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Socio-economic rights of migrants, refugees and persons who were granted supplementary or temporary protection in Ukraine

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Under article 26 of the Ukrainian Constitution¹, foreigners and stateless persons who are staying in Ukraine on legal grounds enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, with the exception of certain cases envisaged by Ukrainian legislation. In the meantime, the scope of socio-economic rights of foreigners in the territory of Ukraine is determined by the legal status that they obtain according to the procedure established by the national legislation.

In order to analyze the socio-economic rights of migrants and persons who were granted refugee status or supplementary protection in Ukraine, let us divide them into the following categories based on the Ukrainian law “On legal status of foreigners and stateless persons”² and the law “On refugees and persons in need of supplementary or temporary protection”: *persons temporarily staying in Ukraine; persons temporarily residing in Ukraine; persons permanently residing in Ukraine; refugees and persons granted supplementary or temporary protection in Ukraine.*

1. Persons temporarily staying in Ukraine

The smallest scope of socio-economic rights is granted by Ukrainian legislation to *foreign nationals temporarily present in the territory of Ukraine* (for the period envisaged by their visas, but no longer than 90 days for foreigners with visa-based entry and 90 days within 180 days for citizens of states with visa-free entry to Ukraine).

This category of foreigners does not have a right to job, education and social assistance, neither does it have a right to invite family members and relatives to Ukraine during their temporary stay.

At the same time they have a right to medical care in accordance with the procedure stipulated by the Regulation of the Ukrainian Cabinet of Ministers No. 667 of 22 June 2011 “On procedure of medical assistance to foreigners and stateless persons temporarily present in Ukraine”³. According to this procedure, foreign nationals and stateless persons are provided with medical assistance on a fee-paying basis only.

Under the rules of visa issuance for entry to Ukraine and transit through its territory adopted by the Regulation of the Ukrainian Cabinet of Ministers No. 567⁴ of 1 June 2011, foreigners and stateless persons applying for visas to enter Ukraine must have a medical insurance policy.

When entering Ukraine for the purpose of temporary stay foreigners and stateless persons are also obliged to prove that they have sufficient financial coverage for the trip and a place to stay in Ukraine during the visit. These provisions were introduced by Ukraine when amending its visa and immigration legislation, in order to bring it into compliance with the EU Visa Code provisions.

When a foreigner does not have a medical insurance policy, medical care is provided at his or her own expense; if a foreigner cannot pay, diplomatic missions of his/her country of citizenship get involved.

Ukrainian legislation does not envisage any other restrictions regarding medical care to foreigners temporarily staying in Ukraine, medical assistance is provided by all medical institutions with exceptions and in full scope.

¹ Constitution of Ukraine <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

² Ukrainian law “On legal status of foreigners and stateless persons” <http://zakon4.rada.gov.ua/laws/show/3773-17>

³ Regulation of the Ukrainian Cabinet of Ministers of 22 June 2011 No. 667 “On procedure of medical assistance to foreigners and stateless persons temporarily present in Ukraine”, available at <http://zakon4.rada.gov.ua/laws/show/667-2011-%D0%BF>

⁴ Rules of visa issuance for entry to Ukraine and transit through its territory adopted by the Regulation of the Ukrainian Cabinet of Ministers of 1 June 2011 No. 567, available at <http://zakon4.rada.gov.ua/laws/show/567-2011-%D0%BF>

2. Persons temporarily residing in Ukraine

Under Ukrainian law “On legal status of foreigners and stateless persons”, foreigners who obtained a temporary permit for residence in Ukraine get the status of *persons temporarily residing in Ukraine on legal grounds*.

Socio-economic rights of this category of migrants is significantly wider: they have a right to a job (provided that they have a Ukrainian work permit obtained according to the procedure established by Ukrainian legislation), right to education and language training (on a fee-paying basis), right to invite family members to Ukraine for the period of their temporary legal residence in Ukraine (“family reunification”), right to medical care (on a fee-paying basis), freedom of movement and free choice of residence. Migrants are supposed to provide accommodation and financial coverage of the temporary residence in Ukraine for themselves and their family members.

Foreigners temporarily residing in Ukraine have a right both to purchase housing and to rent it. Under Ukrainian law “On freedom of movement and free choice of residence”⁵, foreigners and stateless persons who arrived in Ukraine according to the procedure established by the legislation for the purpose of temporary or permanent residence are obliged to get registered in their domicile within 10 days after their arrival in their place of residence (both on their first arrival and when they change their place of residence in Ukraine). Under the law, proof of housing available in Ukraine (documents proving ownership right, contract of lease etc.) is a mandatory condition for registration. Absence of registration is an administrative offense and leads to administrative liability in accordance with the procedure established by the Ukrainian Code on Administrative Offenses⁶.

Under the law No. 5067 – VI “On employment of population”⁷ of 05.07.2012, permits for employment of foreigners and stateless persons in Ukraine are issued to organizations, agencies and enterprises that petition for permit to use labor of foreigners or stateless persons. They are issued by the Ukrainian central executive body implementing government policy in the field of employment and labor migration for the period of up to 1 year, if it is not otherwise envisaged by the international treaties of Ukraine approved by its Parliament.

The following persons are also obliged to obtain work permits:

- foreigners and stateless persons who arrive in Ukraine for the purpose of employment on the basis of labor contracts concluded by foreign and Ukrainian economic entities. (There is a restriction on employment of foreigners in Ukraine under such contracts: the law stipulates that the share of qualified foreigners who get employed in Ukraine under a certain type of contract will not exceed half of the overall number of persons employed under such contracts);
- foreigners who, in accordance with the Ukrainian Schedule of Specific Commitments in Services within the framework of the Protocol of Accession to WTO⁸ (article II of the General Agreement on Trade in Services⁹), fall within the category of “intracorporate assignees”;
- persons with regards to whom a decision was made to consider application for refugee status in Ukraine.

⁵ Law of Ukraine of 11.12.03 No. 1382 – IV “On freedom of movement and free choice of residence”, available at <http://zakon4.rada.gov.ua/laws/show/1382-15>

⁶ Ukrainian Code on Administrative Offense, available at <http://zakon4.rada.gov.ua/laws/show/80731-10>

⁷ Law of Ukraine of 05.07.2012 No. 5067 – VI “On employment of population”, available at <http://zakon4.rada.gov.ua/laws/show/5067-17>

⁸ WTO Protocol on the Accession of Ukraine, available at http://zakon4.rada.gov.ua/laws/show/981_049

⁹ General Agreement on Trade in Services, available at http://zakon4.rada.gov.ua/laws/show/981_017

At the same time the law stipulates that foreigners and stateless persons cannot be appointed to a position or carry out an activity, if under Ukrainian legislation appointment to that position or that activity is predicated on Ukrainian citizenship, if it is not otherwise established by international treaties of Ukraine ratified by the Ukrainian Parliament.

Analyzing migrants' access to the right to employment in Ukraine, one should point to some deficiencies of Ukrainian legislation in this field. For instance, the law "On employment of population" and the law "On status of foreigners and stateless persons" do not envisage the procedure for employment of foreigners who arrive in Ukraine to work under labor contracts with foreign diplomatic missions or diplomatic agents of third countries. Thus, under current Ukrainian legislation, such migrants arriving in Ukraine to work under these contracts would have to obtain work permits, which is impossible due to the legal status of foreign diplomatic missions and diplomatic agents. Thus, this category of migrants has been beyond the law for some time. However, as of September 2013 Ukraine is taking steps to resolve this problem by introducing amendments into both laws, in order to free this category of migrants from having to obtain permits to work in Ukraine.

In July 2013 amendments were also introduced into the law "On employment of population" that freed foreigners who are invited to Ukraine by Ukraine state higher education institutions to teach in their discipline areas (par. 11 article 42) from having to obtain permits to work in Ukraine. In the meantime, as of September 2013 corresponding amendments are yet to be introduced into the law "On legal status of foreigners" and the Regulation of the Ukrainian Cabinet of Ministers of 28.03.13 No. 251 "On procedure of procurement, production and issuance of temporary and permanent residence permits in Ukraine"¹⁰, namely into the sections on rights and procedure for obtaining temporary residence permit in Ukraine by this category of migrants. Ukraine is taking steps to introduce corresponding amendments into its legislation in the nearest future.

The right and procedure of foreigners' education in Ukraine are determined by the Ukrainian legislation, including Regulation of the Ukrainian Cabinet of Ministers of 26.02.93 No. 136 "On education of foreign citizens in Ukraine"¹¹.

Under Ukrainian legislation, training of foreign specialists at Ukrainian educational institutions is carried out primarily on a fee-paying basis within interstate agreements, as well as agreements of ministries, agencies, and educational institutions concluded with government agencies in the field of education, private companies, enterprises from other states, as well as international organizations. Education can be paid for by both legal and physical persons.

The right of foreigners and stateless persons to undergo education according to the procedure established by the Ukrainian legislation serves as grounds for obtaining a temporary residence permit.

In our point of view, a migrant who temporarily resides in Ukraine on legal grounds can exercise the right to education in Ukraine while being engaged in his/her main legal activity during legal temporary residence in the territory of Ukraine on any other grounds. We keep in mind that Ukrainian legislation does not directly ban the migrant temporarily residing in Ukraine on legal grounds (for instance, for the purpose of employment) from concurrently studying at a Ukrainian educational institution, attending language courses etc. At the same time work should remain the main objective of that foreigner's or stateless person's stay in Ukraine. If a migrant makes a decision to stop labor activities and make education the main objective of his or her stay in Ukraine, this will lead to the change of his/her status, as defined by the law "On legal status of foreigners and stateless persons". Such foreigner or stateless person will have to register the new status in accordance with the Ukrainian

¹⁰ Regulation of the Ukrainian Cabinet of Ministers of 28.03.13 No. 251 "On procedure of procurement, production and issuance of temporary and permanent residence permits in Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/251-2012-%D0%BF>

¹¹ Regulation of the Ukrainian Cabinet of Ministers of 26.02.93 No. 136 "On education of foreign citizens in Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/136-93-%D0%BF>

legislation (obtain a D visa with study purposes and a temporary residence permit for the purpose of studying in Ukraine).

Migrants who temporarily reside in Ukraine on legal grounds have a right to invite their family members, friends, relatives and acquaintances to Ukraine for temporary stay, complying with the procedure approved by the Ukrainian Ministry of Interior¹².

Under Ukrainian legislation, a long-term visa for entry to Ukraine is issued for foreigners and stateless persons who are migrant's family members (husband/wife, underage children, disabled parents and persons who are considered family members in accordance with the legal system of the migrant's country of origin).

These visas are issued by Ukrainian diplomatic missions and consular offices abroad on the basis of the copy of migrant's temporary residence permit, documents proving kinship and documents proving sufficient financial coverage available for applicants' residence in Ukraine in the course of the indicated period.

After entry to Ukraine such migrants file an application to the State Migration Service for a temporary permit to reside in Ukraine. Documents that give a right to temporary legal residence in Ukraine are issued to relatives of temporarily residing migrants for the same period as a residence permit of the host.

3. Persons permanently residing in Ukraine

Persons who arrived in Ukraine according to the procedure established by the legislation for the purpose of permanent residence enjoy the full scope of socio-economic rights provided by Ukrainian legislation, namely: right to employment in Ukraine without having to apply for work permit, right to obtaining a permanent residence permit for their family members within the immigration quota (article 4 of the law "On immigration"), right to social protection and security in accordance with the procedure established by Ukrainian legislation.

Let us note that under Ukrainian legislation the right to permanent residence permit in Ukraine is enjoyed by persons who arrived in Ukraine according to the procedure established by the law "On immigration"¹³, as well as foreigners and stateless persons who after making a decision to abandon Ukrainian citizenship chose to permanently reside in in Ukraine.

4. Refugees and persons who were granted supplementary protection

Under Ukrainian law "On refugees and persons in need of supplementary protection"¹⁴, *refugees and persons who were granted supplementary protection by Ukraine* enjoy the same socio-economic rights and have the same obligations as Ukrainian citizens.

The law stipulates that persons who were granted refugee status or supplementary protection by Ukraine are considered equal to those who permanently reside in Ukraine.

Refugees and persons who were granted supplementary protection by Ukraine have a right to free movement, free choice of residence, free departure from Ukraine; employment; entrepreneurial activities permitted by legislation; healthcare; medical care and medical insurance; rest; education;

¹² Decree of Ukrainian Ministry of Interior of 8.10.08 No. 524 "On Procedure of drawing up invitations for entry of foreigners and stateless persons to Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/z1096-08>

¹³ Ukrainian law "On immigration" of 07.06.2011 No. 2491-III, available at <http://zakon4.rada.gov.ua/laws/show/2491-14>

¹⁴ Law of Ukraine "On refugees and persons in need of supplementary protection", available at <http://zakon4.rada.gov.ua/laws/show/2557-14/page>

freedom of conscience and worldview; individual or collective application to Ukrainian central executive bodies; right to own, use and dispose of property and results of creative or intellectual activities; right to challenge action or inaction of the local government in court; application to the Ukrainian Parliament Commissioner for Human Rights to seek protection of their rights; free-of-charge legal assistance; financial assistance, retirement benefits and insurance payments; use of housing they were provided with.

Under Ukrainian legislation a person is considered a refugee or a person under supplementary protection and, correspondingly, enjoys socio-economic rights stipulated for this category from the moment when Ukrainian competent bodies make a final decision to grant refugee status or supplementary protection to that person.

Our analysis of Ukrainian legislation in the field of refugee protection allows making a conclusion that Ukrainian legal framework has settled major issues associated with the status and socio-economic rights of persons with regards to whom corresponding Ukrainian bodies consider granting refugee status or supplementary protection in Ukraine.

The law defines this category of persons as “persons with regards to whom a decision was made to process documents for making a decision on granting refugee status or supplementary protection in Ukraine” (article 13 of the law “On refugees”).

Such persons have a right to temporary employment, education, medical care, accommodation at a hotel, at relatives’ place or in housing space provided for temporary accommodation of refugees, free-of-charge legal assistance, confidential correspondence with the Office of the United Nations High Commissioner for Refugees, as well as meetings with its representatives.

Under Ukrainian legislation, foreigners and stateless persons who temporarily or permanently reside in Ukraine, including refugees and persons under supplementary protection, are obliged to get registered in the place of their residence just as Ukrainian citizens. Persons with regards to whom a decision was made to process documents for making a decision on granting refugee status or supplementary protection in Ukraine are supposed to go to the temporary accommodation facility chosen for them and must inform the State Migration Service about their trips beyond the administrative territorial units where they reside.

Ukrainian legislation is also meant to ensure maxim possible scope of socio-economic rights for *persons who were granted temporary protection in Ukraine* (article 20 of the law “On refugees”). These persons have a right to free-of-charge accommodation, provision with sufficient nutrition, clothes and medication taking into account special needs of new-born children, senior persons, and persons with disabilities; employment in Ukraine, for the period envisaged by temporary protection; financial assistance, if they have no source of additional income in Ukraine; freedom of movement within the territory of Ukraine, in accordance with the procedure established by the Ukrainian legislation for persons temporary staying in Ukraine on legal grounds; free-of-charge medical care at public medical institutions in Ukraine; voluntary return to the country of origin; petitioning for refugee status or status of a person in need of additional protection; acquisition of information on his/her rights and obligations in the native language or language they understand. Underage persons who were granted temporary protection in the territory of Ukraine have a right to upbringing and education at public or community preschool, secondary general and professional educational institutions.

We believe that our analysis of Ukrainian legislation demonstrates that by and large Ukraine ensures maximum access of migrants who temporarily or permanently reside in Ukraine on legal grounds to opportunities of socio-economic rights implementation. There are some gaps in Ukrainian legislation regulating labor relations with foreigners, but we hope that they will be filled soon.