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The System of Migration- Related Legislation in the Republic of Belarus

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Introduction

The Constitution of the Republic of Belarus stipulates¹ that foreign citizens and stateless persons enjoy the same rights and freedoms as citizens of Belarus on the territory of the country, unless laws and international agreements provide otherwise. In view of the above, it is noteworthy that the key legal statutory act that regulates rights and obligations of foreign citizens and stateless persons (further on – foreign citizens) on the territory of the Republic of Belarus is the Law of the Republic of Belarus of January 4, 2010 No. 105-3 ‘*On the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus*’² (further on – the Law).

1. Entry and exit of foreign citizens

Apart from the fact that the mentioned Law No. 105-3 has introduced a number of notions in the area of migration (Art. 1) and has defined an appeal mechanism against decisions and actions (inactivity) of state authorities and officials³, it has primarily established the procedure of entry and exit of foreign citizens (Chapter 2) and in addition has outlined cases when foreign citizens are not allowed entry or their right of entry may be limited (Art. 30-35).

The Decision of the Council of Ministers of the Republic of Belarus No. 1054⁴ was adopted on July 14, 2010 in view of the implementation of provisions of the Law No. 105-3. The document defines the procedure of running a **list of individuals refused exit from the Republic of Belarus** as well as the mechanism of excluding foreign citizens from this List. The mentioned list constitutes the database in the form of information-and-technical system which is kept in order to organize the information exchange between state authorities of the Republic of Belarus. The grounds have been defined for taking the decision about the refusal of exit from the Republic of Belarus of foreign citizens and their inclusion into the mentioned list⁵. The grounds are mostly related to the presence of: criminal or administrative prosecution of foreign citizens; unfulfilled material obligations; collisions with the interests of national security of Belarus.

The Law No. 105-3 requires the establishment of a **list of places**, whose visit, and entities, to enter the territory of which and stay there requires a **special permit**⁶. Such a list is contained in the Decision of the Council of Ministers of the Republic of Belarus of February 3, 2006, No. 145⁷ which also defines the state authorities and other organisations authorised to issue such permits.

¹ Art. 11 of the Constitution of the Republic of Belarus of 15.03.1994 No. 2875-XII (ed. on 17.11.2004) // «Звезда» (*The Star*), No. 276. - 27.11.1996.

² The National Register of Legal Acts of the Republic of Belarus', 20.01.2010, No. 15, 2/1657

³ Chapter 6 '*Appeals against Decisions and Actions (Inactivity) of State Authorities and Officials of the Republic of Belarus*' (Art 71-72) of the Act No. 105-3

⁴ The Decision of the Council of Ministers of the Republic of Belarus No. 1054 adopted on July 14, 2010 '*On the Establishment of the Rules of Including Foreign citizens and Stateless Persons into the List of Individuals Refused Exit from the Republic of Belarus and Excluding Foreign citizens and Stateless Persons from this List as well as the Procedure of Running such a List*' // The National Register of Legal Acts of the Republic of Belarus, 26.07.2010, No. 175, 5/32190.

⁵ Paragraph 5 '*The Rules for the Inclusion of Foreign citizens and Stateless Persons into the List of Individuals Refused Exit from the Republic of Belarus and Exclusion of Foreign citizens and Stateless Persons from this List as well as the Procedure of Keeping Such a List*'

⁶ Chapter 4 Art. 8 '*Travel and the Choice of the Place of Stay (Residence) within the Territory of the Republic of Belarus*' of the Law No. 105-3.

⁷ The Decision (ed. on 09.07.2010) '*On the Establishment of the List of Places, Whose Visit, and Entities, to Enter the Territory of which and Stay there Requires a Special Permit for Foreign citizens and Stateless Persons, as well as the State Authorities and other Organisations Authorised to Issue such Permits*' // The National Register of Legal Acts of the Republic of Belarus, 15.02.2006, No. 24, 5/17223.

In accordance with the Law No. 105-3 (Art. 28 part 2), the **Visa rules** were adopted by the Decision of the Council of Ministers of 15.07.2010 No. 1065.⁸ The decision defines types of visas and the procedure of issuing them to foreign citizens and sets forth the sequence of actions of officials in diplomatic representations and consular offices of the Republic of Belarus as well as other state authorities while examining visa applications.

The procedure of **inviting foreign citizens to the Republic of Belarus by religious associations** registered on the territory of Belarus for the purpose of religious activity is approved by the Decision of the Council of Ministers No. 123⁹. This Decision also implements the provisions of the Law No. 105-3¹⁰.

As regards the **entry of foreign citizens for the purpose of study**, it is regulated by the Decision of the Ministry of the Interior and Ministry of Education of July 25, 2007, No. 175/39-a *'On the Approval of the Instruction on the Procedure of Harmonisation of Invitations for Educating Foreign citizens and Stateless Persons in the Republic of Belarus by the Entities on Citizenship and Migration of the Law Enforcement Authorities'*¹¹. It stipulates that educational institutions and scientific organisations in the Republic of Belarus are obliged to harmonise invitations for the purpose of study which are forwarded to foreign citizens by entities on citizenship and migration of the law enforcements authorities of Belarus.

The procedure of crossing the state border upon entry and exit to and from the territory of the Republic of Belarus is defined in the Decision of the State Border Committee of the Republic of Belarus of April 30, 2009 No. 28 *'On the Procedure of Undergoing Control at Border Checkpoints on the State Border of the Republic of Belarus by Citizens of the Republic of Belarus, Foreign citizens and Stateless Persons'*¹². The decision regulates the rights and obligations of foreign citizens and citizens of Belarus while undergoing the border control.

The procedure of exit from the Republic of Belarus of stateless persons permanently residing in the Republic of Belarus is defined by the Decision of the Council of Ministers of the Republic of Belarus No. 195¹³ which corresponds with the procedure established for citizens of Belarus.

2. The stay of foreign citizens in the Republic of Belarus

The Law No. 105-3 defines three modes of foreigner stay on the territory of the Republic of Belarus: temporary stay, temporary residence and permanent residence¹⁴.

The provisions of the Law No. 105-3 are specified in the Decision of the Council of Ministers No. 73 *'On the Approval of the Rules of Stay of Foreign citizens and Stateless Persons in the Republic of Belarus'*¹⁵. The Rules of foreigner stay in Belarus approved by this Decision provide a detailed

⁸ The National Register of Legal Acts of the Republic of Belarus, 09.08.2010, No. 186, 5/32226

⁹ The Decision of the Council of Ministers of the Republic of Belarus of 30.01.2008 No. 123 *'On the Approval of the Decision on the Procedure of Inviting Foreign citizens and Stateless Persons to the Republic of Belarus for the Purpose of Religious Activity'* // The National Register of Legal Acts of the Republic of Belarus, 11.02.2008, No. 31, 5/26713.

¹⁰ Art. 7 'Personal Rights and Freedoms' of the Law No. 105-3

¹¹ The National Register of Legal Acts of the Republic of Belarus, 15.08.2007, No. 196, 8/16926

¹² The National Register of Legal Acts of the Republic of Belarus, 19.05.2009, No. 118, 8/20918.

¹³ The Decision of the Council of Ministers of the Republic of Belarus of March 29, 1994, No. 195 *'On the Procedure of Drawing up Documents for the Exit from the Republic of Belarus of Stateless Persons Permanently Residing in the Republic of Belarus'* // *The Collection of Decisions of the Government of the Republic of Belarus*, 1994, No. 9, Art. 155.

¹⁴ Art. 38 *'The Modes of Foreigner Stay in the Republic of Belarus'*, Art. 39 *'Temporary Stay of Foreign citizens in the Republic of Belarus'*, Art. 48 *'Temporary Residence Permit'*, Art. 53 *'Permanent Residence Permit'* of the Law No. 105-3.

¹⁵ It is noteworthy that prior to the adoption of the Law No. 105-3 of January 4, 2010, the Law of the Republic of Belarus of 1993 *'On the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus'* (*Народная газета (The*

description of the procedure of foreigner movement, their choice of the place of stay (residence) within the territory of the Republic of Belarus as well as the procedure of drawing up registration, extension of **temporary stay**, permit for **temporary residence** by foreign citizens. The list of required documents has been defined for foreign citizens in various situations.

In order to fulfill the requirements of Art. 29 of the Law No. 105-3, the Decision of the Council of Ministers of the Republic of Belarus of 03.02.2006 No. 142 (ed. on 09.07.2010) '*On the Regulation on the Procedure of the Use of the **Migration Card** and its Form*'¹⁶ was adopted. It approved a single form of the migration card which is filled in by a foreign citizen upon entering the Republic of Belarus and which is used in order to carry out control over temporary stay or temporary residence of foreign citizens in the Republic of Belarus.¹⁷

The subsequent legal statutory act that implements the provisions of the above mentioned law is the Decision of the Council of Ministers of February 3, 2006 No. 144 (ed. as the Decision of the Council of Ministers of 09.07.2010 No. 1030) '*On the Approval of the Decision on the Procedure of Issuing Foreign citizens and Stateless Persons with **Permanent Residence Permits** in the Republic of Belarus*'.¹⁸ In order to bring it in compliance with the new Law No. 105-3, the respective amendments were introduced into the Decision No. 144 on 09.07.2010. It provides details of the procedure of issuing foreign citizens with permanent residence permits in the country; the procedure of examining applications of foreign citizens for issuing permanent residence permits; it regulates control over foreigner permanent residence; legal grounds are established for revoking permanent residence permits; it defines rights and obligations of foreign citizens who carry out a transit trip (transit) across the territory of the Republic of Belarus.

One of the most important socio-economic rights enjoyed by foreign citizens together with the citizens of the Republic of Belarus is **their right to medical services**¹⁹. Legal grounds for providing medical care to foreign citizens are defined in the Letter of the Ministry of Health of the Republic of Belarus of April 23, 2009 No. 02-2/732-490.²⁰

The Law No. 105-3 puts forward the task of creating the central data base of the record of foreign citizens arriving in Belarus. This task is addressed by the Decision of the Council of Ministers of the Republic of Belarus on July 1, 2010, No. 994 '*On the **Central Data Base of the Record of Foreign***

(Contd.) _____

National Newspaper'), No. 182-183. - 12.08.2005 // ed. on 26.12.2007) was in force, and it was the key legal statutory act that regulated public relations in the area of foreigner immigration. The Decision No. 73 was adopted in 2006 for the implementation of the provisions of the Law No. 2339-XII. As this Law was amended twice (amendments and contributions were introduced by the Laws of the Republic of Belarus: of 19.07.2005 No. 41-3 and of 26.12.2007 No. 300-3), the Decision No. 73, too, was reviewed (amendments and contributions were introduced by the Decisions of the Council of Ministers: of 18.05.2006 No. 630; of 17.12.2007 No. 1747; of 10.01.2008 No. 21). When in 2010 the new Law No. 105-3 was adopted, the above Decision did not lose its legal force, and contradictions with the Law No. 105-3 were removed following the amendments and contributions introduced on 09.07.2010. - the Decision of the Council of Ministers '*On Entering Amendments and Contributions to Certain Decisions of the Council of Ministers of the Republic of Belarus and Finding Invalid Certain Decisions of the Government of the Republic of Belarus as regards Issues of the Legal Status of Foreign citizens and Stateless Persons*' of 09.07.2010 No. 1030 // *The National Register of Legal Acts of the Republic of Belarus*, 23.07.2010, № 174, 5/32177.

¹⁶ The source of publication: *The National Register of Legal Acts of the Republic of Belarus*, 20.02.2006, No. 26, 5/17221.

¹⁷ See below the Decision of the Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Transport and Communications, State Committee of Frontier Troops, State Customs Committee of the Republic of Belarus of September 27, 2006 No. 259/108/39a/20/67 (ed. on 30.10.2009) // *The National Register of Legal Acts of the Republic of Belarus*, 23.10.2006, № 169, 8/15121) defines the procedure of cooperation between state authorities upon issuing migration cards of a uniform standard to foreign citizens entering Belarus.

¹⁸ *The National Register of Legal Acts of the Republic of Belarus*, 15.02.2006, No. 24, 5/17222.

¹⁹ Art. 10 of the Law on 'Socio-Economic Rights' No. 105-3.

²⁰ The letter '*On Providing Medical Care to Foreign citizens and Stateless Persons on the Territory of the Republic of Belarus*' (the Document has not been published)

citizens and Stateless Persons Staying in the Republic of Belarus'.²¹ The above Decision stipulates that the Central data base of the record of foreign citizens and stateless persons temporarily staying, temporarily and permanently residing in the Republic of Belarus is established and kept by the Ministry of the Interior, in order to store and application of such information.²²

3. Labour migration

In accordance with the Constitution of the Republic of Belarus and Law No. 105-3, foreign citizens on the territory of Belarus have the **right to work** (Art.4, 10). This area of legal relations is governed by the Law No. 225-3 'On External Labour Migration'.²³ The above Law No. 225-3 covers only two categories:

1. citizens of Belarus and foreign citizens permanently residing in the country and employed abroad;
2. foreign citizens with no permit for permanent residence in the country who are involved in labour activity in the Republic of Belarus.²⁴

The mechanism of the execution of the foreigner right to work is provided for in the Decision of the Ministry of the Interior of the Republic of Belarus No. 264.²⁵

The Decision of the Council of Ministers of the Republic of Belarus No. 885²⁶ is also directed at the implementation of the provisions of the Law No. 225-3 (Art. 21). This Decision regulates the procedure of providing **services for staff recruitment among foreign citizens** who do not have permanent residence permits in the Republic of Belarus, including temporary stayers or individuals temporarily residing in the country. At the same time the provisions of the Decision of the Council of Ministers No. 885 are defined in more detail by the Decision of the Ministry of the Interior No. 247.²⁷ The Instruction approved by the Decision No. 247 was worked out in accordance with the Law No. 225-3 and defines the **procedure of issuing a permit** for attracting foreign labour force to Belarus and a special permit for the right to carry out labour activity.

²¹ *The National Register of Legal Acts of the Republic of Belarus, 12.07.2010, No. 161, 5/32117.*

²² see further the Decision of the Ministry of the Interior, the Ministry of Statistics and Analysis of the Republic of Belarus on May 16, 2008 No. 147/53 'On the Record of Foreign citizens and Stateless Persons Temporarily Residing in the Republic of Belarus' (*The National Register of Legal Acts of the Republic of Belarus, 02.06.2008, No. 131, 8/18844.*) The record of foreign citizens temporarily residing in the country is carried out for the purpose of securing the legal order and national security of the Republic of Belarus;

²³ The Law of the Republic of Belarus of December 30, 2010 No. 225-3 'On External Labour Migration' // The National Register of Legal Acts of the Republic of Belarus, 11.01.2011, No. 4, 2/1777.

²⁴ Art. 2 'The Scope of the Current Law' Law No. 225-3

²⁵ The Decision of the Ministry of the Interior of the Republic of Belarus of November 23, 2004 No. 264 (*ed. on 09.01.2009*) 'On the Approval of the Instruction on the Procedure of Issuing Foreign citizens and Stateless Persons with Special Permits on the Right to Get Involved in Labour Activity in the Republic of Belarus' // The National Register of Legal Acts of the Republic of Belarus, 13.12.2004, No. 192, 8/11759.

²⁶ The Decision of the Council of Ministers of the Republic of Belarus of June 30, 2011 No. 885 'On the Approval of the Procedure of Providing by Legal Persons and Individual Entrepreneurs Services of Staff Recruitment among Foreign citizens and Stateless Persons lacking Permanent Residence Permits in the Republic of Belarus' // The national register of legal acts of the Republic of Belarus, 12.07.2011, No. 78, 5/34089.

²⁷ The Decision of the Ministry of the Interior of the Republic of Belarus of 07.07.2011 No. 247 'On the Approval of the Instruction on the Procedure of Issuing a Permit for Attracting to the Republic of Belarus of Foreign Labour Force and a Special Permit for the Right to Carry out Labour Activity in the Republic of Belarus and Finding Invalid some Decisions of the Ministry of the Interior of the Republic of Belarus' // The national register of legal acts of the Republic of Belarus, 15.07.2011, No. 83, 8/23904.

4. Counteracting illegal migration

The legal ground for counteracting illegal migration in the Republic of Belarus is defined in the Decree of the President of the Republic of Belarus of October 2, 2010 No. 518 '*On the State Programme for Counteracting Human Trafficking, Illegal Migration and Related Unlawful Deeds in 2011-2013*'.²⁸ The liability for unlawful deeds in the area of population migration is stipulated in:

- a. the Code of the Republic of Belarus on administrative offences adopted on April 21, 2003 No. 194-3 (Art. 23.29, 23.55)²⁹;
- b. the Penal Code of the Republic of Belarus of July 9, 1999 No. 275-3 (Art. 371, 371-1, 371-2)³⁰.

Article 23.29 of the *Code* of administrative offences provides for the liability for crossing the State border of Belarus (i.e. in unsettled places, using forged documents and so on) in directions covered by the respective legal regime of border protection. A repeated **illegal crossing of the State border** within a year since the infliction of administrative penalty results in criminal liability in accordance with Art. 371 of the Penal code. Article 23.55 of the Code of administrative offences ('*The violation of rules of stay in the Republic of Belarus as well as rules of a transit trip (transit) across the territory of the Republic of Belarus*') results in administrative liability for the breach of the Rules established by the above Decision of the Council of Ministers No. 73 as well as the Decision of the Council of Ministers No. 63 (ed. on 09.07.2010).³¹ Article 371.1 of the Penal Code provides for **criminal liability for organisation of illegal migration**. And for breaching the deadline, Article 371.2 of the Penal Code prohibits entry to the Republic of Belarus³².

One of the measures aiming at counteracting illegal migration is **personal identification of foreign citizens**. The Decision of the Council of Ministers of Belarus of June 10, 2010, No. 892³³, approved the Regulation on the Procedure of Personal Identification of Foreign citizens. This Regulation was worked out in accordance with the Law No. 105-3 (Article 63). It is stated that personal identification of a foreign citizen is carried out when s/he does not have a valid identity card. The following data are identified: citizenship, last name, first name, patronymic name (if available), date of birth.

5. Deportation, Expulsion and Readmission

The Law No. 105-3 establishes legal grounds for deportation and expulsion of foreign citizens from the country.³⁴ In view of the above, in accordance with Art. 6.2. ('*Types of Administrative Sanctions*') of the Code of administrative offences³⁵, **deportation** is one of the forms of administrative sanctions and constitutes administrative expulsion of a foreign citizen outside the Republic of Belarus. At the

²⁸ the source of publication: *The national register of legal acts in the Republic of Belarus, 08.10.2010, No. 238, 1/12011.*

²⁹ The Code of the Republic of Belarus on Administrative Offences of 21.04.2003 No. 194-3 (ed. on 30.12.2010) // The national register of legal acts of the Republic of Belarus, 09.06.2003, No. 63, 2/946.

³⁰ The Penal Code of the Republic of Belarus of 09.07.1999 No. 275-3 (ed. on 27.12.2010) // The national register of legal acts of the Republic of Belarus, 15.10.1999, No. 76, 2/50.

³¹ The Decision (ed. on 09.07.2010) '*On the Establishment of the Rules of a Transit Travel (Transit) of Foreign citizens and Stateless Persons across the Territory of the Republic of Belarus*' // The national register of legal acts of the Republic of Belarus, 01.02.2006, No. 18, 5/17132.

³² Legal grounds for deportation and expulsion are regulated by the Law No. 105-3 (Art. 64 – 70).

³³ The Decision of the Council of Ministers of Belarus of June 10, 2010, No. 892 '*On the Approval of the Regulation on the Procedure of Personal Identification of a foreign citizen or Stateless Person Staying in the Republic of Belarus and Lacking a Document for Leaving Abroad and the Form of a Certificate Verifying the Personality of a foreign citizen or Stateless Person*' // The national register of legal acts of the Republic of Belarus, 17.06.2010, No. 145, 5/32015.

³⁴ Chapter 5 '*Deportation. Expulsion*' (Art. 64-70) of the Law No. 105-3.

³⁵ The Code of the Republic of Belarus on Administrative Offences of 21.04.2003 No. 194-3 (ed. on 30.12.2010) // The national register of legal acts of the Republic of Belarus, 09.06.2003, No. 63, 2/946.

same time **expulsion** is not a punishment and is applied in the interest of national security, public order, protection of morality, public health, rights and freedoms of citizens of Belarus and other persons, if a foreign citizen is not liable to deportation (Art. 65 of the Law No. 105-3). The decision about the expulsion is made by law enforcement authorities or the state security body.

The detailed description of the mechanism and procedure of realization of deportation and expulsion of foreign citizens from the Republic of Belarus as well as reimbursement of costs related to their deportation and expulsion is provided for by the Decisions of the Council of Ministers of the Republic of Belarus: No. 333³⁶ (*specifies the **procedure of executing deportation** of foreign citizens from the Republic of Belarus, defines competences of the subjects of deportation*) and No. 146³⁷ (*specifies the **procedure of executing expulsion** of foreign citizens from the country, defines competences of the subjects of expulsion*). Besides, the Decision of the Council of Ministers of the Republic of Belarus No. 1592³⁸ provides for the provision of premises for temporary stay of foreign citizens subject to deportation.

Issues of readmission in the Republic of Belarus are currently insufficiently regulated on the legal level because of the difficulties related to bilateral international agreements. In this area the Decision of the Council of Ministers of the Republic of Belarus of 31.12.2010 No. 1918 is in operation '*On the Approval of the Regulation on the Procedure of the Delivery to Neighbouring States of Foreign citizens and Stateless Persons who have Violated the Rules of Cross-Border Movement Established by International Agreements of the Republic of Belarus or who have Lost Documents with which they have Entered the Republic of Belarus following the Rules of Cross-Border Movement*'.

Conclusion

Hence, it is noteworthy that migration-related legislation has currently been formed in the Republic of Belarus, which allows to regulate migration flows and control the stay of foreign citizens in the country.

The major tendency in the development of migration-related legislation in Belarus at this stage is its uniformisation with migration-related legislation of the Russian Federation. It is determined by the establishment of the Union State between Russia and Belarus.

Further development and improvement of migration-related legislation should focus on the promotion of the effectiveness of migration process management. Taking into account the geographical location of Belarus alongside the routes of migrant movements in the Eastern-Western direction, the most important thing is to conclude agreements on readmission. In the first place, such agreements shall be concluded with neighbouring states.

National legislation does not pay sufficient attention to the regulation of labour migration. In addition, the task of stimulating labour migration can only be solved by way of elaborating an effective mechanism of its regulation (determination of social guarantees and employment conditions (including the respective level of remuneration) for labour migrants; regulation of the processes of intellectual migration (development of a set of measures as regards the return of highly skilled specialists and promising academics to the country)).

³⁶ The Decision of the Council of Ministers of the Republic of Belarus of 15.03.2007 No. 333 (ed. on 09.07.2010) 'On the Approval of the Provision on the Procedure of Deportation of Foreign citizens and Stateless Persons' // The national register of legal acts of the Republic of Belarus, 22.03.2007, No. 69, 5/24894.

³⁷ The Decision of the Council of Ministers of the Republic of Belarus of February 3, 2006, No. 146 (ed. on 09.07.2010) '*On the Approval of the Regulation on the Procedure of Conducting Expulsion of Foreign citizens and Stateless Persons from the Republic of Belarus and Finding Invalid several Decisions of the Council of Ministers of the Republic of Belarus as regards Deportation of such Persons*' // The national register of legal acts of the Republic of Belarus, 15.02.2006, No. 24, 5/17224.

³⁸ The Decision of the Council of Ministers of the Republic of Belarus of 15.10.1999 No. 1592 '*On the Procedure of Providing Premises for Temporary Stay of Foreign citizens and Stateless Persons Undergoing Deportation*' // The national register of legal acts of the Republic of Belarus, 05.11.1999, No. 82, 5/1835.