

**ORGANIZING DETENTION OF ILLEGAL MIGRANTS
ADMINISTRATIVELY APPREHENDED BY THE STATE
BORDER GUARD SERVICE OF UKRAINE**

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INTRODUCTION

The State Border Guard Service of Ukraine (hereinafter referred to as the SBGS of Ukraine), as a special-purpose law-enforcement agency fulfills tasks that are directly aimed at securing, protecting and exercising rights and freedoms of individual persons. This is due to both the powers to fight offenses and to the fact that the state border guard bodies perform their activities in areas of migration flows. During 1991–2018, the state border guard bodies of Ukraine apprehended 152.25 thousand illegal migrants, among whom 124.17 thousand – for illegal border crossing, 26.63 thousand – for violation of the rules of stay on the territory of the country, 1.45 thousand – for other offences. Officials of the state border guard bodies made a decision on forced return, forced expulsion and readmission of 42.05 thousand foreigners – offenders. The State Border Guard Service of Ukraine detained 2,054 illegal migrants in just 9 months of 2019¹.

The level of the threat of cross-border crime is estimated to be moderate but has a steady upward trend. Ukraine’s geographical location makes it attractive for the transit movement of illegal migrants and drugs. There are regular attempts at crossing the border by migrants and the illegal movement of goods². Although the overall situation related to illegal migration through the Ukrainian territory remains stable, implementation of provisions of law-enforcement legislation based on generally accepted legal principles is of current interest.

Respect for and observance of human rights and freedoms as a principle underlying activities of the bodies designed to control the

¹ The State Border Guard Service of Ukraine (2019) *Operating results for 9 months*. Retrieved from: <https://dpsu.gov.ua/ua/potochniy-rik/> (accessed 5 November 2019).

² Cabinet of Ministers of Ukraine (2019) Integrated border management strategies for the period up to 2025, approved by the order of the Cabinet of Ministers of Ukraine № 687-p of 24 July 2019. Official Bulletin of Ukraine, no. 70, art. 2472.

national border takes on particular significance in case of adopting enforcement measures associated with restriction of personal freedom of individual³. In recent years, there has been an increase in the level of migration to Ukraine from politically unstable states. One of the five major routes of illegal migration passes through the territory of Ukraine – Central European one, which runs through the Russian Federation, Ukraine, Poland, Slovakia to the countries of Western Europe⁴. Amid the military conflict in eastern Ukraine and exacerbation of the migration crisis in the European Union member states, operation of the places for holding illegal migrants where their freedom is actually abridged remains an important task. Proper organization of activities of the facilities carrying out administrative detention, which is used by the state border guard bodies and units, requires appropriate statutory regulation and its scientific understanding.

The purpose of the research the powers to keep persons detained in administrative order is to identify the specifics of legal regulation of activities of the Ukrainian SNGS bodies aimed to organize detention of illegal migrants. Such scholarly studies are intended to find out the legal nature of individual administrative enforcement measures used in the course of field-service state border protection activities, their implementation based on the principle of respect for and observance of human rights and freedoms.

1. History

The establishment of the SBGS of Ukraine in 2004 eliminated the then existing legal conflict pursuant to all requirements of the Constitution of Ukraine of 1996 Art. 17 of which prohibits using troop formations to restrict rights and freedoms of citizens⁵. The competence of the State Border Guard Service of Ukraine was based on the authority to apply measures of administrative compulsion. In fact, this approach was initiated in accordance with the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Combating Illegal Migration»

³ Holovatyi M. (2015) The State and Society: The Conceptual Foundations and Social Interaction in the Context of Formation and Functioning of States. *Economic Annals-XXI*, no. 9–10, pp. 4–8.

⁴ Cabinet of Ministers of Ukraine (2019) Integrated border management strategies for the period up to 2025.

⁵ Verkhovna Rada of Ukraine (1996) The Constitution of Ukraine, adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996 (with subsequent amendments and additions). *Official Bulletin of the Verkhovna Rada of Ukraine*, no. 30, art. 141.

of 18 January 2001. Subsequently, the complex of relevant powers was constantly expanding. The situation was also influenced by the fact that, in the process of reforming the state border security authorities, they abandoned the investigative (inquiry) apparatus in the structure of the border agency, and now, as before, the border guards carry out an operative-investigative function in criminal proceedings.

It was during the time of the present-day Ukrainian state that the Border Guard Service received the broadest range of competencies in combating illegal migration. In previous historical periods, there were only certain powers of migration control, which, in relation to the general normative regulation, forms and methods of activity, reflected the designation of the state border protection authorities as a military formation. The State Border Service of Ukraine, as a special purpose law enforcement agency, performs tasks that are directly aimed at securing, protecting and exercising the rights and freedoms of individuals. This is due both to the authority to counter the offense and to the fact that border guards carry out their activities in the migration flows.

Between 1991 and 2018, 2 billion 004.78 million people and 423.47 million vehicles were passed through the state border of Ukraine by the units of the Border Troops and the State Border Guard Service of Ukraine. 684.06 people were denied a pass. During the 9 months of 2019 alone, 77.73 million persons were missed (76.40 million in 9 months of 2018, an increase of 1.7 %) and 13.09 million in vehicles (15.57 million in 9 months of 2018, a decrease of 15.9 %)⁶.

It is obvious that such activity is primarily aimed at meeting the needs of ordinary citizens who have been able to travel abroad legally on the territory of Ukraine. However, the implementation of law enforcement tasks in the migration sphere by the State Border Guard Service of Ukraine provides for a number of procedural guarantees for foreigners and stateless persons: accepting applications for recognition of persons as refugees or persons in need of additional protection; ensuring the right to protect oneself personally or to use the legal assistance of a defender, as well as informing the Center on the provision of free secondary legal aid; observance of norms and standards that make it impossible to cruel, inhuman or degrading treatment of detainees. Consequently, the powers to combat offenses in the protection of the state border are based on the

⁶ The State Border Guard Service of Ukraine (2019) *Operating results for 9 months*.

rule of law, since the coercive measures applied are capable of substantially restricting human rights.

However, statutory regulation of the system of detaining administratively apprehended persons began to shape even before that moment. In practice, not only identifying an illegal migrant but also providing conditions of his/her stay consistently with the international obligations assumed by Ukraine proved to be important. An urgent need arose to fit out the temporary detention places for a significant number of people who illegally entered and are in the Ukrainian territory. Legal regulation of their activities aroused mixed feelings.

Thus, “in April 2001, the Zakarpattia regional state administration decided to transfer a camp of a former military base near Mukacheve to border guards in order for them to fit out there a temporary detention facility for illegal migrants without, however, an appropriate government action.” The territorial state border guard bodies and local authorities had to build up that facility known as `Pavshyno` using their own resources and maintain its operation. From 2002 till 2008, almost 14 thousand illegal migrants were held in temporary detention facility `Pavshyno`⁷. Persons who violate the legislation of Ukraine on the state border and legal status of foreigners (stateless persons) and who have been detained in controlled border areas during the attempt or after illegal crossing of the state border have not been transferred to the internal affairs bodies of Ukraine for their detention and expulsion from the state since 2004⁸. For this purpose, in accordance with the provisions of the migration legislation and with the financial assistance of the EU, a system of detention of illegal migrants in the units (bodies) of the state border protection of Ukraine was created.

The legal literature has traditionally devoted attention to organizing detention of those imprisoned for committal of crimes, the purpose and

⁷ Clipnews.info. Society (4 December 2008) “*The Facility for Illegal Aliens in Pavshyno to be Closed Today*”. Retrieved from: <http://www.clipnews.info/newstopic.htm?id=5509> (accessed 2 November 2018).

⁸ State Committee on State Affairs the border of Ukraine, Ministry of Internal Affairs of Ukraine (1997) Instruction on the Procedure of Transfer of Foreigners and Stateless Persons by the Border Troops of Ukraine that violate the legislation of the State on the State Border and the Legal Status of Foreigners, the Reception of Those Persons by the Internal Affairs Bodies of Ukraine, Their Retention and Removal from the State: Order of the State Committee on State Affairs the border of Ukraine and the Ministry of Internal Affairs of Ukraine № 477/877 of 25 December 1997, expired on the basis of an order of the State Border Guard Service, Ministry of Internal Affairs of Ukraine № 742/1090 of 15 October 2004. *Official Bulletin of Ukraine*, no. 44, art. 2930.

system of places of deprivation of liberty. Such scholars as Y. Aleksandrov, V. Rudnyk, A. Stepaniuk and others have conducted relevant research. In science of administrative law, statutory instruments regulating application of administrative arrest as an administrative penalty and administrative detention as a measure ensuring administrative proceedings have represented a subject matter of analysis. The legal nature of such administrative enforcement measures is covered in works by Y. Dodin, Y. Kasaraba, A. Komziuk, T. Kolomoets, A. Kliushnychenko and some other authors. S. Albamasov, Y. Bilousov, V. Ziolka, R. Liashuk, B. Marchenko, M. Mykheyenko, V. Polovnikov, L. Servatiuk, and V. Khoma have studied activities of the state border guard bodies related to administratively applying enforcement measures. In more recent times, apprehending a person began to be studied based on the human rights concept, which manifests itself primarily in the international legal area. In this regard, works written with the assistance of international human rights organizations and reflecting the content and, in particular cases, interpreting international legal rules on possible restriction of human rights are of scholarly and practical interest. The above-mentioned theoretical studies and their results are undoubtedly important for identification of the specifics of organizing detention of illegal migrants administratively apprehended by the Ukrainian SBGS bodies.

The literature on administrative law usually reckons detention among measures of administrative restraint⁹. As A. Komziuk notes, that “the main purpose of these measures is defined as prompt response to any given antisocial acts, termination, suppression of unlawful conduct and thereby prevention of ensuing of its harmful consequences”¹⁰. According to E. Dodin, administrative detention also “has important preventive properties as it prevents the continuation of unlawful behavior”¹¹. In administrative proceedings, detention has, first of all, a procedural

⁹ Bytiak Y. P., Haraschuk V. M., Diachenko O. V. [et al.]; ed. by Y. Bytiak (2006) *Administrativne pravo Ukrainy* [Administrative Law of Ukraine]. Kyiv: Yurinkom Inter. (in Ukrainian), p. 167.

¹⁰ Komziuk A. T. (2002) *Administrativnyj pryus v pravoohoronnij dijalnosti militsiji v Ukraini* [Administrative compulsion in law and order keeping activity of Ukrainian militia] (abstract of the thesis for a doctor’s degree), Kharkiv: National University of Internal Affairs, pp. 16–17.

¹¹ Dodin E. V. (1982) *Protsessual’nye formy profilaktiki administrativnykh prostupkov* [Procedural forms of prevention of administrative offences]. *Problems of Socialist legality*, Kharkov: High school, pp. 36–41.

purpose as a measure intended to ensure such proceedings and aimed to possible bringing to responsibility¹². “The peculiarity of the legal regulation of administrative and procedural issues related to the administrative detention by the bodies of the State Border Service is that they are enshrined in the norms of the Law of Ukraine “On the State Border Service of Ukraine” and detailed in the Instruction on registration of officials of the State Border Guard on administrative offences¹³.

V. Polovnikov points out an important feature of administrative detention in his thesis research. In his opinion, this measure, inter alia, also includes “and detention of a person in premises (places) designed for this purpose”¹⁴. That an administratively apprehended person is detained in a dedicated facility is a no less important guarantee of observing his/her rights than grounds for, period and formalization of such apprehension. Although legislation on administrative responsibility mentions only the place of detention of arrestees – in a guardhouse or in places to be specified by the National Police bodies¹⁵.

The European practice of detaining illegal migrants that is based on the principles of democracy and respect to human rights permits apprehension of a person in order to prevent his/her unauthorized entry to a country or of a person subject to the deportation or extradition process, which is specific to law-enforcement agencies guarding the national boundaries¹⁶.

Although “European countries do not have a uniform established name for the facilities ... for detention of migrants with unregulated status... Such names as reception centers, registration centers, holding

¹² Klyushnichenko A. P. (1979) *Mery administrativnogo prinuzhdeniya, primenyayemye militsiei (Osobennosti. Klassifikatsiya. Sistemovyrazhenie.)* [Measures of administrative compulsion applied by the police (Features. Classification. System expression.)]. Kiev: KVSh MVD SSSR. (in Russian), p. 50; Komziuk, *op.cit.*, pp. 16–17.

¹³ Ziolka V. L. (2015) *Ohorona nacional'nyh interesiv Ukrainy u prykordnij sferi (administrativno-pravovyy aspekt)* [The Safeguarding National Interests of Ukraine in the Border Sphere (administrative and legal aspect)]. Khmelnytsky: NADPSU. (in Ukrainian), p. 297.

¹⁴ Polovnikov V. V. (2007) *Zakhody administrativnogo pryusumu v dijalnosti Derzhanoji prykordnoji sluzhby Ukrainy* [Administrative Enforcement Measures in Activities of the State Border Guard Service of Ukraine] (PhD Thesis), Kharkiv: National University of Internal Affairs, pp. 16–17.

¹⁵ Verkhovna Rada of Ukrainian SSR (1984) The Code of Ukraine on Administrative Offenses (with subsequent amendments and additions). *Official Bulletin of the Verkhovna Rada of Ukrainian SSR*, no. 51, art. 1122.

¹⁶ Solovey S., Kuzmenko L. (2013) Observance of the Rights of Migrants in the Activities of the Border Guard Service: Generalization of Rules of International Law. Teaching and Reference Aid International. Organization for Migration, p. 54.

centers are used, as well as those comprising the word detention as in immigration detention centers, migrant custody centers”¹⁷.

2. The normative regulation

As of today, the legal basis for detaining administratively apprehended foreigners and stateless persons by the SBGS of Ukraine consists in the provisions of part 1 paragraph 16 art. 20 of the Law of Ukraine “On the State Border Guard Service of Ukraine”¹⁸. It provides for the exercise of relevant powers used in the course of guarding the national frontier when persons are administratively detained for extended lengths of time (up to 72 hours). According to the Law of Ukraine «On the Legal Status of Aliens and Stateless Persons», the State Border Service of Ukraine is obliged to make «in the established order the decision on the placement of aliens and stateless persons detained within controlled border areas during the attempt or after illegal crossing of the state border of Ukraine points of temporary stay of foreigners and stateless persons illegally staying in the territory of Ukraine, with subsequent notification within 24 hours of the prosecutor»¹⁹.

However, the activities of the facilities designed for detention of apprehended persons are legally regulated at the departmental level. The Instruction on the Procedure for Detaining the Apprehended Persons in State Border Guard Bodies (Units) approved by the order of the Ministry of Internal Affairs of Ukraine № 352 of 30 March 2015 (hereinafter referred to as Instruction) specifies two types of temporary detention places depending on the system-structural configuration of the SBGS of Ukraine – temporary detention facility (hereinafter referred to as TDF) and special premises (hereinafter referred to as SP). Administratively apprehended persons are held in premises specially equipped for these purposes at two lower levels of the SBGS of Ukraine – in bodies (in whose department’s territory a TDF is located) and units (in whose

¹⁷ BLANK-PRES (2015) *The International Terminology in the Area of Migration: a Ukrainian-English Explanatory Dictionary*. Kyiv: BLANK-PRES, p. 36.

¹⁸ Verkhovna Rada of Ukraine (2003) On the State Border Guard Service of Ukraine, Law of Ukraine of 3 April 2003 (with subsequent amendments and additions). *Government Courier*, 7 May 2003.

¹⁹ Verkhovna Rada of Ukraine (2012) On the Legal Status of Foreigners and Stateless Persons, Law of Ukraine of 22 September 2011 (with subsequent amendments and additions). *Official Bulletin of the Verkhovna Rada of Ukraine*, no. 19–20, art. 179.

territory a SP is being fitted out), which are directly intended for the national border control²⁰.

Therefore, persons detained in administrative order are kept in specially equipped premises for these purposes in the bodies and units of the State Border Guard Service of Ukraine. The State Border Protection Body is the main body in the general structure of the State Border Guard Service of Ukraine, which directly fulfills the tasks assigned to the State Border Guard Service to ensure the inviolability of the state border of Ukraine and participates in the protection of Ukraine's sovereign rights in its exclusive (maritime) economic zone, as well as provides other legislation of Ukraine²¹. The border detachment as a state border guard may include border commanders, border service departments, border guards, checkpoints, border control units²². The Border Service Division is the main unit of the Border Detachment (Border Commandant), intended for the direct protection and protection of a certain section of the state border, the implementation of border control and passage through the state border of Ukraine and to the temporarily occupied territory and from it to persons, vehicles, ensuring compliance with the regime of the state border of Ukraine, the border regime and the regime at the points of passage through the state border of Ukraine (control points, checkpoints of entry and exit), as well as the exercise of other powers provided for by the legislation of Ukraine²³.

Sixty-two temporary detention places (hereinafter referred to as TDP) designed for simultaneous detention of 350 persons, 10 of which are TDFs designed for 155 persons and 52 are SPs designed for 195 persons were in 2017. Their purpose is related to the competence of the SBGS of Ukraine to counter both crimes and administrative offenses and

²⁰ Ministry of Internal Affairs of Ukraine (2015) The Instruction on the Procedure for Detaining the Apprehended Persons in State Border Guard Bodies (Units), approved by the order of the Ministry of Internal Affairs of Ukraine № 352 of 30 March 2015, *Official Bulletin of Ukraine*, no. 39, art. 1172.

²¹ Ministry of Internal Affairs of Ukraine (2019) Regulation on the State Border Protection Body of the State Border Guard Service of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine № 971 of 30 November 2018. *Official Bulletin of Ukraine*, no. 3, art. 86.

²² Verkhovna Rada of Ukraine (2003) On the State Border Guard Service of Ukraine, Law of Ukraine.

²³ Ministry of Internal Affairs of Ukraine (2016) Regulations on the Border Service Division of the State Border Guard Service of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine № 311 of 15 April 2016. *Official Bulletin of Ukraine*, no. 41, 44, art. 1555.

encompasses two aspects, which can be considered by convention as respectively positive and negative ones. The positive aspect envisages reasons for placement of apprehended persons in a TDF or SP, while the negative aspect is associated with prohibition on such placement. Paragraph 1 of section VI of the Instruction specifies five reasons for placement of an apprehended person in a temporary detention place. Aside from the fact that such reasons include for the most procedural instruments, in content they are related to response to unregulated migration²⁴.

Persons suspected of committing a criminal offence may be accommodated in a special premise only under a certain condition – an arrangement that ensures the reliable protection and the security of the personnel of the state border guard bodies (units). Accordingly, detainees suspected of committing criminal offences are housed separately from detainees in an administrative order consistent with international detention practices²⁵.

It is prohibited to place (receive) in TDPs (negative aspect) persons:

“apprehended for the committal of administrative or criminal offenses, countering of which is not referred to the competence of the SBGS;

for disciplinary, educational action or sobering purposes”²⁶.

In addition, in order to avoid abuse it is prohibited to detain servicemen apprehended for the committal of military administrative offenses in departmental places of temporary detention of violators of legislation on border-related issues²⁷.

Based on analysis of the above aspects describing the purpose of TDPs within the SBGS of Ukraine it should be acknowledged that they are set up primarily to detain illegal migrants. The stay of such a category of persons during their detention in places designed for this purpose is one of the requirements of international standards²⁸. In this

²⁴ Ministry of Internal Affairs of Ukraine (2015) The Instruction on the Procedure for Detaining the Apprehended Persons in State Border Guard Bodies (Units).

²⁵ *Ibid.* Paragraph 18 of section VI.

²⁶ *Ibid.* Paragraph 2 of section VI.

²⁷ Administration of the State Border Guard Service of Ukraine (2015) “On Organizational Measures to Counter Military Administrative Offenses within the SBGS”, order of the Administration of the State Border Guard Service of Ukraine № 74 of 1 April 2015 (unpublished).

²⁸ Kasaraba Y. (2006) Mizhnarodni standarty zatorymannja: teoretyko-pravovyj aspekt [International Detention Standards: The Theoretical-Legal Aspect]. *Law of Ukraine*, no. 7, p. 49.

connection, a specifically designated purpose of such places is manifest. “Making the departmental system of detaining persons apprehended for breach of legislative requirements on border-related issues consistent with international standards” is strategically defined as a component of ensuring development of border infrastructure²⁹. For this very reason, S. Albamasov rightly points out two components of securing rights and freedoms of the persons detained in TDPs – “the human and technological factors, that is, conditions in which an apprehended offender is held”³⁰. And while the principles of humanity and respect for human rights also apply to the penal correction system, to which the scientific literature has continually drawn attention³¹, organization of detaining illegal migrants apprehended by the SBGS bodies of Ukraine abandoned ‘prison-specific’ approaches to arrangement of the places designated for this purpose. Among other things, the reason for this also is that “establishment of criminal for illegal entry into the country goes beyond the legitimate intent of the state to control and regulate illegal migration and leads to unlawful apprehensions”³².

²⁹ Cabinet of Ministers of Ukraine (2015) The Strategy of development of the State Border Guard Service, approved by the order of the Cabinet of Ministers of Ukraine № 1189-p of 23 November 2015. *Official Bulletin of Ukraine*, no. 94, art. 3227.

³⁰ Albamasov S. O. (2012) Zabezpechennja prav i svobod osib, jaki utrymujutsja v punktakh tymchasovogho trymannja ta specialjnykh pryshhennjakh vidomchoji systemy trymannja Derzhavnoji prykordonnoji sluzhby Ukrajinny [Ensuring the rights and freedoms of persons held in temporary detention centers and special premises of the departmental detention system of the State Border Guard Service of Ukraine]. *Scientific Herald of the State Border Guard Service*, no. 1, p. 30.

³¹ Aleksandrov Y. V. (2015) Shhodo dejakykh vymogh rezhymu u vypravnykh kolonijakh [Anent Some Security Requirements in Correctional Colonies]. *IAPM Scientific Works*, vol. 44(1), p. 49; Rudnyk V. I. (2004) Pravo derzhavy na pokarannja u vyghjadi pozbavlenja voli v konteksti dotrymannja prav ljudyny [The Right of the State to Impose Punishment in the Form of Imprisonment in the Context of Human Rights Observance]. Proceedings of the *Reforming the Legal System of Ukraine: Problems of and Prospects for Development in the Context of European Integration Processes. The International Research-to-Practice Conference (Ukraine, Kyiv, April 28–29, 2004)* (eds. S. A. Yerokhin, V. F. Pohorilko, and Y. M. Shevchenko et al.), Kyiv: National Academy of Management, part 2, pp. 469–476; Stepaniuk A. F. (2002) *Aktualjni problemy vykonannja pokaranj (sutnistj i pryncypy kryminalno-vykonavchoji dijalnosti: teoretyko-pravove doslidzhennja)* [Important Aspects of Punishment Enforcement (essence and principles of enforcement activity: theoretic research)]. (abstract of the thesis for a doctor’s degree), Kharkiv: Yaroslav Mudry National Law Academy of Ukraine, pp. 18–19.

³² Reshitov A. A., Solodkov T. A., Selivanov A. V. (eds.) (2013) *Rukovodyashchie printsypy po zaderzhaniyu i sodержaniyu pod strazhey: rukovodstvo po primenyemym kriterijam i standartam v otoshenii zaderzhaniya i sodержaniya pod strazhey lits, ishchushchikh ubezshishcha, a takzhe al’ternativam sodержaniyu pod strazhey* [The Guiding Principles on Apprehension and Custodial Detention: Guidance on the Criteria and Standards Applied to Apprehension and Custodial Detention of Asylum-Seekers, as well as on Alternatives to Custodial Detention], Minsk: Peresvet, pp. 55–56.

Such approaches were developed at the State Border Guard Service of Ukraine on the basis of the European practice of dealing with migrants who have `unregulated` status. Priority in such activities was the international legal obligations of our state on the prohibition of torture or inhuman or degrading treatment or punishment. However, the provisions of international law, by virtue of their generalization, can only produce general rules that can be introduced and detailed in the domestic law of a particular country. The universalism of the rules of administrative law enables the implementation of international standards for detention. The purpose of administrative-legal regulation is to encourage subjects of the right to act independently, exercise their rights and perform duties in established regimes and procedures. Accordingly, the rules of international law can be implemented in the requirements of the regime to certain bodies, individuals and objects through a combination of many elements.

Thus, the localization of foreigners and stateless persons in a certain place (buildings, rooms) makes important norms of technical content that are unlikely to be fully reflected in any international document. Denial of the name `camera` in favor of the term `room` to indicate the buildings where the detained person should be detained is only a formal sign of the regime of his stay in a designated place. At the same time, the placement of persons in unsuitable premises is regarded as ill-treatment³³.

The system of places for temporary detention of illegal migrants in the SBGS of Ukraine was formed on the basis of the soviet border guard bodies and has underwent significant transformation with the assistance of various international organizations. Overall, it meets the international standards and the national border control needs. In the current context, however, border guards also fulfill tasks at the administrative boundary line with the Autonomous Republic of Crimea and the delimitation line in the Donetsk and Luhansk regions, where new bodies and units of the SBGS of Ukraine are established. And if the results of the activities of Berdiansk and Kherson border guard detachments indicate a decrease in the number of detected administrative offences and, as a result, of apprehended persons, then the same figures for Donetsk, Kramatorsk and Luhansk border guard detachments have grown. In 2018, 768 reports on administrative offences were drawn up in the Special Forces Operation Area (the Anti-terrorist Operation Area) (in 2017 – 187, an increase by 4.1 times) of which 440 under art. 204-1 of the Code of Ukraine on Administrative Offenses “Illegal Crossing of the State Border” (2017 –

³³ Solovey, Kuzmenko, *op.cit.*, p. 65.

151, an increase by 2.9 times). In the long run, the number of apprehended persons can even grow. Law of Ukraine “On Amending the Code of Ukraine on Administrative Offenses and Some other Laws of Ukraine Related to Providing Border Security of the State” was passed on 27 February 2018, which supplemented the above-said Code with article 204-4 “Violation of the Procedure for Entry into the Anti-Terrorist Operation Area or Exit from it.” In case of detection of such an offense, officials of the SBGS bodies and units of Ukraine also were vested with powers to apply administrative detention for up to 72 hours³⁴.

Therefore, an important organizational task is to establish places for detention of administratively apprehended persons at the newly created border guard units. Based on the results of the monitoring visits of representatives of the National Preventive Mechanism Implementation Department of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights to Donetsk border guard detachment it was found that checkpoint `Hnutove` lacks a place specially designed for administratively apprehended persons. In the opinion of representatives of the monitoring group of the national preventive mechanism, in the context of military operations it creates a real basis for abusive treatment of the apprehended persons³⁵.

The task of detaining detainees and securing the regime in the TDFs is entrusted to a detention unit that is part of the State Border Protection Body. Within the system-structural organization of the bodies of the State Border Guard Service of Ukraine, their place is determined within the subdivisions administrative and jurisdictional activity of staffs. However, the detention of detainees also rests with other detachment officials. The largest amount of authority to organize such activities belongs to the first Deputy Head of the detachment – Chief of Staff, who is directly and subordinate to the Chief of the Detention Unit³⁶.

³⁴ Verkhovna Rada of Ukraine (2018) On amendments to some legislative acts of Ukraine on ensuring the state border security, Law of Ukraine of 27 February 2018. *Official Bulletin of Ukraine*, no. 36, art. 1259.

³⁵ Administration of the SBGS of Ukraine (2015) *Zvit pro rezul'taty monitoryngovoho vizytu ta rekomendaciji shhodo poperedzhennja nenalezhnogho povodzhennja iz zatrymanymy osobamy* [Report on the Monitoring Visit Results and Recommendations on Prevention of Improper Treatment of Apprehended Persons], an Attachment to the letter of the Ukrainian Parliament Commissioner for Human Rights № 8 – 1328/15-120 of 28 May 2015 (Administration of the SBGS of Ukraine, receipt № 1159/0/1-15 of 14 August 2015).

³⁶ The Instruction on the Procedure for Detaining the Apprehended Persons in State Border Guard Bodies (Units).

The security detention of persons in the TDPs is appointed from the personnel of the body (unit) of the state border guard in which it is stationed. One (two) changes in detention units (for TDF) or personnel of the border outfit «Regime Control» change of border outfits (for SP at the Border Service Division) shall security detention of persons. The following outfits can be assigned from a security change staff: senior security change officer, senior security change assistant, regime unit inspector, administrative unit inspector³⁷. These outfits are not border guards, as defined in the Instruction on Border Guards Service of the State Border Guard Service of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine of October 19, 2015 No. 1261³⁸. However, they are part of a common system of management within state border protection bodies and units, which requires their interaction with other regular forces, means and officials.

CONCLUSIONS

Consequently, the system of TDPs is organized in the SBGS of Ukraine consistent with the tasks of this special-purpose anti-illegal migration law-enforcement body. The administratively apprehended persons are held in premises specially equipped to this end at two lower levels – in bodies and units, which are directly intended for the national border control. Statutory regulation of the activities of such facilities is mainly carried out at the departmental level with due regard to international human rights standards. Creating the proper conditions for detaining people detained for violating border law requirements is one of the goals of achieving the strategic goal of identifying illegal migrants and returning them to their countries of origin³⁹.

In the long term, it will require improvement in view of establishment of places of detention at the newly created border guard units in particular areas of Donetsk and Luhansk regions.

The specifics of equipment of such premises must be statutorily regulated, which requires amendments to both the Instruction and the Temporary Procedure to Controlling Movement of Individuals, Transport Facilities and Cargoes (Goods) across the Conflict Line within the Donetsk and Luhansk Regions.

³⁷ *Ibid.* Paragraph 2, 4, 8 of section VIII.

³⁸ Ministry of Internal Affairs of Ukraine (2015) Instruction on Border Guards Service of the State Border Guard Service of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine № 1261 of 19 October 2015. *Official Bulletin of Ukraine*, no. 94, art. 3233.

³⁹ Cabinet of Ministers of Ukraine (2019) Integrated border management strategies for the period up to 2025.

International standards governing the conditions of detention of migrants in detention facilities are being implemented through requirements for state, in particular, law enforcement, individuals and facilities. The administrative and legal rules governing the regime of detention of illegal migrants in the TDPs of the State Border Guard Service of Ukraine are established at the departmental level and detailed through a local act – an order on the organization of detention of detained persons. The practice of their application gives grounds to consider the security component as a priority in ensuring the detention regime of detainees. The personnel of the state border guard bodies (units) must take into account the individual characteristics of the detention of illegal migrants in such activities, based on the need to locate them in a certain place.

SUMMARY

The peculiarities of the organization of detention of illegal migrants detained by the bodies of the State Border Guard Service of Ukraine in administrative order are analyzed. The theoretical bases and legal regulation of activity of places of temporary detention have been clarified. Their purpose, organizational and structural construction and some aspects of improvement of departmental detention system are determined.

The bodies of the State Border Guard Service of Ukraine are empowered to apply administrative enforcement measures to illegal migrants. During their administrative detention, they are held in places specially designed for this purpose. Organization of the activities of such facilities is carried out in accordance with international human rights standards subject to the specifics of the national border control.

The system of places for temporary detention of illegal migrants was formed on the basis of the soviet border guard bodies and has underwent significant transformation with the assistance of various international organizations. Overall, it meets the international standards and the national border control needs. In the current context, however, border guards also fulfill tasks at the administrative boundary line with the Autonomous Republic of Crimea and the delimitation line in the Special Forces Operation Area, where new bodies and units of the State Border Guard Service of Ukraine are established.

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