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# ***Return, Readmission and Reintegration: The Legal Framework in Ukraine***

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Our analysis of Ukrainian national legislation demonstrates that it envisages procedures of readmission, compulsory return and expulsion, as well as voluntary return of foreigners and stateless persons.

The Law 3773-VI of 22.09.2011 “On legal status of foreigners and stateless persons”<sup>1</sup> provides definition only for the term ‘readmission’ (par. 22 of the preamble). According to the Law, readmission represents transfer from the Ukrainian territory or admission to the Ukrainian territory on the grounds and according to procedure set forth in the international treaties of Ukraine.

The Law also determines procedures of voluntary and compulsory return of foreigners and stateless persons from the Ukrainian territory, as well as expulsion procedure, but offers no definitions for the terms ‘voluntary return’, ‘compulsory return’ and ‘expulsion’.

Definitions of the terms ‘compulsory return’ and ‘compulsory expulsion’ are introduced in subordinate legislation, such, for instance, General decree of the Ukrainian Ministry of Interior, Administration of the State Border Service and Security Service of 23.04.2012 No. 353/271/150 “On approval of Instruction on compulsory expulsion of foreigners and stateless persons”<sup>2</sup>.

According to this Decree, ‘compulsory return’ and ‘compulsory expulsion’ represent the system of administrative and legal measures aimed at forcing a foreigner or a stateless person to leave the territory of the state against his or her will.

We have established that Ukrainian legislation in principle does not give a comprehensive definition for the term ‘voluntary return’, and from our point of view this is an oversight, as far as legislation determines procedure of application, but does not give a definition for this legal term.

## **Voluntary return**

Foreigners and stateless persons who do not have legal grounds for their stay in Ukraine, as well as persons who fail to fulfill their obligation and timely depart from the Ukrainian territory before the period of their legal stay expires and do so due to the lack of financial means or passports can voluntarily return to the country of origin or the third country, relying on assistance of international organizations among other things.

Ukrainian legislation clearly defines categories of foreigners and stateless persons who are entitled to procedure of voluntary return (article 25 of the Law No. 3773-VI of 22.09.2011 “On legal status of foreigners and stateless persons”):

1. Foreigners and stateless persons who were notified of refusal to grant refugee status or status of a person in need of additional protection;
2. Foreigners and stateless persons who were stripped of refugee status or status of a person in need of additional protection and did not use their right to appeal;
3. Persons who were notified of dismissal of their appeal against refusal to grant them refugee status or status of a person in need of additional protection and did not use their right to contest this decision in court;
4. Persons who received the court ruling that confirms refusal to grant them refugee status or status of a person in need of additional protection in Ukraine.

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<sup>1</sup> Ukrainian Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”, available at <http://zakon2.rada.gov.ua/laws/show/3773-17>

<sup>2</sup> General Decree of the Ukrainian Ministry of Interior, Administration of the Ukrainian State Border Service and Ukrainian Security Service of 23.04.2012 No. 353/271/150, available at <http://zakon1.rada.gov.ua/laws/show/z1564-11>

According to Ukrainian legislation, procedure of voluntary return is carried out following the decision of Ukrainian migration authorities (part 3 of the article 25 of the Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”).

In accordance with paragraph 5 of the Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return, a foreigner, a stateless person or their legal representative personally file a written petition for voluntary return to the Ukrainian migration authorities.

Procedure of a foreigner’s or stateless person’s voluntary return is carried out following the decision of the Ukrainian State Migration Service and takes no longer than 60 days from the day when this person files petition to the State Migration Service; expenses are covered by the person returned.

According to paragraph 18 of the Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return, if decision is made on voluntary return of a foreigner or stateless person from the territory of Ukraine, Ukrainian State Migration Service bodies immediately issue to this person a standard certificate of “a person to be returned”. This certificate is the basis for temporary stay of a foreigner or stateless person in the territory of Ukraine for the term required for completion of return procedure. After return procedure completion this certificate is given back to the migration authorities or is deemed invalid.

For the period of procedure in the Ukrainian territory persons who are subject to voluntary return are not detained, but are obliged to notify once a week the territorial office of the Ukrainian State Migration Service about their location.

Ukrainian legislation requires the State Migration Service to cooperate with international and non-governmental organizations, statutes of which envisage assistance in voluntary return of foreigners and stateless persons. This cooperation is carried out by way of concluding bilateral agreements between the Ukrainian Migration Service and international organizations.

Foreigners and stateless persons can be denied the right to voluntary return procedure in case if:

1. Decision was made to ban departure<sup>3</sup> of this foreign citizen or stateless person from the territory of Ukraine;
2. Person is convicted for a crime – until the end of the sentence or remission of punishment;
3. Departure of the person from Ukraine does not correspond to the interests of Ukrainian national security – until the end of such circumstances;
4. Persons whose departure following the court decision is postponed temporarily – until fulfillment of property obligations to physical and legal persons in Ukraine, if it is not otherwise provided for in the international treaties of Ukraine<sup>4</sup>.

Decision to deny voluntary return can be contested in court.

In case of decision on voluntary return of an underage foreigner or stateless person (the person who has not reached the age of 18), it must be established that in case of voluntary return this person will go back to a family member or guardian.

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<sup>3</sup> According to part 2 of the article 22 of the Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”, departure of foreigners and stateless persons from Ukraine can be banned if: 1. Person is a suspect accused of committing a crime in Ukraine, if with regards to such persons a decision is made to ban departure from Ukraine; 2. Person is convicted of a crime – until completion of the sentence or relief from punishment; 3. Departure of this foreigner from Ukrainian territory does not correspond to interests of Ukrainian national security – until the end of circumstances that prevent departure.

<sup>4</sup> Regulation of the Ukrainian Cabinet of Ministers No. 179 of 07.03.2012 on Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return”  
<http://document.ua/pro-zatverdzhennja-porjadku-provadhennja-za-zajavami-inozem-doc91563.html>

## Compulsory return

According to article 26 of the Law “On legal status of foreigners and stateless persons”, foreigners and stateless persons can be **forcefully returned** from Ukraine to the country of origin or the third country, if:

1. Actions of the person violate Ukrainian legislation on legal status of foreigners and stateless persons or do not correspond to the interests of Ukrainian national security or public order;
2. Actions of the person present a threat to health, legal rights and interests of Ukrainian citizens;
3. Foreigner or stateless person was apprehended in a controlled border area during or after illegal crossing of the Ukrainian state border;

Compulsory return procedure is not applied to minors (persons who have not reached the age of 18), as well as to persons who are covered by the legislation on refugees and persons in need of additional protection.

Decision on compulsory return of foreigners and stateless persons is made by the State Migration Service, Security Service, and State Border Service. Ukrainian Security Service and State Border Service within 24 hours notify the prosecutor about the grounds for the decision made.

Decision on compulsory return can lead to a three-year ban on entry of Ukraine. Our analysis of Ukrainian national legislation determined that Ukrainian legislation does not establish conditions, under which ban on subsequent entry to Ukraine must be set for foreigners and stateless persons previously forcefully expelled from Ukraine. Thus one can make a conclusion that decision about establishing such a ban is made by relevant Ukrainian authorities within their scope of competence on a case by case basis, based on how grave the this person’s offences had been.

Decision on compulsory return is announced to this foreigner or stateless person, who has to sign the document, in the presence of an interpreter and a legal representative (based on detainee’s request) and can be contested by foreigner or stateless person in court. The start of contestation of such decision in court does not put on hold the decision on compulsory return of the person, unless otherwise established by the separate court ruling.

Person with regards to whom decision was made on compulsory return/expulsion has a right to immediately notify a legal expert who has a right to offer legal assistance, an official diplomatic representative of the corresponding country, and a representative of the Office of the United Nations High Commissioner for Refugees. In case of a request by UNHCR or official diplomatic representative of the relevant country, decision on compulsory return or expulsion can be put on hold, but for no longer than 10 days after its announcement, or can be cancelled in accordance with legal provisions on refugees and persons in need of additional protection.

According to Ukrainian legislation, decision on compulsory return of a person from Ukraine is to indicate the period within which the person in question is to leave the country, but this period is not to exceed 30 days.

Persons with regards to whom decision was made on compulsory return are not detained and are obliged to leave the territory of Ukraine on their own, but for the sake of proper control can be escorted to border checkpoints by representatives of Ukrainian authorities.

## Compulsory expulsion

In accordance of article 30 of the Law “On legal status of foreigners and stateless persons”, **compulsory expulsion** from Ukraine is applied to foreigners and stateless persons who failed to execute the decision on compulsory return, as well as to foreigners and stateless persons, if there are

reasonable doubts that they will fulfill the decision on compulsory return following the ruling of Ukrainian administrative court.

As far as decision on compulsory return is made exclusively by administrative court of Ukraine following the request of Ukrainian authorities, the court evaluates argumentation put forward by the requesting and defending parties and existing risks. Decision on setting or not setting the ban on entry of a foreigner or stateless person subject to compulsory expulsion from Ukraine is also made by the court. In case of court's decision on setting such a ban, its period is also determined by the court. The decision can be contested in higher court.

In order to analyze judicial practice in Ukraine in the field of decision-making on compulsory expulsion, we have studied the registry of court rulings in the field of expulsion of foreigners and stateless persons from Ukraine in 2012. We established that in absolute majority of cases the decision on compulsory expulsion from Ukraine was made with regards to foreigners and stateless persons who had failed to execute an earlier decision on compulsory return.

As a rule, the court also takes into account reasonable doubts that foreigners or stateless persons will execute the decision on compulsory return (if, for instance, Ukrainian authorities discovered deliberate violation of Ukrainian visa and immigration legislation requirements, including deliberate submission of false information about the reason for stay in Ukraine, earlier attempts to illegally extend the stay in Ukraine etc.).

Procedure of compulsory expulsion envisages mandatory detainment of the foreigner or stateless person and his or her transfer to facilities for temporary placement of foreigners and stateless persons who are subject to compulsory expulsion from Ukraine (hereinafter referred to as placement facilities). Persons stay at placement facilities for the period required to execute the ruling of administrative court on their expulsion, but no longer than 12 months.

In case the person with regards to whom decision is made on compulsory expulsion is a father/mother, guardian or accompanying person of a minor/minors who were detained together with them, their further expulsion is carried out together with minor/minors they had accompanied.

Foreigners and stateless persons who are placed in temporary placement facilities are entitled to: information about their rights and obligations during their stay at temporary placement facilities; meetings with family, human rights defenders, lawyers, representatives of diplomatic missions and consular offices of the country of origin, as well as representatives of international and non-governmental organizations; medical, sanitary and epidemiological support; religious rituals, use of religious literature, meetings with clergy; telephone communication, including use of personal communication devices; free access to TV and radio programs etc.

According to Ukrainian legislation, expulsion of foreigners and stateless persons is carried out at their own expense, and if the person lacks necessary means, then at the expense of Ukrainian state budget. If it was established that the person who is subject to expulsion had arrived in Ukraine in violation of Ukrainian legislation and relying on assistance of Ukrainian physical or legal persons, then financial costs of violator's expulsion are collected from those private citizens and organizations.

## **Readmission**

As of January 2013, Ukraine has 16 valid international treaties **on readmission**: with the European Union, Georgia, Uzbekistan, Turkmenistan, Vietnam, Poland, Russia, Hungary, Slovakia, Moldova, Lithuania, Latvia, Bulgaria, Turkey, Denmark, and Norway. Agreements on readmission between Ukraine and the EU member states (Poland, Lithuania, Latvia etc.) stay in force, until Ukraine and EU sign an agreement on readmission.

According to article 17 of the Agreement between Ukraine and EU on readmission, provisions of this Agreement prevail over provisions of bilateral treaties. Bilateral agreement on readmission with Denmark is an exception, as far as Denmark is not party to Agreement between Ukraine and the EU on readmission.

**According to Ukrainian legislation, transfer or admission of foreigners and stateless persons by Ukraine** are carried out based on provisions of international treaties on readmission.

Analysis of the above-mentioned treaties allowed us to establish that in general these are standard treaties that aim to provide for unobstructed expulsion and admission of persons who stay illegally in the territory of the expelling state and have the citizenship of the admitting state or have arrived from the latter's territory.

Integration of agreements on readmission into Ukrainian national legislation is done through the Law "On legal status of foreigners and stateless persons".

Admission by Ukraine of a foreigner or stateless person under the treaty on readmission does not change the grounds for his or her stay in Ukraine that had existed before this admission.

Those foreigners and stateless persons admitted under the international treaty on readmission who do not have legal grounds to stay in Ukraine are subject to **compulsory expulsion** from the Ukrainian territory, if there is no treaty on readmission between Ukraine and the country of citizenship or the country of previous residence. If there is a treaty on readmission between Ukraine and the country of citizenship or previous residence, the person is returned to the country of citizenship or the country of previous residence under this treaty.

Persons who applied for any forms of international protection in the territory of Ukraine cannot be returned or expelled until final decision is made on refusal to grant them the form of protection they are seeking.

Furthermore, according to Ukrainian legislation, foreigners and stateless persons cannot be forcefully expelled or returned to the country: where their lives or freedom are in danger due to their race, faith, nationality, citizenship (allegiance), membership in a certain social group or political beliefs; where they face a death sentence or death penalty, torture, cruel or degrading punishment or treatment; where their life, health, safety, or freedom are in danger due to widespread violence in the course of an international or domestic armed conflict or systematic violation of human rights, as well as natural or man-made disaster, lack of medical treatment or care to sustain life (article 32 of the Law "On legal status of foreigners and stateless persons"). Ukrainian legislation also forbids collective compulsory expulsion of foreigners or stateless persons.

In accordance with Ukrainian national legislation, if foreigners and stateless persons were not forcefully expelled from Ukraine before completion of the maximum period of stay at temporary placement facility for persons who are illegally staying in Ukrainian territory and if this happened due to the absence of a travel document, lack of transport connection with the country of origin or for other reasons that are beyond these persons' control, then they are deemed persons temporarily staying in the territory of Ukraine on legal grounds, while circumstances due to which their compulsory return is impossible persist (paragraph 17 of article 4 of the Law "On legal status of foreigners and stateless persons"). Such foreigners or stateless persons are issued a temporary residence permit in Ukraine and enjoy the same rights and fulfill all obligations envisaged by Ukrainian legislation for foreigners and stateless persons who temporarily reside in Ukrainian territory on legal grounds.

As a result of our study of the Ukrainian legislation we have established that Ukrainian citizens who were returned to Ukraine from other states enjoy all rights and freedoms guaranteed by the Constitution and Ukrainian laws, regardless of the status they used to have in the territory of other states (legal/illegal stay, refugee status etc.), provided that they are not accused of a criminal or other unlawful act under Ukrainian legislation. Ukrainian citizen's application requesting any form of

international protection in another country is by no means a foundation for any type of sanctions with regards to such a person in Ukraine.

In the context of Ukrainian legal reform in the field of migration, in June 2011 the Ukrainian Government adopted an Action Plan to assist in integration of migrants, as well as reintegration of Ukrainian migrants returning to Ukraine in 2011 – 2015<sup>5</sup>.

The plan envisages development of a complex of measures aimed at informing Ukrainian migrants who have returned to their home country about employment opportunities in Ukraine, at offering them social and psychological assistance etc.

In order to implement this governmental regulation, regional and district administrations developed sets of measures aimed at providing assistance to Ukrainian migrants after their return to the home country, primarily social aid.

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<sup>5</sup> Regulation of the Ukrainian Cabinet of Ministers No. 653-r of 15 June 2011 “On approval of the Action Plan to integrate migrants into Ukrainian society in 2011-2015” <http://zakon0.rada.gov.ua/laws/show/653-2011-%D1%80>