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FORMATION OF THE INSTITUTE OF READMISSION AS INSTRUMENT OF THE FIGHT AGAINST ILLEGAL MIGRATION.

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Annotation: The purpose of the assignments is to learn the formation of the institute of readmission and analyse of the bipartite and multilateral if international agreements in the sphere of the migration of the human liberty and of the human right. The main view is using the mechanism readmission to the foreign citizens and the stateless persons, who have a reason to fear of returning to the state as origin. Under such condition, these people are subject to the principle of a non-refoulment as a potential refugee, who is searching a refuge and for such situation is putting special procedures of recognizing the personal status. The government must combine the international legal sources of warnings about of the illegal migration which should be in the agreements of the readmission.

The stages of formation and development of the readmission institute by Niels Coleman are most appropriate stated, since his very narrow monograph on this subject objectively contains more factual materials at this issue.

European countries was consisted of the readmission agreements from the beginning of the 19th century. These agreements related to the expulsion of illegal immigrants through the establishment of obligations and readmission procedures between the contracting parties. The first bilateral readmission agreements were the agreements of 1818 and 1819, which were concluded between Prussia and other German states. Another example is the agreement concluded between the Netherlands and Germany on November 7, 1906. This agreement provided that the contracting states undertake to "open their territories" to foreigners. It aimed at "limiting the authority to expel Dutch citizens from Germany and vice versa".

In general, it should be noted that a greater number of readmission agreements were consisted by European countries between the beginning of the 19th century and World War II. Niels Colman clarifies that after World War II readmission agreements began to contain more and more provisions on readmission of third-country nationals, while previous agreements focused on the reception of their own citizens. In 1950-1960, the West European states began to regulate the movement of people between certain territories by concluding readmission agreements [1, p.11]. For example, this applies to member states of an association such as Benelux.

There are several features of readmission agreements of this period:

- the limited practical use associated with the difficulty of complying with evidentiary requirements for illegal border crossings between contracting states in order to establish readmission obligations;

- lack of recognition by states of migration as a problem requiring urgent solutions.

In the 90s of the XX century, countries of the European Union gradually abolished visa requirements for citizens of Central European states, and readmission agreements became the so-called means of protecting the territories and interests of host countries.

Moreover, in the 90s, the readmission also became an important cause to the promotion of the idea of European integration, and it increased migration flows to Western Europe.

The first readmission agreements covered only their own citizens. Only in the 1970-1990s, such agreements were supposed to apply to third-country nationals and stateless persons for the following two reasons. Most of the entry programs that previously operated in Europe were suspended due to the oil crisis and the ensuing collapse of economies.

The significant migration flows from the post-Soviet space and began to flow to European countries, caused by the political changes that took place in Europe. In these conditions, the countries of Central and Eastern Europe had turned from the “source” countries into “transit corridors” for illegal migrants.

The necessity for the readmission agreements had increased as the European Union haa abolished its internal borders. The concept is of free movement inside the European Union, but strict control at its external borders was embodied in the 1997 Amsterdam Agreement, which transferred jurisdiction over visas, asylum, immigration, and a number of other issues related to the free movement of persons to the European Union.

As a result, the readmission agreements have come to be seen as an important tool in the fight against illegal migration.

In the early 90's of the twentieth century, the competence of the EU is in the field of the concluding readmission agreements had not yet been fixed. During this period, the EU made attempts to attract third countries to conclude readmission agreements and agree on the content of bilateral treaties of member states. C. Gillad points out that since the adoption of the Treaty on the European Union (Maastricht Treaty) in 1992, which created the necessary basis, there is a gradual institutionalization of competence in the field of migration [2]. In a June 1991 was a summit of the Luxembourg, "the German Chancellor first clearly articulated the idea of" communizing "immigration and asylum policies, urging the Council to develop a cooperation program in the field of internal affairs and justice, which was done at the end of 1991. programs, and then its discussion, revealed disagreements between states: Great Britain and Denmark insisted on preserving national sovereignty, and Germany and Belgium advocated expanding the competence of the Community in the field Cored oil affairs and justice. The adoption of the Maastricht Treaty on February 7, 1992 was a kind of compromise between states [3, p. 52].

From 1995, the European Community has begun to recommend member states to include the so-called “readmission clauses” in agreements with third states that do not directly regulate this area of relations, for example, in association and cooperation agreements concluded by the EU with third countries [4]. The readmission provisions generally contain a political commitment to negotiate a full readmission agreement in the future. The next important stage for the development of the EU competence was in the field of concluding readmission agreements is the adoption of the Amsterdam Treaty. In 1997, the Member States adopted the Amsterdam Treaty amending the Treaty on the European Union, the treaties establishing the European Community and certain related acts [5]. “His goal was to conclude a new treaty for Europe based on the “achievements of the Community” and prepare the Union for subsequent enlargements” [6].

After the signing with the Amsterdam Treaty, the policy of internal affairs and justice were divided between the first and third pillars, as evidenced by the attribution was of immigration and asylum to the competence of the Community (first pillar), border protection, legal cooperation in civil matters, while maintaining criminal cooperation between police and legal departments in the field of intergovernmental relations (ie, in the third pillar) [7]. After the entry into force of the

Amsterdam Treaty in May 1999, the Schengen Agreements, which were previously separate international agreements, also began to apply to EU law. Thus, with the entry into force in May 1999 of the Amsterdam Treaty, not only member states could conclude readmission agreements, but the EU also acquired the relevant competence [8, p. 63].

The largest number of agreements (124) between EU Member States was concluded between 1990 and 2000. Since 1999, the European Union may enter into readmission agreements with third countries. In 2008, this process began with the involvement of the countries of the former Soviet Union, as the European Union entered into agreements with Moldova, Ukraine and the Russian Federation.

It should be noted that in different countries different forms of forced return of illegal migrants are used, but they belong to the same category:

Administrative expulsion is an action taken by a public authority to ensure the forcible removal of foreign nationals or stateless persons from a national territory;

- Deportation - action taken by a State exercising its sovereign right to expel an alien from its territory to a certain place after refusing to accept or terminating a residence permit;

- Readmission - authorization by a State to reintegrate (re-enter) its national, a third country national or a stateless person who entered or resided in the other State illegally.

Despite significant differences between them, they share a number of common features:

- the administrative and management activities of authorized State bodies;

- the form of response to violations of the requirements of migration legislation;

- the possibility of restricting the rights and freedoms of foreign nationals and stateless persons;

- obligatory state registration of fingerprints;

- return at the expense of the individual or the State budget.

However, the legal nature of these forms of forced return differs. Thus, the legal institutions of deportation and administrative expulsion are regulated by national legislation, while the institution of readmission is a category of international law and international treaties between States. The differences between forms of refoulement are even more evident in the comparative example of readmission and administrative expulsion.

As I have already mentioned, the application of the readmission institution is based on an international treaty concluded and entered into force by one State with another, whose rules are set out in national legal instruments. The issue of administrative expulsion is settled only on the basis of national legislation. Administrative expulsion is a form of administrative punishment imposed by a judge and takes the form of controlled forced displacement outside the State or controlled independent displacement of an alien outside the State. The expelled person has the possibility of appealing against the administrative expulsion decision. Expulsion may take place only in the State of nationality or permanent residence of the foreign national or stateless person [9, p.50].

The diplomatic mission or consular post of the foreign State concerned shall be notified of administrative expulsion. Unlike administrative removal, readmission is not subject to punishment, and the decision on readmission is taken by the competent authority by mutual agreement and can be made from the point of a State where a foreign national or stateless person has entered the territory of that State directly. With regard to deportation, it is not a form of punishment, as is readmission. Deportation is a mechanism for the forcible removal of a foreign national or stateless person from the State and is carried out extrajudicially by the competent authorities.

However, the procedures of deportation and readmission differ significantly. The legal basis of the institution of deportation is exclusively national legislation. Deportation applies primarily when the foreign national or stateless person has previously failed to comply with an application to leave the territory of the State due to a shorter period of stay or when a temporary residence permit or residence permit has been cancelled; secondly, when an application for refugee status recognition or a notice of loss of or revocation of refugee status has been rejected; thirdly, when a decision is made to refuse to stay (in the place of residence) and when legal grounds are lost or terminated; and thirdly, when a decision is made to leave the territory of the State. Expulsion is carried out only in

the State of citizenship or permanent residence of a foreign citizen or stateless person. As in the case of administrative expulsion, deportation is notified to the diplomatic mission or consular post of the foreign State concerned.

Unlike deportation, readmission is not subject to the criterion of the foreign national or stateless person's failure to comply with the obligation to leave the territory of the State; it can be carried out, including in the State from which the foreign national or stateless person arrived directly in the State. Today, the international community has recognized that one of the most effective and promising tools to combat irregular migration is the application of such a form of forced return as readmission [10, p.129].

It seems that it is easier for a State to return its own nationals than to protect their rights in the host country. Thus, readmission treaties are now more common than, inter alia, bilateral agreements on the legal status of migrant workers or on the reception of returning compatriots. Readmission procedures provide for mechanisms to facilitate the resolution of issues related to the termination of irregular migrants' stay on the territory of foreign States and do not set a global objective represented by the general prevention of irregular migration between States. Readmission is a legal framework that allows countries to accept the return of foreigners residing illegally in States of nationality, permanent residence or transit quickly and easily. The expression of the will of migrants in the legal relations of the Contracting States with regard to readmission is not taken into account. In most cases, only general guarantees of natural rights and freedoms are provided.

The right to free return enshrined in Article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR) is ignored here, since the subject of readmission treaties is forced and controlled repatriation by the Member States. IOM experts note that "international practice does not consider readmission as an independent legal institution and, therefore, in the domestic legislation of foreign states, readmission is not regulated, remaining exclusively a category of international law. From the standpoint of international practice, readmission is only a technical mechanism used in implementing a decision to forcibly expel a foreign national or stateless person from the territory of a State".

In my view, readmission, administrative expulsion and deportation of foreign nationals cannot be seen as effective measures to prevent illegal migration. Such forms of return of foreign nationals to their countries of origin or transit only contribute to the security of the receiving State, as well as to ending the illegal stay of migrants. Thus, readmission means the transfer by the Requesting State and the acceptance by the Requested State of persons (nationals of the Requested State, third-country nationals or stateless persons) whose entry, stay or residence in the Requesting State is recognized as illegal under the provisions of a readmission agreement between States.

Readmission is a legal mechanism that allows States that have concluded readmission agreements to carry out the procedure of return (transfer and reception) of persons (nationals of States Parties, third-country nationals and stateless persons) when the legal basis for the entry, stay and residence in the Requested State in the State of their nationality, the State of residence or in third States where they entered.

The following main features of "readmission" can be identified: one of the distinctive features of readmission, as compared to deportation and removal, is the possibility of applying it to persons who do not have identity documents; readmission is a dual process and involves an agreement concluded between two States. All organizational aspects related to the movement of the migrant and the obligations of countries are mandatory; readmission is possible only if there is an agreement between States that has already entered into force; readmission is not a penalty.

Readmission is as a means of removing irregular migrants from the territory of a State, is regulated by both international and domestic law. The legal regulation in both cases is specific and specific. European law focuses on international legal aspects. In determining the place of readmission in the international law system, we will move away from the definition of readmission in terms of the content of legal relations.

The problem of irregular migration is a global problem for all States of the international community, and it is necessary to consolidate their efforts and develop a common strategy of action.

International cooperation in the field of readmission, which is a simplified procedure for returning, transit and reception of persons who are in the territory of the Contracting Parties illegally, is one of the most promising ways to address this problem both in the interest of the State and in the protection of human and civil rights and freedoms. Readmission can be an effective tool to combat irregular migration and to build confidence in the return of irregular migrants only if the system of readmission agreements between sending, transit and receiving States is implemented in good faith.

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