

CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

Co-financed by the European Union

The Legal Framework for Circular Migration in Ukraine

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CARIM-East Explanatory Note 12/76

Legal Module

September 2012

1. International Cooperation

1.1 Ukraine and EU Member States

The positive impact on circular mobility between Ukraine and its closest neighbors, Member States of the European Union such as Poland, Hungary, Romania and Slovak Republic might be explained by the facilitation of issuance of visas for Ukrainian citizens. Apart from the Agreement between Ukraine and the European Community on the Facilitation of the Issuances of Visas (entered into force in 2008), bilateral agreements on local border traffic have been concluded between Ukraine and abovementioned countries. According to the provisions of these agreements Ukrainian citizens – residents of the border area – are able to travel more freely across the border as they are required to hold only valid travel documents confirming their identity and a special multiple exit and re-entry permit: issued initially for two years and under certain conditions for five years thereafter.

The simplified procedure for issuing short-stay visas allows citizens of Ukraine to travel more frequently to the EU Member States¹ with a view to looking for legal work or to passing entry exams for schools and universities. After having found a job or after having received the conformation for enrollment in a school or at a university, they come back to Ukraine with a view to applying for long-stay visas or resident permits.

According to the abovementioned agreements citizens of Ukraine – close relatives (parents, children) of citizens of Ukraine residing legally within the territories of EU Member States have a right to apply for the simplified visa procedure. The only document they need to confirm the purpose of the trip is the written invitation of the inviting party. Such simplified procedures allow migrants to keep close relations with their families during their stay abroad.

Ukraine has concluded bilateral agreements on social security with Bulgaria, Spain, Latvia, Lithuania, Romania, Slovakia, Hungary and the Czech Republic. According to these agreements migrants as well as their families enjoy all social rights and freedoms within the territory of the country they stay in. Ukraine also concluded intergovernmental agreements with Latvia, Lithuania, Poland and Slovakia on the reciprocal employment of citizens: this regulates the status of migrants, workers within host countries, as well as their legal relations with Ukraine while living and working abroad. Bilateral agreements on the social protection of migrants is very important not only with a view to protecting their social rights while staying and working abroad. There is also the need to regulate their legal relations with the country of origin. Through protecting social security rights of migrants working or residing these agreements potentially facilitate legal circular migration.

1.2 Ukraine and post-Soviet republics

Between Ukraine and almost all post-soviet republics – the exception is Turkmenistan – a mutual visa-free regime has been established. Therefore, circular mobility between these countries and Ukraine is quite active.

Ukraine is also a party to the Convention on the Protection of the Rights of Migrant Workers and Members of their Families from CIS countries.² According to the convention all main rights and freedoms of migrants must be protected by the state: the right for work, the right to free emergency

¹ In 2011 among the EU Member States and Ukraine, the most active mobility process was noticed between Ukraine and Germany (593,470 mutual visits), Italy (217,243 mutual visits), Great Britain (155,563 mutual visits), France (131,152 mutual visits), Czech Republic (202,039 mutual visits).

² Convention on protection of rights of migrant workers and members of their families of states – members of CIS <http://document.ua/pro-ratifikaciyu-konvenciyi-pro-pravovii-status-trudjashih-m-doc83110.html>

medical help, the right to social protection (excluding pensions), the right to education, the right to register a child born within the territory of a host country as its citizen, etc. The Convention protects the private property status of migrants and regulates the procedure for sending and receiving monetary goods through migrants.

Within the framework of the CIS, Ukraine is party to the Agreement on Safeguarding the Human rights of Citizens of CIS Member Countries in the field of pension provisions; the Agreement on Cooperation in Healthcare; the Agreement on the Procedure for Investigating Industrial Accidents, which happen to workers while abroad.

Ukraine also concluded bilateral intergovernmental agreements on Social Security and Pension Guarantees with Azerbaijan, Belarus, Georgia, and Moldova.

The agreements are valid and are observed.

1.3 Ukraine and third countries

Among third countries and Ukraine the most active migration was noticed with Turkey (681,955 mutual visits), the United States (148,643 mutual visits), Israel (251,102 mutual visits), Canada (33,946 mutual visits) and China (39,506 mutual visits). Ukraine does not have bilateral agreements on the protection of migrant rights with these countries.

2. National Legal Framework

2.1 Freedom of movement for Ukrainian citizens

According to the Law on the “Rules of exit of the territory of Ukraine and entry to the territory of Ukraine by the citizens of Ukraine”³, citizens of Ukraine have the right to exit and enter Ukraine. The right of the citizens of Ukraine to exit Ukraine may be restricted in the following cases: the citizen of Ukraine is under criminal inquiry; is condemned – until the period of punishment is over or the citizen of Ukraine is released from punishment, etc. The right of the citizen of Ukraine to enter Ukraine may never be restricted under any conditions.

2.2 Dual Citizenship

Under the law of Ukraine “On the Citizenship of Ukraine”⁴ dual citizenship for Ukrainian citizens is not allowed. If a citizen of a foreign country would like to acquire Ukrainian citizenship he/she is obliged to renounce his/her previous citizenship. If the citizen of Ukraine simultaneously becomes a citizen of a second country (such cases often happen if, according to the law of the second country, the foreigner can keep their previous citizenship) Ukraine treats this person only as a citizen of Ukraine.

2.3 Foreign Ukrainians

Under the Law “On the Legal Status of Foreign Ukrainians”⁵ ethnic Ukrainians from other countries or ethnic Ukrainian stateless persons are classed as foreign Ukrainians. Foreign Ukrainians have legal

³ the Law of Ukraine dated from 21 January 1994 № 3857- XII on the “Rules of exit of the territory of Ukraine and entry to the territory of Ukraine by the citizens of Ukraine” is available at <http://zakon2.rada.gov.ua/laws/show/3857-12>

⁴ the law of Ukraine “On the Citizenship of Ukraine” is available at <http://zakon1.rada.gov.ua/laws/show/2235-14>

⁵ Law of Ukraine from 4 March 2004, № 1582-VI “On legal Status OF Foreign Ukrainians” is available at <http://zakon2.rada.gov.ua/laws/show/1582-15>

facilitations in terms of entry and stay, work and study in Ukraine: in case of necessity, multiple-entry visas for foreign Ukrainians may be issued for up to five years; issuance of visas for foreign Ukrainians are free of charge; there is no need for foreign Ukrainian to present any invitation or other document of proof when applying for a visa at Ukrainian consulates; Foreign Ukrainians have the right to work in Ukraine without work permit; and they can immigrate to Ukraine regardless of immigration limits (“quota”) set up by the Ukrainian government. Foreign Ukrainians also have “quotas” in Ukrainian high schools and Universities according to which they may study on the same basis as Ukrainian citizens.

2.4 Visa policy

Under the Law of Ukraine “On the legal status of foreigners and stateless persons” № 3773-VI, adopted 22 September 2011⁶, foreigners or stateless persons may enter Ukraine with a passport and a visa; this will suffice if nothing else is prescribed by the national legislation of Ukraine or its international agreements. According to the Decree of the Government of Ukraine dated 1 June 2011, № 567 on new “Rules on issuing of visas to enter Ukraine or to transit through its territory”⁷ there are three types of Ukrainian visas:

- *transit visa* (type “B”) – allows visitors to transit through the territory of Ukraine, with a maximum stay of 5 days after entry;
- *short-stay visa* (type “C”) allows visitors to stay within the territory of Ukraine for not more than 90 days;
- *long-stay visa* (type “D”) is usually issued for 45 days and during this period foreigners or stateless persons must request the State Migration Service of Ukraine to issue him or her with a temporary residence permit or a permanent residence permit.

Under the “Rules on the extension of the term of stay and extension or shortening of the term of temporary stay of the foreign citizens and stateless persons in Ukraine”,⁸ the State Border Guard Service of Ukraine registers the temporary stay of the foreigners, coming to Ukraine from visa-free countries, at the border. In this way there is no necessity for them to fulfill any other procedures with the State Migration Service of Ukraine. But they must leave the territory of Ukraine before the permitted visa-free period of stay is over.

The maximum period of stay in Ukraine for citizens coming from visa-free countries is 90 days from 180 days (90 days in Ukraine, 90 days out its territory). In case of necessity (*force majeure*) the period of stay may be prolonged by the State Migration Service of Ukraine for the term necessary for the resolution of the problem. But once that term ends foreigners are obliged to leave the territory of Ukraine. The re-entry to Ukrainian territory is not normally allowed during the next 90 days.

The abolition of visa regimes for foreigners, desiring to visit Ukraine for less than 90 days along with the implementing of new visa or immigration legislation of Ukraine as well as facilitating/canceling visa regimes for Ukrainians by second countries has had a positive impact on the circular migration process. So according to the official statistics of the State Border Guard Service of Ukraine, the number of foreigners that entered Ukraine in 2011 for business, official contacts, tourism, studying, work, cultural or religious exchange grew. It climbed, indeed, from 6,430,940 in 2000 to

⁶ The Law of Ukraine “On the legal status of foreigners and persons without citizenship”, adopted 22 September, 2011⁶, № 3773-VI is available at <http://zakon3.rada.gov.ua/laws/show/3773-17>

⁷ Decree of the Government of Ukraine dated 1 June 2011, № 567 on new “Rules on issuing of visas to enter Ukraine or to transit through its territory”⁷ is available at <http://zakon1.rada.gov.ua/laws/show/567-2011-%D0%BF>

⁸ Decree of the Government of Ukraine № 150, adopted 15 February, 2012, is available at <http://zakon2.rada.gov.ua/laws/show/150-2012-%D0%BF>

21,415,296 in 2011.⁹ In 2011 most of the visits were made for short-stay purposes (private visits, tourism and business) so migration had a temporal character. At the same time 140,108 foreigners came to Ukraine hoping for a long stay (work, study etc). Most of them came from the Russian Federation, Moldova, Poland, Germany and France. An analysis of the statistics on reciprocal migration between Ukraine and other countries shows that the most active circular migration exists between Ukraine and the countries it shares borders with: the Russian Federation, 14,493,942 mutual visits; Moldova, 6,293,164 mutual visits; Belarus, 4,225,116 mutual visits; Poland, 6,822,989 mutual visits; Hungary, 2,589,008 mutual visits; Romania, 1,291,975 mutual visits; and the Slovak Republic, 989,922 mutual visits¹⁰.

2.6 Stability and flexibility of residence

Foreigners coming to Ukraine with a view to stay for more than 90 days must apply for Ukrainian long-stay visa “D” at Ukrainian consulates. They must then request the State Migration Service of Ukraine, within forty five days of entrance, to issue him/her a temporary/permanent residence permit. Long-term Ukrainian visas “D” may also be issued to the family members of foreigners and stateless persons temporary residing in Ukraine.

According to the Law on “On the legal status of foreigners and stateless persons”, a temporary residence permit is issued for foreigners and stateless persons who entered Ukraine to work, study, volunteer and for international technical support etc. In accordance with the Law ‘On Immigration’ the permanent residence permit is issued for a foreigners or stateless persons who received permission to immigrate to Ukraine.¹¹

Under Article 24 of the Law on the legal status of foreigners, the term of validity of temporary residence permit may be shortened by the State Migration Service of Ukraine if the foreigner no longer has the legal basis to stay in Ukraine. Hence, as soon as a permit holder ceases the activity for which he or she was granted the temporary residence status, he or she faces the risk of losing their residence status.

There is no differentiation between the rights regimes enjoyed by temporary and permanent residents: in accordance with the Law on the legal status of foreigners, foreigners and stateless persons who are under the jurisdiction of Ukraine have the right to recognize their legal personality, human rights and freedoms without taking into consideration their legal status within Ukraine (permanent/temporary resident, refugee etc.).

2.6 Provisions facilitating or restricting the regularity of back-and-forth movement

There is no necessity for migrants who temporarily or permanently reside in Ukraine to prolong their visa as the only document they need for free travel in and out Ukraine is a temporary or a permanent residence permit.

Furthermore, in case a foreigner needs to prolong his/her stay in Ukraine (for instance his/her working contract has been prolonged) he/she may do it without leaving Ukraine with a view to applying for a new long-stay visa “D” at Ukrainian consulate abroad. In particular, such foreigners have to provide the evidences of necessity for prolonging his/her stay in Ukraine before the date of expiry of their previous temporary residence permit to the State Migration Service of Ukraine.

⁹ Official statistics of the State Border Guard Service of Ukraine on the number of visitors to Ukraine is available at <http://www.ukrstat.gov.ua/>

¹⁰ Ibid.

¹¹ The Law of Ukraine “On immigration”.

When a foreign citizen or stateless person who previously held a Ukrainian visa/residence permit applies for Ukrainian visa/residence permit normally his/her application is assessed without taking into consideration any previous visa/permit. The exception is made for migrants from “migration risk” countries: in this case if an applicant previously held a Ukrainian visa/residence permit it is always assessed as a “plus” during the assessment of his/her next application (“*bona fide* migrants”).

Usually there are no restrictions on the re-entry of former resident permit holders. The re-entry of such persons may be restricted only in the case of violation on a previous stay. The restrictions on the exit of foreigners to the territory of Ukraine are the following: a person is a suspect or is accused of a criminal offence; he or she is condemned for a criminal offence; or if his/her exit is against the interests of the national security of Ukraine.

Conclusions

During 2011 the visa-immigration legislation of Ukraine was radically changed. New decrees and laws of Ukraine were adopted, visa procedures as well as procedure of entry-exit were simplified. For instance, instead of twenty-two types of Ukrainian visas there are now three types (short and long stay, transit visa). In case a foreigner needs to prolong his/her stay in Ukraine (for instance his/her working contract has been prolonged) he/she may do it without leaving Ukraine with a view to applying for a new long-stay visa “D” at Ukrainian consulate abroad. Members of migrant families of migrants that temporarily or permanently reside in Ukraine received a right to apply for a long stay. This new visa legislation should enhance the circular migration of foreign citizens in Ukraine.

Ukrainian legislation protects migrant rights – citizens of Ukraine working and residing abroad through national legislation and provisions of bilateral agreements. At the same time there is the need to expand a network of bilateral agreements in the field of social security and the protection of rights of Ukrainian citizens migrants residing and working abroad.