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Evolution of Institutional Frame- work Focussing on Migration and Asylum Issues in Ukraine since 1991 *Alissa Tolstokorova*

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There are all the grounds to concur with the observation that although institutional changes in migration area in Ukraine have been discussed and planned for several years, they are still not in full effect¹. A plethora of research focusing on the institutional mechanisms of migration management in the country² pinpointed to the notorious tendency of administration for frequent reorganizations of its governmental bodies and their responsibilities in the area of migration. This created challenges to a precise distribution of responsibilities between agencies, especially in what concerns immigration and asylum policies. Such frequent changes have also entailed some confusion with regard to the specification of particular agency/department responsible for some migrants' detention centers. In early-mid 2000-s this ambiguous situation has spurred a heated debate over the issue of the necessity for the country to have a unified authorized body responsible exclusively for issues of migration policy and management³. The issue was obtaining even greater prominence in view of the changing migratory status of Ukraine throughout the years of state independence: if in the beginning of economic reforms it was perceived mainly a sending country for its surplus labor force, then after the EU Eastern enlargement in 2004 it started transforming itself into a transit country and was increasingly becoming a receiving country for migrants. Yet, in the absence of a well-defined migration policy and proper infrastructure for migration management, such processes as mass out-flows of Ukrainian labour, accompanied by in-flows of aliens into the country, especially those undocumented ones, ambiguity of their status and the use of their labour without formal regulations, can entail the risk of losing control over migration fluxes⁴.

The first attempts to craft a unified agency for migration governance in Ukraine were made as early as in 1996, i.e. soon after Ukraine secured state independence in 1991. Yet, they were pinned mainly on collisions between the key stakeholders: Ministry of Interior, Ministry of Justice, State Committee for Nationalities and Religion. At that stage each of them was trying to appropriate the powers, skilled personnel and public resources allocated to this domain by the state. In these conditions a consensus with regard to functions and structure of an expected unified agency was hardly attainable. It is important to note that the Ministry of Labour and Social Policy, responsible for issues of labour migration, was not involved in the negotiations, insofar as these issues were not expected to be governed by the prospective unified agency on migration, despite labour migration fluxes in Ukraine were (and remain to be up till now) the most tangible.

On the level of strategic state documents, migration was highlighted as a policy issue for the first time in 1997, after the adoption and confirmation by the President of Ukraine of the "Main directions of social policy for 1997 – 2000". This document confirmed the status of Ukraine as a labor exporting society, outlined the key directions of state migration policy, but did not provide any elaborations regarding the institutional framework for their implementation.

In 2002 the Draft Law regarding the creation of the State Migration Service (SMS) was submitted for consideration by the Parliament of Ukraine, but was refuted by deputies as a non-priority issue.

¹ Extended Migration Profile: Ukraine (2011) Building Migration Partnerships (BMP), Kyiv.

² Human Rights Watch (2005) *Ukraine: On the Margins*, volume 17, No. 8 (D), November 2005, online URL at: <http://www.hrw.org/sites/default/files/reports/ukraine1105webwcover.pdf> (accessed December 3, 2005); IPP, ICPS (2008) *Migration Trends and Policies in the Black Sea Region: cases of Moldova, Romania and Ukraine*; Zimmer, K. (2008) *Migrants and Refugees in the Buffer Zone: Asylum Policy in Ukraine*, Multicultural Center Prague, online URL accessed on December 6, 2010 at: http://aa.ecn.cz/img_upload/6334c0c7298d6b396d213ccd19be5999/KZimmer_Ukraineasylumandmigrationpolicy.pdf

³ Global Detention Project (2009). *Ukraine Detention Profile*. Geneva. Online URL at: <http://www.globaldetentionproject.org/countries/europe/ukraine/introduction.html> (accessed December 1, 2010).

⁴ Tolstokorova, A. (2011). *Ukrainian migratory corridor*. Research Report. Case study for the Project "Improving EU and US Immigration Systems' Capacity for Responding to Global Challenges: Learning from experiences", European University Institute, Robert Schuman Centre for Advanced Studies, Migration Policy Center, co-financed by the European Commission, Directorate-General for External Relations. Online URL at: <http://cadmus.eui.eu/handle/1814/17842>

However, the necessity to concentrate the state powers and responsibilities for migration regulation in one agency was not taken off the political agenda primarily because it was part of the EU-Ukraine Action Plan, signed in 2002 to come into force in 2007. No surprisingly, it was exactly in 2007 that the first attempt of creating State Migration Service was made in earnest. It was initiated by the Cabinet of Ministers in compliance with the provisions of the Action Plan, but did not advance beyond a few declarative statements and decisions. This initiative was taken over in 2009 by the President's Decree, mandating the creation of SMS. However, at that stage this agency had not started working in full capacity either, since it's functioning was not supported in legal, administrative or financial terms.

Until recently, the challenge of creating a unified migration service in Ukraine remained to be critical. This period is sometimes referred to by experts as “the war of decrees”⁵ due to a continuous confrontation between the legislative and executive branches of the government. It is worthwhile to note that from numerous attempts of institutional reformations the most suffered the body responsible for asylum. So did the asylum-seekers in Ukraine. After one of such tangible transformations held in 2007 (which was the tenth over the years of Ukrainian state independence), the State Committee for Nationalities and Migration was transformed into the State Committee for Nationalities and Religions. Due to that the Department for Migration and Asylum was not in position to make any decisions for 8 months, because, despite the requirement of migration legislation, the State Committee provisions did not specify which particular agency was authorized by the government to bear responsibility for migration issues. In May 2008 the situation re-emerged when the government adopted the resolution delegating the responsibilities of the authorized governmental agency to the Ministry of Interior. As a result, the procedure for granting refugee status was suspended and applications began to pile up. Furthermore, the Ministry of Interior took over the authority for allocating the places for refugees' placement. In June 2008, the President suspended that resolution by his Decree and concurrently submitted the above issues for consideration by the Constitutional Court of Ukraine⁶.

Continuous institutional transformations had salient implications for personnel skills and work ethics in the field. Every new reformation entailed staff turn-overs followed by influxes of new migration officials with no specialized training in issues they had to deal with. Anecdotaly, as reported by the Human Rights Watch, an immigration lawyer who contacted a migration official to lodge an asylum application on behalf of a client received a reply: “I don't work, I am still under reorganization.”⁷

The resolution of the problem was speeded up after it was addressed by the Ombudsman of Ukraine in 2010 in her appeal on this issue to the President of Ukraine. Her concern about the absence in Ukraine of an advocacy agency for rights of migrants in Ukraine was considered during the administrative reform, launched in late 2010. As a result, on April 6, 2011 the President of Ukraine confirmed the decision of the state regarding the creation of the State Migration Service in Ukraine (SMS). Throughout the years of independence, it was the 5th attempt of the state to launch a centralized administrative unit focused exclusively on migration policy and management in the country. The new agency represents an authorised body of the executive power responsible for issues of migration, citizenship and immigration. Its key responsibilities include: granting the Ukrainian citizenship to non-nationals; granting a refugee status to applicants; maintaining documentation of persons who acquired or terminated Ukrainian citizenship; issuing licenses for immigration, etc. Additionally, the agency bears responsibility for the operation of detention camps for refugees, asylum seekers, non-nationals with no citizenship, etc.

⁵ Malynovska, O. (2011). Завдання міграційної політики України у світі візового діалогу з ЄС [Objectives of migration policy in Ukraine in terms of visa dialogue with the EU]. *Безпека документів та міграційна політика: висновки та рекомендації. Проект «Європа без бар'єрів»*[Documents security and migration policy: conclusion and recommendations. “Europe Without Borders” Project]. Київ, с. 31-48.

⁶ IPP, ICPS (2008). Op. cit.

⁷ Human Rights Watch (2005). Op. cit.

Certainly, the creation of SMS after so many futile attempts is a big step forward in the development of the national system for regulation of migration processes. It has already enabled the enhancement of some crucial issues in this area, which were awaiting for their regulation for quite a while. Thus, on May 5, 2011 came into force the amendment to the Law of Ukraine on the regulation of migratory processes and the enforcement of responsibility for undocumented (illegal) migration.

However, experts are concerned if the newly-established agency will be able to solve a big cluster of unsolved issues that have piled up throughout the previous years and are awaiting regulation. There are a number of constraints on this way. In particular, the SMS lacks a civic component given that it stems primarily from police structures in the respective ministries. Second, it is not authorized to deal with the issue of labor migration which, by the Decree of the President⁸, was eventually recognized as a serious challenge to the national security in Ukraine.

Yet, despite all the shortcomings, what is important is that the matter has moved on from the dead point and allows hoping for further progress in the formation of national migration policy in Ukraine.

Institutional setting and policy makers on migration issues in Ukraine

1. State and local governmental policy-makers and implementers

- 1.1 The **President**, as the Guarantor of the Constitution, participates in shaping the migration policy (legislative initiative, signing of laws, veto right, management of foreign affairs). He/she takes decisions regarding acquisition of citizenship, granting of asylum in Ukraine, etc.
- 1.2 The **Cabinet of Ministers** establishes the immigration quota. An immigration quota is calculated annually for the corresponding calendar year based on the analysis of immigration process and taking into account the need to limit as much as possible the immigration of foreign nationals and persons without citizenship from countries with a large number of migrants. The quota is approved by the Cabinet of Ministers of Ukraine.
- 1.3 **Ukrainian Parliament Commissioner for Human Rights** has parliamentary control over the observance of constitutional human and citizens' rights, freedom and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.
- 1.4 **State Border Guard Service (SBGS)** conducts transfer and registration of foreigners through the state border; counteracts irregular migration; checks grounds for foreigners' entry; and takes decisions on shortening the term of their stay in Ukraine and deportation. The responsibilities of SBGS include the following: border control and issuance of permits to individuals, transport vehicles, cargo, property crossing the border; detecting and preventing illegal flows of individuals, vehicles and material products across the border; combating organized crime and irregular migration along the borders; taking decisions regarding expulsion of foreign citizens and stateless persons.
- 1.5 **Ministry of Interior, the State Department for Citizenship, Immigration and Registration of Individuals**, created in 2002, has a status of a governmental agency of state management, i.e. higher than that of a ministerial subdivision. Its functions include: issuance of documents for citizens' departure abroad; registration of foreigners; issuance of decisions on naturalization; combating of irregular migration; and decision on shortening the term of foreigners' stay and deportation.

⁸ Decree of the President of Ukraine as of 20.07.2007, No 657/2007.

- 1.6 **Ministry of Foreign Affairs** protects the rights of citizens abroad; ensures development of ties with Ukrainians abroad and issues visas to foreigners for entering Ukraine.
- 1.7 **Ministry of Labor and Social Policy** has a joint responsibility with the Ministries of Foreign Affairs and Interior in terms of labor migration. Its responsibilities include: participating in the design and implementation of state migration policy; monitoring of implementation of migration policy and related laws; issuance of licenses to agencies mediating employment abroad and control of compliance with license requirements; participation in the preparation and implementation of international treaties; and initiating of scientific research projects.
- 1.8 **State Committee for Nationalities and Religion (SCNR)** in cooperation with the Ministries of Interior, Foreign Affairs, Labor and Social Policy, Public Health, as well as the State Border Guard Service, exercises the following functions: policy development in the field of immigration and refugees; processing of claims for granting refugee status and asylum; provision of shelter to claimants at centers of temporary accommodation for refugees; assisting voluntary returns of refugees and asylum seekers to their countries of origin or permanent residence; and developing programmes for refugee integration into the Ukrainian society.
 - 1.8.1 **Security Service** facilitates state border protection; participates in taking decision regarding the entry, exit and stay of foreigners; and counteracts illegal migration and human trafficking.
- 1.9 **State Committee for Statistics** produces and publishes statistics on migration regularly.
- 1.10 **State Migration Service** is a recently established authorised body of the executive power responsible for issues of migration, citizenship and immigration. Its key responsibilities include: granting the Ukrainian citizenship to non-nationals and granting the status of refugees to applicants; documentation of persons who acquired or terminated Ukrainian citizenship; issuing licenses for immigration, etc. Additionally, the agency bears responsibility for the operation of detention camps for refugees, asylum seekers, non-nationals with no citizenship, etc.
- 1.11 **Regional Migration Services (MS)**. The SCNR and MS are grossly understaffed with 150 staff, 20 in Kiev and 130 in the regions of Ukraine. Additionally these agencies suffer from constant staff turn-over. Other failings include a lack of information on the country-of-origin. There also appears to be no consultation with other organizations and databases, such as the UNHCR publications.

2. Quasi-governmental agencies

2.1. State research institutes

- 2.1.1. Institute of Demography and Social Studies of the National Academy of Science (NAS) of Ukraine. *Department for Research on Migration* carries out a complex research on migratory tendencies in Ukraine; research on labor migration and its impact on demographic development in Ukraine; migratory prognosis; research in ethnic composition of the population and inter-ethnic relations.
- 2.1.2. Institute of Ethno-National Studies of the National Academy of Science (NAS) of Ukraine (Lviv branch).
- 2.1.3. Institute of Sociology, NAS of Ukraine
- 2.1.4. National Institute for International Security Studies.

2.2. State regional employment centers (all Ukrainian networks)

3. Non-Governmental organizations (selective)

- 3.1. The **Open Ukraine Philanthropic Foundation** is a private nonpartisan international philanthropic foundation established by Arseny Yatsenyuk and Zbigniew Drzymala to support public diplomacy, raise the profile of Ukraine internationally, and to provide information and legal aid to Ukrainian citizens. Open Ukraine actively cooperates with IOM and World Bank on the migration issues.
- 3.2. The **Kharkiv Regional Charitable Foundation (KRCF) “Social Service of Assistance” (previously “Caritas Kharkiv”)** is a charitable organization that provides assistance to refugees, migrants, orphans, elderly people, and other vulnerable groups of society. KRCF “Social Service of Assistance” has been actively engaged in IOM activities in Ukraine. Since 2005 it has been running a “Centre for Migrant Advice” project within the framework of the IOM Capacity Building in Migration Management Programme.
- 3.3. The **Western-Ukrainian Resource Centre (WURC)** has a long experience (since 1996) in providing consultations and educational services to local NGOs and communities on the questions of NGO administration, strategic development, and community development. It offers a wide range of consulting services to local NGOs, implements democracy research, establishes partnership relations and systems of information exchange, organizes conferences, seminars and trainings, and publishes the all-Ukraine magazine “*Civil Initiatives*”.
- 3.4. **The Southern Ukraine Centre of Young Layers** is an executive partner of the UNHCR in the Odessa region. Since 2000 this NGO together with the UNHCR mission in Ukraine, has been implementing a project that provides legal assistance to refugees and asylum seekers in the Odessa region. The target groups of this project are refugees, asylum seekers, repatriated people, and people who require legal assistance due to the threat of deportation to a country where danger awaits them. The staff of this NGO provides free legal assistance to the beneficiaries and represents them in court and to the authorities.
- 3.5. **Charitable Foundation “Rokada”** offers various kinds of supports to non-nationals: psychological and psychiatrist counseling, as well as consultation on human rights, legislation (e.g. assistance of a professional lawyer on how to acquire welfare subsidies from the governmental); humanitarian assistance (clothes, school kits for children, living essentials and food packs for new comers and for TB-infected person, etc.); educational assistance (language courses, retraining courses).
- 3.6. **Ukrainian Refugee Council** is a network of 10 NGOs offering support to refugees and enforced immigrants. It assists Ukrainian state bodies in provision of assistance to refugees and asylum seekers, fulfilling Ukraine's international obligations.

4. International organizations (key actors)

- 4.1. **International Centre for Migration Policy Development (ICMPD)** strives for comprehensive, sustainable and future-oriented migration governance in Ukraine, doing so based on solid evidence and in partnership with all relevant stakeholders at national, regional and international levels.
- 4.2. **Kennan Institute Kyiv Office** is a branch of the Woodrow Wilson Centre, International Centre for Scholars. One of the research priorities of the institute is “Ukraine at the crossroads of migration routes”. It has issued several collections of essays on intercultural relations in Ukraine and non-traditional migrants in the capital city of Kyiv.
- 4.3. **Caritas Ukraine. The work of Caritas Ukraine** is primarily directed at addressing issues of health, migration, and HIV/AIDS and assisting families and children, disabled individuals, and people in difficult life situations.

5. Transnational structures

5.1. UN country team in Ukraine:

5.1.1. International Organization for Migration (IOM). Counter-Trafficking Partnership Network of NGOs;

5.1.2. International Labor Organization.

5.1.3. United Nations High Commissioner for Refugees.

5.2. International Committee of the Red Cross (ICRC);

5.3. Organization for Security and Cooperation in Europe (OSCE);

5.4. European Commission.