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Combating the Illegal Employment of Third-Country Nationals in the Member States of the European Union⁶

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Abstract

The aim of the study is a comprehensive analysis of the legislation on the fight against illegal employment both at the supranational level of the European Union and at the EU Member States level, *inter alia*, in Poland, France, and Germany. The leading method in the study was the comparative-legal method. It helped to compare the peculiarities of the practice of European countries in the field of combating illegal employment in the EU Member States, as well as to identify how this issue is regulated. The results demonstrate that illegal employment destroys legal jobs, leads to the increase in unemployment and deprives the state of revenues such as tax and social contributions, etc. That is why international declarations and conventions should guarantee the right to work in the European Union for the citizens of non-European states.

Keywords: third-country nationals, Directive 2009/52/EC, sanctions, labor law, migration law.

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Zwalczanie nielegalnego zatrudnienia obywateli państw trzecich w państwach członkowskich Unii Europejskiej⁷

Streszczenie

Celem niniejszego opracowania jest przeprowadzenie wyczerpującej analizy ustawodawstwa dotyczącego walki z nielegalnym zatrudnieniem zarówno na ponadnarodowym poziomie Unii Europejskiej, jak i na poziomie państw członkowskich, m.in. w Polsce, Francji i Niemczech. Główna metoda badawcza to metoda porównawczo-prawna. Pomogła ona w analizie szczególnych cech praktyki krajów europejskich w dziedzinie zwalczania nielegalnego zatrudnienia w państwach członkowskich UE, a także w zdefiniowaniu regulacji tej kwestii. Wyniki pokazują, że nielegalne zatrudnienie niszczy legalne stanowiska pracy, prowadzi do zwiększenia bezrobocia i pozbawia państwo wpływów takich jak podatki czy składki na ubezpieczenia społeczne itd. Dlatego międzynarodowe deklaracje i konwencje powinny gwarantować obywatelom państw pozaeuropejskich prawo do pracy w Unii Europejskiej.

Słowa kluczowe: obywatele państw trzecich, Dyrektywa 2009/52/WE, sankcje, prawo pracy, prawo migracyjne.

⁷ Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

As more people seek to migrate in search of a better life for themselves and their families sometimes feeling a lack of employment opportunities, and sometimes from extreme poverty, natural disasters, or persecution, illegal employment rates are also increasing. Not everyone who wants to migrate has a legally authorized job opportunity. Today, migration is an important component of the country's demographic development, one of the sources of compensation for demographic losses and labor shortages. Attracting foreign workers in priority professional qualification groups in accordance with the needs of the EU economy is a necessity for its further progressive development. At the same time, the EU's task is to prevent the use of migration processes for illegal purposes.

In the modern realities, many countries use the labor of foreign workers to organize their activities. However, the attraction of foreign labor, from the point of view of the process of registration and further registration of foreign personnel, differs significantly from the rules for registering citizens of the country and is regulated by special labor and migration legislation, the violation of which leads to sanctions for attracting foreign labor. It should be noted that illegal employment constitutes only part of the informal economy, if even the largest part⁸. The illegal employment of foreign workers is a source of concern for economic and migration-related reasons. From the economic perspective, it may entail lost revenues for the state, put the legally employed – both foreign and native-born – at a disadvantage, and lead to the use of migrant workers by employers to cut labor costs. From the viewpoint of migration policy, countering the illegal employment of foreign workers helps deter irregular migration for which it acts as a major pull factor⁹.

Illegal work reduces the revenues of local budgets, budgets of the pension fund and social insurance funds. The consequence of “shadow” employment is also the deterioration of the business environment and investment climate due to the formation of unfair competition. Illegal employment also has negative consequences for employees. In particular, it is the lack of social guarantees provided for the employee for the right to leave (including during pregnancy and childbirth),

⁸ M. Gerads, *Forscher jagen die Schattenwirtschaft*, 2017, <https://www.sueddeutsche.de/wirtschaft/bruttoinlandsprodukt-forscher-jagen-die-schattenwirtschaft-1.3223910> (accessed: 16.11.2021).

⁹ E. Reyneri, *Illegal Immigration and the Underground Economy*, [in:] *The Challenges of Immigration and Integration in the European Union and Australia*, University of Sydney, Sydney 2003.

insurance against accidents at work and occupational diseases, the right to pay sick leaves, and so on. Citizens also lose their retirement age and the opportunity to receive state assistance in case of job loss¹⁰.

Working abroad illegally, a person violates the law. If an illegal worker is found, he or she is deported and deprived of the right to enter the country in the future. Working illegally, an employee will not be able to properly protect his or her rights. In most cases, only formal employment relationships allow citizens to assert their rights in court in the event of a conflict with an employer. The wages of an illegal worker are much less than the wages of an employee working legally. Illegal work carries the greatest risk of becoming a victim of labor exploitation or even human trafficking. At the same time, it should be noted that the illegal employment of foreigners is a global problem. Each country is looking for its own way of solving it.

The illegal employment of immigrants, a phenomenon that appears to be on the increase in Europe, has raised a number of issues, such as the possibility of domestic workers being crowded out, the losses to national revenue resulting from the non-payment of taxes and social security contributions, and problems relating to the living conditions, legal protection, and integration of the immigrants working illegally¹¹. Responsibility for unauthorized recruitment of labor force, as well as complicity in it, is a trinity of sanctions against illegal workers, employers, and agencies that assist in establishing contacts between unauthorized workers and their employers. The main feature of the sanctions against unauthorized labor activity in the legislation of the EU states is their financial nature. The sanctions for countering illegal labor activity can be roughly classified:

- ❑ by subjects: in relation to employers, employees, and third (involved) subjects – recruitment agencies.
- ❑ by nature: general (fines, restriction of freedom), compensatory (compensation for the costs of deporting an illegal migrant) and restorative (return of funding and/or its equivalent in the period from 12 months until the moment when the fact of using illegal labor was established).
- ❑ by measures of influence: punitive (fine, restriction of freedom) and legal (as an element of the employer's fulfillment of obligations lying on him or her and not fulfilled to an unauthorized employee).
- ❑ by the degree of certainty: depending on the degree of freedom that the legislators leave to the law enforcement officer to independently determine the punishment for the committed act.

¹⁰ K.L. Tomashevski, O.M. Yaroshenko, *Problems of Labour Legislation Codification in Belarus and Ukraine: History, Current Situation and Prospects*, "Transition Studies Review" 2020, Vol. 27(2), pp. 41–50.

¹¹ C. Boswell, T. Straubhaar, *The Illegal Employment of Foreign Workers: An Overview*, "Intereconomics" 2014, Vol. 39(1), pp. 4–7.

It is important to note that the EU uses, along with punitive sanctions (fines, restrictions on freedom, etc.), such administrative penalties as deprivation of the right to participate in state regional support programs, state/regional tenders, etc.¹².

Many scientists have studied the methodological foundations of the study of the nature, genesis and systematization, structure and functions, methods of modeling and algorithms for improving the fight against illegal employment in the EU Member States. The conclusions made in the work are based on the synthesis of methodological approaches and theoretical solutions proposed in the works of a number of scientists.

For instance, Dei¹³ studied the issue of combating illegal employment in the EU Member States in the context of the harmonization of labor legislation of Ukraine with the law of the European Union on labor protection. Borshchevska and Bychkivsky¹⁴ studied procedural legal relations in international labor law. Tarasevich and Kortukova¹⁵ analyzed the legal regulation of combating illegal migration within the European Union. Kaida¹⁶ studied the issue of combating illegal employment in the EU Member States through the prism of the adaptation of Ukrainian labor legislation to EU legislation.

In this context, Arnold et al.¹⁷ mentioned that the illegal employment of non-EU nationals is a concern of the European Union (EU) that intersects with both economic and migration policies. While the economic policy is to a large extent a Member State's competence, the illegal employment of non-EU nationals is nonetheless a policy concern at the European level, as it impacts on the irregular migration policy.

Soova et al.¹⁸ emphasized that the EU Employers' Sanctions Directive entered into force in July 2009 as a central component of the EU's migration policy to prevent irregular migration. The directive establishes sanctions for employers who

¹² O. Gulina, *Legal Responsibility for Recruiting Illegal Migrants: The Experience of the EU and the US*, The Institute for the Rule of Law, St. Petersburg 2013.

¹³ M. Dei, *The Concept and Content of Harmonization of Labor Legislation of Ukraine with the Law of the European Union on Labor Protection*, "Journal of Kyiv University of Law" 2011, Vol. 1, pp. 311–314.

¹⁴ G. Borshchevska, O. Bychkivsky, *Procedural Legal Relations in International Labor Law*, "Law and Society" 2015, Vol. 6, pp. 78–83.

¹⁵ T. Tarasevich, Kortukova T., *Legal Regulation of the Combating Illegal Migration within the European Union*, [in:] *Global Imperatives for Business and Law Development. 2nd International Scientific and Practical: Conference Proceedings*, National University of Trade and Economics, Kyiv 2019.

¹⁶ N. Kaida, *General Theoretical Characteristics of Adaptation of Ukrainian Labor Legislation to EU Legislation*, [in:] *Theoretical Issues of Jurisprudence and Law Enforcement Problems: Challenges of the 21st Century*, Scientific Institute of Public Policy and Social Sciences, Kharkiv 2020.

¹⁷ S. Arnold, S. Whelan, E. Quinn, *Illegal Employment of Non-EU Nationals in Ireland*, The Economic and Social Research Institute, Dublin 2017.

¹⁸ K. Soova, L. Keith, M. LeVoy, *Employers' Sanctions: Impacts on Undocumented Migrant Workers' Rights in Four EU Countries*, Platform for International Cooperation on Undocumented Migrants, Brussels 2015.

hire undocumented workers in order to curb irregular employment, which is seen as a “pull factor” for irregular migration. Tangermann and Grote¹⁹ focus on the illegal employment of third-country nationals as part of illegal employment and the informal economy in general. The extent, existing preventive measures, the authorities responsible for controlling, and their legal framework as the consequences for employers and employees in case of the illegal employment of third-country-nationals are addressed.

Methodological Framework

Materials and methods of research were chosen, taking into account the goals and objectives set in the article. In addition, the work used a set of regulatory principles, techniques, and methods by which knowledge was gained about the legal regulation of the fight against illegal employment in the EU Member States. The use of methods and materials listed below allowed for a comprehensive analysis of the theory and practice of combating illegal employment in the EU Member States. One of the methodological techniques used in the research process was an integrated approach, which significantly overcame the shortcomings of analytical jurisprudence, as it allowed us to organically combine legal tools, basic legal ideas, and EU principles.

In order to comprehensively analyze the problems of scientific research, a set of different general scientific techniques and methods were used in the work. In particular, universal methods were used in the study: dialectical, empirical, and logical. For instance, new results were found, using the dialectical method, i.e. the study transformed previously created theoretical knowledge in the field of combating illegal employment in the EU Member States, and by systematically adding new theoretical provisions, new modifications of existing knowledge were formed.

Among the general scientific methods of cognition were used the following ones: analysis and synthesis, generalization, modeling, and more. Thus, in order to comprehensively examine the topic in the study, the method of systematic analysis and synthesis was used, which helped to identify the main features of the fight against illegal employment in the EU Member States. Among the methodological techniques used in the research process is a multifaceted approach to determining the specifics of the legal status of subjects of civil law. This approach

¹⁹ J. Tangermann, J. Grote, *Illegale Beschäftigung von Drittstaatsangehörigen in Deutschland: Fokusstudie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)*, Bundesamt für Migration und Flüchtlinge (BAMF), Nürnberg 2017.

has made it possible to comprehensively study the phenomenon of the legal regulation of the fight against illegal employment in the EU Member States, to form a holistic view of it, thus overcoming the one-sided view of the illegal employment of workers in the EU.

In addition, special legal methods were used in the article: conceptual-legal, comparative-legal, formal-legal, and others. It should be noted that the leading method in the study was the comparative-legal method. It helped to compare the peculiarities of the practice of European countries in the field of combating illegal employment in the EU Member States, as well as to identify how this issue is regulated in different countries. Information and knowledge gained from the experience of European countries can be used as the basis for the adoption, adaptation and development of new relevant provisions.

System-structural, complex, and holistic research approaches were also used in the work. The formulation and substantiation of theoretical provisions, proposals for improving the legislation, practical recommendations and conclusions are based on the above methods and approaches. At the same time, the use of different methods and approaches in their combination allowed for solving the objectives of the study. The normative legal basis of the study was the EU *acquis* in the field of combating illegal employment in the EU Member States. The empirical basis of the study included statistical and analytical data on the state of the fight against illegal employment in the EU Member States.

Despite the extensive theoretical development of this problem, the methodological basis in the field of combating illegal employment in the EU Member States still requires further research. In particular, in order to develop the fight against illegal employment, it is necessary to deepen research on legal, economic, organizational, and technical issues of this problem, the place and role of the EU legislation in the field of combating illegal employment.

Results

In accordance with the EU law, illegal employment means the employment of an illegally staying third-country national²⁰. Also, the illegal employment of third-country nationals defined as employment contravening migration and/or labor law is a source of concern in the EU for economic and social reasons, as well as

²⁰ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0052> (accessed: 16.11.2021).

those related to migration and fundamental rights. It is also linked to trafficking in human beings for labor exploitation²¹.

Illegal employment acts as a breeding ground for the shadow sector of the economy, hinders the normal functioning of the national labor market, creates preconditions for the violation of the social rights of illegal migrant workers, as well as of their family members, etc. One of the rights enjoyed by foreign citizens and stateless persons in the EU on an equal basis with EU citizens is the right to freely dispose of their ability to work, choose an occupation, profession, as well as the right to freely use their abilities and property for entrepreneurial and other economic activity prohibited by law, subject to the restrictions provided by the legislator.

For a foreign citizen, stateless person, situated in the EU and carrying out labor activities, a work permit is required. It should be noted that one of the first international documents, which deals with the problems of labor migration in violation of the law, is Convention No. 143 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers²². According to Article 3 of this document, "each Member of the Organization shall take all necessary and appropriate measures, both within its jurisdiction and in cooperation with other Member States, against organizers of the illegal or secret movement of migrants seeking work ... as well as against those who employ workers who have immigrated to illegal conditions." Thus, the terminological emphasis is on the illegality of labor migration, which can be caused by various aspects: illegal entry or stay in the country, illegal employment.

A special type of assistance to illegal immigration is the illegal employment of an immigrant. The key act in this area in the European Union is the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (2009). The main goal of this directive is to increase the level of the responsibility of employers using the labor of illegal immigrants, thereby making this activity unprofitable not only for the immigrants themselves but also for those who employ them. Directive 2009/52/EC (2009) prohibits the employment of foreign nationals illegally staying in the EU. At the same time, the Member States should not only implement this prohibition into their legislation but also establish the employer's responsibility for its violation.

²¹ European Migration Network, EMN Synthesis Report: Illegal Employment of TCNs in the European Union, 2017, <https://emn.ie/publications/illegal-employment-of-third-country-nationals-in-the-european-union-emn-synthesis-report/> (accessed: 16.11.2021).

²² International Labour Organisation Convention No. 143 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, 1975, <https://treaties.un.org/doc/Publication/UNTS/Volume%201120/volume-1120-I-17426-English.pdf> (accessed: 16.11.2021).

EU Directive 2009/52/EC (2009) contains a broad definition of work as “an activity for which wages or salary are paid, carried out for or under the direction and/or supervision of an employer, regardless of the nature of the legal connection” (paragraph 7). Requirements for employers are that they: 1) check that candidates for work have a valid residence permit or residence permit; 2) keep copies or extracts from these documents during the period of the employment; 3) notify the competent authorities of the commencement of the employment of a third-country national (part 1 of Article 4 of Directive 2009/52/EC of 2009). That is, under Directive 2009/52/EC (2009), employers are required to ensure that third-country nationals working for them are legally present on the territory of the Member State concerned and to inform the competent authorities about the employment of legal migrants; employers pay penalties depending on the number of illegal immigrants employed and also cover the cost of their travel.

Moreover, Directive 2009/52/EC (2009) does not contain provisions on the liability of illegal workers themselves, since this issue is regulated by national legislation. On the contrary, it introduces a number of provisions aimed at protecting their interests. This is, first of all, the obligation of employers to reimburse them in full wage arrears and to make other payments in their favor, as if they were working legally. A similar obligation remains in force in cases where the former illegal migrant worker is deported to his/her homeland, in this case, additional costs for the transfer of funds are also borne by the employer.

Directive 2009/52/EC (2009) provides for the possibility of applying various measures of influence to the employer, including administrative liability, including revocation of the license, termination or suspension of the activities of the enterprise, etc.; criminal liability of an individual and a legal entity; financial responsibility in the form of the employer’s obligation to reimburse the costs associated with the return of the illegal immigrant; other types of liability in the form of restrictions on receiving financial assistance from the state, suspension from participation in public procurement, etc. In addition, in order to comply with Directive 2009/52/EC (2009), Member States shall carry out inspections.

It should be noted, however, that the financial sanctions applied to the employer increase depending on the number of illegally recruited foreign nationals, and they also include the payment of state expenses for the return of such persons if such a procedure is applied by the authorities (part 1 of Article 5 of Directive 2009/52/EC of 2009). There are monetary forms of compensation in relation to the wages of an illegally hired migrant in the number of unpaid wages and in the amount of taxes and deductions that would have to be paid in case of the legal employment of an employee, including forfeits and administrative fines. The employer also covers any expenses arising from the transfer of the unpaid wages of a foreigner to the

country of his or her return (part 1 of Article 6). A foreign worker must be informed of his or her right to claim compensation, filing an appropriate legal claim and enforcing a subsequent decision, including if the procedure of voluntary return or forced return has been applied to him or her (part 2 of Article 6 of Directive 2009/52/EC of 2009).

The aim of Directive 2009/52/EC is to prevent the influx of illegal labor from third countries into the European Union. In pursuit of this goal, the directive fixed, as fundamental, the principle of prohibiting any employment of illegal immigrants and provided for violators (EU employers, including contractors and subcontractors) with a wide range of sanctions and measures of a preventive, restorative, and punitive nature. A positive aspect of Directive 2009/52/EC (2009) are the norms on material compensation for the unpaid work activities of illegally staying foreign citizens, which indicates the use of the content of part 2 of Article 68 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families²³. As stated in section 1.4, this rule prohibits the use of such measures against the employer of illegally staying migrant workers, which prejudice the rights of the latter under the employment contract.

In line with Directive 2009/52/EC (2009), measures have also been developed to prevent, detect, and punish, *inter alia*, contractors and subcontractors who engaging in the illegal recruitment of immigrants. Belova and Marin²⁴ point out that the main purpose of Directive 2009/52/EC is to strengthen the system of sanctions and obligations in relation to employers and, at the same time, to ensure a minimum level of protection for illegal labor migrants.

In addition, for the withdrawal of immigrants from the informal sector of the economy and illegal employment, the EU is also implementing programs and mechanisms for the regularization of illegal immigrants. The first programs were launched in the 1980s in countries that implemented seasonal programs for the hiring of foreign workers (France, Germany, Belgium, etc.). Since the 1980s, more than 5 million illegal immigrants have received legal status in the EU, but more than 80% of immigrants have been legalized in the southern EU countries: Italy, Spain, and Greece, which has created tensions between the southern and northern EU countries – which, in turn, prefer an alternative solution to their problems through the expulsion of illegally staying immigrants. According to statistics, it is the northern countries (for instance, Poland, Germany, the United Kingdom) that

²³ United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx> (accessed: 16.11.2021).

²⁴ G. Belova, N. Marin, *Some Issues Related to the Irregular or Undocumented Migrants*, "Kutafin University Law Review" 2017, Vol. 4(2), pp. 563–564.

expel more foreign citizens than the southern countries do, and the total number of third-country nationals expelled from the 27 EU countries has decreased from 199,000 in 2010 to 161,000 in 2019²⁵.

Discussion

Illegal employment destroys legitimate jobs, leads to rising unemployment, and deprives the state of revenues – tax and social contributions. At the same time, employers are the second, after migrants, party in the migration interaction, and they depend, in particular, on a number of issues related to the regularization of migrant workers. For instance, if a person without a special permit employs a migrant or even a large number of migrants, he or she formally facilitates the migrant's illegal stay on the territory of the state and will be held liable. If a person commits a set of actions, for instance, searches for migrants, provides them with housing and food, finds jobs without a permit, etc., his or her actions should be qualified as organizing illegal migration²⁶.

It should be noted that most often the employer of a migrant is fined for: lack of a complete package of documents; violation of labor laws; evasion from the registration of an employment contract; violation of state regulatory requirements for labor protection; failure or incorrect assessment of working conditions at workplaces; admission of an employee to the performance of his or her labor duties; failure to provide employees with personal protective equipment. Violation of the rules for migration registration provided by law entails administrative fines and other measures of influence, both on the employer and on the migrant worker. In order to conduct multidimensional research, it is necessary to consider the legislation of Poland, Germany, and France in the context of combating illegal employment in EU member states²⁷.

For instance, according to Polish law, illegal employment is the employment of a person who does not have a valid visa or another document that entitles him or her to stay in Poland; if the reason for staying in Poland does not give one the

²⁵ S. Ryazantsev, G. Ochirova, *Methods of Combating Illegal Immigration (Experience of the USA, EU and Russia)*, "Polis. Political Studies" 2021, Vol. 2, pp. 46–63.

²⁶ O.M. Yaroshenko, K.L. Tomashevski, *The Impact of COVID-19 on Labour and Social Security Relations: Rule-Making Experience of Belarus and Ukraine*, "Journal of the National Academy of Legal Sciences of Ukraine" 2021, Vol. 28(2), pp. 211–221.

²⁷ YO.M. Yaroshenko, O.V., Moskalenko, L.Yu. Velychko, V.S. Kovrygin, *Property Civil Law Liability and Material Liability of Employees for Damage Caused to an Employer: On the Basis of Civil Law of Ukraine*, "Asia Life Sciences: The Asian International Journal of Life. Sciences Supplement" 2019, Vol. 21(2), pp. 735–748.

right to employment; who performs work without permission, in cases where it is needed; who works in other conditions or in a position other than specified in the work permit; who works without concluding the necessary employment contracts or civil law contracts.

Thus, in Poland there is a law that determines sanctions for employers to perform work by a foreigner who is without a valid document in Poland and a claim for the payment of wages and related benefits. In particular, before employing a foreigner, the employer must make sure that the foreigner has a document that entitles him or her to stay in Poland. Employers pay severe fines for the employment of a foreigner who is not allowed to stay in Poland, and they are obliged to pay the wage arrears due to illegally employed foreigners (presumption of employment for 3 months) and related benefits (they pay social security contributions, taxes) and cover the cost of returning them to the country of origin. In addition, such employers will be deprived of the right to use government subsidies.

In addition, in Poland, inspections are carried out by at least two officials with the appropriate authority. As follows from Article 24 of the Act on National Labour Inspectorate²⁸, labor inspectors have the right to conduct inspections without prior notice and at any time, in compliance with labor legislation, in particular, the state of occupational safety and health, as well as control in the field of legality, employment, and performance of paid work.

In particular, according to the Polish law, the employer must have: work permits; applications for assignment of work to a foreigner; employment contracts or civil law agreements; documents confirming receipt by the foreigner who carries out business activity, the certificate that he or she is on the account and legally conducts economic activity. The nature of the work performed by the foreigner is also subject to verification, as well as whether the conditions of its performance correspond to the description contained in the permit/application. In case of the non-compliance or lack of documentation, the labor inspector who found a violation of the provisions of the law on employment promotion may file a petition with the court to punish the persons responsible for the identified violations. In addition, the labor inspector may report violations of the law to the competent authorities, in particular, in the case of violations of the law on foreigners, the police or border guards²⁹.

²⁸ Act on National Labour Inspectorate, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78032 (accessed: 16.11.2021).

²⁹ O.M. Yaroshenko, N.M. Vapnyarchuk, Y.M. Burnyagina, N.V. Kozachok-Trush, L.V. Mohilevskyi, *Professional Development of Employees as the Way to Innovative Country Integration*, "Journal of Advanced Research in Law and Economics" 2020, Vol. 11(2), pp. 683–695.

Thus, border guards can also conduct inspections of companies, households, and individuals who employ foreigners, as well as foreigners who conduct their own business in Poland. The National Labour Inspectorate, on the other hand, has the right to monitor the legality of employment as a result of concluding employment contracts with employees. At the same time, the control of the legality of the stay of foreigners on the territory of Poland is within the competence of the border guards and the police, as well as the customs and tax authorities.

With regard to German employment legislation, it should be noted that providing work to a foreigner who does not have a relevant residence permit in Germany may result in a penalty. Moreover, under certain conditions, the employer may be sentenced to imprisonment. Theoretically, up to ten years if the employer is organized, and it is not the first time that he or she used or provided illegal labor. However, this is the most severe punishment. Usually, it is still an administrative offense, as well as social contributions.

Provisions on access of foreigners to work in France are enshrined in the French Labor Code in a special section "Foreign labor and Protection of National Labor"³⁰. In particular, according to Article 341-2 of this Code, in order to enter the country for employment, a foreigner, in addition to the necessary documents and visas, must provide an employment contract certified by administrative bodies or a work permit and medical certificate. The same section provides for the protection of the rights of a foreigner hired in violation of established rules; the procedure for collecting fines from the employer who violated the established procedure for hiring a foreigner; the prohibition to carry out illegal penalties from foreign employees in favor of the employer.

Conclusion

Nowadays, more and more employers in the European Union are hiring foreign workers as employees. At the same time, sometimes employers illegally hire foreigners. However, illegal employment destroys legal jobs, leads to rising unemployment, and deprives the state of revenues, such as tax and social contributions, etc. That is why it should be noted that persons who are citizens of other states through the guarantees of international declarations, conventions, and directly under national law have the right to work in the EU. However, first of all, it is important

³⁰ Code du travail, 2021, <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006072050/> (accessed: 16.11.2021).

for them to take care of a work and residence permit in the country. After that, their employment rights are the same as those of EU citizens.

In this context, it is important that employers are the second, after migrants, side in migration interaction, and a number of issues related to the regularization of migrant workers on them depend particularly on them. For instance, if a person without a special permit employs a migrant or even a large number of migrants, he or she formally facilitates their illegal stay on the territory of the state and will be held liable. If a person commits a set of actions, for instance, searches for migrants, provides them with housing and food, finds jobs without a permit, etc., his or her actions should be qualified as organizing illegal migration.

That is why, in the European Union, under Directive 2009/52/EC, employers are required to ensure that third-country nationals working for them are legally present in the territory of the Member State concerned and to inform the competent authorities about the employment of legal migrants; employers pay penalties depending on the number of illegal immigrants employed and also cover the cost of their travel.

It should be noted that illegal employment includes the employment of a person who does not have a valid visa or other document that entitles him or her to stay in a EU country; if the reason for staying in that EU country does not give the right to employment; who performs work without permission, in cases where it is needed; who works in other conditions or in a position other than the one specified in the work permit; who works without concluding the necessary employment contracts or civil law contracts, etc. The article also considers the legislation of Poland, Germany, and France in the context of combating illegal employment in EU Member States. It should be noted that the penalty for illegal employment vary from country to country. For instance, in Germany, providing work by an employer to a foreigner who does not have a relevant residence permit may even result in the imprisonment of the employer.

Recommendations

The unfavorable demographic trends in the EU, the decline and aging of the population were partly offset by the influx of international migrants, both temporary and permanent, from other countries. However, numerous omissions in the field of migration management led to the fact that the EU's attractiveness tension in society. The EU migration policy has specific strategic goals arising from the characteristics of the modern demographic, economic, and political development of the EU. These are: 1) replenishment of the natural decline in the EU population

by stimulating the inflow of legal migrants from abroad and the stabilization of the number of its resident population; 2) meeting the need of the EU labor market for additional labor in the context of a reduction in the number of national labor resources by attracting temporary international labor migrants; 3) changes in the existing vectors of EU migration, increasing the uneven distribution of the population across the EU.

The scale of illegal migration and unregistered employment of migrants, which is explained, on the one hand, by the peculiarities of the existing economic system in the EU with its administrative and bureaucratic barriers to obtaining permits for employment in the EU by foreign citizens, which prompts them to look for work bypassing the law. Illegal migration and unregistered employment of foreign citizens causes significant damage to the economy of the EU, from the degradation of the culture of labor relations and the erosion of the norms of fair competition in the labor market to the shortfall in the EU budget due to the non-payment of income tax by illegal migrants.

Nowadays, there is an increasing trend towards illegal employment of third-country nationals. In order to counteract the illegal employment of citizens of third countries in the EU, the migration policy should be tough. Therefore, the legislation should be amended to criminalize the illegal use of migrant labor. First of all, it is necessary to replace the administrative responsibility for attracting a foreign citizen or stateless person to work in the absence of a work permit or patent; attraction to labor activity of a foreign citizen or stateless person without obtaining, in accordance with the established procedure, permission to attract and use foreign workers, for criminal liability in the form of a fine and imprisonment.

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