



Countering Migration Legislation Violations as a Modern Threat to National Security

IGOR' YU. SAMOKHVALOV

Arzamas Branch of National Research Lobachevsky State University of Nizhni Novgorod, Arzamas, Russian Federation,

ORCID: <https://orcid.org/0000-0001-7932-6238>, e-mail: herrysam@mail.ru

Abstract. *Introduction:* the paper investigates migration situation in the country, reasons and prerequisites for migration-related crime, and identifies features of state prevention of migration offenses. *Aim:* by analyzing current migration situation, to identify problems in the field of migration-related offenses and how to counteract them at the current stage of society development. *Methods:* general scientific dialectical method of cognition, comparative legal method, empirical methods of description and interpretation; method of interpretation of legal norms. *Results:* having analyzed manifestations of migration-related crime we determine its signs, internal content, essence, types, and objectivity of existence; this allows us to put forward ways to counteract the current state of this type of crime. *Conclusions:* when studying how migration offenses are counteracted, we propose a number of measures that can change the existing crime situation in the migration sphere. Among them: strengthening the registration of migrants when passing the state border; increasing the responsibility of an unscrupulous employer who provides work to migrants in violation of current legislation, obliging unscrupulous employers to cover expenses related to the expulsion of illegally located migrants, strengthening the responsibility of the employer; tightening the sanctions of existing legislation for submission of false documents for registration by migrants and for registration based on false documents; strengthening the functional activities of the Federal Migration Service by granting it the right to perform intelligence-gathering activities and interaction with operative units of law enforcement agencies engaged in such activities; determining the priority of external and operative services to identify the facts of illegal stay of migrants in the territory of the metropolis; establishment of a single codified act – the migration code, regulating legal relations arising in the migration sphere.

Keywords: migration-related crime; labor migration; uncontrolled migration of labor resources; legal status; victimization; migration diasporas.

12.00.08 – Criminal law and criminology; penal law.

For citation: Samokhvalov I.Yu. Countering migration legislation violations as a modern threat to national security. *Penitentiary Science*, 2021, vol. 15, no. 1 (53), pp. 162–170. DOI 10.46741/2686-9764-2021-15-1-162-170.

Introduction

External labor migration as a social phenomenon has entered the life of our country and is now gaining global scale, affecting many social fields. Society, on the one hand, cannot abandon labor migration due to economic reasons, and on the other hand, it is not ready to address a number of issues due to the lack or insufficient activity of legislation in this field of legal relations.

Current geopolitical situation, intensification of migration processes, as well as the consistently high rate of crime involving foreign citizens cause the need for legal regulation of the execution of criminal sentences and other measures of a criminal-legal nature related to these

categories of criminals. Migrant convicts have a special legal status, which has been repeatedly highlighted in penitentiary literature.

Thus, according to Article 10 of the Penal Enforcement Code of the Russian Federation, Russia respects and protects the rights, freedoms and legitimate interests of convicts, ensures the legality of the use of means of their correction, their legal protection and personal safety in the execution of sentences. Convicts who are foreign citizens and those who are stateless persons enjoy the rights and bear the obligations that are established by international treaties of the Russian Federation, the legislation of the Russian Federation on the legal status of foreign citizens and stateless persons,

with exceptions and restrictions provided for by the criminal, penal enforcement and other legislation of the Russian Federation.

Statistics show a decrease in the number of crimes committed by foreign citizens and stateless persons in recent years: in 2019, 20,165 crimes were committed by foreign citizens and stateless persons, including 16,196 crimes – by citizens of CIS member states; in 2018, 23,164 crimes were committed by foreign citizens and stateless persons, including 16,777 – by citizens of CIS member states; in 2017, 25,580 crimes were committed by foreign citizens and stateless persons, including 18,222 – by citizens of CIS member states [13].

In 2016, 37.8 thousand crimes were committed by foreign citizens and stateless persons, which is 7.6% less than in the same period of 2015, including 33.2 thousand – by citizens of CIS member states (for comparison: in January–November 2015, 42.8 thousand crimes were committed by foreign citizens and stateless persons on the territory of the Russian Federation, which is 3.7% more than in the same period of 2014, including 37.2 thousand crimes (+4.4%) – by citizens of CIS member states, their share was 87.0%; in January – November 2013, 43.3 thousand crimes were committed by foreign citizens and stateless persons on the territory of the Russian Federation, which is 10.2% more than in January–November 2012, including 37.2 thousand crimes committed by citizens of CIS member states (+8.0%), their share was 86.0 %) [13].

Countering violations of migration legislation as a modern threat to the security of the state

The changes taking place in the world economic community, in conditions when countries are objectively dependent on the presence of a significant number of labor migrants, require the development of a set of balanced measures to regulate migration flows. Currently, it is necessary to bring the existing situation with illegal migration in line with legal norms and standards. On the one hand, migrants act as an integral component and driving force of economic development, and on the other – there is a range of unresolved problems related to ensuring the security of the country from migration expansion. Risks of deterioration of the criminal situation, the emergence and entrenchment of religious and ethnic extremism are quite high. With the arrival of cheap labor from the republics of Central Asia, regions witness the dissemination of Islamic fundamental-

ism, which is closely linked to extremism and terrorism. The fact that a greater number of developed countries that are subject to migration expansion are concerned about this problem is evidenced by the constant development of measures within the framework of national domestic policy, which uses a symbiosis of both voluntary contractual and repressive reactions of legal state structures to regulate the circulating migration flows. The 1994 United Nations International Conference on Population and Development determined that “unregistered or illegal migrants are persons who do not meet the requirements established by the host country in relation to entry, stay or economic activity”. In addition, “due to the continuing increase in the population, it is expected that the scale of unregistered or illegal migration will increase” [5, p. 76]. According to foreign observers, illegal migration becomes an alternative for those migrants who cannot pass strict selection criteria, and for those who find illegal migration less expensive. In countries where the possibilities of legal entry or stay are significantly limited (including EU countries), the use of illegal migration mechanisms for most potential migrants becomes almost the only way to move in [8]. The process of globalization, which affects all aspects of public life, cannot ignore illegal migration, which adapts to the historical situation and takes its place among the problems of international scale. A survey of European Union residents conducted in autumn 2012 has shown that they consider immigration, including illegal immigration, among the five most important problems that the EU is currently facing [16, p. 12]. According to international studies, residents of developed countries associate the influx of migrants with the deterioration of the living conditions of the residents themselves, increase in crime rate, threats of international terrorism, increase in the burden on the system of social services, and other negative phenomena [15, p. 2].

The term “migration” is interpreted quite broadly both in legislation and in everyday life: it is defined as a constant movement of individuals or their groups from one place to another [1, p.93], while their legal status changes, as well.

In accordance with Federal Law 114-FZ of August 15, 1996 “On the procedure for leaving the Russian Federation and entering the Russian Federation”, illegal entry is interpreted as a violation of the established rules of entry, when the guilty person intentionally violates legally established procedures for processing docu-

ments [2, p. 51]. Federal Law 115-FZ of July 25, 2002 "On the legal status of foreign citizens in the Russian Federation" considers illegal employment as the labor activity of foreigners carried out by them in violation of the law regulating a clear procedure for registering the legal status of a migrant [4, p. 231].

According to scientists, international or external migration is a continuous process typical of most countries of the world. The purpose of migration is people's movement and their settlement in more prosperous, profitable and economically promising territories. Well-being is understood as relative stability and security (the absence of armed interethnic conflicts, ability to find a feasible and paid job, livable natural climate, more or less environmentally balanced economy, a standard minimum of social protection measures, etc. [7, p. 12].

The imbalance in the management of migration processes, which should provide for the availability of the necessary and at the same time sufficient contingent of visiting citizens on the territory of a particular metropolis, entails, social, demographic and criminal implications, along with economic ones. The unsettled situation in the field of migration can be associated with various aspects, such as departure, transit, entry and return, and violations of the law can be committed both against migrants and by migrants themselves [6, p. 11]. Program speeches of the Russian Government, in particular the National Security Strategy of the Russian Federation until 2020, outline the tasks of adjusting the state migration policy in relation to external labor migration. Along with the goals and objectives, the main directions of migration policy approve the mechanisms of its implementation from the viewpoint of integration processes taking place on the territory of member states of the Customs Union.

The conditions and procedure for issuing permits for attracting labor, as well as for confirming the right of foreign citizens to work in the territory of the Russian Federation, are established in accordance with the current legislation on the introduction of a quota system for attracting foreign labor. Decree of the President of the Russian Federation 2146 of December 16, 1993 (with subsequent amendments and additions) regulated a special procedure for registering employment relations for foreign citizens who entered the Russian Federation for the purpose of carrying out professional activities. The need to confirm the right to work that a citizen receives on the basis of a permit obtained by the

employer is the main condition for the possibility of employment in the territory of the Russian Federation. Violators of the requirements are subject to expulsion from the Russian Federation at the expense of the employer.

The administrative apparatus in regions shows responsible attitude toward labor quotas. The number of applications from employers to attract foreign workers, for example, in the Orenburg Oblast, amounted to more than 13 thousand people per year, the process of reviewing applications is streamlined. However, the administrative system of quotas for migration flows of labor has its flaws; the period of consideration of documentation is too long; but at the same time, the lack of control of these processes can cause opposition from the local population.

In the system of migration regulation, there are processes that negatively affect the state of the labor market. The need for employees on the part of employers significantly exceeds the real possibilities of their use. At the same time, the expectations of employees do not correspond to the proposals of employers, which in turn selectively affects the choice of labor potential. The existing labor market in Russia's regions is deformed by a large-scale and uncontrolled migration of labor resources, which leads to a variety of social issues and implications. Moreover, the deformation leads to the fact that some regions, for example, Saint Petersburg and the Kaliningrad Oblast experience an active influx of migrants, while others, in particular the Novgorod, Pskov, and Murmansk oblasts, have the opposite process.

It is well-known that in many former Soviet republics that have become independent states, the economy has finally weakened over the past years. Thus, according to the deputies of the Kyrgyz Parliament (the Social Democrats faction), during the years of independence, government has not revived a single production or launched a single plant; such a situation caused an outflow of citizens from the country. At the same time, in the former republics there is a negative attitude toward Russia in terms of providing assistance to boost the economy. According to the Kyrgyz parliamentarians, Russia, acting as the core in the integration process, should take most of the political and economic burden. Russia voluntarily withdraws from the regions, promises to build hydroelectric power plants in Kyrgyzstan for many years, but it does not do this itself and does not allow others do it. As for China, it builds factories with large capacities and a railway that will allow it to export

and re-export. As for the Russian language, it is the official language in Kyrgyzstan. According to the parliamentarians, there is a proposal to introduce dual citizenship between Kyrgyzstan and Russia, which will promote broad integration of peoples and significantly reduce the outflow of Kyrgyz citizens to work in Russia.

Thus, according to the Government of Kyrgyzstan, about 250–270 thousand Kyrgyz citizens work in Russia, and the number of Kyrgyz citizens who take the Russian citizenship is growing every year. According to official statistics, labor migrants transfer up to 1.5 billion US dollars to their home country every year, according to unofficial data – twice as much. At the same time, in a number of regions, there are cases of direct discrimination against the local population. So, for example, the fact was revealed (which has become known to the government) that the employer of OOO Agrofirma Severnaya filed an application for 200 migrant workers by profession of poultry operators to work at the Kirovograd poultry farm. The problem of discrimination was voiced by representatives of the trade union organization in connection with the high level of unemployment among local residents, where the personnel shortage due to the dismissal of local specialists is eliminated at the expense of migrants. This issue was resolved by the local authorities. The interdepartmental commission, having studied the applications of unscrupulous applicants and employers who violate the rights of citizens, halved the migration quotas. There are also abuses in the opposite direction. Thus, when forming quotas for migrants, an adequate assessment of the needs of the region should be taken into account. For example, according to the results of the regional meeting of the Sverdlovsk Oblast, the profession of “security guard” was completely excluded from the quotas for attracting migrants. As for the allocation of quotas for foreign construction workers, the facts have been revealed when employers deliberately declare wages at a level much lower than provided for by the federal agreement on the construction industry, thus they were obviously pursuing personal interest or were lobbying for the interests of a certain group of people.

A cautious assessment of the prospects for the migration situation in central Russia indicates a possible increase in migration flows, which subsequently leads to complications in the labor market, violations of the social sphere of megacities and, most dangerously, an increase in crime rate.

At the same time, an analysis of the legislation, in particular the federal laws “On refugees” and “On internally displaced persons” that came into force, and the subsequent weakening of control over migration processes in the light of the execution of the decision of the Constitutional Court of the Russian Federation of February 2, 1998 “On the case of checking the constitutionality of Items 10, 12 and 21 of the current Rules for registration and removal of citizens of the Russian Federation from the register at the place of stay and place of residence within the Russian Federation of July 17, 1995 no. 713” indicates the emergence of a situation, under which a number of instruments of administrative and legal influence that restrain negative trends in the migration sphere were abolished and removed from the administrative practice of law enforcement agencies. Here we should mention Federal Law 5242-1 of June 25, 1993 “On the right of citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the Russian Federation”, which caused significant harm by canceling the registration procedure at the place of stay [10, p. 126].

The procedure for detecting the illegal stay of unregistered migrants in the territory of megacities consists in analyzing the results of processing migration cards, when it is possible to determine the number of foreign citizens who entered the country, some of whom, according to the stated reason for arrival, indicated employment. However, if we compare this figure with the actual work permits issued, we will reveal a significant number of those who worked illegally. This situation fundamentally contradicts the Federal Migration Program that defines the directions of state policy in the field of attracting and using foreign labor in the Russian Federation, which include: meeting the needs of the Russian labor market for the necessary labor, forming a rational and balanced structure of this market, ensuring the priority right of Russian citizens to employment in the national labor market, as well as preventing illegal labor migration [12, p. 154].

The adopted Decree of the President of the Russian Federation no. 928 of July 19, 2004 united the migration and passport and visa service of the Ministry of Internal Affairs of Russia into the Federal Migration Service, defining the main tasks of the service:

- 1) proceedings on cases of citizenship of the Russian Federation, registration and issuance of basic documents certifying the identity of a citizen of the Russian Federation;

2) carrying out registration of citizens of the Russian Federation at the place of stay and at the place of residence within the Russian Federation, monitoring the compliance of citizens and officials with the rules of registration and de-registration of citizens of the Russian Federation;

3) registration and issuance of documents to foreign citizens and stateless persons for entry into the Russian Federation, for residence and temporary stay in the Russian Federation;

4) monitoring the compliance of foreign citizens and stateless persons with the established rules of residence and temporary stay in the Russian Federation;

5) development and implementation, in cooperation with other state bodies, of measures to prevent and suppress illegal migration;

6) implementation of the legislation of the Russian Federation on refugees and internally displaced persons, participation in the established procedure in granting political asylum to foreign citizens and stateless persons;

7) implementation of control and supervision in the field of external labor migration, attraction of foreign workers to the Russian Federation and employment of citizens of the Russian Federation outside the Russian Federation, in accordance with the legislation of the Russian Federation;

8) management of the territorial bodies of the FMS of Russia, its representative offices abroad and other organizations and divisions established to solve the tasks assigned to the FMS of Russia.

The variety of crimes committed in the migration sphere requires timely response from law enforcement agencies. For example, let us have a look at the analysis of the situation concerning arriving foreigners. As a rule, up to 80% of foreigners arriving at the address of their intended place of residence are not registered, which makes it much more difficult to control this category of persons and indicates that these citizens are in an illegal situation on the territory of the metropolis.

Illegal residence of a migrant in a megalopolis, that is, the presence of a person outside the legal field, without observing the algorithms of legal registration, contributes to the process of their victimization. The above-mentioned individuals, on the one hand, are at the center of increased attention and supervision on the part of state bodies that perform law enforcement functions of implementing migration legislation, on the other hand they become the object of en-

croachment by criminal structures that use the fact of their illegal stay to obtain personal benefits. Organized criminal structures have the opportunity to conduct their business of illegal distribution and sale of labor, using extortion, seizure and retention of personal documents of migrants. Migrants become hostages of criminal showdowns between rival gangs, often with the use of firearms. Having considerable financial resources at their disposal, the criminal world uses various schemes to evade responsibility, has corruption connections in various echelons of power. There is no social interaction between migrant workers and the local population. They exist as a closed community, there is a process of minimizing the possibility of full integration of migrants and the host society, there is no mutual cultural exchange, which impedes overcoming the existing stereotypes of negative mutual perception. Interethnic relations play a significant role in this situation, and the existing national closeness of diasporas significantly complicates communication with their representatives and prevents from obtaining timely operative information, which does not contribute to timely counteraction of this type of crime.

The illegal presence in the country makes the migrant a victim of the arbitrariness of the employer, who, using migrants' labor outside the framework of labor legislation, at the employer's own discretion, sets the length of the working day (at least 10–12 hours), unfairly regulates labor remuneration, minimizes the costs of labor protection, health and sanitary standards for employees. The employer does not conclude an employment contract with the migrant worker, the employment relationship is formed through an oral agreement. If we talk about living conditions, they can be so unsatisfactory that they do not comply even with basic sanitary standards, as a rule, such workers live in the same place where they work. With regard to residence permit, the Federal Law "On the right of citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the Russian Federation" defines fictitious registration at the place of residence or at the place of residence as the registration carried out using deliberately forged documents, or without the intention to stay in this accommodation, or registration without the intention of the owner of the residential premises to provide it for these purposes. In all cases, these are deliberate actions on the part of the perpetrators. Thus, the fact of lack of registra-

tion gives rise to a crime defined by the legislator in Article 322.2 of the Criminal Code of the Russian Federation.

Internal affairs agencies record an increase in the number of registered criminal cases against foreign citizens. The range of crimes is quite wide: murders, intentional infliction of grievous bodily harm, assaults with intent to rob, extortion, robberies, theft and fraud [3, p. 6]. All this indicates the victimization of this category of persons. At the same time, it is necessary to note the high latency of crimes against migrants. Here, both natural and artificial latency are clearly manifested. As a rule, artificial latency is expressed in the fact that law enforcement agencies deliberately conceal such crimes from accounting and subsequent legal response due to the weak and sometimes complete lack of operative cover, the inability to obtain the necessary information, the difficulty of penetrating into migrants' diasporas. This indicates a decrease in the professional level of law enforcement officers, the lack of coordination of the work of the external services of internal affairs agencies and the investigative and operative apparatus.

Migration crime is characterized by specific methods and techniques of detection and prevention. First of all, this is due to the presence of the following circumstances: time frame of the stay (usually short-term), specifics of the subject of crime, attempts to escape after the crime; active support of the diaspora, manifested in the provision of assistance – from financial aid to concealment from law enforcement agencies; closeness of migrants' communities, based, as a rule, on kinship or fraternal relations; presence of a language divide that makes it difficult to enter the community quickly and makes it impossible to implement proactive measures.

Summaries of operations of law enforcement agencies are full of reports of conflicts that turn into crimes, where migrants play a key role, and the circumstances of the crimes revealed in the investigation process indicate legal gaps and shortcomings of the existing legislation in the migration sphere. Analyzing incidents involving migrants, with murders or violent acts against local residents, we find that the main reason for migrants' nihilistic attitude toward the law consists in the lack of counteraction to migration crime on the part of law enforcement agencies. Conflict situations involving migrants do not arise out of the blue, and they develop, as a rule, according to the same scenario. Thus, in

order to boost an industry or a particular production in a megalopolis, there emerges a need to use a certain number of migrants, who fill the enterprise or the production sector first legally and then randomly and evading the legislation. Representatives of the local population are gradually displaced from this sector, even the leadership can be replaced. These processes are taking place before the eyes of law enforcement agencies, which have withdrawn from the control of the situation while the diaspora emerges and expands. After all, it is well-known that it is much easier to manage the migrants, if you know a person in authority from among them, who will manage the diaspora with their own means, influence, and sometimes with specific methods and techniques. Up to a certain point, the migrants are relatively manageable; gradually the diaspora turns into a small state, with the rule of the laws established by migrant authorities with a clear nationalist bias. The unwillingness to assimilate, to obey the laws of the host country, fueled by not always comfortable living conditions, pushes migrants to protest. United by a common labor activity, isolation from a permanent place of residence, problems of existence and everyday life, they begin to actively oppose the established order, way of life, and traditions of the local population.

The growing contradictions result in criminal manifestations associated with violent actions. For example, a high-impact murder of a local resident by an Azerbaijani citizen in October 2013 in the Biryulyovo Zapadnoye neighborhood of Moscow, the murder of a resident in the city of "A" of the Nizhny Novgorod Oblast by a migrant, etc. The mass riots that arose after these cases and supported by active involvement of local youth required significant efforts of city administrations, law enforcement agencies, and special forces to prevent hooligan manifestations. During the investigation and analysis of the situation in Biryulyovo, law enforcement agencies identified more than 200 illegal migrants. A similar pattern was observed in the city of "A", where a significant number of migrants from the Caucasus and Asia stayed in the city, violating the migration legislation. The results of the investigation confirm that the work on the registration of migrants is so unsatisfactory that in extreme circumstances it is impossible to determine the exact number, place of residence, and employment of migrants.

According to the press service of the Border Department of the Federal Security Service of

Russia, the statistics of offenses for the first half of the year at border checkpoints in the Orenburg Oblast are as follows: 50 citizens tried to cross the border with forged documents, more than three thousand people had documents that require revision and correction, and the number of attempts to prevent the entry of persons whose presence in Russia is prohibited is also increasing. Administrative fines in the amount of more than 750 thousand rubles were imposed for offenses related to the protection of the State Border of the Russian Federation. More than 80 criminal cases were initiated under Part 1 of Article 322 and Part 3 of Article 327 of the RF Criminal Code.

The prosecutor's office systematically identifies the facts of fictitious marriages with citizens of foreign countries in order to further obtain a simplified temporary residence permit on the territory of the Russian Federation. The plot of these cases is about the same: a female citizen of a foreign state pays her "spouse" a remuneration (about 8–10 thousand rubles), the necessary documents are drawn up, the marriage is registered, after which the relationship is terminated. As the prosecutor's office finds out, from the moment of marriage, the spouses do not live together, do not have common children and do not run a joint household. Consideration of a civil case results in the decision to annul the record of the act of civil status. Accordingly, the consequences of these actions are regulated by the Federal Law "On the legal status of foreign citizens in the Russian Federation", when a temporary residence permit for a foreign citizen is revoked if the court finds the marriage invalid. Subsequently, the foreign citizen's right to temporary residence is terminated, and he/she is obliged to leave the territory of Russia within 15 days.

Actions with forged documents occupy a significant place in the structure of migration crime. However, sanctions for this crime, unfortunately, are not always applied. As for Article 327 of the RF Criminal Code, here the responsibility extends to criminal encroachments against the established order of management, and there is no provision for criminal-legal protection of personal documents. A number of authors believe that "the basis for the punishability of such acts is the harm and danger that arise in relation to the public, state or private interests associated with the circulation of documents" [11, p. 10]. This article of the RF Criminal Code, when applied in the context of migration offenses, along with the interests of manage-

ment, usually affects the economic interests of the state. At the same time, it is necessary to determine that the execution of the objective side of Article 327 of the RF Criminal Code is directly related to Article 292 of the RF Criminal Code "Forgery by an official", which encroaches on two objects at once – the official document flow and the interests of service in state authorities and local government bodies. In this case, there is a goal to hide another crime or facilitate its commission. The need for an independent legal treatment of the production of a forged document, which will later be used for the implementation of certain goals of the criminal, is subject to discussion. So, according to a number of scientists, all that was done should be qualified only once, without adding the act of production of a forged document: forgery, falsification and the use of forged documents, stamps, etc. are considered as a method of written deception in crimes of greater public danger, and not a combination of forgery and the corresponding act [9, p. 31]. At present, the courts pay insufficient attention to counteracting the crimes provided for in Article 327 of the RF Criminal Code; it is confirmed by the reaction of the judicial community: real imprisonment is imposed only in conjunction with other crimes (most often with fraud, embezzlement or misappropriation). Thus, the courts do not recognize a sufficiently high degree of public danger of simple forgery of documents.

Comparing the practical application of Article 292 and Article 327 of the RF Criminal Code, we see that the reasons that prompted the legislator in Article 292 of the RF Criminal Code to limit liability for forgery in office to self-interest or other personal interest remain unclear. The actions of a civil servant who puts deliberately false information into official documents and makes corrections to official documents that distort their actual content always have not only this motive. There is no mention of the motive in Article 327 of the RF Criminal Code, under which, in fact, state and municipal employees, violating their official duties, are in a more privileged position in comparison with ordinary persons, and there are often certain difficulties in distinguishing official forgery from abuse of official powers under Article 285 of the RF Criminal Code. In our opinion, the use of a forged document is a necessary component of deception or abuse of trust as one of the methods of fraud, smuggling and other crimes related to the registration of documents by migrants. It is these circumstances that can explain the insuf-

ficient criminal-legal and criminological impact of Articles 292 and 327 of the RF Criminal Code in the field of migration crime.

The language divide plays a negative role in building mutual understanding between representatives of government structures and migrants. In the light of the implementation of the decree signed by the President of Russia on the introduction of a mandatory exam in the Russian language, the history of Russia, the basics of the legislation of the Russian Federation for migrant workers in Kyrgyzstan, for example, real actions are being taken to enable the assimilation of migrant workers in Russia. Currently, migrants have a lower level of education, knowledge of the Russian language and professional qualifications. For this purpose, Russian language testing centers are being actively launched, one of which operates on the basis of the Kyrgyz-Russian Slavic University. The effectiveness of the work carried out will be achieved with the simultaneous activities of both countries. The need to join forces is also important for the recognition of the legal force of the testing in Kyrgyzstan on the territory of Russia. This process will require the active work of specialists in the Russian language, literature, history and, of course, law. The Government of Kyrgyzstan considers it promising to create training centers that can provide the required knowledge and skills to citizens of Kyrgyzstan who want to work in Russia. Moreover, a balanced detailed approach to this problem will help to determine the different level of Russian language proficiency for use in different areas of migrant labor activity. The issue of sending specialists to Kyrgyzstan to teach Russian to local residents is also being discussed.

In our opinion, there is a need to introduce the state institution of the Commissioner for the Rights of Migrants in Russia, which will help to prepare the basis for addressing the above problems, reduce human rights violations on the part of state bodies, constantly monitor the financial situation of migrants and their sentiments, improve legal literacy, and promote their integration into Russian society.

The introduction of the institution of the commissioner will contribute both to the prevention of crime against migrants and to the improvement of the effectiveness of the observance of the rights and legitimate interests of migrants when they commit crimes and offenses. Thus, to date, penal enforcement legislation has not regulated such issues as detailing and legally determining the status of an interpreter in the

RF Penal Enforcement Code and the conditions for providing the services of an interpreter, the legalization and specifics of the legal status of a migrant involved in penal relations. In addition, scientific literature contains an increasing number of proposals on the feasibility of creating specialized correctional institutions for foreign citizens and stateless persons [14, p. 194], the development and implementation of which will be facilitated by the creation of the institution of the Commissioner for the Rights of Migrants.

The most common causes of illegal migration are as follows:

- insufficiently adjusted information base on the demand of the megalopolis (lack of a state order) for migrants, taking into account the balance of interests of the local population and migrants, and technological shortcomings of labor quotas at the regional level;

- the lack of a civilized form for organized recruitment of foreign workers, taking into account the qualifications, knowledge of the language minimum, which would allow them to feel comfortable in the host country;

- legal gaps and flaws in the current legislation in the field of migration, the achievement of the legal effect of the criminal legislation (Articles 292, 327, 285 of the RF Criminal Code), the lack of interaction in the work of regulatory and law enforcement agencies at the regional and local levels;

- unprepared and underdeveloped migration infrastructure, which does not allow migrants to feel comfortable and safe, which in turn creates the possibility of the existence of shadow intermediaries who issue fictitious work permits, medical certificates, registration using the so-called “rubber apartments” (apartments in which many migrants are registered fictitiously).

Conclusion

Despite the joint measures taken by law enforcement agencies to counteract the commission of crimes in the field of migration, the implementation of the main provisions of Russia’s migration policy is at an insufficiently high level, which allows the shadow business to flourish on migrants.

This situation requires urgent measures, among which, in our opinion, the following are necessary:

1. Introduction of a system of enhanced registration of migrants at the state border under the rule “controlled arrival, controlled stay, controlled departure from the country”. It is necessary to introduce a system of electronic scan-

ning of fingerprints or retinas, which will help to prevent the entry of citizens who have violated migration-related administrative legislation.

2. Toughening of the current legislation, in particular strengthening of responsibility for providing false documents and for registration on them, effective application of Articles 292, 285, 327 of the RF Criminal Code in relation to officials.

3. Increasing the responsibility of an unscrupulous employer who illegally provides work to migrants, up to the mandatory payment of expenses related to the expulsion of illegally located migrants.

4. Strengthening the functional activities of Federal Migration Service structures by granting the right to carry out intelligence-gathering

activities and interact with the operational divisions of the law enforcement system, determining the priority of external and operational services in identifying the facts of illegal stay of migrants in the territory of the metropolis, improving indicators in this area in the reports of the Ministry of Internal Affairs of Russia and other law enforcement agencies.

5. Creation of a single codified act – the migration code, which regulates legal relations arising in the migration sphere.

6. Introduction of the state institution of the Commissioner for the Rights of Migrants in the country, which will prepare the basis for addressing numerous problems of migrants at the state level.

REFERENCES

1. Bobyrev V.V. Topical issues of legal support for countering illegal migration. *Pravo i ekonomika=Law and Economics*, 2008, no. 1, pp. 92–96. (In Russ.).
2. Vod'ko N.P. *Ugolovno-pravovaya bor'ba s organizovannoi prestupnost'yu: nauchno-prakticheskoe posobie* [Criminal-legal fight against organized crime: scientific and practical guide]. Moscow: Yurisprudentsiya, 2000. 73 p.
3. Gladyshev Yu.A., Gorshenkov G.G., Izosimov S.V., Kuznetsov A.P. *Preduprezhdenie, rassledovanie i raskrytie prestuplenii, sovershaemykh inostrannymi grazhdanami i deyanii, napravlennykh protiv nikh: uchebnoe posobie* [Prevention, investigation and disclosure of crimes committed by foreign citizens and acts directed against them: a textbook]. Nizhny Novgorod, 2000. P. 6.
4. Prudnikov A.S., Tyurkin M.L. (Eds.). *Gosudarstvenno-pravovye osnovy migratsii naseleniya v Rossiiskoi Federatsii: uchebnoe posobie dlya studentov vuzov, obuchayushchikhsya po spetsial'nosti 021100 "Yurisprudentsiya"* [State-legal bases of population migration in the Russian Federation: a textbook for university students studying in the specialty 021100 "Jurisprudence"]. Moscow: YuNITI: Zakon i pravo, 2006. 480 p.
5. *Report of the International Conference on Population and Development (Cairo, September 1994)*. Available at: http://www.demoscope.ru/acrobat/icpd_rus.pdf (accessed July 6, 2020). (In Russ.).
6. *Towards a fair deal for migrant workers in the global economy: report of the VI International conference of labor (92nd session, 2004)*. Geneva, 2004. 214 p. P.11. (In Russ.).
7. Zagryazhskaya I. Kh. *Zakonodatel'noe regulirovanie prav migranta* [Legislative regulation of the rights of migrants]. Moscow: Teoriya budushchego, 2002. P. 12.
8. Iontsev V.A., Aleshkovskii I.A. Illegal migration in socio-political discourse. In: *Mezhdunarodnaya migratsiya: ekonomika i politika* [International migration: economics and politics]. Moscow: TEIS, 2006. 130 p. (In Russ.).
9. Kuznetsova N.F. Qualification of complex compositions of crimes. *Ugolovnoe pravo=Criminal Law*, 2000, no. 1, pp. 25–32. (In Russ.).
10. Kuznetsov A.P., Loginov E.A. *Migratsiya, mezhetnicheskie otnosheniya, prestupnost': sb. nauch. statei* [Migration, interethnic relations, crime: collection of scientific papers]. Nizhny Novgorod, 2005. 126 p.
11. Pikurov N.I., Bukalerova L.A. *Podlog i drugie prestupnye posyagatel'stva na ofitsial'nyi dokumentooborot: uchebnoe posobie* [Forgery and other criminal encroachments on the official document flow: a textbook]. Volgograd: Vologograd. akad. MVD Rossii, 2001. 112 p.
12. *Problema nezakonnoi migratsii v Rossii: realii i poisk reshenii (po itogam sotsiologicheskogo obsledovaniya)* [The problem of illegal migration in Russia: realities and the search for solutions (based on the results of a sociological survey)]. Moscow, 2004. P. 154.
13. Santashova L.L., Santashov A.L. *Mezhdunarodnoe sotrudnichestvo v sfere peredachi osuzhdennykh dlya otbyvaniya nakazaniya v gosudarstva ikh grazhdanstva* [International cooperation in the field of transfer of convicted persons to the states of their citizenship for serving their sentences]. Moscow: Yurilitinform, 2021. 164 p.
14. Teplyashin P.V., Mal'kov S.M. Serving sentences by convicted foreign citizens and stateless persons as a subject of penal research. *Vestnik Kuzbasskogo instituta=Bulletin of the Kuzbass Institute*, 2020, no. 2, pp. 190–197. (In Russ.).
15. Morehouse C., Blomfield M. *Irregular Migration in Europe*. Washington: Migration Policy Institute, 2011. 18 p.
16. *Public opinion in the European Union: report*. Available at: https://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb78/eb78_publ_en.pdf (accessed July 6, 2020).

INFORMATION ABOUT THE AUTHOR

IGOR' YU. SAMOKHVALOV – Candidate of Sciences (Law), associate professor at the Department of Law, Philosophy and Social Sciences, Faculty of Economics and Law, Arzamas Branch of National Research Lobachevsky State University of Nizhny Novgorod, Arzamas, Russian Federation. ORCID: <https://orcid.org/0000-0001-7932-6238>, e-mail: herrysam@mail.ru

Received August 24, 2020