

GENERAL LEGAL PRINCIPLES OF MIGRATION LAW

ЗАГАЛЬНО-ПРАВОВІ ПРИНЦИПИ МІГРАЦІЙНОГО ПРАВА

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This paper describes the principles of law which are original and defining ideas provisions units that form the moral and organizational basis for the emergence, development and operation of basic human – migration law.

Key words: migration, law, law, principles, ideas.

У статті йдеться про принципи права, які є вихідними та визначальними ідеями, положеннями, установками, що формують моральну й організаційну основу виникнення, розвитку та функціонування фундаментальної галузі прав – міграційного права.

Ключові слова: міграція, право, закон, принципи, ідеї.

В статье речь идет о принципах права, которые являются исходными и определяющими идеями, положениями, установками, формирующими моральную и организационную основу возникновения, развития и функционирования фундаментальной области прав – миграционного права.

Ключевые слова: миграция, право, закон, принципы, идеи.

The relevance of the researching. State migration policy aimed at creating a system of criteria that allow you to assess migration situation in accordance with the interests of society and the state, socio-economic development. Regulation of migration processes, their design is a major task, which revealed the concept of migration policy. Since the right is the main way of regulation of migration processes, the concept should express the basic principles on which it is based. These principles are nothing like the principles of immigration law, with their precise definition is not possible, not only to implement but also to shape law.

Migration engaged many scholars, among them we should mention the works of Andrienko, A. Bandurko, Branchevsky A., L. Brown, S. Brytchenka, Buznitsky Yu, W. Boutkevitch W. Valkenburg, P. Vorob'ya, J. Okkiptini, J. Galustyan, A. Getman, V. Glushkov, R. Grant, D. Johar, C. Jones-Paully, A. Dzhuzhi, P. van Dyuyyna, B. Elder, W. Yevintova, V. Evtukh, A. Zakalyuka, U. Sieber, N. Kaufman, Hevenera, M. Korzhanskoho, A. Kuz'menko, R. Cook, M. Kucheryavenko, V. Kuts, N. zany-Sachuk, K. Levchenko, A. Leonova, A. Leonenko, J. Lyzohub, A. Malinowski, A. Macko, V. Melashchenko, M. Miller, M. Moklyak, T. Nazarova, S. Naumenko, E. Nisner, V. Novikov, N. Nyzhnyk, C. Newland, A. Orleans, Pyrozkhov, T. Petrova, A. Piskunov, N. Plakhotnyuk, B. Plonha, N. Victory, A. Pozniak, J. Prybytkova, R. Ramfa, J. Rymarenko, M. Romaniuk, W. Rudzhiyero, A. Handles, V. Subotenko, Todyky Yu, W. Troshchinsky, P. Chaly, C. Czechowicz, Shakun, A. Shamshur, V. Shapovalov, M. Sheynosta, A. Shlepakova, M. Shulga A. Homra, N. Yuzikovoyi and others.

The purpose of the article is a comprehensive analysis of theoretical and applied foundations of mechanism of regulation of migration processes, the scientific study ways and methods of its improvement, developing proposals and recommendations to resolve the abovementioned problems.

The formation of immigration law is objective, because it reflects a social order that is in society. Note that in order to discover the essence of the current law in society, it is necessary to put a question about the legal principles on which it is based. Consideration of principles of law must precede all other pieces of knowledge. In addition, considering the importance of the principles of law caused by the fact that allows us to determine some drawbacks as using it, its adequacy social relations that have been established and the legal correctness of the law. For Migration Law is especially important in view of the rapid development of migration legislation, and a lot of

legal issues and organizational plan that relate to the regulation of migration processes.

According to O. Racehorse, principles of law – «this weekend, defining ideas provisions settings that are moral and organizational basis for the emergence, development and operation of law. The principles of law – is based on what shaped the dynamics and effect of law in time and space, to determine the nature of law as a democratic, or rather totalitarian»[1]. So from this we can conclude that the principles of law – are certain assumptions, ideological elements that are characteristic of a particular legal system. In this case, the principle of historical rights, as well as a historical any legal system.

The principles license be divided into general and cross-sectoral. Sectoral principles are in line with the legal framework and common law permeate the entire legal system. Among these include moral and ethical principles that are enshrined in many international legal instruments. The Constitution of Ukraine, in Section II stipulates that freedom, equality, the right to life, the right to private property, safety, honor, justice, family, the people – the source of power, people – the highest social value, protection of natural rights – home purpose and duty of the state, and such organizational principles Ukrainian law as a unitary, legality, transparency, humanism, the ratio of coercion and persuasion, incentives and restrictions in the law.

Between principles of law and the rule of law is a very fine line of distinction is very significant for the understanding of the legal system. The principles of law are the legal system as defined pattern of regulation. In this case, the rule of law operates within this pattern, is the mechanism of its expression. In this case, the principle of law in a particular context can be considered as law. But we should not forget that the rule of law cannot be regarded as a principle of law. [2] This is because the principles of law endowed with great strength against the law, which are more mobile. This fact provides stability legal system.

The right of an idea or principle function until these are provided the factual circumstances of its entry into force, certain rights and responsibilities of the rights set out options for their behavior, until its violation installed as specified sanctions.

Formation of the legal system is not only the genesis of the principles of law which play is certainly a fundamental role, but also the creation of legal mechanisms for its implementation. Difficulties of regulating migration processes is largely

due to their inconsistency. This is due to the fact that the state migration policy of Ukraine, which was formed in the 90s of the twentieth century, was characterized by uncertainty principles of law that is primarily due to the imperfection of the immigration laws. In a subsequent issue of legal regulation of migration began limited to inconsistency in the implementation of the principles of law.

It should be noted that the current Ukrainian law no researches on the analysis of the principles of immigration law. Migration Law is an integral part of the legal system. Therefore, the formation of a new political system in our country, the formation of law requiring significant changes with respect to the state the rights and freedoms of man and citizen, their consolidation as general legal. Ukraine as a European country were recognized international legal standards and ensuring protection of human rights. Universal Declaration of Human Rights includes the following rights and freedoms: the right to life, liberty, security, equality before the law and others.

The right to freedom of movement, choice of place of residence and place of residence serve as the basic legal principle of immigration law, thereby creating the legal framework of migration. This right was originally enshrined in Art. 13 of the Universal Declaration of Human Rights: «Everyone has the right to freedom of movement and choice of residence within each state» [3]. It should be noted that this right was reflected in the United Nations International Covenant «On Civil and Political Rights», Part 1, Art. 12 which states that «everyone is guaranteed the right to free movement and choice of residence» [4].

Freedom of movement – the right of citizens of Ukraine, foreigners and stateless persons lawfully staying in Ukraine, freely and smoothly as desired move through the territory of Ukraine in any direction, in any way, at any time.

The subject of the right to free movement and choice of residence and residence is a person who is lawfully in the territory of Ukraine. First of all, the Russian citizens and foreign citizens and stateless persons who entered the country legally, received an invitation to stay active in it.

The issue of freedom restriction of this right is regulated by Art. 33 of the Constitution of Ukraine, which states: «Everyone lawfully within the territory of Ukraine will be guaranteed freedom of movement, choice of residence, the right to freely leave the territory of Ukraine, with the exception of restrictions established by law. A citizen of Ukraine cannot be denied the right at any time to return to Ukraine» [5].

The right of citizens of Ukraine on freedom of movement, choice of residence and stay and stay in the Ukraine may be limited only in accordance with Art. 12, 13 of the Law of Ukraine «On freedom of movement and choice of residence in Ukraine» dated 11 December 2003. It provides that freedom of movement, choice of residence and stay under the law may be limited:

- in the border zone;
- in areas of military facilities;
- in areas which by law belong to areas with limited access;
- the private land plots;
- in areas for which imposed martial law or state of emergency;
- in some areas and in localities where in case of danger the spread of infectious diseases and poisoning people put special conditions and mode of the populations and economic activities.

Freedom of movement, residence and place of residence is limited to:

- persons to whom accordance with procedural safeguards applicable laws relating to the restraint or imprisonment;
- persons upon conviction sentenced to deprivation or restriction of liberty;
- persons who under the law are under the administrative supervision;
- persons under the law on infectious diseases and mental health care to be forced hospitalization and treatment.

Thus, the principle of freedom of movement and choice of residence formulate standard array of immigration law. Moreover, this principle is the right figure only when it creates a mechanism for regulation. In these conditions, the effects of other principles come into migration law, the most important of which is the principle of legality.

Migration Law only be free to develop when there is a legal mechanism for its implementation. Securing the right of citizens of Ukraine on freedom of movement, choice of residence and stay, the state ordered him to register the place of residence, it is introduced, and registration, notification that is character. Join in the community and stay a principle Migration Law, which forms a significant legislative plan that requires significant changes and codification of immigration laws in the long run is to serve the creation of the migration code. The essence of the legal activity of executive bodies, the central place among the ranks of the State Migration Service shall be limited to the proper use regulations, including foreign laws pursuant to applicable law ratified by the Verkhovna Rada of Ukraine. Examples of such actions can serve as registration of citizens in the community and stay, which is a sectoral and represents formalized in the relevant records that are directly related to the set of public order, public order and public safety, for the purpose of record keeping, documentation and follow-up.

Procedures for registration of citizens of Ukraine governed by many regulations, among them are:

- Law of Ukraine «On Citizenship of Ukraine» dated 18 January 2001;
- Law of Ukraine «On freedom of movement and choice of residence in Ukraine» dated 11 December 2003;
- Law of Ukraine «On the basis of social protection of homeless people and street children» from December 21, 2010;
- Code of Ukraine on Administrative Offences (Art. 213-330) on December 7, 1984;
- Resolution of the Verkhovna Rada of Ukraine «On approval of regulations on passport of Ukraine for traveling abroad» on February 23, 2007.

Also on the subject adopted a number of resolutions of the Constitutional Court of Ukraine, which clearly defined the scope of the internal affairs bodies as only register of citizens and housed decision to cancel some unconstitutional provisions of Soviet law, contrary to European standards. [7] If we talk about current regulations, it is worth noting that they are more consistent with international law, although they have significant drawbacks. In most cases, the old law is the practice of using the ideology of regulations. Despite the fact that almost all laws and regulations relating to the register of citizens, were canceled in the minds of many people and the actions of some officials at this time there is understanding of the need for notification and registration of accounting and registration that allows you to temporarily or permanently reside in a particular locality.

Such actions include those that directly create new legal provisions that change the existing legal relationships that have traditionally formed the society for many years.

It should be noted that the Migration Law of Ukraine has not received enough effective mechanism for the implementation of human rights and the principles of immigration law is not entirely consistent regulatory and legal framework of migration. It is expressed in limiting the freedom of residence and stay of citizens described in the constitution. [8] Because it is nothing more than a violation of the Universal Declaration of Human Rights. Despite the fact that the legislation repealed mandatory registration, in some regions of Ukraine in veiled form it exists. Colossal problem is the lack of clear division of powers between the executive, such as an eviction and registration of citizens.

Currently topical issue is the legal status of IDPs and refugees. More recently, a category of people as refugees and internally displaced persons, virtually nonexistent in this country.

This has become a global problem after the Second World War, in an era when the world has seen tremendous upheaval: the formation of new independent states, the emergence of socialism and the emergence of the Cold War between the U.S. and the Soviet Union, the creation of the UN and its active role in the ordering relations on the basis of civilized principles and norms of international law. All these developments should help people who do not have their own country, as well as permanent residence, which is the most necessary, prompted the United Nations and its regional organizations to take care of them.

The United Nations created the necessary international legal framework and mechanisms to address pressing issues of refugees. Were taken such important documents as the Convention relating to the Status of Refugees (1951), Protocols relating to the Status of Refugees (1967), the Statute of the Office of the United Nations High Commissioner for Refugees (1950). Implementation of all these acts relies on a special-

ized mechanism of the United Nations, who heads the High Commissioner for Refugees and its management. In addition, regional items have been created that deal with the rights of refugees. [6]

The emergence of refugees and internally displaced persons in the country was a result of the collapse of the USSR. Migration – is an objective process. Economically developed countries, which partly relate Ukraine, cannot do without the influx of labor from outside. However, to live in towns and villages often presses on social infrastructure, often creating infrastructure in the labor market affects ethnic and economic development of the region creates many problems for law enforcement.

From the above it can be concluded that the problem of migration is very crucial and requires further research scientists and their support from the government in the context of the creation of favorable conditions and grants to young researchers working in this area.

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МАЙНОВІ ВІДНОСИНИ ЯК ОБ'ЄКТ ДЕРЖАВНОГО НАГЛЯДУ (КОНТРОЛЮ) У СФЕРІ ОХОРОНИ ПРАВ НА СОРТИ РОСЛИН

PROPERTY RELATIONS AS OBJECT OF STATE SUPERVISION (CONTROL) IN THE FIELD OF PROTECTION OF RIGHTS ON SORTS OF PLANTS

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У статті розглянуті та проаналізовані майнові відносини у сфері охорони прав на сорти рослин як об'єкт державного нагляду (контролю), досліджено місце Державної інспекції сільського господарства України, її територіальних органів в цих відносинах, запропоновані шляхи вирішення неврегульованих позицій при проведенні державного нагляду (контролю) у сфері охорони прав на сорти рослин.

Ключові слова: державний нагляд у сільському господарстві України, Державна інспекція сільського господарства України, Головний державний інспектор сільського господарства України, державний інспектор сільського господарства Автономної Республіки Крим, м. Києва, Севастополя, державні інспектори сільського господарства областей, районів.

В статье рассмотрены и проанализированы имущественные отношения в сфере охраны прав на сорта растений как объект государственного надзора (контроля), исследована роль Государственной инспекции сельского хозяйства Украины, ее территориальных органов в этих правоотношениях, предложены пути решения неурегулированных позиций при проведении государственного надзора (контроля) в сфере охраны прав на сорта растений.

Ключевые слова: государственный надзор в сельском хозяйстве Украины, Государственная инспекция сельского хозяйства, Главный государственный инспектор сельского хозяйства, государственный инспектор сельского хозяйства Автономной Республики Крым, г. Киева, Севастополя, государственные инспекторы областей, районов.

Property relations in the sphere of protection of rights on plant varieties as an object of state supervision (control) have been examined and analyzed, the role of the State Inspection of Agriculture of Ukraine and its territorial bodies in this type of relations has been researched, ways of solution of unsettled position during exercising state supervision (control) in the sphere of protection of rights on plant varieties have been proposed.

Key words: state control in the agriculture of Ukraine, State Inspection of Agriculture of Ukraine, The Chief State Inspector of Agriculture of Ukraine, State Inspector of Agriculture of the Autonomous Republic of Crimea, Kyiv, Sevastopol, the state inspectors of agriculture of region, areas.

Постановка проблеми. Необхідність створення в Україні ефективної системи нагляду (контролю) у частині охорони прав інтелектуальної власності на сорти рослин викликана як міжнародними зобов'язаннями України, зокрема вступом України до Міжнародного союзу з охорони нових сортів рослин, Світової організації торгівлі, виконанням Угоди про торговельні аспекти прав інтелектуальної власності [1, с. 29], так і внутріш-