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Integration of Migrants and Reintegration of Returnees in Ukraine: Legal Prospective

Oleksandra Palagnyuk

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CARIM-East
Creating an Observatory of Migration East of Europe

Research Report
CARIM-East RR 2013/47

**Integration of Migrants and Reintegration
of Returnees in Ukraine: Legal Prospective**

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CARIM-East – Creating an Observatory East of Europe

This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

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Executive Summary

The Ukrainian government is being confronted with numerous migration-related problems. The need for a coherent state migration policy is, thus, becoming acute due to the international obligations of the state and the issues of inner stability and security. This is particularly important as since 1991 Ukraine has become both a country of emigration and immigration. According to the official statistics of the International Organization of Migration¹, the total stock of immigrants, who are officially registered as legal residents in Ukraine as of 2012, has reached 230,891 persons. Moreover, since 2008, their numbers have grown by some 10,000-15,000 annually. According to statistical data, the Russian Federation, Moldova, Georgia, Azerbaijan, Belarus, Armenia and Uzbekistan are the seven main “suppliers” of migrants to Ukraine.

A propos labor and seasonal migration it is important to underline that the highest number of aliens officially employed in Ukraine reached its peak in 2008. Afterwards, due to economic instability and crisis in the country, the number of foreign workers in Ukraine started to drastically decrease and as of now stands at about 8,000.

Integration of migrants, refugees and stateless persons as well as the reintegration of returnees is a gradual long-term process. This involves a wide range of socio-economic and cultural issues and problems that are addressed by the government. In this research paper, the author looks at: the current state of national legislation for migrant integration and returning persons into the “recipient society”; the identification of relevant judicial and institutional shortcomings in the relevant policies and regulations; and we also offer recommendations for improvements in Ukrainian state migration policy in this area.

The aim of the paper is to address and to analyze migrant integration and the integration returnees into Ukrainian society, while applying the following criteria, set by the Migration Integration Policy Index: anti-discrimination and equity; access to education, social benefits system and healthcare; employment opportunities; grade of execution of the right for a freedom of movement and choice of a free place of residence; and the legally-enforced mechanisms aimed at guaranteeing citizenship through naturalization as well as various economic and socio-political rights and lawful interests.

Introductory note

Ukrainian legislation relating to the integration of immigrants into the society of the “recipient country,” as well as the re-integration of Ukrainian citizens, who are voluntarily returning home, covers numerous international treaties. These have been ratified by the Ukrainian government and thus are an integral part of the state migration system. There are also various intra-governmental agreements with countries concerning relevant relations. Then, there is, finally, domestic laws, policies and regulations in the migration sphere. Talking about the last category of migration legislation in Ukraine and in terms of the particular research conducted, special emphasis should be paid to: the Constitution of Ukraine; the Civil, Civil Procedural, Labour and Land Codes; and the laws On the Legal Status of Aliens and Stateless Persons, On Immigration, On Citizenship, On the Freedom of Movement and the Choice of Residence, On Entrepreneurship, On Investments, On Public Service, On Employment, On Associations, On Education, On General Secondary Education, On Higher Education and others.

¹ Migration in Ukraine: Facts and Figures. International Organization of Migration. Second edition, 2013. Available under http://iom.org.ua/en/pdf/Eng%20FF_F.pdf

According to the new Law of Ukraine On the Legal Status of Aliens and Stateless Persons, September 22, 2011² (which had replaced the former legal act with the same title from 4 February, 1994), the term “alien” covers two categories of individuals. Thus, Article. 1 of the legislative act states that aliens are either citizens of foreign countries (thus not citizens of Ukraine) or stateless persons, who have no citizenship from any state.

Anti-discrimination and equity

According to Art. 26 of the Constitution of Ukraine³, aliens and stateless individuals enjoy the same rights and freedoms as Ukrainian citizens and are equal before the law, unless national legislation states otherwise. In particular, it is stipulated that there should be no discrimination of foreign individuals legally residing in Ukraine based on their origin, race and ethnicity, gender, language, religion, occupation, social and property status, etc. In general terms, Ukrainian state legislation has the tendency to equate its own citizens with the citizens of foreign countries regarding the in terms of the execution of their rights, with rare exceptions set by law. For example, if a foreign country makes a decision to apply certain limitations on the rights and lawful interests of Ukrainian citizens residing in that state, the Cabinet of Ministers of Ukraine may decide to set some restrictions accordingly on the citizens of that state in Ukrainian territory.

As to the legal status of aliens and stateless persons temporarily or permanently residing in the territory of Ukraine that status sets the prerequisites for their human rights and freedoms on the same grounds as citizens of Ukraine. At the same time there are certain limitations that are fully consistent with the norms of international law. Thus, Ukrainian legislation, namely the Constitution, stipulates that foreigners are have the right to personal integrity, integrity of a household, non-interference in the private and family life, privacy of correspondence, telephone conversations and telegraphic communications, and respect of their human dignity. Moreover, the Ukrainian state provides protection for both material and non-material rights and for the lawful interests of aliens according to the current legislation in the event of their violation. Art. 423-424 of the Civil Procedural Code of Ukraine⁴ proclaim that foreigners are entitled to go to the court and other state institutions so as to file a petition for the protection and/or re-establishment of their personal non-material, material and other rights. It is important to note that during the court proceeding aliens enjoy the same type of procedural rights as citizens.

Aliens have a wide range of rights and freedoms, established and safeguarded by the national law and international judicial norms. But those aliens in Ukraine are also bound by certain duties and obligations. Thus, aliens are obliged to respect and abide the norms and provisions of the Ukrainian Constitution, and to honour Ukrainian traditions and customs. Moreover, the execution of rights and freedoms by the citizen of a foreign state or a stateless individual must not harm the national interests of Ukraine, the rights, nor the freedoms and lawful interests of Ukrainian citizens.

Entry requirements and regulations

The rules governing the procedure of the entry, transit and exit of aliens to, through and from Ukrainian territory are clearly defined by the Law of Ukraine On the Legal Status of Aliens and Stateless Persons and the relevant Decrees of the Cabinet of Ministers of Ukraine. Thus, Art. 25 of the Law of Ukraine on the Legal Status of Aliens and Stateless Persons stipulates, that the citizen of a foreign state or a stateless person may enter Ukraine with valid international passport or other

² Закон України Про правовий статус іноземців та осіб без громадянства від 22.09.2011 № 3773-VI .

³ Конституція України, Верховна Рада України; Закон від 28.06.1996 № 254к/96-ВР

⁴ Цивільний процесуальний кодекс України, Верховна Рада України; Кодекс від 18.03.2004 № 1618-IV

documents which substitute a passport. In certain cases, which are designated and regulated by national law and international agreements between Ukraine and governments of foreign countries, aliens are obliged to obtain a valid entry visa in order to cross the state border of Ukraine. They must obtain this visa prior to their arrival into the country.

Cases, when entry into Ukraine territory is not permitted to the citizens of foreign countries and stateless individuals are explicitly postulated by the legislation and include situations when:

- The arrival of foreigner constitutes a threat to the national interests of the state, its security and/or public order;
- For the protection of health, rights and lawful interests of the citizens of Ukraine and other people who legally reside in the country;
- When, in the process of filing a visa application false statements, information and/or falsified documents are given;
- When in filing an application for the visa to Ukraine or at the time of crossing the state border international passports or substitute documents do not comply with the officially established patterns or belong to another person;
- When the entry visa to Ukraine is falsified.
- If, in entering Ukraine, the alien has violated the rules for crossing the state border, customs regulations, established health standards or failed to comply with the legal requirements set by the border troops of Ukraine and the other state agencies responsible for border control;
- If facts about violations of the national legislation on a previous visit come to light.

Freedom of movement

The Law of Ukraine On the Freedom of Movement and Choice of Residence⁵, governs how citizens of foreign countries and individuals without citizenship enjoy: freedom of movement within the country; and can choose the place of residence with some minor restrictions and limitations established by the aforementioned legal act and according to the regulations set by the law and relevant Decrees of the Cabinet of Ministers of Ukraine. Thus, limitations towards the freedom of movement of aliens residing on the territory of Ukraine can be applied and proven justified when: the relevant decision had been taken from consideration of security measures; for the protection of national interests of the country, health, rights and lawful interests of the citizens of Ukraine and other people who stay in Ukraine. Also, in the event of an alien changing his or her place of residence this person is obliged, under the law, to acknowledge this fact to the relevant state agency: this is the local department of the Ministry of Interior, which is responsible for registering foreign nationals and stateless individuals during their stay in Ukraine within ten working days.

Access to permanent residence

Ukrainian immigration laws and regulations clearly distinguish between foreigners arriving in the country temporarily (short-term stay) and those wanting permanent residence. The status, rights and lawful interests of such individuals vary accordingly. In general terms, based on the analysis of the national migration legislation of Ukraine, we can conclude, that foreigners residing in the country permanently are entitled to a wider range of rights and freedoms than short-term visitors, especially when it comes to access to education and medical care (for clarifications and more information please refer to the relevant chapters of this paper)

⁵ Про свободу пересування та вільний вибір місця проживання в Україні, Верховна Рада України; Закон від 11.12.2003 № 1382-IV

In accordance with the Law of Ukraine On Immigration⁶, aliens and stateless persons may move to Ukraine with the aim of permanent residence if all conditions, set by the national legislation for that purpose, are fully met. The law also stipulates the legal procedure for requiring permanent residence permits, their amendments and cancellations; designates authorities and state bodies that are responsible for ensuring the enforcement of immigration legislation such as: the Cabinet of Ministers; the State Migration Agency; the State Committee of Ukraine on Nationalities and Migration; the Ministry of Interior; and relevant diplomatic representations and consular institutions.

Article 4 of the Law of Ukraine On Immigration states that permanent residence permits are issued to aliens in accordance with the specially designated immigration quota. This is set annually by the Cabinet of Ministers of Ukraine, in compliance with the established administrative procedure and is applicable to the following categories of migrants:

1. scientists and employees in the cultural sphere, whose immigration into the country is in line with the national interests of Ukraine;
2. highly-qualified specialists in industry and science where the economy of Ukraine has seen a significant shortfall in workers;
3. individuals, who have invested at least one hundred thousand US dollars (in convertible foreign currency) into the economy of Ukraine;
4. individuals who are a full-blood brother or sister, grandfather or grandmother or grandchild of a Ukrainian citizen;
5. individuals, who have been in possession of Ukrainian citizenship before but who have lost it due to certain legislative and institutional circumstances;
6. persons who are parents or the spouse of the immigrant and their minor children;
7. individuals, who have uninterruptedly resided on the territory of Ukraine for three years since the obtaining their refugee or asylum status in the country of concern, along with their parents, spouses and minor children.

Important to note here is, that, besides the quota-scheme for immigration into Ukraine, the aforementioned law (namely Art. 4) designates the right for long-term residence and the acquisition of immigration permits for certain categories of migrants, such as:

- spouses of Ukrainian citizens, to whom said citizens have been married for at least two years;
- parents and children of Ukrainian citizens;
- legal guardians or trustees of Ukrainian citizens, as well as individuals under the guardianship or trusteeship of citizens of Ukraine;
- individuals entitled to Ukrainian citizenship because of their territorial origin;
- individuals whose immigration into the country is of the special interest to the Ukrainian state.

It is important to underline that there is a different procedure for the acquisition of permanent residence status by some special categories of immigrants and it is essential to reflect upon this here. The Law of Ukraine on the Legal Status of Aliens and Stateless Persons (Art.4) has certain provisions on the permanent residence of individuals, who have been granted asylum status in Ukraine. Thus, the aforementioned persons are considered, by national legislation, as those permanently residing in Ukraine after having acquired official refugee/asylum status and this should be supported by the issuing of the relevant state certificate. Moreover, foreigners and stateless persons, who are recognized as individuals requiring legal protection from the Ukrainian state and who have been granted temporary protection in the country, shall be deemed lawfully temporarily residing in the territory of Ukraine for the whole duration of the circumstances under which the temporary protection permit was

⁶ Про імміграцію, Верховна Рада України; Закон від 07.06.2001 № 2491-III

granted. As to the foreigners and stateless persons who have arrived in Ukraine on legal grounds with the aim of paid employment and execution of their professional activities, they shall be deemed as lawfully residing in Ukrainian territory for the period of their employment in the country.

Prior to the acquisition of permanent residence status as the finalization of the immigration process, there are a few institutional steps to be taken by the foreigner. The Law On the Legal Status of Aliens and Stateless Persons clearly determines the procedure of arrival of aliens into Ukraine: including the need for the temporary residence permit. Thus, according to Art. 9, a person who lives outside Ukrainian territory and who wishes to immigrate into the country, must first of all apply for the entry visa in the Ukrainian consulate abroad. This special type of visa is valid for one calendar year. After arrival in Ukraine the holder is obliged to file a petition for a permanent residence permit within five working days to the “central executive body dealing with migrants”, which is a special division of the Ministry of Interior. At the same time, those already legally residing in Ukraine should file the relevant petition directly to the aforementioned state institution.

Article 10. of the Law of Ukraine on Immigration institutionalizes the legal and institutional grounds for denying the issue of the residence permit to certain explicitly determined individuals, namely:

1. those who have been sentenced to imprisonment for more than one year for a criminal offence according to the national legislation of Ukraine, unless the conviction has been cancelled or cleared according to the procedure specified by law;
2. those, who have committed unlawful acts against peace, war crimes or offences against humanity as these are being defined by the provisions of the international law;
3. those who are the subject of ongoing criminal proceedings;
4. those who are suffering from chronic alcoholism, addiction to toxic substances and drugs, or those who are infected with contagious diseases, which are officially included in the list approved by the state executive agency for health care;
5. those, who have deliberately provided false information in their applications for immigration permits or who have submitted counterfeited documents;
6. those whose entry into the territory of Ukraine is prohibited by national law;
7. in other cases stipulated by the laws and regulations of Ukraine.

National migration legislation of Ukraine, which is in line with the established norms of international law, governs that citizens of foreign countries and stateless individuals may be expelled from Ukrainian territory in certain cases: when it is deemed necessary for the protection of the health, rights and legitimate interests of citizens of Ukraine; when the actions of aliens constitute a threat to the national security and the public order of the country; when individuals commit a crime and are being sentenced for a term of imprisonment longer than one year; when applicants knowingly provide false information and/or counterfeit documents at the time of filing a petition for a permanent residence permit; when foreigners violate legal provisions for their stay on Ukrainian territory. At the same time Ukraine, being bound by the obligations set by the norms and provisions of the international law, excludes certain categories of migrants from expulsion. Thus, in accordance with the Art. 31 of the Law of Ukraine On the Legal Status of Aliens and Stateless Persons: an individual cannot be forcibly returned or forcibly expelled, extradited or transferred to countries where their life or freedom would be threatened due to discrimination by race, religion, nationality, citizenship (nationality), membership in a particular social group or political opinion or due to a widely-spread violence; or where they will face the death penalty or execution, torture, cruel, inhuman or degrading treatment or punishment.

Access to citizenship

Following the provisions of the Constitution and the Law On Citizenship⁷ it is fair to conclude that foreigners and stateless individuals are entitled to Ukrainian citizenship through naturalization in the event when all legal and institutional prerequisites are fully met. First of all, Art. 9 of the aforementioned law designates that an alien willing to acquire Ukrainian citizenship and prior to filing the official petition for it should give up his or her former nationality: this is ignored in cases where this provision is excluded by international agreements between Ukraine and governments of other states. In all other cases the legal clause applies, that the application for the acquisition of Ukrainian citizenship can only be processed after proof is presented for the termination of the former foreign citizenship. However, the obligation shall be waived for foreigners who are citizens of countries where legislation envisions automatic termination of citizenship once a foreign citizenship is acquired, or when international treaties with Ukraine stipulate such simultaneous termination.

Second, the aforementioned legislative act requires the recognition and observance of the Constitution and [other] laws of Ukraine by any foreigner who wishes to gain the citizenship of the country.

The third important prerequisite in this matter is the receipt of a permanent residence permit and the continuous lawful residence of the foreigner in the territory of Ukraine for five years. Yet, simplified conditions apply towards certain categories of individuals, explicitly indicated by national immigration legislation. Thus, this clause is not relevant for individuals married to Ukrainian citizens for over two years and who are permanently and lawfully residing in the country with their spouse, even when the marriage is terminated by the death of Ukrainian spouse. Also, for persons who have refugee status in Ukraine, the term of continuous lawful residence in the territory of the country is to be shortened to three years from the date of receiving refugee or asylum status. In the case of stateless individuals, they are legally entitled to apply for Ukrainian citizenship after three years of residence in the country from the date of receiving their permanent residence permit.

Knowledge of the state language of the country (Ukrainian) should be proven by the foreign applicant for the acquisition of Ukrainian citizenship: though certain physically disabled individuals, namely those who are blind, deaf and/or mute are exempted from this obligation.

And, lastly, the applicant must prove that he or she has legitimate sources of subsistence in Ukraine to get Ukrainian citizenship: here refugees and/or asylum seekers are exempt from it.

Access to employment opportunities and the system of social benefits

Ukrainian state employment legislation, while protecting the national job market, nonetheless states that certain categories of migrants can work in the country. Thus, Art. 42 of the Law of Ukraine on Employment⁸ postulates that foreigners who are permanently residing in the country, after having been through the authorized immigration process and those with refugee status, can work in Ukraine if no special agreement between Ukraine and foreign governments applies. This means that they can be hired on the same legal grounds and on equal conditions with Ukrainian citizens. Their labour is thus regulated by national employment legislation, which comprises of the Labour Code and the Law On Employment.

Note though that Art. 3 of the Law stipulates that foreign nationals can be hired by Ukrainian economic entities and enterprises according to concluded labour contracts, which in turn serves as the legal grounds an authorized work permit: work permits are processed by the State Employment Agency for every potential foreign employee separately after a petition from a potential employer. It is

⁷ Про громадянство України, Верховна Рада України; Закон від 18.01.2001 № 2235-III

⁸ Про зайнятість населення, Верховна Рада України; Закон від 05.07.2012 № 5067-VI

important to underline that Art. 42 of the aforementioned law explicitly stipulates the legal grounds and the procedure for the issue of the work permit for the citizen of a foreign country. Thus, a Ukrainian enterprise or economic entity might be entitled to the right to use the labour of the foreigner. This entitlement depends on the valid and properly issued work permit under the conditions that: an interested employer will be able to justify in his petition to the State Employment Agency, that the work of the foreign national is necessary due to the shortage of workers/specialists in this particular branch of economy or sphere of production; and that no Ukrainian employee has the right qualification from this position. The relevant work permit is issued for one year of employment with the possibility of its extension if both parties involved (namely the employer and State Employment Agency) agree upon it: this obviously applies only if not obstacle for the prolongation of the labour contract emerges.

At the same time the aforementioned law (namely Art 4) sets certain restrictions and limitations on the labour and professional activities of foreigners in Ukraine. It contains the provision that citizens of foreign countries and stateless individuals cannot execute certain activities and/or occupy work positions where Ukrainian citizenship is a strict requirement. To be more precise, Art. 4 of the Law of Ukraine On Public Service⁹ and Art. 38 of the Constitution state that foreign nationals may not be elected to become officials of state institutions or bodies, as this right is to be executed by Ukrainian citizens.

To conclude we should note that foreigners residing in Ukraine with the valid work permit and legally carrying out their professional activities according to labour contracts have the right for and access to the same social employment benefits as Ukrainian citizens. This is based on the legal provision of equity and non-discrimination and includes annual vacation leave, sickness leave, maternity leave, appropriate and safe labour conditions, healthcare and pensions. The lawful interests are proclaimed and regulated by the Labour Code of Ukraine.

Level of economic and socio-political engagement in the recipient society

According to national legislation, citizens of foreign countries and stateless individuals are entitled to numerous socio-political and economic rights and freedoms in Ukraine with certain limitations and restrictions being applicable. Talking about economic integration of aliens in the life of a “recipient country”, the former Law On Legal Status of Aliens and Stateless Persons from 1994 used to institutionalize their right for investment and entrepreneurship activities (Art. 7); the right to own personal property, inherit or bequeath the same (Art. 13); and the right for dwelling (Art. 12). The new version of the Law and updated version (of September 22, 2011) had been changed significantly by law-makers. Thus, it no longer contains any legal provisions concerning the rights and freedoms of foreigners residing in Ukraine and all the aforementioned articles have been revoked. Instead of that, a new chapter entitled the “Liability of aliens and stateless individuals” has been introduced.

At the moment most of the economic rights and lawful interests of foreigners in Ukraine for personal property and housing are defined and regulated by the Civil Code of Ukraine.

Art. 2 and 16 of the Law on Entrepreneurship¹⁰ grants citizens of foreign countries the freedom to conduct business in Ukraine. The legal act also includes the provision that foreign citizens and stateless individuals owning business in Ukraine are entitled not only to equal rights but also to the same volume of obligations and economic duties as Ukrainian entrepreneurs. Namely, they are the subject of taxation and other types of state fees according to national legislation and according too to the international agreements of Ukraine.

Ukrainian national legislation of Ukraine, namely the Law on Investments, encourages and promotes any kind of investment initiatives foreign nationals in the Ukrainian economy. Potential

⁹ Про державну службу, Верховна Рада України; Закон від 16.12.1993 № 3723-ХІІ

¹⁰ Про підприємництво, Верховна Рада УРСР; Закон від 07.02.1991 № 698-ХІІ

investors from abroad and those individuals holding non-Ukrainian citizenship while legally residing in the country are, therefore, entitled to almost unlimited rights and freedoms in this sphere of economic activity with some minor restrictions and limitations, which apply towards national investors as well.

At the same time the Land Code of Ukraine establishes certain limitations towards the possession of land by foreigners. To be more precise, the aforementioned legislative act determines the provision, that foreign citizens and stateless individuals have no right of ownership for any pieces of land in Ukraine. However, they can access and widely use it according to their rent contract.

While analyzing the volume of socio-political rights of aliens in Ukraine, we came to the conclusion that they are fully deprived of the electoral right and some other important political freedoms, which are accessible only for Ukrainian citizens. According to the Constitution (namely Art. 36, 38), foreigners and stateless individuals are not allowed to take part in the elections and referendums and to establish or to become members of political parties. Even though, in accordance with Art. 12 of the Law on Associations of Citizens, they may be initiators and participants of all other types of unions connected to their social and cultural interests and aspirations. Moreover, Art. 36 of the Constitution of Ukraine and Art. 15 of the European Convention on Human Rights fully support this legal provision.

Access to education

The educational opportunities of foreign citizens and stateless individuals in Ukraine are stipulated and regulated by the Constitution, Law on Education, Law on General Secondary Education, and the Decree of the Cabinet of Ministers # 136 On the Provision of Educational Services to Aliens Temporarily Residing in Ukraine. In general terms, given the content of these legal acts, we can conclude that educational opportunities of foreign citizens in Ukraine vary depending on their legal status and the relevant educational degree.

The Constitution of Ukraine (Art 53) proclaims that “Everyone has the right to education. Complete general secondary education is compulsory. The State ensures accessible and free pre-school and complete general secondary education in state and communal educational establishments” and institutionalizes the provision that “Children are equal in their rights regardless of their origin”(Art. 52). Law on General Secondary Education¹¹, on its behalf, postulates that citizens of foreign countries and stateless individuals aged eighteen and below, who are residing in Ukraine on legal grounds, are entitled to the free state secondary education along with citizens.

The situation with a higher education degree is different. Thus, in accordance with the Art. 3 of the Law On Education¹² and Art. 4 of the Law on Higher Education¹³, only individuals in need for temporal legal protection and those being granted the status of refugee enjoy free access to higher education in Ukraine. All other categories of foreign citizens are obliged to pay for educational services, which they take advantage of inside the country of concern, if no other legal provisions apply concerning commitments and obligations of Ukraine in educational sphere in accordance with numerous international agreements. However, there is an exception, contained in and enforced by the Decree of the Cabinet of Ministers # 136 On the Provision of Educational Services to Aliens Temporarily Residing in Ukraine. This legislative act provides 1,000 state scholarships annually from the budget for the education of foreign citizens in the country. The Ministry of Education and Science distributes these grants between educational institutions.

¹¹ Про загальну середню освіту, Верховна Рада України; Закон від 13.05.1999 № 651-XIV

¹² Про освіту, Верховна Рада УРСР; Закон від 23.05.1991 № 1060-XII

¹³ Про вищу освіту, Верховна Рада України; Закон від 17.01.2002 № 2984-III

Access to healthcare

As to the access of aliens to the healthcare system in Ukraine it is important to note that their rights and lawful interests in this particular sphere vary depending on their legal status in the country, meaning whether they are permanent residents or whether they are in any other category. Thus, foreigners living legally in Ukraine on the basis of their permanent residence permits after the successful procedure for immigration, refugees and individuals in need for temporal legal protection from the Ukrainian government enjoy free-of-charge state medical treatment: on the same basis as Ukrainian citizens. However, the provision of medical care to all other categories of aliens is regulated by the relevant Decree of the Cabinet of Ministers of Ukraine¹⁴. This legal act designates that foreigners who are temporarily staying on the territory of Ukraine can acquire medical treatment, including emergency medical care, explicitly on a paid basis, if no other provision arise from international agreements between Ukraine and governments of foreign states. All remunerations of medical care should be directly paid for by foreigners to the medical institution and/or establishment which had provided such services. This is done according to terms and conditions and in the amount established according to the official procedure approved by the Ministry of Health.

Aliens have the right to use the services of officially registered and certified insurance companies and also to sign relevant contracts with them on their own behalf. In these cases the insurance company is obliged to bear all costs related to the treatment of the foreigner in question.

Reintegration of returning migrants

The return and re-integration of citizens should be one of the most important migration-related policies of every country in the contemporary world. After all, in a time of growing globalization and widespread freedom of movement problems connected with the outflow of qualified specialists (“brain drain”), loss of labour resources and drastic decrease in population are becoming more and more acute for the governments of some states. Ukraine is no exception. Moreover, according to the outcomes of the sociological study conducted by the State Statistics Service and the Institute of Demography and Social Studies of Ukraine¹⁵, for the period from January 2010 to June 2012 1.2 million of Ukrainians (which constitutes approximately 3.4% of the country’s population between the age of 15 and 70), have been officially employed abroad in the Russian Federation (43% of respondents), Poland (14%), Italy and the Czech Republic (13% each). (Here we have named the main destination countries for the labor emigration of workers of Ukrainian origin.) Moreover, relying on the statistical data of the International Organization of Migration, Ukrainian migrants (both short-term visitors and permanent residents) became, in 2012, the fifth largest national group of third-country nationals in the European Union after Turkey, Morocco, Albania and China.

Several state programs aimed at the promotion and support of repatriation and the reintegration of returning Ukrainian migrants are currently being implemented by the Ukrainian government. In general, they target such categories as Ukrainian citizens residing abroad as labour migrants, victims of the crime of “trafficking in human beings” and individuals who have crossed the state border illegally (irregular migrants). To be more exact, at present there is the Governmental Program for the integration of immigrants into Ukrainian society and measures aimed at the re-integration of Ukrainian returning emigrants for the years 2011-2015. (adopted by the Cabinet of Ministers by the relevant Decree on 15.06.2011). The main objective of this state program is to enforce legal mechanisms and institutional measures aimed at the successful and smooth departure of returned migrants. This is done in terms of the

¹⁴ Про затвердження Порядку надання медичної допомоги іноземцям та особам без громадянства, які тимчасово [...]Кабінет Міністрів України, Постанова, Порядок, Перелік від 22.06.2011 № 667

¹⁵ Migration in Ukraine: Facts and Figures. Second edition, 2013. Available under http://iom.org.ua/en/pdf/Eng%20FF_F.pdf

financial and operational assistance of the aforementioned process from the country of former residence along with their further reintegration into the socio-economic life and labour market of Ukraine.

Much work in the sense of *joint efforts in the provision of judicial, socio-economic, institutional conditions for the return of labor and other categories of emigrants from the European Union back to Ukraine* has been carried out by the *European Reintegration Support Organizations, a coalition of non-governmental organizations active in Ukraine since its establishment in 2008. 2011-2013 the regional branch of CARITAS in Ukraine has been implementing a project, "Strengthening Tailor-made Assisted Voluntary Return", which, among other things, targeted the most vulnerable categories of migrants such as women and minors.*

In case of "trafficking in human beings", there are several state programs for the rehabilitation of victims, including the provision of qualified psychological, medical and social treatment. These are actively supported by the international community represented by the International Organization of Migration, Organization of Security and Cooperation in Europe, the United Nation and numerous international human-rights organizations ("La Strada", "Caritas" etc). *Here we are mostly referring to the Governmental Program aimed at the prevention and counterfeit of the crime "trafficking in human beings" for the period of duration until the year 2015, which is normally adopted for five years and renewed accordingly.*

As to the return of irregular migrants, according to the information provided on the official website of the State Migration Agency¹⁶, the Ukrainian government has legally-enforced readmission agreements with seventeen countries. These include the Russian Federation, Georgia, Moldova, Uzbekistan, Turkmenistan, Armenia, Vietnam, Hungary, Poland, Slovakia, Lithuania, Latvia, Bulgaria, Switzerland, Turkey, Denmark and Hungary. Active negotiations concerning the future signing of such agreements are being carried out with the governments of CIS countries such as Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and states in which citizens currently constitute the highest "risk rate" of illegal immigration to Ukraine. They typically remain in Ukraine as asylum seekers and refugees or transit through the territory on their way to the European Union. Here we are mainly talking about Bangladesh, India, Iraq, Iran, China, Afghanistan, Sri-Lanka and Lebanon. An important achievement for Ukrainian foreign policy and diplomacy was the signing of the Readmission Agreement with the European Union in 1997.

¹⁶ Державна міграційна служба України <http://dmsu.gov.ua/normatyvna-baza>

Concluding notes

In 2011 Kiev International Institute of Sociology conducted a sociological survey for the Institute of Human Rights and Prevention of Extremism and Xenophobia. 400 immigrants over the age of 18, representing 10 different ethnic groups, were interviewed in all parts of Ukraine¹⁷. The major aim of the poll was to figure out to what extent these people are integrated. Another aim was to see how this integration corresponds to the criteria of the assessment of alien integration in the recipient country, set by the Migrants Integration Policy Index. The aforementioned sociological study revealed that out of the pool of respondents 51% were in higher education, 56% were officially employed (with 14% being private entrepreneurs); 15% claim that their relatives could freely move to Ukraine if they wanted it or it was deemed necessary; 80% were able to openly communicate with the local population in Russian or Ukrainian; 66% of migrant children study at local schools; 91% established friendly relations with the locals; and 93% enjoy freedom of religious expression during their residence in Ukraine.

We wanted to address the requirements set by the Migration Integration Policy Index towards the margins of successful integration of immigrants and returnees to the society of the “recipient country”. To achieve this we decided to analyze and determine the grade of its concordance with the Ukrainian national migration legislation. We did so by reflecting upon those indicators selected and examined in this piece of research, such as the criteria of: anti-discrimination; access to education, the system of social benefits and healthcare; equal employment opportunities; access to long term residence and citizenship.

As the result of this analysis and an estimation of the outcomes of the study on the subject of accordance of Ukrainian state immigration legislation to the standards and requirements set by the Migrant Integration Policy Index we have come to a series of conclusions. The present Ukrainian migration policies and the regulations in this particular sphere of governance are below the average margin in comparison to those established in some European countries: Sweden, Norway, Spain, Italy, Finland, Portugal, Belgium and the Netherlands have the highest indicators for the inclusion of immigrants and their dependants in the society of the recipient country¹⁸. The performance of Ukraine in this matter, according to our considerations, can be approximated to the level of legal enforcement of integration of foreign residents in such countries as Latvia, Serbia, Cyprus, Slovakia, Malta and Lithuania (with the total score below the margin of 40 out of 100¹⁹). From our point of view, this is largely due to the fact that Ukraine, being a relatively young country, finds itself in the process of active institutional and judicial reform. In fact, it must find new mechanisms to establish steady and fully-functioning democratic values and practices, intensive approximation of its state legislation up to the internationally-recognized judicial standards and the norms of the *acquis communautaire*. At the same time it has averagely developed immigration laws along with somewhat weak migrant integration procedures and practices. In general terms, Ukrainian legislation for ensuring and safeguarding the needs of foreign residents in terms of their smooth and effective integration into the recipient society corresponds with the basic international and European requirements and standards. However, the major problem here is that national migration authorizes often encounter difficulties in terms of their practical enforcement and realization due to numerous institutional restraints. These are mostly connected with the existence of corruption, high level of bureaucracy and often the lack of proper professional training and sufficient competence of relevant state officials. The Ukrainian government should significantly improve the coordination of performance of responsible state institutions and agencies in connection with the fulfillment of their entitled responsibilities and duties.

¹⁷ Migration in Ukraine: Facts and Figures. International Organization of Migration. Second edition, 2013. Available under http://iom.org.ua/en/pdf/Eng%20FF_F.pdf

¹⁸ OVERALL SCORES 2010 - Country results <http://www.mipex.eu/countries>

¹⁹ OVERALL SCORES 2010 - Country results <http://www.mipex.eu/countries>

They should also incorporate more transparent, coherent and effective procedures and practices into state immigration policy.

While comparing the different areas of socio-economical and political inclusion of foreigners and stateless persons residing in Ukraine as the result of the application of established MIPEX indicators, we are able to conclude that Ukrainian state policies and regulations are the most coherent and well-developed in the following fields: ensuring access of aliens to the long-term residence Ukrainian citizenship, national labor market and the system of social security benefits connected with employment. Such spheres, meanwhile, as access to free education, medical care and political participation remain rather underdeveloped and, therefore, need reconsideration and further improvement from the Ukrainian government.

Also, based on an in-depth study and analysis of Ukrainian immigration legislation, it is essential to point out the difference between short and long term residents. Permanent residents, in fact, are entitled to a much wider range of rights and freedoms according to national law in comparison to those who are living in Ukraine on a short-term basis. However, the most significant shortcoming of Ukrainian immigration state policy is that it stipulates and practically enforces the protection of rights and the lawful interests of explicitly officially registered aliens (foreigners legally residing on its state territory). However, irregular migrants are mostly deprived of the same. We find this discriminatory and non-acceptable in terms of the democratic values of the civil state. Both of the aforementioned disadvantages should be addressed and resolved by the Ukrainian government as soon as possible.

As to anti-discrimination it is important to note that, Ukrainian judicial norms proclaim, ensure and safeguard the equity of foreign nationals residing in Ukraine with the citizens of the state.²⁰ However, more intensive and target-originated measures should be undertaken by the government in terms of promoting the democratic values of racial, religious and ethnic tolerance among the population of the country. The aim here must be to create a more positive environment for the realization of all proclaimed rights and guarantees of aliens through the prevention of any possible expressions of xenophobia and racism in the society.

²⁰ Migration in Ukraine: Facts and Figures. International Organization of Migration. Second edition, 2013. Available at http://iom.org.ua/en/pdf/Eng%20FF_F.pdf