

## CONTENT AND FEATURES OF LEGAL CATEGORIES OF “FORCED (ADMINISTRATIVE) EXPULSION”, “DEPORTATION” AND “FORCED RETURN TO THE COUNTRY OF ORIGIN”

### ЗМІСТ ТА ОЗНАКИ ПРАВОВИХ КАТЕГОРІЙ «ПРИМУСОВЕ (АДМІНІСТРАТИВНЕ) ВИДВОРЕННЯ», «ДЕПОРТАЦІЯ» ТА «ПРИМУСОВЕ ПОВЕРНЕННЯ ДО КРАЇНИ ПОХОДЖЕННЯ»

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**Relevance of the research topic.** The world is experiencing several problems that affect the vital interests of the entire population of the planet and require the efforts of the entire global community to find solutions. They are related to the contradictions of uneven development of the world economy and the conflict of regional civilizations. Social progress depends on their successful resolution. Migration challenges are among the socio-political and legal issues of global scale, affecting all spheres of activity and political, legal and economic processes.

Lawmaking and law enforcement practice creates conditions for the need to clarify the approach to the theoretical and methodological understanding of migration processes and improve administrative and legal regulation. Therefore, the disclosure of the nature, content and logic of migration processes at the junction of historical, theoretical and legal, and administrative and legal understanding helps to clarify the nature and essence of this phenomenon in modern conditions. This approach to understanding the essence of migration processes on the basis of administrative and legal science makes it possible to develop a methodology adequate to the subject matter and cognitive task.

Expulsion, by its very nature, is a coercive tool of a multifunctional nature, it is carried out regardless of the will and desire of the subjects to whom it is applied. It reveals the will of the state, which negates individual will. It can have the following content and purpose: an administrative warning and have the name "expulsion", an administrative suspension and have the name "deportation" and an administrative penalty, with the name – "eviction". Deportation is a type of administrative responsibility that is applied unilaterally to special subjects of administrative-legal relations – foreign citizens and stateless persons who have committed administrative offenses, based on the decision of a court of general jurisdiction, in the procedural order determined by law.

Voluntary return of a foreigner or stateless person has a preventive, preventive meaning. That is, it is a preventive measure in the system of administrative coercion. It is characterized by the fact that it performs the role of moral, personal, property, and organizational restrictions on the rights, freedoms, and legal interests of foreign citizens and stateless persons in order to prevent the commission of illegal acts by any and specific persons, to ensure law and order in any what circumstances are used within the scope of operational, simplified, economical administrative proceedings. At the same time, shortening the period of stay is defined by the legislator as a measure of responsibility, which is not true, as it has the characteristics of a termination measure.

**The purpose of the scientific article.** Analyzing the problems in the field of migration relations, it should be noted that migration law as a special scientific discipline is evolving. In modern conditions, the institutional and functional properties of migration processes are being formalized, which makes it possible to consider migration in terms of its importance in the system of administrative and legal relations. However, a number of issues related to the essence of migration processes, as well as the forms and methods of their administrative and legal regulation, including the forced expulsion of foreigners and stateless persons, are insufficiently researched. This necessitates their consideration, including as part of an independent study. All of the above indicates that the processes taking place in the field of migration in Ukrainian society determine the social need and necessity for the development of a holistic concept of administrative and legal regulation of migration processes and the introduction of specific proposals for their further improvement into the activities of the authorized bodies in the field of migration. This problem statement has determined the relevance, methodology and focus of this study.

**Key words:** migration relations, administrative and legal regulation of migration processes, forced (administrative) expulsion, deportation, forced return to the country of origin.

**Актуальність теми дослідження.** Світ переживає кілька проблем, які зачіпають життєві інтереси всього населення планети і вимагають для рішення зусиль всього світового співтовариства. Вони пов'язані з протиріччями нерівномірного розвитку світового господарства, конфліктом регіональних цивілізацій. Від їх успішного вирішення залежить соціальний прогрес. У сфері соціально-політичних і правових проблем глобального масштабу лежать міграційні виклики, що впливають на всі сфери діяльності та на політичні, правові і економічні процеси.

Правотворча, правозастосовна та правоохоронна практика створює умови для необхідності уточнення підходу теоретико-методологічного розуміння міграційних процесів та вдосконалення адміністративно-правового регулювання. Тому розкриття природи, змісту та логіки міграційних процесів на стику історичного, теоретико-правового та власне адміністративно-правового розуміння сприяє уточненню природи, сутності даного явища в сучасних умовах. Даний підхід до розуміння сутності міграційних процесів на основі адміністративно-правової науки дозволяє виробити адекватну предмету та пізнавальній задачі методологію.

Видворення за своєю сутністю є примусовим засобом поліфункціонального характеру, воно здійснюється незалежно від волі та бажання суб'єктів, до яких застосовується. В ньому виявляється державна воля, що заперечує волю індивідуальну. Воно може мати зміст та призначення: адміністративного попередження та мати назву «вигнання», адміністративного припинення та мати назву «депортація» та адміністративного стягнення, з назвою – «видворення». Видворення – це вид адміністративної відповідальності, що застосовується в односторонньому порядку до спеціальних суб'єктів адміністративно-правових відносин – іноземних громадян та осіб без громадянства – які вчинили адміністративні проступки, на підставі постанови суду загальної юрисдикції, у визначеному законодавством процесуальному порядку.

Добровільне повернення іноземця або особи без громадянства має попереджувальний, профілактичний зміст. Тобто є заходом попередження в системі адміністративного примусу. Для нього є характерним те, що він виконує роль моральних, особистих, майнових, організаційних обмежень прав, свобод, законних інтересів іноземних громадян та осіб без громадянства задля попередження вчинення протиправних діянь як будь-якими, так і конкретними особами, забезпечення правопорядку за будь-яких обставин, що застосовуються у межах оперативного, спрощеного, економічного адміністративного провадження. В той же час, скорочення терміну перебування визначається законодавцем як захід відповідальності, що є не вірним, так як йому притаманні ознаки припинювального заходу.

**Мета наукової статті.** Аналізуючи проблеми у сфері міграційних відносин, слід зазначити, що міграційне право як спеціальна наукова дисципліна розвивається. У сучасних умовах відбувається формалізація інституційно-функціональних властивостей міграційних процесів, що дає можливість розглядати міграцію з точки зору її значення в системі адміністративно-правових відносин. Проте низка питань щодо сутності міграційних процесів, а також форм і методів їх адміністративно-правового регулювання, у тому числі примусового видворення іноземців та осіб без громадянства, є недостатньо дослідженими. Це зумовлює необхідність їх розгляду, в тому числі в рамках самостійного дослідження. Усе вище зазначене свідчить про те, що процеси, які відбуваються у сфері міграції в українському суспільстві, зумовлюють суспільну необхідність і необхідність розробки цілісної концепції адміністративно-правового регулювання міграційних процесів та внесення конкретних пропозицій щодо їх подальшого вдосконалення в діяльність уповноважених органів у сфері міграції. Така постановка проблеми визначила актуальність, методологію та спрямованість даного дослідження.

**Ключові слова:** міграційні відносини, адміністративно-правове регулювання міграційних процесів, примусове (адміністративне) видворення, депортація, примусове повернення до країни походження.

Having enshrined the democratic principles of state building, the Constitution of Ukraine [2] guarantees everyone who is legally on its territory freedom of movement, free choice of residence, free entry and exit from the country. It declares equal rights and freedoms as compared to citizens of Ukraine, as well as the duties of foreigners and stateless persons, and the possibility of obtaining asylum in Ukraine, etc. The Fundamental Law guarantees the care and protection of citizens abroad by the state and states that citizens of Ukraine cannot be deprived of the right to return to Ukraine at any time.

Thus, the Constitution of Ukraine establishes the national legal regime for foreigners and stateless persons in Ukraine, which is characterised by the following features:

1) it is general (not personalised), i.e. applies to all categories of foreigners and stateless persons, although the legal status of some of them may have certain peculiarities;

2) foreigners and stateless persons enjoy the same rights and perform the same duties as Ukrainian citizens. Thus, the Constitution and laws of Ukraine guarantee foreigners and stateless persons personal (civil) rights that belong to the universally recognised list of natural rights: the right to life and its protection; the right to respect for dignity; the right to liberty and security of person; the right to inviolability of the home; the right to marriage and family relations; the right to secrecy of correspondence, telephone conversations, telegraph and other correspondence; the right to non-interference in personal and family life; the right to freedom of movement, free choice of residence; the right to freedom of thought and speech, to free expression of one's beliefs; the right to freedom and religion.

Foreigners and stateless persons also enjoy numerous economic, social and cultural rights and freedoms in Ukraine. As subjects of private property rights, they can own, use and dispose of their property and the results of their intellectual and creative activity. They can own houses, apartments, personal items, means of production, money, etc. They are also subjects of freedom of entrepreneurship, the right to work, the right to strike, the right to rest, the right to social protection, the right to housing, the right to an adequate standard of living, the right to health care, medical care and medical insurance, the right to a favourable environment and environmental safety.

Foreigners and stateless persons have the right to apply to courts and other public authorities to protect their personal, property and other rights. In particular, under Articles 147 and 150 of the Constitution of Ukraine and Articles 13, 42, 43, 94 of the Law of Ukraine "On the Constitutional Court of Ukraine", they, like Ukrainian citizens, may file written petitions with the Constitutional Court of Ukraine whenever it is necessary to interpret the Constitution and laws of Ukraine in order to ensure the exercise or protection of their constitutional rights and freedoms. Foreigners and stateless persons enjoy the national regime in the field of civil procedure law in accordance with the provisions of Articles 423 and 424 of the Civil Procedure Code of Ukraine, regardless of their stay in Ukraine.

It should be noted that the recently adopted Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" does not contain a separate chapter on the fundamental rights and freedoms of foreigners with articles on the rights of immigrants to work, education, healthcare, social protection, housing, etc., but only states: "Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and bear the same responsibilities as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine." In our opinion, such a refusal to declare the rights of foreigners in more detail is not justified, since the scope of rights available to an immigrant primarily depends on the status of his or her stay in Ukraine.

For example, only foreigners permanently residing in Ukraine have the right to work or engage in other labour

activities on the grounds and in accordance with the procedure established for citizens of Ukraine, while other categories of foreigners must obtain a work permit from the competent authorities. Only foreigners permanently residing in Ukraine also have the same rights to education as Ukrainian citizens; other immigrants pay for their education in accordance with a separate procedure. The absence in the new law of a clear regulation of the rights and freedoms of foreigners, including the status of their stay in the country, undoubtedly complicates, in our opinion, the mechanism for exercising these rights [5];

3) the effect of the national regime on foreigners has certain limits: they are not fully equated in rights and obligations with Ukrainian citizens.

So, foreigners do not enjoy the majority of political rights in Ukraine (they cannot join political parties; they cannot participate in the management of state affairs; they do not have electoral rights; they cannot participate in referenda; they do not have the right of equal access to public service; cannot form trade unions, etc.), have a slightly smaller amount of economic, social and cultural rights compared to citizens of Ukraine (they do not have the right to use objects of state and communal ownership, the right to protection against illegal dismissal, the right to social protection, the right to obtain free of charge higher education, etc.), they are not subject to the obligation to perform military service;

4) the national legal regime has an unconditional character, it applies to foreigners and stateless persons regardless of whether or not citizens of Ukraine have similar rights in the respective countries [3, p. 134]. For violations of Ukrainian legislation, foreigners and stateless persons are liable on the same grounds as citizens of Ukraine. At the same time, the legislation of Ukraine provides for the specialized responsibility of these entities for violation of the order of stay in Ukraine, transit passage through its territory (which cannot be applied to citizens of Ukraine).

That is, living without permits or with invalid documents, non-compliance with the established procedure for registration or movement and choosing a place of residence, employment, evading departure after the end of the period of stay, as well as non-compliance with the Rules of transit through the territory of Ukraine entails the application of the following measures of responsibility to them, such as: forced (administrative) deportation, voluntary return of foreigners and stateless persons, forced return of foreigners and stateless persons, reduction of the period of temporary stay in Ukraine, withdrawal of a permanent residence permit (revocation of immigration permit), ban on entry to Ukraine.

In international practice, the terms "eviction", "expulsion" are also used as synonyms for the term "expulsion". The International Covenant "On Civil and Political Rights", adopted by the UN General Assembly on December 16, 1966 (Article 13), defines that "expulsion" is a legal decision issued by a judicial or administrative authority, according to which, from whom is required to leave the territory of this country. In the study on the situation of stateless persons, the concept of "expulsion" was understood as the introduction to the border, i.e., a physical action consisting in the removal from the territory of the state of a person who gained access to this territory or lived there illegally [1, p. 100]. Currently, in the legislation of a number of countries (Germany, the USA, France, Japan, Sweden, Switzerland, Finland), the following terms are found that denote various forms of removal from the country of residence of foreign citizens and stateless persons who have committed offenses: "eviction" (there is meaning resettlement to another region of the country), "expulsion", "expulsion", "expulsion", "forced expulsion", etc.

Deporting foreign citizens and stateless persons from Ukraine is not a simple act. It can be carried out in several basic forms and depends on the category of foreign citizen. That is, with respect to foreign citizens and stateless persons in our country, one should take into account the period

of stay (permanently or temporarily staying foreign citizens or stateless persons), the purpose of stay (tourist trip, invitation of relatives or acquaintances, etc.), capacity for delict (subject to liability for on common grounds with citizens of Ukraine or use diplomatic immunity) and other circumstances. Therefore, "expulsion" is essentially a coercive tool of a multifunctional nature, it is carried out regardless of the will and desire of the subjects to whom it is applied, it reveals the will of the state, which negates the will of the individual. The goals for which coercion is used are achieved by influencing the moral, property, organizational and physical sphere of a specific legal entity.

That is why, in our opinion, it is not correct to apply the legal category "forced expulsion" by the legislator, because whatever color the legal category "expulsion" has, it is violence against the individual's will through the use of coercion. Thus, it should be recognized that the terms "expulsion", "forced expulsion", "administrative expulsion" today have the same legal nature under the legislation of Ukraine. In addition, it is not appropriate, in our opinion, to emphasize the administrative nature of this legal category, because the legislation does not provide for the possibility of another nature of this measure.

It should be noted that persons can be deported only with the consent of the relevant state to accept them. According to international law, Ukraine's jurisdiction does not extend to foreigners who have diplomatic or consular privileges and immunities. The presence of such privileges means: inviolability of the person, inviolability of housing, immunity from jurisdiction, fiscal immunity, customs privileges, etc. Note that the mass media repeatedly informs society about the expulsion of diplomatic agents from the host country. The Legal Encyclopedia gives the following definition of this term: "Deportation (from the Latin *deportatio* – banishment, exile) is the forced removal from the place of permanent residence of a person, group of persons or people, as a specific form of deprivation of liberty" [6, p. 75].

Deportation has been known since ancient times. Thus, in Roman law, deportation was applied to persons for lifelong exile to a foreign land, mostly to an island. Initially, deportation was applied to political criminals, and later to other categories of citizens. This measure was accompanied by confiscation of such person's property, deprivation of citizenship and civil rights.

In Kyivan Rus', expulsion outside the community ("to send out from the parish") or the region ("to drive out of the land") was used. According to Russian Truth, exile was part of the punishment for serious crimes. In the Grand Duchy of Lithuania, a type of deportation was used – liberation, which by its nature was limited to the current judicial deportation outside the country. Since the time of the Hetmanship, many of its political figures were deported to the Moscow Empire. The first mass deportations from Ukraine on national grounds took place at the beginning of the 18th century, when the Russian Tsar Peter I used thousands of Ukrainians in the construction of St. Petersburg [6, p. 75]. In Western Europe, mass deportation began to be practiced in Portugal, from where at the end of the 15th century. criminals were deported to South America. In the criminal law of France, deportation meant special types of exile to overseas colonies, which were used in the 18th – 19th centuries. both to recidivist criminals and to political criminals (for example, the Paris Communards). A mass campaign of deportation and genocide of French and Franco-Acadian settlers was carried out by the British with the official support of the authorities in the territory of modern Canada. Deportation and genocide affected the French-speaking inhabitants of the former French territories (Acadia Nova Scotia) in Atlantic Canada, which came under the jurisdiction of Great Britain. In total, from 1755 to 1763, on the orders of the British governor Charles Lawrence, more than 10,000 people were deported, more than half of whom died in the holds of the ships that transported

them to the prisons of those British colonies in North America, which later created the United States, and to the Falkland Islands islands Initially, the campaign was called "The Great Disturbance".

It should be recognized that there are many definitions of the term "deportation" in legal science. Despite different wordings, the essence of the interpretations does not go beyond the above, interested many lawyers and scientists who put different meanings into it, but it almost did not go beyond the above. At the same time, we cannot agree with the opinion of V.I. Palka, that deportation should not be considered as an independent measure of coercion, because it is a set of measures applied to foreigners and stateless persons in order to ensure the implementation of the decision (resolution) on their forced deportation in a forced manner [4, p. 20].

In our opinion, deportation is a coercive measure in the form of forced removal of a person to another state, usually accompanied and at the expense of the host state's budget. It should be noted that this legal category carries a specific substantive burden, namely forced removal, in our opinion, is possible only on the basis of a decision of a court of general jurisdiction. In addition to the above, this phenomenon is characterized by controllability, and is also carried out at the expense of state funds, by the relevant competent body of public administration. In order to streamline the content of legal categories, we propose to consider this measure as a measure of administrative suspension, which is applied only in cases of loss, termination or lack of legal grounds for staying in the country. Deportation, in our opinion, must be applied in the interests of national security (to illegal migrants, persons who evade departure in connection with eviction or expulsion, persons according to which the receiving state may refuse to recognize official affiliation to a consular or diplomatic institution).

For violations by foreigners and stateless persons of the rules of stay in Ukraine, that is, employment without the appropriate permit for this, if the need for such a permit is provided for by the legislation of Ukraine, or failure to comply with the established order of movement and change of residence, failure to arrive without valid reasons at the specified place of study or employment after "traveling to Ukraine within the specified period, as well as violating the rules of transit through the territory of Ukraine, may be subject to an administrative penalty in the form of deportation. This type of liability is applied on the basis of a decision of a court (judge) of general jurisdiction, which considers case materials submitted by the State Migration Service, the State Border Service, the Security Service of Ukraine in the order of administrative proceedings.

Deportation as an administrative penalty is carried out at the expense of the offender (if the offender does not have them, then at the expense of the party that invited the foreign citizen, or from the state budget) with the escort of such a foreigner on the territory of Ukraine to the checkpoint through the state border of Ukraine through which deportation is planned. Thus, it can be argued that expulsion as a measure of administrative coercion has a multifunctional meaning in terms of the purpose of application and the method of maintaining law and order. Accordingly, expulsion may take the form of an administrative warning, administrative suspension, and administrative penalty. Deportation is a measure of administrative prevention manifested in the form of official physical and psychological influence by authorized state bodies (the State Migration Service, SBU) on foreign citizens and stateless persons in the form of organizational restrictions on their rights, freedoms and interests in order to prevent the protection of morality, health population, rights and freedoms of citizens, the state and other persons.

Signs of the legal category of "expulsion" are: coercion, applied regardless of the will of the subject to whom this measure is assigned; applies only to foreigners and stateless

persons; is used to protect morality, public health, rights and freedoms of citizens, the state and other persons; is applied by decision of the central executive body that ensures the implementation of state policy in the field of migration, the body of the Security Service of Ukraine, with further notification within 24 hours to the prosecutor about the grounds for such a decision; a foreigner or stateless person is obliged to independently leave the territory of Ukraine within the period specified in the decision on deportation; at his own expense or at the expense of the party that invited the foreigner or stateless person; consent to acceptance is not required from the state to which the foreign citizen and stateless person is going; the expulsion decision may involve the application of such a coercive measure as shortening the period of stay.

Deportation is an administrative measure aimed at stopping illegal behavior and its consequences. Its application is related to a real illegal situation. Deportation is a terminating type of administrative coercion that is applied unilaterally to special subjects of administrative-legal relations of foreign citizens and stateless persons who violate the legislation on the legal status of foreigners and stateless persons; their actions are contrary to the interests of ensuring the national security of Ukraine, in the procedural order determined by the law, by specially authorized public bodies.

Deportation is characterized by the following features: a coercive measure of a stopping nature; the procedure for its application is regulated by administrative legislation; restricts the right to choose a place of residence and freedom of movement, imposes material and moral limitations; subjects of deportation are only foreign citizens and stateless persons, this measure cannot be applied to citizens of Ukraine; appointed by the decision of the court (judge) of general jurisdiction, which considers the case materials submitted

by the State Migration Service, the State Border Service, the Security Service of Ukraine; has a procedural procedure of application clearly defined by the legislation of Ukraine; is carried out at the expense of the state budget with mandatory accompaniment of the person being deported; the decision to deport foreigners is accompanied by a ban on further entry into Ukraine for a period of three years.

Deportation is a type of administrative responsibility that is applied unilaterally to special subjects of administrative-legal relations – foreign citizens and stateless persons who have committed administrative offenses, based on the decision of a court of general jurisdiction, in the procedural order determined by legislation. Expulsion is characterized by the following features: a legal coercive measure; type of administrative liability in the form of an administrative penalty; the procedure for its application is regulated by administrative legislation; restricts the right to choose a place of residence and freedom of movement entails material and moral restrictions; the grounds for expelling foreigners and stateless persons from Ukraine are the commission of an administrative offense; subjects of expulsion are only foreign citizens and stateless persons; applied by the decision of a court of general jurisdiction; has a procedural procedure of application determined by the legislation of Ukraine; is carried out at the expense of the offender (the inviting party) or state funds provided for in the state budget of Ukraine; implemented, if necessary, under the control of a specially authorized public body; the control and supervisory functions of the execution of the decision on expulsion are entrusted to the central body of the executive power, which ensures the implementation of the state policy in the field of migration (the State Migration Service), the state border protection body (the State Border Service), the Security Service of Ukraine.

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