

# IRREGULAR MIGRATION AND READMISSION: INTERCONNECTION, SETTLEMENT OPPORTUNITIES

## MIGRAÇÃO IRREGULAR E READMISSÃO: INTERCONEXÃO, OPORTUNIDADES DE ASSENTAMENTO

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**Abstract:** This article seeks to understand the essence of the institution of readmission, its relationship with irregular migration, and its impact on international migration processes. It has been established that readmission has a unique set of features: (1) the need to establish the state from which the irregular migrant arrived and document it; (2) the non-obligation to establish the identity of an irregular migrant (especially during the accelerated procedure for the readmission of persons); (3) the possibility of returning an irregular migrant not only to the state of citizenship but also to the state from which they came. It has been proven that readmission should not be considered a tool or mechanism to counter or fight against irregular migration. Readmission is an internal regulator of migration processes. In the presence of an appropriate agreement concluded by the state, the readmission of persons enables the return of foreigners or stateless persons to the state of their citizenship or previous stay in the most humane way without long-term detention in places of detention.

**Keywords:** Migration Processes. Readmission. Irregular Migration. Legal Regulation.

**Resumo:** Este artigo busca compreender a essência do instituto da readmissão, sua relação com a migração irregular e seu impacto nos processos migratórios internacionais. Foi estabelecido que a readmissão tem um conjunto único de características: (1) a necessidade de estabelecer o estado de origem do migrante irregular e documentá-lo; (2) a não obrigação de estabelecer a identidade de um migrante irregular (especialmente durante o procedimento acelerado de readmissão de pessoas); (3) a possibilidade de devolver um migrante irregular não só ao estado de cidadania, mas também

ao estado de origem. Ficou provado que a readmissão não deve ser considerada uma ferramenta ou mecanismo para combater ou combater a migração irregular. A readmissão é um regulador interno dos processos migratórios. Na presença de um acordo apropriado concluído pelo Estado, a readmissão de pessoas permite o retorno de estrangeiros ou apátridas ao estado de sua cidadania ou estada anterior da maneira mais humana, sem detenção de longo prazo em centros de detenção.

**Palavras-chave:** Processos Migratórios. Readmissão. Migração Irregular. Regulamentação Legal.

## 1. Introduction

The right to free movement and choice of residence is proclaimed by Article 13 of the Universal Declaration of Human Rights and Freedoms and enshrined in several international legal acts. To implement their international obligations in this area, states conclude agreements on the simplified crossing of the state border of their states, visa-free travel of their citizens, and on other issues that ensure the free international movement of persons on legal grounds. However, the threat of irregular migration forced states to limit this right.

Uncontrolled flows of irregular migrants bring social, political, and economic losses to countries, and the imperfection of migration legislation is used to smuggle people across the state border illegally (Kuryliuk Y., Khalymon S., 2020). Irregular migrants are looking for better living conditions or even salvation from death. Irregular migration remains an important problem organized by criminal syndicates. People who want to get to Western European countries “use illegal means to pay large sums of money, which ensure that organized criminal syndicates receive a high level of financial profits” (Roth M.P., 2010). The specified circumstances led to the establishment of legal mechanisms for countering this negative phenomenon, one of which is the institution of readmission of persons.

International agreements on readmission are considered one of the “oldest tools used by states to control the influx of migrants” (Bouteillet-Paquet D., 2003) which is “used by states to control migration flows” (Janmyr M., 2014). However, the actualization is due to the exponential growth of global migration processes, which require the joint efforts of the international community to regulate them.

## 2. Theoretical framework and literature review

At the current stage of world development, changes and processes that cover various spheres of life are taking place, and therefore require a deeper scientific understanding. Migration processes and the institution of readmission associated with them are no exception, which, depending on internal and external circumstances, must be formed per the requirements of the time, taking into account the interests of society and the state (Slyvka M., Kuryliuk Y. and Kushnir Y., 2021).

At the monographic level, a number of aspects of readmission are considered in the works of N. Coleman “European Readmission Policy: Third Country Interests and Refugee

Rights” (Coleman N., 2009), M. Giuffre “Seeking Protection in Europe: Refugees, Human Rights, and Bilateral Agreements Linked to Readmission” (Giuffre M., 2014), O. Bilokon “Administrative and legal regulation of readmission in Ukraine” (Bilokon O.V., 2015), S. Oliinyk “International legal regulation of readmission of persons” (Oliinyk S.M., 2020), and others.

This article aims to understand the essence of the institution of readmission, its relationship with irregular migration, and its impact on international migration processes. Politicians often assume that “closer cooperation on readmission will lead to higher return rates” (Stutz P., Trauner F., 2022). This article provides some critical considerations and discussion of this assumption, as well as views on the impact of readmission in preventing irregular migration.

### **3. Research design and methods**

The methodological basis of the research on the indicated topic is a set of used general scientific and special legal methods. These methods complement each other taking into account the research topic, which in turn contributes to objective analysis. Among the methods of research on the topic of this article, it is worth highlighting dialectical and semantic methods, the method of system analysis, and the method of analogy, comparative legal and historical methods.

With the help of a system analysis, it was possible to establish the main legal acts regulating the institution of readmission, standards and mechanisms for its implementation. Using the semantic method, the main terms and terms used in the research were determined. A comparativist method was used to analyze various international legal acts that regulate readmission to varying degrees. The historical method contributed to the study of the process of formation of readmission and the necessity of its existence. The use of the dialectical method made it possible to analyze and distinguish the specifics of readmission.

### **4. Results and Discussion**

Over the past decade, states, especially with EU member states, have been actively concluding agreements on simplified border crossing, visa-free travel for citizens, as well as on other issues that encourage the free movement of citizens. Against the background of such openness to immigration, a significant part of the spheres of society's life turned out to be insufficiently protected. Some countries turned into suppliers of migrants, others into countries

of destination, and some were prepared to play the role of transit countries. Therefore, agreements on the readmission of persons began to be concluded more actively.

The analysis of readmission agreements concluded so far has shown that the essence of such agreements is the mutual obligation of states to accept back their citizens, third-country nationals, and stateless persons who have illegally arrived on the territory of one of the contracting parties or remain there without legal grounds if these persons arrived from the territory of another contracting party.

At the same time, to become an object of readmission, a migrant must obtain the appropriate status, which gives them certain legal properties - a person who is illegally staying in the territory of the relevant state to which they arrived from abroad. This status is granted according to national law (Knysh S.V., 2011).

In fact, readmission agreements are based on the assumption of the need for an effective system of administrative and judicial detention and deportation as part of the national legislation on the treatment of foreigners (Chumak V., Kazhmierkevich P., 2010). In addition to the legislative regulation, there should also be a practical component, which will provide for the possibility of managing the procedure for the movement of irregular migrants, as well as establishing rules for reimbursement of costs, data protection, and compliance with other international rights and obligations.

Skeptics have always noted that after the readmission agreement comes into force, states will have to hold irregular migrants at the expense of the state budget and also try to send them to their homeland at the expense of taxpayers. They also scare people with possible outbreaks of exotic Asian-African diseases, ethnic crime, difficulties for their own citizens in the employment market, etc. However, the practical implementation of the agreements showed that the escalation of the situation was unjustified, as the specified intimidation did not come true, and the work carried out in this direction has shown its effectiveness. For example, according to the official statistics of the border and migration service of Ukraine for the period from 2013 to 2022, Ukrainian state authorities accepted a total of more than 9.8 thousand people from other countries into Ukraine, and 685 were transferred from Ukraine to other countries.

The dialectic of the formation and development of the institution of readmission demonstrates the breadth of views on its concept and essence, which requires a more detailed understanding of this issue. For example, K. Gillade believes that readmission is “a state action that allows the re-entry of persons (own citizens, citizens of a third country or stateless persons), whose entry, stay, or residence in another state was recognized as illegal” (Gillade K., 2012),

J. Sozanski understands readmission as “the sending of irregular migrants to the country from which they arrived on the territory of this state or, if they are refugees, to the first safe country in which they found themselves after fleeing their homeland” (Sozański J., 2009).

In addition, a significant number of both researchers and ordinary citizens often mistakenly equate such institutions of expulsion as “deportation”, “extradition”, “repatriation”, “expulsion”, and sometimes equate them with “readmission” (see for example Bloch & Schuster, 2005, Phuong, 2005, Kohls M., 2014). In this context, we should note the valid positions of E. Paoletti and S. Malby, who emphasize that “although the definitions of “deportation” and “removal” are theoretically different concepts, they are often used interchangeably” (Paoletti E., 2010). Thus, for example, the editors of the French human rights publication “Migreurop” equated readmission with deportation (Malby S., 2017). In the International Organization for Migration's Handbook of Terminology in the Field of Migration, the definitions of “deportation” and “expulsion” are generally recognized as equivalent.

The analysis of conducted research and positions on the definition of “readmission” allows us to come to the following conclusions.

First of all, we consider the disclosure of the concept of readmission of persons through the term “deportation” as well as the identification of readmission with “extradition”, “repatriation” or “expulsion” quite debatable. Although, as G. Clayton notes, all forced departures, including deportation, end with the expulsion of a person, these concepts still have separate and rather limited meanings (Clayton G., 2006).

Unlike the aforementioned institutions in the field of return of persons, readmission has its own unique features, one of which is that it involves the return of a person not only to the state of return but also to the state from which such a person arrived. Each of the readmission agreements known to us contains a provision that the return of a migrant with an uncertain status is possible only to the state of their citizenship or the state from whose territory they arrived.

Also, we consider the wrong position regarding the understanding of readmission exclusively as the consent (permission) of the state to return or accept a person, since such consent is only a component of this phenomenon. Readmission is not exhausted by the state's consent to accept a migrant to its territory. It is, in particular, preceded by the collection of evidence, the sending of a corresponding request, and the conduct of an inspection, and is continued by agreements on the place, date, and time of the transfer and, ultimately, the transfers themselves.

The majority of international lawyers, diplomats and practitioners consider readmission agreements to be one of the most effective tools or mechanisms for combating irregular migration (Sakovich T., 2004). For example, M. Janmyr notes that “readmission agreements are aimed both at reducing irregular presence (due to an increase in the number of returns) and at deterring future irregular migration” (Janmyr M., 2014).

In our opinion, this approach of scientists is somewhat wrong. Of course, few migrants are happy with the prospect of being immediately returned to their country of origin. However, we strongly believe that the presence of a concluded readmission agreement with the state even encourages migrants to illegally cross the state border of the states. This is due to the fact that if the migrants do not succeed and are detained, then they will be returned to the country from which they came without any special costs for them. This is despite the fact that readmission involves the most accelerated return procedure than expulsion.

Readmission is, rather, a convenient technical method for the host state to get rid of unwanted undocumented migrants. Even if they are returned to the country of initial entry, this will not solve the problem of illegal stay. If, as a result, the migrant returns to the state of citizenship, they may leave again by a different route. In this sense, the position of F. Trauner and I. Kruse, who noted that “agreements on the simplification of the visa regime with the EU and readmission are the main means to ensure a balance between internal security problems in the EU and the needs for external stability” is also correct in this sense (Trauner F., Kruse I., 2008)

It should be emphasized that “it is difficult or almost impossible to oppose the expulsion of foreigners who are in an illegal situation since it is about the exercise by states of their unconditional sovereign right”. At the same time, in the process of the emergence and development of the institution of readmission of persons, ambiguous contradictory trends are manifested, which, on the one hand, consist of the need to combat irregular migration, and on the other hand, in the protection against violations of the rights of readmitted persons.

In our opinion, the readmission of persons, first of all, should be considered as one of the internal regulators of migration processes, which makes it possible to send foreigners or stateless persons to the state of their citizenship or previous stay in the most humane way without long-term detention in places of detention, which is obliged take them back.

Practitioners who have been engaged in the identification and deportation of irregular migrants for many years, such as some of the authors of this article, are asked questions about what to do when the period for which a foreigner was detained expires, and it is still not possible

to establish their identity. Is it necessary to release them to the territory of the state in which they were detained for staying in violation of the established requirements?

Situations often arise when it is very difficult to establish the identity of an irregular migrant due to both objective and subjective reasons. Such can be, for example, a person reporting inaccurate data about themselves, which does not allow them to be identified; the absence of a consular institution in the country of the state of citizenship of this person, and sometimes the reluctance of such a state to assist in establishing the identity of its citizen due to a certain migration policy of the country. As S. Carrera notes, “requested states often do not want to document persons or do not respond (for a long time or at all) to requests for readmission” (Carrera S., 2016).

The readmission institute is designed to help solve many problems in this area. It contributes to the destruction of the usual practice of long-term identification of an irregular migrant, and also allows to remove, as far as possible, migrants or the state of their citizenship from this process, and minimize their influence on the result.

It is worth knowing that during readmission it is not necessary to establish the identity of an irregular migrant, but first of all (especially during the accelerated readmission procedure) it is necessary to establish from which country they arrived and document it. In the presence of an agreement on readmission concluded with such a state and the evidence stipulated by this agreement, a person can be transferred to the state in which they were previously, and this is not necessarily the state of their permanent residence. Provided that this irregular migrant is not a citizen of the state that received them, similar “problems” arise in this state as well.

At the same time, even the best intentions cannot serve as a basis for establishing total state control over the behavior of citizens and lead to violations of human rights. In the modern world and in Ukrainian society, finding a balance between the rights of individual and public interests is one of the most acute problems.

As a rule, international standards are developed in the field of human rights and mechanisms for monitoring their compliance are created. However, the main guarantor of their provision is the state, which is not a repressive apparatus of the dominance of the ruling elite, but primarily a mechanism for protecting the rights of an individual and the entire society.

Under such conditions, the international cooperation of states in the field of readmission, in addition to the importance associated with the regulation of intra-state migration processes, is also aimed at ensuring the rights and freedoms of persons subject to readmission. In the process of reception and transfer of irregular migrants, there is an interference in the area of their rights



and freedoms, and therefore in the institution of readmission, the norms of human rights direction occupy a special place.

In the modern world, when the problem of protecting human rights has gone far beyond the boundaries of each individual state, the world community has created a number of universal international legal standards, which are also basic human rights. S. Carrera also notes that “EU readmission agreements are an instrument of international relations based on the guarantee of fundamental human rights” (Carrera S., 2016). The direct meaning of this principle in the international legal regulation of migration processes is undoubted because there is nothing more valuable than a person, each individual person, their life, rights, and freedoms, including and in the field of readmission of persons.

The principle of respect for human rights and fundamental freedoms is one of the main and most frequently mentioned principles in multilateral and bilateral international readmission agreements, which not only requires states to refrain from human rights violations but also imposes positive obligations to ensure such rights and their effective protection.

When applying the readmission of individuals, the state must make sure that there are no discretionary and imperative grounds for the impossibility of expelling them, in particular, regarding non refoulement of its own citizens or humanitarian or political considerations. In particular, the requesting state, when making a decision on the readmission of a person, is obliged to prevent the deportation of a person who may be subject to torture or other cruel, inhuman or degrading treatment or punishment in the requested state. In addition, the state should not resort to forcible readmission, including of persons applying for the status of a refugee or a person in need of additional or temporary protection, as well as not to violate other rights of the person subject to readmission guaranteed by the national law of the requesting state and international legal norms in the field of human rights protection.

Thus, the readmission of persons should not be regarded as purely a regulator of migration processes within the country, but also as an institution that allows, with respect to human rights and freedoms, to send foreigners or stateless persons to the state of their citizenship or previous residence in the most humane way without long-term detention in places of deprivation of liberty.

A well-known Slovenian expert on migration and asylum, N. Kogovšek Šalomon, also emphasizes the great human rights benefit of readmission agreements, as “their absence leads to long-term detention of migrants without the prospect of their return. If there is no such



prospect, the detention is not legally justified, makes no sense and is extremely illegal.” (Kogovšek Šalomon N., 2019).

## 5. Conclusion

Summarizing the above, we note that readmission is the procedure of return or transit transportation by one state and acceptance or granting permission for transit by another state on the grounds and in the order established by international agreements on the readmission of persons concluded between these states, persons (citizens of the receiving state, foreigners or persons without citizenship) who, according to the legislation of the transferring state, arrived in violation of the established rules, are or live on its territory.

The institution of readmission has a unique set of features: (1) the need to establish the state from which the irregular migrant arrived and document it; (2) non-obligation to establish the identity of an irregular migrant (especially during the accelerated procedure for the readmission of persons); (3) the possibility of returning an irregular migrant not only to the state of citizenship but also to the state from which they came.

Readmission should not be seen as a tool or mechanism to counter or combat irregular migration. Readmission is an internal regulator of migration processes. In the presence of an appropriate agreement concluded by the state, the readmission of persons enables the return of foreigners or stateless persons to the state of their citizenship or previous stay in the most humane way without long-term detention in places of deprivation of liberty.

Thus, the analysis of the outlined proposals and abstract approaches of state governance makes it possible to conclude that each of them has both positive and negative sides. Nevertheless, the decisive criteria that should be taken into account when conducting the general functioning of state social work are as follows: dependence of the content of social work on the state's social policy; conformity and structural absoluteness of the system of social work bodies; professional training of civil servants; the ability of the state governance system to adequately respond to changes in the transition period. In our opinion, the most effective proposals for state management of the system of social work are the concept of the fatal (mortal) factor, the concept of civil society based on social cooperation, the project approach, the proposal of social networks and the transitive proposal. The strategic and political claims of the state functioning of the system of social work, the main directions of its development can be outlined in the introductory document to the concept of social work and the effective model of the functioning

of social work. Further prospects for investigations in this direction relate to developing methodological substantiation of the concept of improving the state mechanisms of the functioning of social work.

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