

ABSTRACT

of the dissertation on the topic “Problems of counteraction of migratory crime” submitted for the degree of Doctor of Philosophy (PhD) in the specialty 6D030100 - "Jurisprudence" by Kundakova Makpal Zhanatkaliyevna.

The relevance of the dissertation research topic. Currently, there is an unprecedented increase in the migration flow worldwide under the influence of various conditions. According to the International Organization for Migration, in 2019, the number of international migrants reached 272 million people. The growth of the migration flow is facilitated by social, economic, and political conditions in a particular area.

The increase of such a migration flow is also happening in the territory of the former Soviet Union. The reason for this is the war in Ukraine. Its impact can be seen in the migration conditions in Kazakhstan. The massive migration of citizens of the Russian Federation to neighboring countries, which occurred in September 2022, significantly changed the migration situation in Kazakhstan. About 400,000 citizens of the Russian Federation entered the territory of Kazakhstan. During the period from October to December 2022, 351 criminal offenses were committed by citizens of the Russian Federation, which accounted for 46.43 percent of all criminal offenses committed by citizens of the Russian Federation in 2022. This is one of the manifestations of the impact of criminal offenses committed by foreign immigrant citizens on the overall criminal situation. In addition, in the conditions of the proximity of the Middle East, Afghanistan, there has long been a threat to the security of our country. In particular, for the reporting year 2022, 96 international and regional drug channels were eliminated, 32 channels of illegal migration were closed, and entry into the country was blocked for 134 foreign citizens involved in terrorism and religious extremism.

According to general statistical indicators, from 2012 to 2014, compared to the number of criminal offenses committed by foreign nationals and stateless persons, the number of criminal offenses committed by these individuals increased by 0.63 percent since 2015. In 2015, there were 2982 offenses (which accounted for 2.75 percent of the total number of criminal offenses), 3066 (2.60 percent) in 2016, 3296 (2.85 percent) in 2017, 3238 (2.99 percent) in 2018, 2597 (2.61 percent) in 2019, 2963 (2.11 percent) in 2020, 1654 (1.94 percent) in 2021, and 1869 (1.90 percent) in 2022. The number of criminal offenses committed by these individuals began to increase from 2015 and continued until 2019, and due to the introduction of pandemic restrictions related to COVID-19, the number of such criminal offenses decreased from 2019. When compared to the number of crimes committed between 2008-2014 (with a maximum of 2393 offenses or 2.04 percent), there has been an increase in the number of criminal offenses committed by this category of individuals from 2015-2022. These circumstances require a comprehensive study not only of criminological aspects but also of the criminal law aspects of existing problems in the fight against migration-related crime.

However, the norms establishing criminal offenses related to the violation of migration procedures, in particular criminal offenses such as intentional illegal

crossing of the Republic of Kazakhstan's border (Article 392) and organizing illegal migration (Article 394), need improvement and have practically no fundamental research regarding the problems of differentiating these criminal offenses.

In addition, there is a lack of scientific research on the issue of imposing criminal penalties on foreign citizens and stateless persons who commit criminal offenses.

Considering the importance of effectively combating migration-related crimes in the context of Kazakhstan's active integration into the global community, the chosen research topic justifies its relevance.

Level of research on the topic of the dissertation. Since migration, as a multifaceted phenomenon, is the subject of scientific research by representatives of various fields of science, such as sociology, demography, economics, political science, jurisprudence, and others, its problems have been studied from different points of view. Among such researchers, one can consider scientists such as V.A. Ionzev, A.U. Khomra, L.L. Rybakovskaya, L.L. Shamilova, T.N. Yudina, and others.

The problems of legal regulation of migration have also been studied by scientists from various branches of law, such as constitutional, administrative, and criminal law. The examples of such scientific researches were researches made by T.N. Balashova, G.A. Khurinov, M.R. Vokuev, V.A. Korobeev, N.N. Totsky, and others.

The problems of combating migration-related crimes became the subject of scientific research by scholars only after the Soviet period. The reason for this situation was migration-related crime - a new phenomenon that emerged because of the activation of the migration process due to the desire of independent states to join the global integration process in connection with the provision of freedom for external migration of the population.

The issues of combating this type of crime have been studied by both foreign and domestic scientists, who have formed their own scientific views on this problem. Among the foreign researchers who conducted research on the special dissertation level of the problems of combating migration crime were K.A. Alchibekov, N.R. Asmandiyarova, M.N. Akhmedov, E.R. Baiburina, V.N. Balykov, K.I. Bogomolova, K.V. Dyadyun, E.B. Magomedova, S.E. Meteleva, A.V. Morina, P.A. Nasurova, I.E. Nezhibetskaya, A.A. Ill., A.K. Esayan, P.N. Kobets, Yu.A. Kashuba, E.Kh. Kahbulayeva. It is worth mentioning R.K. Kecherukov, L.R. Rashitov, A.N. Sandugeya, D.A. Sokolov, T.N. Utorova, A.N. Shkilev, and others.

Among domestic scientists, A.B. Balabekova, R.E. Dzhansarayeva, M.I. Zhurinov, D.B. Kaynazarova, and T.M. Narikbayev can be distinguished. These scientists studied the problems of migration crime from different points of view, but it is necessary to take into account that all of these scientific studies were conducted in the period from 2003 to 2007.

Only in 2022, R.E.O. Mammadov explored criminological aspects of combating migrant crime in his scientific work.

Despite these studies, criminal law aspects and some criminological issues of combating migration crime have not been studied. However, provisions establishing individual types of criminal offenses that constitute this type of crime require further

improvement.

The object of the dissertation research is social relations occurring on the territory of the Republic of Kazakhstan within the framework of the fight against criminal offenses committed against foreign citizens and stateless persons, as well as offenses committed against them.

The subject of the dissertation research consists of provisions of current regulatory legal acts regulating migration relations, the current Criminal Code, international conventions on combating crime in the field of migration, international treaties, provisions of regulatory legal acts that have ceased to be in force, scientific research on problems of combating migration crime, and materials of judicial and practical activities.

The purpose and objectives of the dissertation research. The purpose of this dissertation research is to analyze the problems that arise in the fight against migration-related crime and to develop scientifically grounded proposals to improve criminal and criminological measures in combating this type of crime. The achievement of this purpose is accomplished through the following tasks:

- formation of understanding of a range of concepts related to migration;
- study of existing problems related to the differentiation of criminal offenses associated with violation of migration procedures and development of proposals to improve norms establishing criminal liability for criminal offenses related to violation of migration procedures;
- analysis of the issue of criminalizing certain types of activities for effective combating of migration-related crime;
- study of problems related to the imposition of criminal penalties on foreign citizens and stateless persons and development of proposals to improve norms establishing the imposition of criminal penalties on these individuals;
- analysis of the state, quantitative and qualitative composition, and trends in the development of criminal offenses committed by foreign citizens and stateless persons;
- formation of a criminological profile of foreign citizens and stateless persons who commit criminal offenses;
- analysis of problems related to the prevention of migration-related crime and development of proposals to improve measures for preventing migration-related crime.

Scientific novelty of the dissertation research. This dissertation is the first scientific work to comprehensively study the criminal and criminological aspects of combating migration crime. The author also provides original definitions for the concepts of "migration," "illegal migration," and "criminal migration," and offers recommendations for improving the criminal law of the Republic of Kazakhstan by establishing criminal liability for violations of regulations governing migration relations, as well as for individuals with dual citizenship.

The following conclusions are proposed for defense:

1. Original definitions are given for the concepts of "migration," "illegal migration" and "criminal migration";
2. To improve the criminal law of the Republic of Kazakhstan, changes and

additions are proposed to Article 392 of the Criminal Code, which establishes criminal liability for the criminal offense of illegally crossing the state border of the Republic of Kazakhstan;

3. Proposals for improving the provisions of the joint order of the Minister of Foreign Affairs and the Minister of Internal Affairs of the Republic of Kazakhstan, dated November 24, 2016, No.11-1-2/555, "On Approval of Rules for the Extension and Shortening of the Duration of Visas of the Republic of Kazakhstan for Inviting Foreigners and Stateless Persons to Enter the Republic of Kazakhstan, Coordination of Invitations, Issuance, Cancellation, and Restoration," are also included;

4. To improve the criminal law of the Republic of Kazakhstan, changes and additions are proposed to Article 394 of the Criminal Code, which establishes criminal liability for the criminal offense of organizing illegal migration;

5. Norms establishing criminal liability for citizens with dual citizenship should be introduced into the current Criminal Code;

6. Changes and additions to Articles 51 and 81 of the Criminal Code are proposed to improve the criminal law, which establishes the imposition of criminal punishment for foreign citizens and stateless persons;

7. A criminological description of criminal offenses committed by foreign citizens and stateless persons and a criminological description of the personality of the foreign citizen and stateless person criminal offender have been compiled.

Methodological foundations of the dissertation research. In the course of the research, general philosophical methods of understanding phenomena occurring in society were used, as well as general scientific methods such as analysis and synthesis, and individual scientific methods such as statistical analysis, comparative legal, historical legal, structural-functional, grouping, and generalizing methods.

The theoretical basis of the dissertation research was composed of scientific works of scientists who studied migration as a multifaceted phenomenon, as well as scientific works of scientists who considered issues of combating migration-related crime.

The normative foundations of the dissertation research were formed by the Constitution of the Republic of Kazakhstan, international conventions, interstate agreements on migration issues, the current Criminal Code of the Republic of Kazakhstan, laws, and regulatory legal acts regulating relations in the field of migration.

Empirical basis of the research. The study analyzed court rulings that have entered into legal force, as well as statistical data on criminal and administrative cases gathered from the "Qamqor" system of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan. Over 300 criminal cases were examined, covering the period from 2015 to 2023.

Theoretical and practical significance of the research results. The scientific findings obtained during the research can be used in future studies regarding issues related to combating migration-related crime. They can also be utilized in teaching various legal disciplines to prepare specialists in the field of law. Additionally, the research results may be applicable in training programs for immigration service officials and other legal practitioners.

Furthermore, the research results may be employed in legal practice, particularly in judicial and investigative activities, to differentiate between various criminal offenses and to enhance the corresponding provisions of the Criminal Code of the Republic of Kazakhstan.

Criticality of research results. The scientific results obtained during the dissertation research were published as scientific articles in collections formed by international scientific conferences held both abroad and in Kazakhstan, as well as in scientific journals, the list of which is determined by the Committee for Quality Assurance in Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, in a scientific journal included in the Web of Science database.

Structure and volume of the dissertation. The structure of the dissertation consists of an introduction, logically connected two chapters comprising eight subchapters, a conclusion, and a list of references. The volume of the work covers 134 pages.