Ukraine with exemption from court fees [9].

This category of administrative cases is considered by the court with the obligatory participation of the parties within ten days from the date of filing the statement of claim [10].

When considering cases of forced expulsion of foreigners and stateless persons from Ukraine, the court, with substantiated grounds, in accordance with Part 2 of Art. 371 of the Code of Administrative Procedure of Ukraine may apply for immediate execution of the decision on forced expulsion of a foreigner or stateless person.

It should be noted that the law provides for a judicial procedure for the forced expulsion of foreigners or stateless persons, but the law does not prohibit entry into the territory of Ukraine in court. At the same time, the decision of law enforcement agencies as subjects of power to prohibit entry into the territory of Ukraine for foreigners may be appealed to the district administrative court.

If we talk about the main grounds for satisfying an administrative claim for forced expulsion of a foreigner or stateless person, then, as noted by I. L. Gula, such grounds are: the existence of laws that provide for administrative expulsion or administrative misconduct that grossly violates the law, ie: a) non-execution in due time without valid reasons of the decision on forced return; b) if there are reasonable grounds to believe that a foreigner or a stateless person will evade such a decision, except in cases of detention of a foreigner or stateless person for illegal crossing of the state border of Ukraine outside the state border of Ukraine and their transfer to border authorities of a neighboring state [11, p. 253].

According to Art. 289 of the Code of Administrative Procedure of Ukraine, if there are reasonable grounds to believe that a foreigner or stateless person

in respect of whom an administrative lawsuit for forced expulsion is filed, will evade execution of the decision on his forced expulsion, will prevent the expulsion or readmission procedure if there is a risk of her escape, as well as in the absence of a foreigner or stateless person who has violated the legislation of Ukraine on border issues or the legal status of foreigners, a document entitling to leave Ukraine, the State Migration Service of Ukraine, State Border Guard Service or the Security Service of Ukraine, a statement of claim shall be submitted to the local general court as an administrative court at the location of these bodies (subdivisions) or at the location of the temporary residence of foreigners and stateless persons illegally staying in Ukraine. detention of a foreigner or a stateless person for the purpose of identification and (or) ensuring expulsion from the territory of Ukraine or detention for the purpose of ensuring the transfer of a person in accordance with international readmission agreements of Ukraine [9].

The period of detention of foreigners and stateless persons in places of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine is six months. If there are conditions under which it is impossible to identify a foreigner or a stateless person, to ensure the forced expulsion or readmission of a person within the specified period or to make a decision on the application for recognition as a refugee or a person in need of additional protection in Ukraine, this period may be extended for more than eighteen months.

The body (unit) at the request of which a foreigner or a stateless person has been detained shall file an appropriate administrative lawsuit every six months to extend the detention period no later than five days before its expiration. Such a claim shall indicate the actions or measures taken by the body (unit) to identify the foreigner or stateless person, ensure the execution of the decision on forced expulsion (readmission) or to consider the application for recognition as a refugee or person in need of additional protection in Ukraine.

Conditions under which it is impossible to identify a foreigner or a stateless person, to ensure the forced expulsion or readmission of a person are:

1) lack of cooperation on the part of a foreigner or a stateless person during the procedure of his / her identification;

2) failure to receive information from the country of citizenship of the foreigner or the country of origin of the stateless person or documents necessary for identification of the person.

The consideration of the above issues is carried out by the court with the obligatory participation of the parties on the day of filing the relevant statement of claim. Consideration of cases on extension of detention of a foreigner or stateless person may be carried out by videoconference, including broadcast from another room outside the courtroom, in the manner prescribed by the Code of Administrative Procedure of Ukraine [9].

Appeals against court decisions in administrative cases specified in this article may be filed within ten days from the date of their promulgation. The appellate

court considers the case within ten days after the expiration of the term for appeal with notification of the parties to the case [12].

At the time of the appeal, foreigners or stateless persons who do not have documents entitling them to leave Ukraine shall continue to be detained in specially equipped for this purpose premises (units) of the State Border Guard or the Security Service of Ukraine or in the temporary stay of foreigners and stateless persons who are illegally staying in Ukraine [12].

Forced expulsion of foreigners and stateless persons is a legal consequence of their violation of the legislation on border issues, which is implemented by the state border guards or the migration service on the basis of a court decision made on the basis of an appropriate administrative claim.

Grounds for forced expulsion are: the existence of laws that provide for administrative expulsion or administrative misconduct that grossly violates the law, ie: failure to comply with the decision on forced return without good reason, if there are reasonable grounds to believe that a foreigner or stateless person will evade from the execution of such a decision, including: stay on the territory of Ukraine without legal grounds; attempt to illegally cross the state border, outside the established checkpoint, lack of documents entitling to enter and leave Ukraine; lack of documents granting the right to leave Ukraine; lack of relatives in Ukraine; open intention to enter the country illegally; lack of funds for the purchase of travel documents [11, p. 253].

If there are reasonable grounds to believe that a foreigner or a stateless person in respect of whom an administrative action for forced expulsion has been filed will evade execution of the decision on his or her forcible expulsion, obstruct the expulsion or readmission procedure in accordance with international readmission agreements or if there is a risk of escape, as well as in the absence of a foreigner or stateless person who has violated the legislation of Ukraine on border issues or the legal status of foreigners, a document giving the right to leave Ukraine, it is possible to detain such a person for six months on the basis of court satisfaction administrative claim. The term of such detention may be extended in court on the basis of a relevant court decision, if there are conditions under which it is impossible to identify a foreigner or a stateless person, to ensure the forced expulsion of the person within the specified period. Conditions under which it is impossible to identify a foreigner or a stateless person, to ensure the forced expulsion or readmission of a person are: lack of cooperation on the part of the foreigner or stateless person during the procedure of his identification; failure to receive information from the country of citizenship of the foreigner or the country of origin of the stateless person or documents necessary for identification of the person [12].

The court decision on forced expulsion of a foreigner or stateless person is executed by the central executive body implementing the state policy in the field of migration, and in respect of foreigners and stateless persons detained by them within controlled border areas during the attempt or illegal crossing of the state

border of Ukraine, - body for protection of the state border. Control over the correct and timely execution of the decision on forced expulsion is carried out by the body on whose claim the court made the decision on forced expulsion. In order to control the implementation of a foreigner or a stateless person, the decision on forced expulsion of officials of the state border guard or the central executive body that ensures the implementation of state policy in the field of migration, accompanies such a foreigner or stateless person [8, p. 254].

Foreigners and stateless persons who, in accordance with a court decision, are subject to forced expulsion from Ukraine, reimburse the costs associated with the expulsion, in the manner prescribed by law. If these persons do not have the funds to reimburse the costs associated with the expulsion from the territory of Ukraine, the expulsion is carried out at the expense of the state budget. Natural or legal persons who invited or received foreigners and stateless persons, arranged their illegal entry, residence, employment, assisted in evading departure after the expiration of the stay, by court decision in the manner prescribed by law reimburse the costs of damages due to the expulsion of foreigners and stateless persons.

**In conclusion.** Ukrainian law does not use the term "deportation", but uses the term "forced expulsion of foreigners and stateless persons". According to the provisions of the Instruction on forced return and forced expulsion of foreigners and stateless persons from Ukraine, the terms "forced return" and "forced expulsion" should be understood as a system of administrative and legal measures aimed at forcing foreigners and stateless persons to leave Ukraine against their will and desire.

The institution of forced expulsion of foreigners and stateless persons in Ukraine needs to be improved in accordance with international standards and modern conditions related to the pandemic. It is necessary to amend the Code of Ukraine on Administrative Offenses, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", the Instruction on Compulsory Return and Compulsory Expulsion of Foreigners and Stateless Persons from Ukraine.

#### Literature

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## КИБЕРТЕРРОРИЗМ: ПРИЧИНЫ И УСЛОВИЯ

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## CYBER TERRORISM: CAUSES AND CONDITIONS

### Аннотация.

В статье рассматриваются причины и условия распространения угрозы кибертерроризма в настоящем и будущем. Характеризуя кибертерроризм как негативное социальное явление, автор делает попытку к устранению семантических противоречий относительно его понятия. Анализируя современную ситуацию в международном и внутригосударственном контексте, автор выделяет основные причины и условия распространения кибертерроризма, основываясь на современные исследования в данной области.

### Abstract.

The article discusses the causes and conditions of the spread of the threat of cyber terrorism in the present and future. Describing cyberterrorism as a negative social phenomenon, the author makes an attempt to eliminate semantic contradictions regarding his concept. Analyzing the current situation in the international and domestic context, the author identifies the main causes and conditions for the spread of cyber terrorism, based on modern research in this area.

**Ключевые слова:** кибертерроризм; кибератаки; интернет; причины и условия преступлений; национальная безопасность; интернет.

**Keywords:** cyber terrorism; cyber-attacks; the Internet; causes and conditions of crimes; national security; the Internet.

Современный технологический прогресс привел к повышению оснащенности организаций, осуществляющих террористическую деятельность, а

также форм проявления данного негативного социального явления. Использование в деятельности террористических организаций информационных