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NEW MEASURES TO COMBATING ILLEGAL MIGRATION IN THE EUROPEAN UNION¹

Summary. The article analyzes the modern measures to combating illegal migration. The search for a new tendency of using traditional measures to combating illegal migration a seek of optimal instruments for Ukraine and its legal registration in view of European integration trends in our state. The purpose of this paper is to analyze the modern tools of prevention and combating illegal migration, including new ones. The analysis system such facilities in the EU to adopt the experience of struggle against illegal migration to the legislation of Ukraine. One of the objectives of the study should outline the migration situation in the EU and Ukraine and analysis of the factors influencing the use of certain drugs. The following features of measures on prevention of irregular migration were analyzed: The conduct of preliminary tests in the provision of visas (first of all, it suggests the Consul consent to the visa in accordance within the coordination and cooperation in the implementation of the relevant EU visa policy between Schengen countries); Border security and control at the border (The Schengen Borders Code governs the crossing of the external border, facilitating access for those who have a legitimate interest to enter into the EU); Control on the territory of the State (usually The Border Guard and the Police are those institutions which control the legality of residence of foreigners); Return, deportation and readmission (Europeans features), Amnesty for illegal migrants (the new measure); Integration. Also have given the recommendations for a systems using of these instruments.

Key words: illegal immigration, instruments counteracting illegal migration, migration policy, standards of the European Union, immigration amnesty.

The EU membership is a strategic goal to our state and the adaptation of the Ukrainian legislation to the EU law system, particularly in the sphere of resistance of illegal migration, is an important prerequisite for the EU accession, taking into account that the border of Ukraine can become border of the European Union. One of the sections of the Lisbon Treaty, which came into force on 01.01.2009, is dedicated to "the policy of border controls, asylum and immigration" (art. 77–80). They spelled out a completely new common policy of the EU in the field of migration and proposed new tools against illegal migration, such as immigration amnesty and tolerant habitation, the new Visa policy and voluntary return.

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Greater mobility brings with it opportunities and challenges. A balanced, comprehensive and common migration policy will help the EU to seize these opportunities while tackling the challenges head-on. This policy – currently under development – is built upon solidarity and responsibility. It will have the added advantage of making a valuable contribution to the EU's economic development and performance in the long term.

The article's problem is a very practical, and therefore should find its theoretical solution. Attempts to do this and draw public attention to migration issues carried out repeatedly. However, a comprehensive search of models of migration policy wasn't conducted. It is necessary to distinguish the works by O. Potemkina, V. Shreybut, P. Kaczmarczyk, M. Okolski, Yu. Buznitsky, A. Babenko, V. Kolpakov, A. Kuzmenko, A. Malinowski, V. Novik, V. Olefir, S. Pyrozhkov, A. Piskun, I. Prybytkova, Yu. Rymarenko, Yu. Todyka, V. Troshchinsky, P. Chaly, S. Czechowicz, O. Shamshur, V. Shapoval, M. Shulga et al., which have important theoretical and practical for the further study of modern migration. Actively working on this issue conducts State Migration Service, which was established in 2009.

The purpose of this paper is to analyze the modern tools of prevention and combating illegal migration, including new ones. The analysis system such facilities in the EU to adopt the experience of struggle against illegal migration to the legislation of Ukraine. One of the objectives of the study should outline the migration situation in the EU and Ukraine and analysis of the factors influencing the use of certain drugs.

The issue of combating illegal migration on the EU forum has special significance because it presupposes the existence of the Union area without internal borders whose management is based on principles designed to reconcile the need for solidarity within the Union, fundamental rights of migrants and expectations of third countries and the social acceptance the phenomenon of illegal migration in the member states.

The phenomenon of illegal migration accepts several forms: a) persons arriving illegally in the territory of a member state, often using forged documents or through criminal groups; b) persons who enter legally on the territory of the country, but then extend their stay; c) persons seeking international protection extending to them which are in a member state, even though it was to them a final negative decision. The fight against illegal migration includes people who do not require international protection.

The phenomenon of illegal migration includes not only illegal movement of foreigners. It is also the existence of various forms of criminal activity, especially organized criminal groups involved in human smuggling and trafficking.

The following features of measures on prevention of irregular migration were analyzed:

1. *The conduct of preliminary tests in the provision of visas* remains the most effective means of prevention of illegal immigration. Foreigners, before the entry into the territory of the EU, are being verified and controlled. First of all, it suggests the Consul consent to the visa in accordance within the coordination

and cooperation in the implementation of the relevant EU visa policy between Schengen countries.

The Schengen Area is one of the greatest achievements of the EU. It is an area without internal borders, an area within which citizens, many non-EU nationals, business people and tourists can freely circulate without being subjected to border checks. Since 1985, it has gradually grown and encompasses today almost all EU States and a few associated non-EU countries.

While having abolished their internal borders, Schengen States have also tightened controls at their common external border on the basis of Schengen rules to ensure the security of those living or travelling in the Schengen Area.

Several Member States also introduced measures aimed at strengthening prevention either through international cooperation, or nationally-focussed measures. Visa abuse – in 2014, the Border Guard recorded the practice of using visas by third-country nationals for the purpose different from the declared. It was still one of the main threats for the Polish border security system. Most of incidents of this kind were recorded in connection with nationals from Ukraine, Belarus, and to a lesser degree, from Georgia, Russia, Uzbekistan, Moldavia, Mongolia, Kirgizstan, India, and Iraq. Visa swindling was usually practiced with the use of a system of intermediaries (among others, with an aid of persons connected with Polish business entities, intermediate companies offering employment to foreigners – especially companies from Ukraine, tourism agencies, organised crime) and was often connected with the so-called visa shopping.

2. *Border security and control at the border.* The provision by the consul of visa to a foreigner is a preliminary solution that is checked each time by the Border Guard Service during the foreigner's border crossing. An important role in border security outside the customs belongs to new systems of physical and technical protection of access to the country (border guards, mobile modules, integrated tools radar, guard towers, communications, vehicles, etc.), operational measures aimed to combat border organized crime.

The Schengen Borders Code governs the crossing of the external border, facilitating access for those who have a legitimate interest to enter into the EU. A special Local Border Traffic Regime has also been established to facilitate entry for non-EU border residents who frequently need to cross the EU external border. A common visa policy further facilitates the entry of legal visitors into the EU.

EU State authorities need to cooperate on border management to ensure the security of citizens and travellers in the EU. A number of information sharing mechanisms are central to this cooperation.

- The Visa Information System (VIS) allows Schengen States to exchange visa data, in particular data on decisions relating to short-stay visa applications.

- The Schengen Information System (SIS) allows Schengen States to exchange data on suspected criminals, on people who may not have the right to enter into or stay in the EU, on missing persons and on stolen, misappropriated or lost property.

VIS and SIS, as well as EURODAC are operated by the EU Agency for large-scale IT systems (eu-LISA).

It is also necessary to ensure the security of travel documents to fight against the falsification and counterfeiting of travel documents and to establish a reliable link between the document and its holder.

Incidents of illegal migration disclosed by the Polish Border Guard in 2014 show that the majority of them was organised and took place with the involvement of a third party including organised crime. Increased activity of crime groups organising transfer of people was specifically observed at the Polish-Belarusn border section. These groups reacted to the change of the situation in a very dynamic way and to the opportunities of a transfer with the use of the above-mentioned channel, which was an outcome of extending. European Union sanctions imposed on Belarus in the middle of 2012. Eventually, Belarus Border Guard has changed the priorities in the field of border security with the EU countries, i.e. it concentrated on the control of entry to Belarus admitting practically the lack of control at the exit direction. Such situation was considered as extraordinary. It had significant influence on the intensification and occurrence of new phenomena noted at the Polish and Belarusian border as far as illegal entries through the state border at the so-called “green” sections of the border were concerned. This section was characterised by the highest increase of indicators’ dynamics profiling migratory pressure and high level of threat of illegal migration comparing with other sections of the border of the Republic of Poland. The most frequent perpetrators of illegal entries onto the Polish territory were nationals from Afghanistan, Vietnam, Russia, and Georgia.

The problem is caused by the growth of illegal migration - illegal movement of people across the border or “smuggling”. The irregular and clandestine nature of smuggling presents challenges in collecting statistics on smuggling. The two main challenges experienced by Member States were reported as:

- The identification of apprehended migrants thought to be smuggled; and
- The differentiation of victims of smuggling from other types of irregular migration (including trafficking).

Other countries (not only Poland) faces with different sides of this problem. For example, Croatia, where the main issue is age assessment, since most irregular migrants detected by the police do not have identification and describe themselves as minors. It is thought that they do so to avoid prosecution and to access reception facilities in order to continue onto destination countries in other Member States. Romania, also a transit country, faces challenges in identifying the nationality of irregular (and undocumented) migrants detected at the border, since it is suspected that many claim to be Syrian when they are of a different nationality in order to improve their chances of being granted asylum in the EU.

EU mechanisms for monitoring smuggling in 2014, including the Frontex Risk Analysis Network (FRAN Tactical), EUROSUR and Frontex’s Mare Nostrum mission, which helped monitor migration routes, were noted as useful by most Member States.

Another issue is the protection of borders outside border crossing points. In this case, the important role of physical and technical systems secure access to the territory of the country.

3. *Control on the territory of the State.* Under the current law, the Border Guard and the Police are those institutions which control the legality of residence of foreigners in Poland. Instead the Head of the Department of Immigration and the Governor can control the legality of foreigners residence in Poland in order to execute justice for Aliens.

– Responsibility of foreigner for illegal entry and staying. In addition to illegal entry and residence in the territory of Poland, applicable Polish law provides a number of sanctions aimed at both alien and on other subjects – that is, persons who have invited them, persons who facilitate the illegal entry / staying, carriers and employers. Adding of alien trespasser's data into the Schengen Information System (SIS) is an effective way to prevent these violations of migration regulations by the person.

– Prevention of illegal employment. The main tool for preventing of illegal employment is the control on legality of residence / work carried out by authorized state bodies, particularly in Poland: the National Labour Inspectorate and Border Protection. In implementing their tasks both agencies interact with each other and with other agencies, including the police, Treasury, social security bodies.

A sustainable and credible policy approach to the management of migration also requires addressing the issue of irregular migration. The EU is tackling the issue through specific measures targeting employers who hire undeclared migrant workers.

With the aim to combat illegal work for third-country nationals UE proved Directive 2009/52/EC and the aim of member states – better harmonize national legislation with it. The amendments also include provision of due diligence for subcontractors (in order to avoid illegal employment of third-country nationals through subcontracting).

4. *Return, deportation and readmission.* The EU try to set up a humane and effective return policy, in line with the Charter of Fundamental Rights. It is also targeting human trafficking networks and smugglers who take advantage of undocumented persons.

In the field of return policy most important instrument is the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008. On the establishment in Member States common standards and procedures for the expulsion of third country nationals who are staying illegally in the European Union. The Directive applies to third-country nationals who: a) illegally present on the territory of an EU Member State; b) in accordance with Art. 13 of Regulation No 562/2006 does not have permission to enter or who are apprehended or intercepted by the relevant authorities in connection with the irregular crossing of the external border of that Member State and who have not subsequently obtained a residence permit or right of residence in that Member State; c) in accordance with national law shall be subject to expulsion, in accordance with or by a judgment delivered by a court in criminal proceedings, or the subject of extradition.

However, Member States may decide not to apply the directive to the last two categories of people. With the implementation of the Directive, States shall

observe the principle of non-refoulement, as well as guided by the interests of the child, family life and take into account the health status of third-country national.

The actions of EU Member States have a basis in the decision on obligation to return, which is defined very broadly as a decision or administrative or judicial act, stating or declaring the third-country national staying illegally in the Member State, and also imposing or stating an obligation to return.

The rule is that based on the decision on obligation to return the third country can benefit from voluntary return in the period 7–30 days prescribed in the decision. However, if no such person has exercised the option of voluntary return or that option was not her proposed, Member States shall take all necessary steps to implement the decision, and ultimately coercive measures. We are talking about forcible return: to the country of origin to a country of transit – in accordance with readmission agreements or other, or to another third country to which the third-country national decides to return and in which will be adopted.

Those for which there is a danger of escape or avoid the return to or hinder the preparation for it, can be placed in a detention center to prepare for return (Polish Aliens Act uses the terms “security center” and “arrest the purpose of deportation”).

Return policy is commonly perceived as an important tool in combating illegal migrations, limiting the undesirable situation, such as irregular stay of foreigners, and playing significant prevention role. This instrument has two important parts. The first of them (by the level of EU) provides a special road map of new migration solutions while the second one (by the level of member-countries) implements a number of solutions indicated in the strategic document. Among them should be mentioned: reinforce and improve existing procedures and mechanisms; limit channels of illegal immigration (fake students, fake marriages, foreigners taking advantage of simplified system of taking up the employment); distribution of information in the countries of origin on opportunities of legal migration while indicating at the same time the consequences of the violation of the provisions of migration law; reduce time of expulsion decisions specifically in case of minors at guarded centers; set priority to voluntary returns; and introduce regulations that in justified cases will allow persons staying illegally to legalize their stay or leave the Republic of Poland without negative consequences (entry on the list of *personae non grate*).

Expulsion of Aliens from Poland is carried out by taking by the Governor an administrative decision, or at the request of the competent authorities, in accordance with the terms and conditions set forth in the law.

The legal basis of the deportation of undesirable aliens includes also readmission agreements, which allow their expulsion to countries from which they came. Readmission is the act of allowing to enter; entrance granted by permission, by provision or existence of pecuniary means, or by the removal of obstacles. More efficient carrying out expulsions are in particular readmission agreements, regarded as one of the instruments return policy. The readmission agreement is an agreement under which the sides agree to adopt its citizens as well as citizens

of other countries illegally staying on the territory of the other side (as long as they penetrated there through the territory of a State member) and agree to transit through its territory of persons deportees. The main aim of readmission agreements is to establish, on the basis of reciprocity, rapid and effective procedures for the identification and safe, fast and orderly return of persons who do not fulfill or no longer fulfill the conditions for entry, stay or residence on the territory of a third country member to the agreement or on the territory of one of the Member States of the EU, as well as in a spirit of cooperation to facilitate transit of such persons.

Information cooperation is essential for combating illegal migration. EU Member States also receive assistance on return activities from the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Overall, Frontex assists states and ensures the coordination of Joint Return Operations (JTOs), including the following:

- Joint Return Operations accomplishment, including guardian of best practices;
- Cooperation with third countries to identify best practices on the acquisition of travel documents and the return of illegally present third-country nationals;
- Development of Code of Conduct for Joint Return Operations coordinated by Frontex;
- Return capacity building – training, establishment of structures.

Returns policy is widely seen as an important tool to combat illegal migration, limiting the undesirable state, which is the illegal stay of foreigners, as well as fulfilling an important preventive role.

The advantage of voluntary return is more effective and humane system of return, ensuring respect for human dignity.

In addition, voluntary return is, as a rule, more durable than organized returns using an instrument of coercion. This happens among others through reintegration assistance for returning migrants provided for under the assisted voluntary return programs. Along with bringing the assisted voluntary return of foreigners are rising substantially because the chances of permanent "anchor up" of migrants in society from which they emigrated, thus far limited re-migration.

At the same time the financial mechanism to support the voluntary return allows for a more efficient placement of funds from the state budget spent on organizing trips of foreigners illegally staying on the territory.

5. *Amnesty for illegal migrants.* One of the possible measures aimed at counteracting illegal migration, as well as reducing the number staying on the territory of the country for irregular immigrants, is to legalize their stay under the amnesty. This action allows a foreigner to legalize temporary stay or permanent in the long term, thereby allowing exit from the gray zone and to allow gradual integration into society.

Currently in Poland three times (in 2003, 2007 and 2012) Taken a decision on an amendment to the Law about foreigners, which introduced provisions that allow the legalization of stay of foreigners, due to a number of criteria. If the amnesty, by using this type of mechanism were: continuous stay in Poland during

three years; specifying the apartment in which the foreigner intends to reside and to provide proof of legal residence in it; availability for consent to the publication of a work permit in Poland or a written declaration of intention to employ his employer; possession of income or property sufficient to cover the cost of maintenance and the treatment of his family and its members without any material support from social services; no obstacles for legalization in connection with a threat to national defense or national security or protection of public safety and order. Since the previous abolition campaigns do not deliver on their objectives because of the – as it turned out in practice – failure to comply by a large group of foreigners the conditions under which they could legalize their stay in this particular mode. Legalizing the stay takes place in the form of a residence permit for a fixed period of time granted for a period of 2 years. During their stay the foreigner will be able to take up employment without a permit – under a contract of employment. The deadline for filing applications of abolition is 6 months from the date of entry into force of the Act, ie from 1 January to 2 July 2012.

The current rules are designed to allow regulation of the abolitionist status as the largest number of foreigners illegally staying in Poland, so they are relatively liberal. Also waived from the requirement for having the legal title to the premises, work or the possession of certain income or assets.

Integration. The EU approach to migration also addresses the issue of integration. Successful integration of migrants into their host society is essential to maximize the opportunities afforded by legal migration and to realize the potential that immigration has for EU development. With this in mind, the EU is promoting European cooperation to develop common approaches and exchange information at EU level.

Building dialogue and partnerships with countries of origin and transit, based on solidarity and shared responsibility, is also an essential aspect of the common EU approach to migration. The Global Approach to migration and mobility is to be regarded as the overarching framework for the EU external migration policy, complementary to the EU foreign policy and development cooperation.

The integration process is understood as mutual societies adapt both host countries and immigrants, and is an important factor in drawing the full benefits of immigration. In 2004 it adopted Common Basic Principles for immigrant integration policy. They provide a clear definition of the conduct of activities in this field within the EU, including the legal, economic, social and cultural conditions of the member countries. In order to finance the Member States activities related to the integration created a financial instrument - the European Fund for the Integration of Third-Country Nationals. Resources from the Fund are intended for use at integration programs, language training and build intercultural dialogue.

At last years the EU has initiated a lot of processes and conferences to combating or preventing illegal migration. They have a direction to all of possible ways of illegal migration to EU. One of them is “Khartoum Process”. The aim of the “Khartoum Process” is to tackle trafficking and smuggling of migrants between the Horn of Africa and Europe. At the launch of the initiative on 28th November 2014,

Ministers of EU28 met with Ministers from nine countries of the Horn of Africa region to provide assistance to countries of origin and transit in order to address the root causes of irregular migration. This would involve strengthening cooperation between the EU and Africa in identifying and prosecuting smugglers and traffickers. The European Commission, represented at the meeting by the Commissioner for Migration, Home Affairs and Citizenship, pledged to finance projects that support migrants and refugees stranded along the migration routes from Eastern Africa. However, the Process aims not only to build capacity for urgently responding to rapid influxes, but also to address the root causes of irregular migration, such as poverty. The EU also agreed to help participating African countries in to establish effective asylum qualification procedures.

Conclusions and recommendations

Combating illegal immigration before crossing the border of the destination country is the most effective and cheapest way to respond to this phenomenon, although treatment visa policy as barriers to entry of citizens of third countries to Ukraine would be far-reaching simplification.

- Border control must provide the highest level of security against people and goods undesirable or dangerous. At the same time cannot hold back the legitimate movement of people and international trade. In addition, efforts should be made to improve passenger flows at the borders in places involving the taking of such measures and to increase the quality of available infrastructure at the border.

- Analyzing the Polish's practice we should look to the growing importance of the control of illegal migration carried out within the country, regardless of the complementary nature of activities undertaken in this field within the control exercised at the border. It is a difficult task requiring significant changes in legal, organizational and logistics.

- Strengthening cooperation between the services and the institutions responsible for combating illegal migration issues, taking into account the leading role in this respect the State Migration Service of Ukraine. The organizational structure of the Ukrainian migration system remains fragmented, making it difficult to coordinate activities and conduct of a single migration policy. The structure of migration in the majority of EU countries have centralized (most tasks in this area are carried out by specialized government agencies equipped with the powers to effective management, covering a broad range of migration issues, including employment and integration of foreigners).

- Construction related systems to collect data on residence and employment of foreigners, representing an effective tool for the control and monitoring alien activity and to improve administrative services, as well as an element of the implementation of Directive 2009/52/EU providing for minimum standards on sanctions and measures against employers illegally staying third-country nationals on the creation of a registration system of employment of third country nationals.

- Return policy is one of the most important mechanisms enabling effective fight against illegal migration. It should promote systems that encourage foreigners in an irregular situation to leave the Ukraine, for example. In the context

of voluntary return. Organize and promote in countries of origin whose citizens mostly Polish violate the rules on entry and residence information activities of the possibility of legal entry and residence in Ukraine.

– Support for Ukraine to conclude readmission agreements, both bilateral and multilateral, since such agreements are an effective mechanism to return aliens to their countries of origin.

– In terms of amnesty for illegal immigrants – should be considered justified the introduction of a mechanism allowing the individual cases on legalization of foreigners residing illegally staying. It should also be noted that there is a need to introduce legislation to allow foreigners residing in Ukraine, and who have no residence permit, to leave Ukraine as stipulated time, without incurring negative consequences of illegal stay.

Чайковський Ю. В. Нові заходи щодо боротьби з нелегальною міграцією в Європейському Союзі

Анотація. У статті проводиться аналіз сучасних інструментів боротьби з нелегальною міграцією. Досліджуються нові тенденції застосування традиційних засобів протидії нелегальній міграції, пошук оптимальних засобів для України та його правове оформлення з урахуванням євроінтеграційних тенденцій нашої держави. Також наводяться рекомендації щодо системного застосування цих інструментів.

Ключові слова: нелегальна міграція, інструменти протидії нелегальній міграції, міграційна політика держави, стандарти права Європейського Союзу, міграційна амністія.

Чайковский Ю. В. Новые меры по борьбе с нелегальной миграцией в Европейском Союзе

Аннотация. В статье проводится анализ современных инструментов борьбы с нелегальной миграцией. Исследуются новые тенденции применения традиционных средств противодействия нелегальной миграции, поиск оптимальных средств для Украины и правовое его оформление с учетом евроинтеграционных тенденций нашего государства. Также приводятся рекомендации по системному применению данных инструментов.

Ключевые слова: нелегальная миграция, инструменты противодействия нелегальной миграции, миграционная политика государства, стандарты права Европейского Союза, миграционная амнистия.