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# *The system of national migration-related legislation in Ukraine*

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MIGRATION  
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The national migration-related legislation in Ukraine comprises the Constitution of Ukraine, Ukraine's international treaties, laws and regulatory by-laws.

## 1. Constitution of Ukraine

*The Constitution of Ukraine*<sup>1</sup> contains several provisions on migration-related issues. Hence, in accordance with paragraph 10 part one of Article 92, the principles of the regulation of migration processes are defined exclusively in the laws of Ukraine. Part one Article 26 defines the legal status of foreign citizens and stateless persons in Ukraine: foreign citizens and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and also bear the same responsibilities as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.

Part one Article 33 of the Constitution stipulates that everyone who is legally present on the territory of Ukraine is guaranteed the right to freely leave the territory of Ukraine, with the exception of restrictions established by law.

In accordance with part two Article 22 of the new Law 'On the Legal Status of Foreign citizens and Stateless Persons'<sup>2</sup>, departure from Ukraine for a foreign citizen or stateless person is prohibited if s/he is a suspect, accused of a crime committed on the territory of Ukraine or indicted for a crime committed on the territory of Ukraine when such persons in accordance with the law are prohibited departure outside Ukraine; if s/he is found guilty of a crime – until the term of punishment is served, or until release from the punishment; his/her departure contradicts the interests of Ukraine's national security – until the circumstances preventing departure shall be removed. Part three of the same article determines time limits for foreign citizens and stateless persons as regards departure from Ukraine. In particular, departure from Ukraine of a foreign citizen or stateless person may be temporarily postponed upon the court decision until s/he fulfils the property obligations before physical and legal persons in Ukraine, if Ukraine's international treaties do not provide otherwise<sup>3</sup>.

## 2. International treaties

Ukraine has concluded a number of *international treaties in the area of migration*. It is noteworthy that on July 11, 2002 the Supreme Council of Ukraine (the parliament) adopted the Law 'On the Approval of the Statute of the International Organization for Migration and Amendments to the Statute'.<sup>4</sup>

International treaties of Ukraine in the area of migration, depending on the subject of regulation, can be classified in accordance with the following groups:

- readmission agreements and agreements on the transfer and admission of persons across the common state border or persons illegally staying on the territory of the states (for example, Ukraine has such agreements with the European Union<sup>5</sup>, Norway<sup>6</sup>, the Kingdom of Denmark<sup>7</sup>, Switzerland<sup>8</sup>, Hungary<sup>9</sup>, Georgia<sup>10</sup>, Russia<sup>11</sup>, the Republic of Turkey<sup>12</sup> etc.);

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<sup>1</sup> The Constitution of Ukraine, adopted on June 28, 1996, entered into force on June 28, 1996, the Bulletin of the Supreme Council (Verkhovna Rada) of Ukraine of July 23, 1996, No. 30, Article 141.

<sup>2</sup> The Law of Ukraine 'On the Legal Status of Foreign citizens and Stateless Persons' was adopted on September 22, 2011, **entered into force on December 25, 2011**, 'Golos Ukrainy' ('*The Voice of Ukraine*') newspaper of October 25, 2011, No. 199.

<sup>3</sup> In this case Ukraine's international agreements on legal assistance are considered.

<sup>4</sup> Ukraine's Law 'On the Approval of the Statute of the International Organization for Migration and Amendments to the Statute' was adopted on July 11, 2002, entered into force on August 10, 2002, 'Uryadovyj Courier' («*Урядовий кур'єр*») of July 31, 2002, No. 138.

<sup>5</sup> The agreement between Ukraine and the European Communities on readmission of persons was signed on June 18, 2007, ratified on January 15, 2008, entered into force of February 11, 2008, the Official Bulletin of Ukraine No. 8, p. 5, Article 197.

- agreements on the procedure of mutual trips of citizens of the respective states (on visa-based and visa-free travel of citizens, on facilitation of issuance of visas). Ukraine has concluded a number of such agreements (for example, with the European Union<sup>13</sup>, Russia<sup>14</sup> etc.);<sup>15</sup>
- agreements on regulating the process of resettlement and protection of settler rights (these are agreements with the Russian Federation<sup>16</sup>, the Republic of Belarus<sup>17</sup>, Turkmenistan<sup>18</sup>);
- migration-related agreements (with Argentina<sup>19</sup>);
- agreements on regulating labour migration flows (for example, with Spain<sup>20</sup>).

(Contd.) \_\_\_\_\_

- <sup>6</sup> The agreement between the Cabinet of Ministers of Ukraine and the Government of the Kingdom of Norway on Readmission of Persons was signed on February 13, 2007, ratified on July 6, 2011, the Official Bulletin of Ukraine of August 5, 2011, No. 57, p. 27, Article 2270.
- <sup>7</sup> The agreement between the Cabinet of Ministers of Ukraine and the government of the Kingdom of Denmark on Readmission was signed on March 16, 2007, ratified on May 21, 2008, entered into force on March 1, 2009, the Official Bulletin of Ukraine of December 12, 2008, No. 92, p. 9, Article 3038.
- <sup>8</sup> The Agreement between the Cabinet of Ministers of Ukraine and the Swiss Confederation on Readmission of Persons who Stay Illegally on the Territory of these States was signed on July 11, 2003, ratified on June 23, 2004, entered into force on October 1, 2004, the Official Bulletin of Ukraine of July 24, 2009, No. 53, p. 147, Article 1859.
- <sup>9</sup> The Agreement between the government of Ukraine and the government of the Republic of Hungary on the transfer and admission of persons across the shared state border was signed on February 26, 1993, entered into force on June 4, 1994, the Official Bulletin of Ukraine of November 1, 2006, No. 42, p. 169, Article 2838;
- <sup>10</sup> The Agreement between the Cabinet of Ministers of Ukraine and the Executive Authorities of Georgia on admission and transfer of persons (readmission) who Stay Illegally on the Territory of the States was signed on April 22, 2003, ratified on March 17, 2004, entered into force on May 26, 2004, the Official Bulletin of Ukraine of August 27, 2004, No. 32, p. 345, Article 2204.
- <sup>11</sup> The Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Readmission was signed on December 22, 2006, ratified on September 23, 2008, entered into force on November 21, 2008, the Official Bulletin of Ukraine of December 19, 2008, No. 94/ No. 76, Article 2555, p. 108, Article 3123.
- <sup>12</sup> The Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Turkey on Readmission was signed on June 7, 2005, ratified on July 24, 2006, entered into force on November 19, 2008, the Official Bulletin of Ukraine of November 28, No. 88/ No. 32, Article 2294, p. 148, Article 2969;
- <sup>13</sup> The Agreement between the European Union and Ukraine on Facilitation of Issuance of Visas was signed on June 18, 2007, entered into force on January 1, 2008, the Official Bulletin of Ukraine of February 12, 2008, No. 38, p. 19, Article 198.
- <sup>14</sup> The Agreement between the Government of Ukraine and the Government of the Russian Federation on Visa-Free Travel of Citizens of Ukraine and the Russian Federation was signed on January 16, 1997, entered into force on March 10, 1997, the Official Bulletin of Ukraine of November 26, 2004, No. 45, p. 333, Article 3005;
- <sup>15</sup> The majority of agreements on mutual trips of citizens are adopted by the decisions of the Cabinet of Ministers of Ukraine. At the same time, part one of Article 9 of the Constitution of Ukraine considers as a part of national legislation of Ukraine only those international agreements that are regarded compulsory by the Supreme Council of Ukraine.
- <sup>16</sup> The Agreement between Ukraine and the Russian Federation on Regulating the Process of Resettlement and Protection of Settler Rights was signed on February 16, 2001.
- <sup>17</sup> The Agreement between Ukraine and the Republic of Belarus on Regulating the Process of Resettlement and Protection of Settler Rights and Members of their Families was signed on March 19, 2003, ratified on March 17, 2004; entered into force on July 6, 2005, the Official Bulletin of Ukraine of August 9, 2006, No. 30, p. 268, Article 2181.
- <sup>18</sup> The Agreement between Ukraine and Turkmenistan on Regulating the Process of Resettlement and Protection of Settler Rights was signed on May 14, 2001, ratified on January 10, 2002, entered into force on March 6, 2003, the Official Bulletin of Ukraine of April 9, 2004, No. 12, volume 2, p. 476, Article 794.
- <sup>19</sup> The Agreement between Ukraine and the Argentine Republic on migration was signed on April 29, 1999, ratified on July 6, 2000. It came into force on November 29, 2001.
- <sup>20</sup> The Agreement between Ukraine and Spain on regulating and setting into order of labour migration flows between the two states was signed on May 12, 2009, ratified on December 1, 2012, entered into force on July 28, 2011, the Official Bulletin of Ukraine of August 8, 2011, No. 58/ 98, 2010, Article 3465, p. 81, Article 2339.

Laws that comprise the foundation for national migration-related legislation are as follows:

- The Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of September 22, 2011, came into force on December 25, 2011.
- The Law ‘On Immigration<sup>21</sup>’ of June 7, 2001 (with later amendments),
- The Law ‘On Border Control<sup>22</sup>’ of November 5, 2009.

### 3. The Law ‘On the Legal Status of Foreign citizens and Stateless Persons’

*The Law ‘On the Legal Status of Foreign citizens and Stateless Persons’* of February 4, 1994, **which has been in force until December 25, 2011**, defined the legal status of foreign citizens and stateless persons in Ukraine, established main rights, freedoms and duties of foreign citizens and stateless persons as well as grounds for the entry of foreign citizens and stateless persons to Ukraine. This Law stipulated that foreign citizens and stateless persons may immigrate to Ukraine in accordance with the established procedure for permanent residence or arrive for employment for a defined period of time as well as temporarily stay on the territory of Ukraine (Article 3 of the Law). The grounds for the entry of foreign citizens and stateless persons to Ukraine as well as grounds for the ban on such entry were defined in Article 25 of the Law.

**The new Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of September 22, 2011**, defines the legal status of foreign citizens and stateless persons staying in Ukraine, establishes the procedure of their entry to Ukraine and exit from Ukraine. The Law for the first time introduced a broad range of terminology (26 notions), since different laws of Ukraine differ<sup>23</sup> in their definition of the same notions as regards foreign citizens and stateless persons (Article 1 of the Law). The grounds for the legal status of foreign citizens and stateless persons were changed considerably by the Law. In particular, for the first time, the law embodied at the legislative level the principle of equality of the legal status of foreign citizens and stateless persons under the jurisdiction of Ukraine regardless of the legality of their stay: every foreign citizen and stateless person is entitled to the acknowledgement of his/her legal personality as well as fundamental rights and freedoms<sup>24</sup>. The principle of mutuality is also excluded as regards limits on realization of rights and freedoms of citizens of certain states<sup>25</sup>. The Law considerably broadens the grounds for permanent and temporary stay of foreign citizens and stateless persons on the territory of Ukraine as well as the grounds for receiving permanent and temporary residence permits (Articles 4-5 of the Law). At the same time the law provides for the principle of family reunification (part thirteen and fourteen of Article 4 of the Law).

For the first time, the possibility of the issuance of temporary residence permits for foreign citizens and stateless persons is provided, if upon completion of the time of stay in the centres of temporary stay for foreign citizens and stateless persons illegally residing in Ukraine they have not been compulsorily expelled from Ukraine because of the lack of the travel document, transport communication with the country of origin or for other reasons beyond the control of such persons.

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<sup>21</sup> Ukraine’s Law ‘On Immigration’ was adopted on June 7, 2001, entered into force on August 7, 2001, *Uryadovyy courier (Урядовий кур’єр)* of July 7, 2001, No. 119.

<sup>22</sup> Ukraine’s Law ‘On Border Control’ was adopted on November 5, 2009, entered into force on December 8, 2009, ‘The Voice of Ukraine’ («Голос України») newspaper of December 8, 2009, No. 232.

<sup>23</sup> Ukraine’s Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of February 4, 1994, defines only three terms: ‘foreigner’, ‘stateless person’ and ‘passport document’.

<sup>24</sup> Art. 3(2).

<sup>25</sup> Part three Article 2 of Ukraine’s Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of February 4, 1994, allowed for the establishment of the respective procedure of realization of rights and freedoms of citizens of a given state, if such a state had introduced limits on the realization of rights and freedoms of citizens of Ukraine.

These persons are recognized as lawfully temporary stayers on the territory of Ukraine within the period of operation of the conditions which make compulsory expulsion impossible (Art. 4(17)).

Chapter II of the Law regulates issues related to the entry into Ukraine and exit from Ukraine, issuance of visas, grounds for visa refusal, abolition of visas, grounds for the ban on the entry of foreign citizens and stateless persons to Ukraine, the return of foreign citizens and stateless persons refused entry to Ukraine. In addition, this Chapter defines documents for the entry to Ukraine and exit from Ukraine, registration of foreign citizens and stateless persons entering Ukraine or staying on the territory of Ukraine, extension of the terms of stay of foreign citizens and stateless persons on the territory of Ukraine.

The Law for the first time establishes the procedure of voluntary return of foreign citizens and stateless persons who have been refused refugee status or status of a person in need of subsidiary protection (Art. 25(1)) as well as foreign citizens and stateless persons with no legal grounds for their stay on the territory of Ukraine or who cannot depart from Ukraine due to lack of funds or loss of passport (Art. 25(2)).

The expulsion procedure was replaced by the procedure of forced return of foreign citizens and stateless persons (Art. 26). The grounds for and procedure of forced return are regulated by Art. 30 of the Law. Forced return is carried out only based on the court decision<sup>26</sup>.

In accordance with the final provisions, the Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ come into force on 25 December 2011 apart from provisions that refer to the registration of biometric information which will enter into force when the national system of biometric verification and identification of citizens of Ukraine, foreign citizens and stateless persons starts functioning.

Issues related to the issuance of visas to foreign citizens and stateless persons for their entry to Ukraine are regulated by *The Procedure of Issuance of Visas for the Entry to Ukraine and Transit Movement across its Territory* adopted by the Decision of the Cabinet of Ministers No. 567 of June 1, 2011.<sup>27</sup>

#### 4. The Law ‘On Immigration’

*The Law ‘On Immigration’* determines conditions and procedure of immigration which is arrival or stay of foreign citizens and stateless persons in Ukraine for permanent residence. In accordance with the Law, immigration quotas are introduced (Art. 4(1)). In addition, categories of foreign citizens and stateless persons granted permanent residence permits outside quotas are defined (Art. 4(2)). The legal status of immigrants is established by the *Law ‘On the Legal Status of Foreign citizens and Stateless Persons’*.

The main legal and regulatory by-laws aimed at the implementation of the Law ‘On Immigration’ are as follows:

- The procedure of examining applications for immigration permits and refusals as well as execution of decisions taken,
- The procedure of issuance and granting permanent residence permits;
- The procedure of the establishment of an immigration quota.<sup>28</sup>

<sup>26</sup> Ukraine’s Law ‘On the Amendments to the Code of Administrative Judicial Proceedings in Ukraine as regards the Specific Nature of Proceedings in Cases of Expulsion of Foreign citizens and Stateless Persons’ of September 22, 2011. The Code has been supplemented with an additional Article 183 (5) which has established the specific nature of proceedings in cases under administrative claims for expulsion. The Law entered into force on October 15, 2011, ‘The Voice of Ukraine’ («Голос України») newspaper of October 15, 2011, No. 193.

<sup>27</sup> The Official Bulletin of Ukraine of June 10, 2011, No. 41, p. 91, Article 1681; the Procedure entered into force on September 10, 2011.

## 5. The Law ‘On Border Control’

Ukraine’s Law ‘On Border Control’ partially regulates issues related to the entry of foreign citizens and stateless persons to Ukraine, the procedure of crossing the state border, instances of refusals to cross the state border.

### Conclusion

To sum up, Ukraine’s national migration-related legislation is not precise and transparent enough at this stage. At the legislative level it is necessary to tell apart the notion of repatriation and immigration, since Ukraine’s Law ‘On Immigration’ considers repatriates (persons earlier born or residing on the territories that are the territory of contemporary Ukraine) as immigrants who receive permanent residence permits in Ukraine on general grounds except that they are not covered by the quotas.

Ukraine’s Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of September 22, 2011, removed a number of gaps in the regulation of the legal status of foreign citizens and stateless persons. At the same time, during preparation of the draft of this Law for the second reading, a chapter has been excluded which defined the rights and freedoms of foreign citizens and stateless persons, which may currently bring about inadequate application of the law, since sectoral laws in various fields differ as to the definition of the scope of rights and obligations of foreign citizens and stateless persons, which does not always comply with provisions of the Constitution of Ukraine. In addition, the Law did not practically alter the powers of the Security service of Ukraine as regards the reduction of the terms of temporary stay of foreign citizens and stateless persons on the territory of Ukraine, compulsory return and compulsory expulsion. A serious drawback of the new Law is the fact that during preparation for the repeated second reading the procedure has been altered as regards placing foreign citizens and stateless persons in temporary accommodation centres for foreign citizens and stateless persons illegally staying on the territory of Ukraine: in accordance with Art. 30(3), the State Migration Service or the state border protection authority on the basis of the relevant decision with the following notification of the public prosecutor within 24 hours, places foreign citizens and stateless persons liable for forced return in temporary accommodation centres for foreign citizens and stateless persons illegally staying on the territory of Ukraine<sup>29</sup>.

(Contd.) \_\_\_\_\_

<sup>28</sup> All the three documents are adopted by the Decision of the Cabinet of Ministers of Ukraine of December 26, 2002, No. 1983; the Official Bulletin of Ukraine of January 10, 2003, No. 52, p. 132, Article 2400.

<sup>29</sup> In accordance with part eight and part ten of Article 32, the currently operating Law ‘On the Legal Status of Foreign citizens and Stateless Persons’ of February 4, 1994, apprehension of foreign citizens and stateless persons as well as placement of foreign citizens and stateless persons in temporary accommodation centres for foreign citizens and stateless persons illegally staying in Ukraine is possible only following the decision of the administrative court.