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# *The legislative system of Ukraine in the area of asylum and refugee status*

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The national legislative system of Ukraine in the area of asylum and refugees comprises the Constitution of Ukraine, Ukraine's international agreements, laws as well as regulatory by-laws.

In accordance with Art. 26(2) of the Constitution of Ukraine<sup>1</sup>, foreign citizens and stateless persons can be granted asylum in the due course of law. Art. 106(26)(1) of the Constitution stipulates that the President of Ukraine decides about granting asylum in Ukraine.

The national legislation of Ukraine distinguishes between the notion of 'asylum' and 'refugee status'. In particular, the Constitution of Ukraine applies the notion of 'asylum' while the notion of 'refugee status' is absent altogether.

It is noteworthy that the third law in the area of refugees is currently in operation in Ukraine: on August 4, 2011, the Law of Ukraine of July 8, 2011, No. 3671-VI 'On Refugees and Persons in Need of Complementary or Temporary Protection'<sup>2</sup> entered into force, and based on it, the Law of Ukraine 'On Refugees' of June 21, 2001, No. 2557-III became invalid (the first Law of Ukraine 'On Refugees' was adopted in 1993).

The new Law takes into account provisions of the 1951 Convention Relating to the Status of Refugees and 1967 Protocol acceded by Ukraine in 2002 without any reservations.<sup>3</sup> In particular, the Law applies the convention-based notion of a 'refugee'. The Law also aims at improvement of refugee-related legislation taking into account documents in the area of migration adopted by the Council of Europe and by the European Union. The Law introduced institutions of complementary<sup>4</sup> and temporary protection<sup>5</sup>, which is a part of integration between Ukraine and the EU in the area of migration. In particular, provisions on institutions of complementary and temporary protection contained in recommendations of the Committee of Ministers of the Council of Europe No. R (2000) 9 of May 3, 2000 'On Temporary Protection' and No. Rec (2001) 18 of November 27, 2001 'On Complementary Protection' are taken account of.

The Law of Ukraine 'On Refugees and Persons in Need of Complementary or Temporary Protection':

- establishes the procedure of applying for protection in Ukraine (Article 5), conditions under which a person shall not be recognized as a refugee or person in need of complementary protection (Article 6), procedure of document preparation and decision-making (Article 10) as well as the procedure of appealing against decisions on refugee status and complementary protection (Article 12);

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<sup>1</sup> The Constitution of Ukraine, adopted on June 28, 1996, entered into force at the moment of approval, the Bulletin of the Supreme Council of Ukraine of July 23, 1996, No. 30, Article 141;

<sup>2</sup> The Law of Ukraine 'On Refugees and Persons who Need Complementary or Temporary Protection', the newspaper «Голос України» ('The Voice of Ukraine') of August 3, 2011, No. 142;

<sup>3</sup> The Law of Ukraine of January 10, 2002 'On Ukraine's Accession to the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees' entered into force on February 8, 2002, the newspaper «Урядовий кур'єр» of January 29, 2002, No. 18;

<sup>4</sup> *Complementary protection* is understood as a form of protection granted in Ukraine on an individual basis to foreign citizens and stateless persons who have arrived in Ukraine or stay in Ukraine and cannot or are unwilling to return to the country of citizenship or country of previous permanent residence owing to circumstances which threaten their life, safety or freedom (Paragraph 4 Article 1 of the Law).

<sup>5</sup> *Temporary protection* is understood as a form of protection which is an exceptional practical measure, limited in time, and is granted in Ukraine to foreign citizens and stateless persons who arrived in Ukraine en masse from the country that shares a border with Ukraine and who cannot return to this country because of external aggression, foreign occupation, civil war, ethnic clashes, natural or man-made disasters or other events that violate public order in some parts of the country or throughout the country of origin (Paragraphs 14, 21, Article 1 of the Law).

- contains provisions that refer to prohibition of expulsion or forced return of a refugee or a person in need of complementary or temporary protection to countries where their life is endangered (Article 3), provisions on promotion of preservation of family unity (Article 4);
- differentiates rights and obligations of foreign citizens and stateless persons at different stages of examination of their cases related to their applications for protection in Ukraine, including rights and obligations of a person refused recognition as a refugee or a person in need of complementary protection or who has lost or has been deprived of a refugee status or complementary protection (Articles 13-17);
- regulates grounds and period of granting temporary protection, rights and obligations of individuals granted temporary protection, grounds for discontinuation and withdrawal of temporary protection etc. (Articles 18-21, 24);
- establishes powers of the Cabinet of Ministers of Ukraine, specially authorized central executive migration authority, migration service authorities in the Autonomous Republic of Crimea, the regions, the cities of Kyiv and Sevastopol as well as powers of other executive authorities in the area of migration (Articles 26-29);
- contains provisions on international cooperation for the purpose of protection of refugee rights and defines the legal status of persons in Ukraine who have been granted refugee status by other countries – parties to the 1951 Geneva Convention (Articles 30-31);
- defines the status of persons granted refugee status in Ukraine prior to entering of the present Law into force; establishes the procedure for examination of applications for granting refugee status submitted prior to entering of the present Law into force (par. 3-4 of ‘Final Clauses’).

It is noteworthy that in accordance with Art. 10(1) of the Law, the decision about recognition of an individual as a refugee is taken by the specially authorized central executive migration authority (currently it is the State Migration Service of Ukraine). Hence the decision about granting refugee status or asylum in accordance with the national legislation is made by different public authorities and, correspondingly, the notion of ‘asylum’ does not coincide with the notion of ‘refugee status’.

At present the law on granting asylum to foreign citizens and stateless persons has not been adopted. At the same time, it is noteworthy that Ukraine has bilateral agreements, in accordance with which it is forbidden to extradite individuals granted asylum in Ukraine. They include, for example, agreements on legal aid with the Republic of Poland<sup>6</sup> (Article 61), the Republic of Lithuania<sup>7</sup> (Article

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<sup>6</sup> The Agreement between the Republic of Poland and Ukraine on Legal Aid and Legal Relationships in Civil and Criminal Matters, signed on May 24, 1993, ratified on February 4, 1994, entered into force on August 14, 1994, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 215, Article 3169;

<sup>7</sup> The Agreement between the Republic of Lithuania and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed on July 7, 1993, ratified on December 17, 1993, entered into force on November 20, 1994, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 234, Article 3170;

51), Georgia<sup>8</sup> (Article 49), the Republic of Estonia<sup>9</sup> (Article 49), the Republic of Moldova<sup>10</sup> (Article 59), the Republic of Latvia<sup>11</sup> (Article 55), Mongolia<sup>12</sup> (Article 27) and Vietnam<sup>13</sup> (Article 51).

In accordance with paragraph 5 (of 'Final Clauses') of the Law 'On Refugees and Persons in Need of Complementary or Temporary Protection', before legislation of Ukraine is brought in compliance with this Law, regulatory by-laws are applied in the part which does not contradict this Law. For example, the Regulation on the Refugee Identity Card<sup>14</sup>, the Regulation on the Refugee Travel Document for Travelling Abroad<sup>15</sup> are still in force.

## Conclusion

At this stage national refugee-related legislation in Ukraine is relatively precise and transparent. In particular, the Law 'On Refugees and Persons in Need of Complementary or Temporary Protection' is a directly applicable law, since all the procedural issues are precisely and consistently regulated in it, there are practically no provisions that are optional as to their content.

The problem remains as regards adjustment of provisions of other laws with provisions of the new Law. In addition, in the course of almost ten years since the moment of Ukraine's accession to the Convention Relating to the Status of Refugees, the problem of compliance of Ukraine's national legislation with its provisions has not been solved.

The maximum approximation of national legislation in the area of refugees with the respective legislation of the European Union, in the author's opinion, is complicated because of differences in the contents of the notion of asylum. In particular, provisions of the Constitution of Ukraine on asylum have been borrowed from the USSR legislation on political emigrants, which is not adjusted to the notion of asylum generally accepted in the international law.

In the author's opinion, for full harmonisation of Ukraine's legislation in the area of asylum with EU legislation, amendments have to be introduced to the Constitution of Ukraine including, in particular, exemptions of provisions on granting asylum by the President.

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<sup>8</sup> The Agreement between the Republic of Georgia and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters, signed on January 9, 1995, ratified on November 23, 1995, entered into force on November 5, 1996, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 266, Article 3172;

<sup>9</sup> The Agreement between the Republic of Estonia and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed on February 15, 1995, ratified on November 22, 1995, entered into force on May 17, 1996, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 279, Article 3173;

<sup>10</sup> The Agreement between the Republic of Moldova and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters, signed on December 13, 1993, ratified on November 10, 1994, entered into force on February 24, 1995, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 247, Article 3171;

<sup>11</sup> The Agreement between the Republic of Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed on May 23, 1995, ratified on November 22, 1995, entered into force on July 12, 1996, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of December 4, 2006, No. 47, p. 292, Article 3174;

<sup>12</sup> The Agreement between Mongolia and Ukraine on Legal Assistance in Civil and Criminal Matters, signed on June 27, 1995, ratified on November 1, 1996, entered into force on August 1, 2002, the Official Bulletin of Ukraine (*Официальный вестник Украины*) of June 7, 2006, No. 21, p. 203, Article 1597;

<sup>13</sup> The Agreement between the Socialist Republic of Vietnam and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters, signed on April 6, 2000, ratified on November 2, 2000, entered into force on August 18, 2002, the Official Bulletin of Ukraine (*Официальный вестник Украины*) on August 16, 2006, No. 31, p. 482, Article 2283;

<sup>14</sup> The Decision of the Cabinet of Ministers of Ukraine of October 11, 2002, No. 1527 'On the Approval of the Regulation on the Refugee Identity Card', "Урядовый курьер" of October 23, 2002, No. 196;

<sup>15</sup> The Decision of the Cabinet of Ministers of Ukraine of October 11, 2002, No. 1526 'On the Approval of the Regulation on the Refugee Travel Document for Travelling Abroad', "Урядовый курьер" of October 23, 2002, No. 196.