



Some Aspects of Administrative Punishment in the Form of Expulsion of Foreign Citizens in the Legislation of the Republic of Uzbekistan

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Abstract

In this research was considered the legal nature of such types of administrative enforcement measures as administrative expulsion, deportation and readmission. Based on this, he concluded that current trends in the legal regulation of the prevention and suppression of illegal migration are aimed at further differentiation of administrative and criminal responsibility measures for committing offenses in the field of migration.

Keywords: *Administrative Punishment; Foreign Citizens; Legislation; Deportation; Readmission; Administrative Responsibility; Stateless Persons; Administrative Enforcement; Illegal Migration*

Introduction

Migration is a relatively complex social process that influences numerous facets of citizen and societal life, necessitating state regulation.

For this reason, the competent authorities of the country where foreign citizens visit must regulate migration processes, control the compliance of foreign citizens with the rules of the country, and apply a number of administrative punishments such as fines and deportation against foreign citizens who do not comply with the internal rules of the country.

Consequently, the application of administrative punishments in the form of deportation is one of the primary responsibilities of the state's migration authorities in the implementation of the primary responsibilities for the prevention and prevention of offenses related to the rules of stay.

Despite the fact that this institution is governed by migration law, there are some difficulties with its application that have not yet been resolved by the law.

The study proposes to examine issues pertaining to the application of an administrative sanction in the form of expulsion from the country, as prescribed by the laws of the Republic of Uzbekistan.

The foreign nationals who participate in legal relationships in accordance with the laws of the Republic of Uzbekistan are conferred with relevant rights and obligations, regardless of the duration of their stay.

Therefore, in accordance with Article 23 of the Constitution of the Republic of Uzbekistan, foreign nationals and stateless persons on the territory of the Republic of Uzbekistan are accorded rights and liberties in accordance with international law. They are bound by the constitutional, legal, and international obligations of the Republic of Uzbekistan [1].

Furthermore, Article 5 of the Law of the Republic of Uzbekistan “On the legal status of foreign citizens and stateless persons in the Republic of Uzbekistan” states that foreign citizens and stateless persons residing on the territory of the Republic of Uzbekistan are equal before the law of the Republic of Uzbekistan without regard to gender, race, nationality, language, religion, social origin, beliefs, or personal and social status [2].

Depending on the severity of their offenses, foreign nationals who have committed crimes may be subject to legal liability measures under criminal or administrative law.

The Law also stipulates that foreign citizens and stateless persons who have committed crimes or administrative offenses on the territory of the Republic of Uzbekistan are subject to liability on the same grounds as citizens of the Republic of Uzbekistan, unless otherwise stipulated by the Republic of Uzbekistan’s international treaties.

In the meantime, the study’s findings revealed that administrative procedural legislation, which is an integral part of administrative law, is not without flaws in terms of normative regulation and practical application.

It must be acknowledged that administrative responsibility measures do not always attain their objectives. The existing legal gaps at the legislative level, firstly, prevent authorized bodies from realizing their maximum potential in the suppression of illegal actions by foreign nationals, and secondly, contribute to the evasion of responsibility by offenders.

The aforementioned circumstances demonstrate the need for an objective examination of the administrative sanction of expelling foreign nationals from the Republic of Uzbekistan.

Thus, the legal basis of this legal institution is the Convention for the Protection of Human Rights and Fundamental Freedoms [3], international agreements concluded by the Government of the Republic of Uzbekistan with foreign states on readmission [4], the Code of Administrative Responsibility of the Republic of Uzbekistan [5], the Law of the Republic of Uzbekistan “On the legal status of foreign citizens and stateless persons in the Republic of Uzbekistan”, and the Decree of the President of the Republic of Uzbekistan “On the procedure for entry, exit, stay and transit passage of foreign citizens and stateless persons in the Republic of Uzbekistan” [6], “On improving the procedure for receiving and training of foreign citizens in educational institutions of the Republic of Uzbekistan” [7], and others.

It deserves to be pointed out that the Convention for the Protection of Human Rights and Fundamental Freedoms is the fundamental international legal act regulating the procedure for the expulsion of foreigners from the territory of the host states, as it establishes the legal institution of expulsion and confers appropriate protections on this category of individuals. Such safeguards should include procedural guarantees against expulsion and the conditions under which expulsion is prohibited.

The dictionary of international law defines expulsion of foreigners as “...expulsion is the removal of foreign nationals and stateless persons from the territory of the receiving state by the competent authorities of the receiving state”.

In addition, the regulatory legal acts of the Republic of Uzbekistan provide a comprehensive definition of expulsion.

The Code of Administrative Responsibility of the Republic of Uzbekistan, for instance, defines “administrative expulsion of foreign citizens and stateless persons from the Republic of Uzbekistan in forced or controlled independent departure...”.

In the international agreements on readmission of the Republic of Uzbekistan, “readmission” means that the transfer by the competent authorities of the state of the Requesting Party and admission by the competent authorities of the state of the Requested Party of persons according to the procedure, under the terms and conditions and for purposes, stipulated by this Agreement, of persons who enter into or are present in the state of the Requesting Party in violation of legislation of this state regulating the entry, departure and stay of foreign nationals and stateless persons.

Regarding the concept of “deportation”, it should be noted that this legal institution is not codified by statute. The legal institution for expelling foreign nationals in the Republic of Uzbekistan consists of administrative expulsion and readmission, as described above.

Due to the fact that each of the aforementioned types is a relatively complex legal phenomenon governed by separate legal acts, this paper will only examine administrative expulsion as it applies to foreign nationals who have committed offenses under the Code of Administrative Responsibility of the Republic of Uzbekistan.

In accordance with Article 29¹ of the Code of Administrative Responsibility of the Republic of Uzbekistan, administrative expulsion may be imposed on foreign nationals and stateless persons who have committed the following offenses: “Interference in the affairs of the Central Election Commission of the Republic of Uzbekistan, election commissions, and referendum commissions” (Article 51²); “Contravention of the procedure for financing elections or a referendum” (Article 51⁸); “Contravention of the procedure for publishing the results of public opinion surveys, election forecasts, or a referendum” (Article 51⁹); “Small-scale illegal manufacture, procurement, storage, or transfer of narcotic drugs, their analogs, or psychotropic substances” (Article 56); “Concealment of the source of infection with a sexually transmitted disease or HIV/AIDS” (Article 57); “Avoidance of patients with sexually transmitted diseases or HIV/AIDS from examination” (Article 58); “Bribery of a non-state commercial or non-state organization employee” (Article 61¹); “Destruction, harvesting, or other actions that may contribute to the death, reduction in population, or habitat disturbance of rare or endangered animals” (Article 94); “Production, manufacture, acquisition, storage, and transportation for the purpose of sale or sale of substandard or counterfeit medicines or medical products outside pharmacies and their branches, as well as violations of the procedure for the retail sale of prescription medicines” (Article 165¹); “Illegal production, storage, import, or distribution of religiously themed materials” (Article 184²); “Production, storage or distribution of materials promoting national, racial, ethnic or religious enmity” (Article 184³); “Production, importation, distribution, advertising, demonstration of pornographic products” (Article 189); “Production, importation, distribution, advertising, and display of items that propagate the cult of violence or cruelty” (Article 189¹); “Contravention of the procedure for organizing, holding, or participating in meetings, rallies, street processions, or demonstrations” (Article 201); “Inducement to participate in the activities of illicit non-governmental non-profit organizations, movements, sects” (Article 202¹); “Infractions of the regime at checkpoints on the Republic of Uzbekistan’s state frontier” (Article 224¹); “Violation of the Republic of Uzbekistan’s residency regulations” (Article 225); “Infraction of the procedure governing the conduct of activities by non-governmental nonprofit organizations” (Article 239); “Violation of the legislation on religious organizations” (Article 240); “Violation of the order of instruction religious doctrines” (Article 241).

Administrative expulsion of foreign nationals from the Republic of Uzbekistan is both a primary and secondary administrative sanction.

For information: in 2021, 67 foreign citizens were expelled from the country for violations of the rules of stay in the territory of the Republic of Uzbekistan, and by 2022, their number has decreased to 56.

Article 346² of the Code of Administrative Responsibility of the Republic of Uzbekistan specifies that administrative expulsion of foreign nationals from the Republic of Uzbekistan may be carried out in the following manner: controlled self-sustaining departure; forced expulsion by official transfer of a foreign national to a representative of the authorities of a foreign state, to the territory from which the individual is expelled.

A distinguishing feature of the first form of expulsion is that the foreign national departs the country on his own accord and at his own expense.

In the second scenario, a ticket for a foreign national is typically purchased with funds from the state budget, and the individual departs the Republic of Uzbekistan under the supervision of the appropriate authorities.

The current legislation of the Republic of Uzbekistan explicitly delineates the costs associated with expelling foreign nationals from the country.

Thus, the costs associated with expelling foreign nationals who entered the Republic of Uzbekistan on official, private, commercial, or public business, for study, advanced training, work, or as tourists are borne by the organizations and individuals that invited the deported foreign nationals.

And the costs associated with expelling other foreigners, including those with permanent residency in the Republic of Uzbekistan, are incurred by the bodies responsible for internal affairs.

The Code of Administrative Responsibility of the Republic of Uzbekistan, which determines the jurisdiction of cases of administrative offenses resulting in the administrative expulsion of foreign citizens, stipulates that judges of district (city) courts hear administrative expulsion cases involving foreign nationals.

When a court decides to impose a penalty in the form of administrative expulsion on foreign nationals, it may imply that these individuals must be detained in separate facilities of the internal affairs bodies until the decision is carried out.

The absence of special institutions where foreign offenders will be detained until the implementation of the court's decision is one of the problematic aspects of administrative punishments in the form of expulsion.

For instance, the majority of states have institutions for the temporary detention of foreign nationals prior to their deportation.

For information: in the Russian Federation, there are 36 Temporary Detention Centers for Foreign Citizens (TDCFC). These institutions are established in cities where a significant number of immigrants reside. Reception and placement of foreign nationals in the TDCFC is conducted in the presence of a valid decision from a court, the Minister of Internal Affairs of the Russian Federation (his deputy), or the head of the relevant territorial body of the Ministry of Internal Affairs of the Russian Federation.

24 deportation centers and 2 repatriation (return) centers for foreign nationals are administered by the General Directorate for Migration of the Ministry of Internal Affairs of the Republic of Turkey. The decision to deport foreign nationals is made directly by the Ministry of the Interior's Main Directorate for Migration or the regional governor.

There are special reception facilities in the Republic of Kazakhstan for foreign nationals and stateless people who have violated the rules of stay or committed other offenses specified by the Republic of Kazakhstan's legislation. Placement in a special reception center of foreigners and stateless persons subject to forcible expulsion on the basis of a verdict, decision, court order that has entered into legal force, as well as those who have not left the territory of the Republic of Kazakhstan within the period specified in the judicial act on expulsion, is carried out on the basis of a decision of the authorities internal affairs on preventive restriction of freedom of movement, sanctioned by the President of the Republic of Kazakhstan.

The preventive restriction of the freedom of movement of such a person is allowed in this case for the period necessary to organize his expulsion from the Republic of Kazakhstan, but not more than thirty days.

In Ukraine, there are 3 temporary detention centers (TDC) for foreign citizens who have violated migration rules (Volyn, Nikolaev and Chernihiv). All three of these centers are managed by departmental organizations of the State Migration Service of Ukraine. As a rule, foreigners are subject to forced expulsion, in respect of whom a court decision on voluntary departure was previously issued.

In addition, it should be noted that the administrative expulsion of foreign nationals is distinguished from other forms of punishment by the imposition of a subsequent prohibition on entry into the Republic of Uzbekistan.

In accordance with the requirements of the Decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 408 dated November 21, 1996 "On the procedure for entry, exit, stay and transit passage of foreign citizens and stateless persons in the Republic of Uzbekistan", a foreign citizen may be expelled from the Republic of Uzbekistan in the event of a violation of the rules of stay in the Republic of Uzbekistan, i.e., residence without documents for the right of residence in Uzbekistan or on invalid documents, non-compliance with the established procedure for temporary or permanent registration, movement or choice of residence, evasion from leaving after the expiration of the period of stay, non-compliance with the rules for transit through the territory Republic of Uzbekistan, with subsequent restriction of the right to enter the Republic of Uzbekistan for a period of one to three years.

A foreign citizen is expelled from the Republic of Uzbekistan after being executed or serving the punishment imposed by the court for a crime committed on the Republic of Uzbekistan's territory, or after being exempted from criminal liability or punishment in cases provided for by law, with subsequent restrictions on the right to enter the Republic of Uzbekistan: five years for committing acts that do not represent a significant public risk and less serious offenses; ten years for serious crimes; life imprisonment for committing especially serious crimes.

That is, present legislation identifies the grounds for imposing restrictions on the right to enter, but no method or grounds exist for lifting these restrictions.

In this regard, it is regarded important at the legislative level to handle problems: establishment of a provisional detention facility for foreign nationals pending their expulsion from the Republic of Uzbekistan. Determine the procedure and mechanism for holding foreign nationals in these institutions; introducing appropriate amendments and additions to the current legislation to determine the grounds and procedure for lifting entry restrictions into the Republic of Uzbekistan imposed after the execution of court decisions on expulsion from the Republic of Uzbekistan.

The issues addressed necessitate an interdisciplinary approach to their resolution and the adoption of appropriate legislative measures.

These initiatives include, in particular, the assumptions presented in the paper, the implementation of which will allow: the elimination of existing legal gaps; the regulation of the procedure for entry, stay, and exit of foreign citizens from the territory of the country; the discipline of foreign citizens entering, staying, and exiting the territory of the Republic of Uzbekistan; the avoidance of additional financial costs for administrative expulsion, thereby saving budgetary funds; and the improvement of the efficiency of the country's immigration system.

References:

1. Конституция Республики Узбекистан от 01.05.2023 года. <https://lex.uz/docs/6445147>.
2. Закон Республики Узбекистан, от 04.06.2021 года № ЗРУ-692 “О правовом положении иностранных граждан и лиц без гражданства в Республике Узбекистан”. <https://lex.uz/ru/docs/5443901>.
3. Конвенция о защите прав человека и основных свобод Рим 4 ноября 1950 года. <https://nrm.uz>.
4. Соглашение между Правительством Республики Узбекистан с иностранными государствами “О реадмиссии лиц”. <https://lex.uz/ru/docs/2659242> (с Республикой Казахстан). <https://lex.uz/ru/docs/2570915> (с Российской Федерацией).
5. Кодекс об Административной ответственности Республики Узбекистан от 01.04.1995 года. <https://lex.uz/ru/docs/97661>.
6. Постановление Кабинета Министров Республики Узбекистан, от 21.11.1996 г. № 408 “О порядке въезда, выезда, пребывания и транзитного проезда иностранных граждан и лиц без гражданства в Республике Узбекистан”. <https://lex.uz/ru/docs/513096>.
7. Постановление Кабинета Министров Республики Узбекистан, от 04.08.2008 г. №169 “О совершенствовании порядка приема и обучения иностранных граждан в образовательных учреждениях Республики Узбекистан”. <https://lex.uz/ru/docs/1380638>.

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