LEGAL BASIS FOR ADMINISTRATIVE LIABILITY OF FOREIGNERS AND STATELESS PERSONS PARTICIPATING IN MIGRATION PROCESSES

Sadigova Afag Nadir gizi - PhD candidate at the Department of "Constitutional Law" of Baku State University

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The article examines and analyzes the legal bases of administrative liability of foreigners and stateless persons who actively participate in migration processes and temporarily or permanently reside in the Republic of Azerbaijan according to the Migration Legislation of the Republic of Azerbaijan, as well as provides a number of legally substantiated scientific proposals regarding the bringing of these subjects to administrative liability in connection with some provisions of the Code of Administrative Offenses of the Republic of Azerbaijan.

Keywords: participant in migration processes, administrative responsibility, registration by location, temporary or permanent residence permit, work permit.

According to the Constitution of the Republic of Azerbaijan, foreigners and stateless persons residing temporarily or permanently in the Republic of Azerbaijan have numerous rights. Part I of Article 69 of the Constitution of the Republic of Azerbaijan entitled "Rights of Foreigners and Stateless Persons" states that, foreigners and stateless persons staying in the Republic of Azerbaijan shall enjoy all rights and fulfill all duties equally with citizens of the Republic of Azerbaijan, unless otherwise prescribed by law or international treaty to which the Republic of Azerbaijan is a party [2].

According to the Migration Legislation of the Republic of Azerbaijan, as well as citizens of the Republic of Azerbaijan, foreigners and stateless persons temporarily or permanently residing in the Republic of Azerbaijan are considered active participants in migration processes. Article 5.0.4 of the Migration Code of the Republic of Azerbaijan states that, foreigners and stateless persons who enter the Republic of Azerbaijan on the basis of a visa or visa-free regime, stay in the country temporarily, extend their temporary residence, obtain a permit for temporary or permanent residence and a permit for carrying out paid labor activity in the Republic of Azerbaijan [5].

According to migration legislation, in addition to the fact that foreigners and stateless persons are participants in migration processes, administrative liability for administrative offenses committed by these subjects has also been established. To determine the legal liability of these entities, let us consider individual articles of the Code of Administrative Offenses of the Republic of Azerbaijan.

According to the migration legislation, legal norms have been established regarding the legal entry of these subjects into our country. Thus, foreigners and stateless persons in our country can enter and leave our country on the basis of their passports or other border crossing documents, provided that they pass through the state border checkpoints. In cases where a visa is required to enter the Republic of Azerbaijan, foreigners and stateless persons must obtain a visa in accordance with the procedure established by law. Foreigners and stateless persons arriving in our country on the basis of a visa are registered for the period of stay indicated on the visa, and those arriving without a visa requirement are registered for a period of 90 days. Registration of these persons at the

place of their residence is carried out in accordance with the requirements of the Law of the Republic of Azerbaijan on Registration at the Place of Residence and Location.

Foreigners and stateless persons wishing to temporarily or permanently reside in the territory of the Republic of Azerbaijan must obtain appropriate permission from the State Migration Service of the Republic of Azerbaijan. When these persons are granted permission to temporarily or permanently reside in the territory of our country, they are issued a temporary residence permit in the territory of the Republic of Azerbaijan by the State Migration Service of the Republic of Azerbaijan. A temporary or permanent residence permit in the territory of the Republic of Azerbaijan is considered a legal document that gives foreigners and stateless persons the right to leave the Republic of Azerbaijan and return to the Republic of Azerbaijan without a visa, as well as confirming the identity and registration of these persons in the territory of the country at the place of residence. In addition, if the information in the identity documents of foreigners and stateless persons changes or the permit card is lost, they must inform the State Migration Service of the Republic of Azerbaijan about this within 10 working days and submit an application for re-issuance or cancellation of the permit card. Otherwise, administrative penalties are imposed on these persons.

It should be noted that, according to the Migration Legislation, foreigners and stateless persons arriving in the Republic of Azerbaijan from foreign countries must obtain a work permit in addition to a temporary residence permit in the territory of our country. Foreigners and stateless persons obtain work permits through legal entities that employ them, individuals engaged in entrepreneurial activities without forming a legal entity, and branches and representative offices of foreign legal entities. A work permit is an official document that allows foreigners and stateless persons to engage in paid labor activities in the territory of the Republic of Azerbaijan. A work permit is issued by the State Migration Service of the Republic of Azerbaijan.

According to the requirements of national legislation, registration of foreigners or stateless persons temporarily staying in our country for more than 15 days is carried out in accordance with the requirements of the Law of the Republic of Azerbaijan "On Registration at the Place of Residence and Place of Stay" dated April 4, 1996. According to Article 11 of the same law, entitled "Registration of foreigners and stateless persons at the place of their stay in the Republic of Azerbaijan", foreigners and stateless persons temporarily staying in the Republic of Azerbaijan for more than 15 days must be registered at the place of their stay within the period and in the manner determined by Article 21 of the Migration Code of the Republic of Azerbaijan [4].

According to the requirements of the Law "On Registration at the Place of Residence and Location", the administration of the place of stay of a foreigner or stateless person (hotel, sanatorium, rest house, boarding house, camping, tourist base, hospital or other such public places) or the owner of the apartment or other living space, as well as the citizen of the Republic of Azerbaijan who invited the foreigner to the country or the foreigner and stateless person permanently residing in the Republic of Azerbaijan, must submit an application-form for registration at the place of stay of the newly arrived foreigner or stateless person and a copy of his/her passport to the State Migration Service of the Republic of Azerbaijan within 15 days from the date of arrival of that person in the country via the Internet information resource of the State Migration Service of the Republic of Azerbaijan, via e-mail or in person.

According to migration legislation, when foreigners and stateless persons leave their place of residence, the receiving party or the person himself informs the State Migration Service of the Republic of Azerbaijan about this and, based on this information, they are deregistered at their place of residence.

This article analyzes the legal grounds for bringing to administrative responsibility foreigners or stateless persons who participate in migration processes in our country. As in other countries of the world, the legal basis for the administrative liability of foreigners or stateless persons residing temporarily or permanently in the Republic of Azerbaijan is regulated by domestic laws. The legal basis for the admin-

istrative liability of foreigners or stateless persons in the Republic of Azerbaijan is regulated by the Code of Administrative Offenses of the Republic of Azerbaijan, approved by the Law of the Republic of Azerbaijan dated December 29, 2015. In addition to the numerous rights granted to foreigners and stateless persons who participate in migration processes and come to our country from foreign countries, according to our national legislation, these subjects are held administratively liable for administrative offenses they commit.

According to Article 16.5 of the Code of Administrative Offenses of the Republic of Azerbaijan, foreigners and stateless persons are held administratively liable on general grounds for administrative offenses committed on the territory of the Republic of Azerbaijan [1].

A number of legal norms related to the legal bases of administrative liability of these persons are reflected in the relevant articles of the Code of Administrative Offenses of the Republic of Azerbaijan. For example, Article 575.1.1 of the Code of Administrative Offenses of the Republic of Azerbaijan states that foreigners or stateless persons who live in the Republic of Azerbaijan without documents granting the right to stay or reside, or without registration, shall be subject to a fine of three hundred to four hundred manats, with or without administrative expulsion from the borders of the Republic of Azerbaijan.

As can be seen, Article 575.1.1 of the Code of Administrative Offenses imposes a fine of three hundred to four hundred manats for two administrative acts on foreigners and stateless persons living without documents granting the right to stay or reside, as well as without registration, with or without administrative expulsion from the borders of the Republic of Azerbaijan. I believe that the punishment imposed on a foreigner or stateless person who has committed an administrative offense should be fair, as the punishment should correspond to the nature of the administrative offense, the circumstances of its commission, and the personality of the person found guilty of committing the administrative offense. In this regard, we propose that foreigners or stateless persons living in the Republic of Azerbaijan without documents granting the right to stay or reside should be subject to administrative expulsion outside the borders of the Republic of Azerbaijan. Foreigners or stateless persons living in the Republic of Azerbaijan without registration should be subject to administrative fines.

According to our national legislation, the rights of foreigners and stateless persons who actively participate in migration processes are protected by the state in cases of violation of the rules for issuing visas, registering them at their place of stay in the territory of the Republic of Azerbaijan, extending the period of temporary stay, and issuing (extending) temporary or permanent residence permits and work permits to them. Thus, administrative punishment is also provided for officials for violations of the law committed against these subjects. Article 568 of the Code of Administrative Offenses of the Republic of Azerbaijan states that officials shall be fined three hundred manats for delaying the consideration of an application for issuing a visa to foreigners and stateless persons, registering them at their place of stay in the territory of the Republic of Azerbaijan, extending the period of temporary stay, granting them a temporary or permanent residence permit and a work permit (extension of the period), requiring additional documents not provided for in the Migration Code of the Republic of Azerbaijan, or unjustified refusal to consider the application.

As in the whole world, the national legislation of our country also includes legal norms regarding the application of administrative penalties in cases where foreigners and stateless persons engage in labor activities in the Republic of Azerbaijan without a work permit. Thus, Article 575.1.4 of the Code of Administrative Offenses of the Republic of Azerbaijan states that in cases where a work permit is required, foreigners or stateless persons engaged in paid labor activities in the territory of the Republic of Azerbaijan without this permit shall be subject to a fine of three hundred to four hundred manats, with or without administrative expulsion from the borders of the Republic of Azerbaijan.

In our opinion, the main purpose of administrative liability imposed on foreigners or stateless persons who actively participate in migration processes and are temporarily,

temporarily or permanently residing in our country is not to punish them, but to ensure that these persons comply with the laws of our country and respect the rules of coexistence.

One of the administrative penalties imposed on foreigners and stateless persons arriving from foreign countries in the Code of Administrative Offenses of the Republic of Azerbaijan is related to legal norms that restrict their entry for a certain period of time. In this regard, Article 575.2 of the Code of Administrative Offenses of the Republic of Azerbaijan states that foreigners or stateless persons who were previously expelled from the borders of the Republic of Azerbaijan and whose entry was restricted for a certain period of time, if they deliberately change their documents and re-enter the country during that period, foreigners and stateless persons shall be administratively expelled from the borders of the Republic of Azerbaijan with a fine of five hundred manats.

As can be seen, foreigners or stateless persons who were previously deported from our country and whose entry was restricted intentionally return to the country by changing their documents, and these persons are deported from our country with administrative fines. It is clear from the provisions of this article that these persons have obtained official documents granting rights by forgery, intentionally committing a criminal act. In our opinion, the imposition of administrative sanctions on persons who have committed a criminal act cannot be considered acceptable. In this regard, we propose that foreigners or stateless persons who deliberately forge their documents and enter our country be held criminally liable, not administratively.

We consider it necessary to inform that the Law of the Republic of Azerbaijan "On Passports" was adopted on June 14, 1994 [3]. That Law is currently in force.

Thus, the legal bases of administrative liability of foreigners and stateless persons temporarily or permanently residing in the Republic of Azerbaijan, who are considered participants in migration processes according to the Migration Legislation of the Republic of Azerbaijan, are comprehensively investigated and analyzed, and a number of scientific proposals are made.

Reference

1. Code of Administrative Offenses of the Republic of Azerbaijan // Adopted on December 29, 2015 (in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/46960

2. Constitution of the Republic of Azerbaijan // Adopted on November 12, 1995 (amendments and additions dated August 24, 2002, March 18, 2009 and September 26, 2016; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/897

3. Law of the Republic of Azerbaijan on Passports // Adopted on June 14, 1994 (in Azerbaijani): [Electronic resource] / https://is.gd/cfxcM9

4. Law of the Republic of Azerbaijan on Registration at the Place of Residence and Location // Adopted on April 4, 1996 (in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/3988

5. Migration Code of the Republic of Azerbaijan // Adopted on July 2, 2013 (in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/46959