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## PROSPECTS OF IMPROVEMENT OF CRIMINAL-LEGAL MEASURES TO COMBAT ILLEGAL MIGRATION

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### ABSTRACT

The article discusses the rules for the residence of foreign citizens in the Republic of Uzbekistan, legal measures of influence in practice to combat illegal migration and measures to prevent the consequences of such socially dangerous acts, statistical data on crimes committed by foreign citizens. In addition, the opinions of scientists conducted scientific research on the prevention of dangerous consequences and improvement of measures of responsibility for illegal migration and the criminal elements of illegal migration in order to prevent the socially dangerous consequences of illegal migration, the creation of a criminal legal basis for achieving the full implementation of the tasks defined in international acts regarding migration are presented. Some proposals are put forward to improve the measures to combat crimes by establishing criminal responsibility.

### KEYWORDS

Migration, illegal migration, criminal legal measures to combat illegal migration, responsibility for illegal migration, foreign citizens, international acts, direct object, objective side, mens rea, subject, aggravating circumstances.

### INTRODUCTION

It is considered socially dangerous acts such as illegal migration, the procedure of state administration in the sphere of migration and violating the rights and legal interests of migrants, complicating the criminogenic situation in the regions, creating conditions for the transit of prohibited items in the country or to other countries, threatening economic stability, a negative

impact on the sanitary-epidemiological situation of the region, causing social contradictions in society, increasing corruption risks in migration processes, violating the integrity of the state border and threatening the national security of the country. At the moment, such socially dangerous consequences are uncontrolled migration processes and illegal entry, exit, residence of foreign citizens or stateless persons

in the Republic of Uzbekistan, transit through the territory of Uzbekistan, as well as citizens of the Republic of Uzbekistan who violate national legislation, international legal rules and the legislation of the destination country. It occurs as a result of entering, staying or transiting other countries or as a result of the illegal organization of these acts.

It should be noted that currently in our country appropriate legal-organizational measures have been taken to combat against such socially dangerous consequences and to prevent them. For instance, according to the first part of Article 34 of the Law of the Republic of Uzbekistan “On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan”, on June 4, 2021, No. LRU-692 [10] (responsibility for offenses), “Foreign citizens and stateless persons committed crimes and administrative offenses on the territory of the Republic of Uzbekistan shall be prosecuted on the same grounds as citizens of the Republic of Uzbekistan”. In the second part of this article was defined that “Foreign citizens and stateless persons residing temporarily or permanently in the Republic of Uzbekistan shall be held administratively liable for violation of the rules of stay and other offenses stipulated by the legislation of the Republic of Uzbekistan and administrative expulsion shall be applied to them in accordance with the legislation of the Republic of Uzbekistan, a ban shall be imposed on their entry into the territory of the Republic of Uzbekistan, as well as, the period of their stay shall be reduced”[19].

In addition, in Article 107 of the Law of the Republic of Uzbekistan “On Population Employment” on October 20, 2020, No. LRU-642 (Attracting and using foreign labor force in the Republic of Uzbekistan) has been noted that “A foreign citizen entering the Republic of Uzbekistan to carry out labor activities shall work for

hire in the territory of the Republic of Uzbekistan only if there is a confirmation received by the employer for the right of labor activity on the territory of the Republic of Uzbekistan”.

In the fifth part of Article 108 of this Law defined that “In case of violations of the conditions of the certificates of the right to work in the territory of the Republic of Uzbekistan submitted by employers and (or) foreign citizens, as well as the legislation of the Republic of Uzbekistan, appropriate instructions shall be sent by the labor authority bodies to eliminate the identified violations, for the time necessary to eliminate the violations identified in the instructions. proportional periods should be specified. In the event of violations by employers and (or) foreign citizens of the conditions of the provided confirmations for the right to work in the territory of the Republic of Uzbekistan, as well as the legislation of the Republic of Uzbekistan, labor authorities shall send appropriate instructions to eliminate the identified violations”[9].

In addition, Article 223 of the Criminal Code of the Republic of Uzbekistan establishes criminal responsibility for illegal departure abroad or entry into the Republic of Uzbekistan. Subjects of this crime shall apply citizens of the Republic of Uzbekistan, foreign citizens and stateless persons.

According to statistics, crimes committed by foreign citizens in our country are increasing year by year, such as 205 crimes were committed by foreign citizens in 2020, 258 crimes in 2021, 583 crimes in 2022 and 621 crimes in 2023, which is a 3-fold increase in crimes committed in 2023 compared to the corresponding period in 2020. 25-30 percent of crimes committed by them are serious and extremely serious crimes [15].

It should be said that the Republic of Uzbekistan ratified the United Nations Convention against

Transnational Organized Crime[11] on November 15, 2000 and joined the agreement on cooperation in combat illegal migration among the member states of the Commonwealth of Independent States, on March 6, 1998, at the regional level.

In addition, although the Republic of Uzbekistan did not join the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on November 15, 2000. Agreements on “Cooperation in Combating Illegal Migration” with certain countries based on the requirements specified in the provisions of this act [16; 17; 18] signed. In these agreements, individuals and legal entities operating in the territories of the parties involved in the organization and implementation of illegal migration, organization of illegal migration and measures aimed at cooperation in areas such as determining the departure and arrival points, routes, carriers and vehicles used in the implementation, methods of obtaining and using entry visas and other acts used for the purpose of illegal migration are defined.

However, in order to effectively implement the tasks of the agreements, it is necessary to adapt the national legislation to the requirements of these acts. Because the legal system of our country uses the phrase illegal migration, but its concept is not disclosed from a legal point of view and administrative or criminal responsibility measures are not provided for it. However, it is known that any international legal act, even if it is ratified by the states or if certain measures are provided for in international documents related to it, if it is not included in the content of national legislative acts, it will remain declarative in nature. From this point of view, in today’s modern conditions, the problem of illegal migration and combat against it through criminal and legal means is very important for Uzbekistan.

This, in turn, it shows that the necessity to improve accountability measures to enter and residence of foreign citizens and stateless persons coming to our country, to improve the legal rules taking into account the modern conditions of determining cases of violation of the law related to carrying out labor activities in the country, passing through the territory of the country in transit, as well as, to protect the rights, liberties or interests of our citizens who have left for labor migration, for the illegal actions of officials or employees of organizations designated as responsible for the selection and sending of citizens who wish to perform temporary work activities outside the Republic of Uzbekistan based on the requirements of foreign employers, and for providing assistance to citizens who are in dire straits on the territory of the Republic of Uzbekistan.

In particular, the necessity to improve criminal legislation to prevent the socially dangerous consequences of illegal migration has been recognized. According to researcher A.T. Achilov noted that “It is necessary to organize the concept of illegal migration in order to protect the legal use of labor force and legal regulation of activities in this regard, at a time when the process of integration is continuously developing in the current world community, to improve the legislation of the Republic of Uzbekistan on administrative and criminal responsibility by introducing rules that determine responsibility for violating the rules of attracting and using foreign labor in our republic”[2]. We fully support this opinion of the researcher.

In addition, in this regard, S.Dj. Djoldasova who studied migration issues and in addition paid attention. She does not support the idea of establishing criminal responsibility on the basis of an independent rule in the criminal law in order to improve measures of responsibility for crimes in the sphere of migration,



rather, the scientist focused on the liberalization of Article 223 of the current Criminal Code, according to the author, “As a result of the statistical analysis of crimes related to Article 223 of the Criminal Code of the Republic of Uzbekistan and the analysis of the criminal legislation of foreign countries in this regard, in order to liberalize criminal responsibility for violating the legislation in the sphere of migration, for the first time administrative responsibility for committing the offense provided for in the first part of this article, the second within one year establishing criminal responsibility for committing these actions, in addition, it is necessary to reduce the duration of the sanctions of this article in order to ensure the level of social danger of this offense, the reasonable and proportionate application of the punishment”[3]. In fact, at a time when the policy of liberalizing the criminal law continues in our country and the state policy aimed at the development of tourism is consistently carried out, the scientist’s views on liberalizing Article 223 of the current Criminal Code are commendable, however, meantime, we believe that in order to eliminate and prevent the negative consequences of illegal migration, it is necessary to improve the criminal law based on the development of special rules.

On the need to develop a special rule to combat illegal migration, A.A. Allanova expressed her opinion on the results of her research. The scientist said that almost all of the CIS member states are responsible for organizing illegal migration, The Criminal Code of the Republic of Uzbekistan should be supplemented with Article 223<sup>1</sup> entitled that “Organization of illegal migration”[1] and it is appropriate to describe it in the following way, “Organizing the illegal entry of foreign citizens or stateless persons into the Republic of Uzbekistan, their illegal stay in the Republic of Uzbekistan or their illegal passage through the territory of the Republic of Uzbekistan shall be

punished by a fine of one hundred to three hundred times the amount of the base calculation”.

Meantime, the researcher refers that to the special aggravating elements of this socially dangerous act and in the second part of this article those actions: a) by previous concert by a group of individuals; b) by committed an organized criminal group, – shall be punished with fine for from three hundred to five hundred times the amount of the base calculation or restriction of liberty from three to five years or deprivation of liberty from three to five years, as well as those actions in the third part of this article: a) in order to commit a crime on the territory of another state; b) suggests that if it is committed using a position of service, it should be punished with imprisonment from five to ten years. In addition, it is proposed that in the fourth part of the proposed rule, the following incentive rule of this crime, that is: “Citizens and stateless persons who came to the Republic of Uzbekistan without proper formalization of the entry documents of persons affected by human trafficking in order to use the right of political asylum provided for in the Constitution of the Republic of Uzbekistan are exempted from responsibility”. In turn, we fully support the author’s opinion that it is necessary to combat illegal migration through criminal legal means and establish a special rule in the law in this regard, but, in our opinion, in the context of this rule put forward by the scientist, it is necessary to further clarify the objective and subjective features of the crime structure and the aggravating elements and we do not believe that the structure of the crime in this content alone will not be enough to carry out a comprehensive combat the socially dangerous consequences of illegal migration through criminal-legal means.

In addition, according to the results of research conducted in foreign countries where criminal



responsibility for illegal migration is established, the social necessity of criminal responsibility is based on the effective combat illegal migration [6; 12; 13; 20] we consider it appropriate to note separately and we can note that a number of proposals have been developed for the further improvement of the current rule. For instance, D.D. Fomenko studied the criminal-legal problems of illegal migration who proposes to state Article 3221 of the current Criminal Code of the Russian Federation in the following version regarding the improvement of measures of responsibility for illegal migration: “Organization of illegal entry of foreign citizens or stateless persons into the Russian Federation, their illegal stay in the Russian Federation or illegal transit through the territory of the Russian Federation, if committed for malicious or other personal interests, – shall be punished by restriction of liberty for up to two years or deprivation of liberty for up to five years [21].

In turn, we believe that the motive of the crime (mercenary or other personal interests), which represents the subjective side of the crime of organizing illegal migration as stated by the author, is included as a necessary feature in the content of the rule, and that a group of people colluded in advance, by an organized group; participation of individuals in international terrorist activities, for the purpose of creating international criminal organizations, participating in banned terrorist organizations or recruiting for committing other crimes on the territory of the country; endangering the life or health of migrants or treating them inhumanely or degradingly; supporting the inclusion of such characteristics as aggravating circumstances. Because these cases increase the social risk of illegal migration and considering the motive of the crime as a necessary sign of the criminal structure allows to distinguish this crime from similar crimes and clarify its essence.

In addition, D.A. Sokolov regarding the improvement of responsibility for illegal migration, “in order to distinguish between administrative and criminal responsibility, it is necessary to take into account the number of foreign citizens or stateless persons whose illegal entry, stay or illegal transit is arranged”, puts forward the opinion and the disposition of the rule that is responsible for the organization of illegal migration “organizing of illegal entry of two or more foreign citizens or stateless persons into the Russian Federation, their illegal stay in the Russian Federation, or illegal transit through the territory of the Russian Federation”[14] offers to explain in the content. But we do not agree with these opinions of the researcher, because the number of foreign citizens or stateless persons can increase its social danger when determining criminal liability for organizing illegal migration, but this criterion does not distinguish the crime from an administrative offense.

A.M. Ishakov proposes that to supplement the Criminal Code with the penalty of forced expulsion of foreign citizens and stateless persons from the territory of the country in order to effectively combat illegal migration. Coercive expulsion shall be used as the main or additional type of punishment. If a person has been convicted of the serious crime, coercive deportation should be combined with a 10-year or indefinite entry restriction [4]. In turn, this view is supported by T.N. Utorova. But we do not support these views either, because in our view there is no sufficient need to include the penalty of forced expulsion from the territory of the country as a criminal penalty. Currently, in our country, this punishment is considered a type of administrative punishment and in accordance with Article 291 of the current Code of Administrative Responsibility, administrative expulsion of foreign citizens and stateless persons from the territory of the Republic of Uzbekistan, with their right to enter the Republic of Uzbekistan subsequently limited for a

period of one to three years, it is determined to be applied by the district (city) court in criminal cases in the form of forced or independent departure under supervision. If foreign citizens and stateless persons do not comply with the court resolution on administrative expulsion from the territory of the Republic of Uzbekistan issued against them, in accordance with Article 2251 of the Criminal Code, they shall be fined from seventy-five times to one hundred times the base calculation amount or be subject to administrative detention for a period of up to fifteen days.

Meantime, R.K. Kecherukov studied this problem that in addition to the responsibility established for organizing illegal migration, the Criminal Code is proposed to be supplemented with an independent crime called “Illegal Migration” and to state it in the following version, such as: illegal stay or transit of a foreign citizen or stateless person in the territory of the country, committed by a person subject to administrative punishment in accordance with Articles 18.8, 18.10-18.11 of the Code of Administrative Offenses of the Russian Federation for such acts, .... shall be punished”[5]. In our opinion, foreign citizens and stateless persons living in the country without documents giving the right to live or with invalid documents and not complying with the established procedure for registration, moving or choosing a place of residence, refusing to leave after the end of their stay, as well as transiting through the territory of the country. It is not appropriate to establish criminal responsibility for non-compliance. Because, firstly, the structure of the crime, which provides for criminal responsibility for these acts, it was decriminalized in our country by the Law of the Republic of Uzbekistan on November 5, 2019, No. LRU-579 [8], secondly, it may have a negative impact on the state policy of developing tourism in our country and attracting foreign citizens to our country, thirdly, the responsibility for these acts is established within the

framework of the legislation on administrative responsibility, and therefore it is considered sufficient.

In short, in order to prevent the socially dangerous consequences of illegal migration and to create the criminal-legal basis for achieving the full implementation of the tasks defined in the international migration acts of our country, it is proposed to improve it by establishing criminal responsibility for the following criminal elements related to illegal migration:

firstly, many cases of violations of the law are committed by sending organizations in attracting citizens who want to perform temporary labor activities outside the Republic of Uzbekistan to organized labor migration. In accordance with the legislation, the Foreign Labor Migration Agency under the Ministry of Poverty Reduction and Employment, as well as private employment agencies licensed to carry out activities on employment of persons seeking work outside the Republic of Uzbekistan, are sending organizations.

Usually, such violations occur in cases of violation of the Law by sending organizations in the process of organizing the selection of citizens who wish to perform temporary work outside the Republic of Uzbekistan, vacancies offered by foreign employers, conditions for concluding employment contracts with them, requiring type of profession or specialty, living and working conditions, amount and conditions of payment for labor, duration of working hours, social, housing and household support in not ensuring openness regarding the timely provision of information, in the fact that cases of corruption are allowed in these areas, as well as the inaction of the state bodies responsible for ensuring the protection of their rights and legal interests during the period of



temporary labor activities of citizens outside the Republic of Uzbekistan.

As a result, the sense of confidence of citizens in the state bodies is decreasing, the rights, liberty or interests of individuals protected by the Law are being seriously harmed, as well as, citizens who have suffered from violence, forced labor and discrimination during the period of working abroad who have had their labor and other rights violated, who have fallen into a difficult financial situation and who have been left without identity documents and without means for living, are not provided with legal, social protection and material support, the life and health of citizens is in danger. In order to prevent these situations, it is appropriate to establish criminal responsibility to the Criminal Code “violation of migration legislation”.

secondly, the high social risk of organizing illegal migration and immigration in a number of foreign countries (Italy, Spain, France, Latvia, Lithuania, Estonia, Bulgaria, USA, Turkey, RF, Belarus, Azerbaijan, Tajikistan, Kazakhstan, Kyrgyzstan, Poland, China, etc.) taking into account the positive experience of establishing criminal responsibility for migration, it is appropriate to establish criminal responsibility for organizing illegal migration in the Criminal Code. In particular, the direct object of the proposed crime is the activity of state bodies in the sphere of regulation and management of migration processes and social relations that ensure the regulation of migration processes based on state and international documents. Social relations that ensure the life, health, public health, economic and national security of individuals can be an additional direct object of the crime. Therefore, it is reasonable to place this crime in the chapter of crimes against administrative order of the Criminal Code.

The objective side of the crime is to organize foreign citizens or stateless persons to enter, leave, stay, and transit the territory of the Republic of Uzbekistan in violation of the established order; sending citizens of the Republic of Uzbekistan to illegally enter the territory of a foreign country; consisting of directing or assisting in any form in the execution of these actions. The mens rea of this crime is expressed in the form of intent. The perpetrators of this crime know that their actions are illegal and intend or knowingly allow them to be committed. Committing a crime based on mercenary and other personal interests is a necessary feature of this crime. The subjects of the crime shall be any sane individuals over the age of 16.

The aggravating circumstances of the crime, these actions are occurred by a group of individuals, an organized group, with the purpose of recruiting individuals to participate in international terrorist activities, to form international criminal groups, to participate in prohibited terrorist organizations, to commit other crimes on the territory of the country, against an elderly person or an infirm person, a minor or a woman who is known to be pregnant, using violence or threatening to use violence or inhumane or degrading treatment of a person, endangering the life or safety of a person, should be considered as if they were committed using their official position. Therefore, the Criminal Code of the Republic of Uzbekistan should establish criminal responsibility for “organizing illegal migration”.

thirdly, in order to ensure the economic stability of our country and to provide employment to the population, it is very important to create vacancies and provide employment to the population. In this regard, a foreign citizen entering the Republic of Uzbekistan to perform labor activities can only work for hire in the territory of the Republic of Uzbekistan in our legislation, if the employer has a certificate of the right to work in the

territory of the Republic of Uzbekistan obtained in the prescribed manner and the attracting and using foreign labor force to the Republic of Uzbekistan is stipulated by the employer when it is not possible to fill the available vacancies with local labor force or when there is a need for highly skilled and qualified specialists.

If these procedures and conditions are violated by the employer or illegal resolution are made by the persons entrusted with providing documents of this category or if the permit issued by the employer and foreign citizens is caused by a violation of the conditions, or if other violations of the law are detected, if its term of validity ends before its term or if the document's validity period expires without its extension, it leads to a violation of the management procedure of the state authorities in the sphere of providing employment to the population.

At this point, it should be said that in the legislation of our country, neither administrative nor criminal responsibility is established for the official of the competent body, the employer and foreign citizens for violating the legislation on the procedure for attracting and using foreign labor in the Republic of Uzbekistan. This has a negative impact on the mechanism of effective implementation of the state manager in this area. For this reason, the Criminal Code of the Republic of Uzbekistan (the offense of the same content must in addition be included in the Code of Administrative Responsibility) criminal responsibility for “violation of the procedure for attracting and using foreign labor in the Republic of Uzbekistan”.

fourthly, it is known that illegal act circulation primarily contributes to uncontrolled migration which is a problem for the entire international community. In particular, knowingly entering false information into acts that lead to the illegal issuance or illegal receipt of

an identity act enables illegal migration. For this reason, it is appropriate to establish criminal responsibility for “illegally giving citizenship of the Republic of Uzbekistan” in the Criminal Code of the Republic of Uzbekistan.

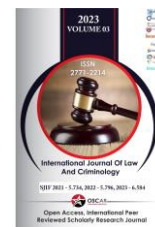
We believe that the implementation of these measures will increase the effectiveness of combat illegal migration.

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