

ADMINISTRATIVE LAW OF UKRAINE FOR FOREIGNERS

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In the publication, the achievements of the modern theory of administrative law and the administrative practice of the national public administration enable to reveal the key provisions of Ukraine's modern administrative law in the form of questions and answers. They are based on the examples faced by foreigners in Ukraine. The publication considers the human-centred theory, according to which national public administrators are required to ensure the rights and freedoms of foreigners. A popular scientific publication can be used as educational provisions for foreigners. Furthermore, it will be useful to foreign scientists and students.

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General Information on Legal Ukraine¹

Ukraine is a legal, democratic state, with a mixed form of government – a presidential-parliamentary republic². It is the second-largest country by area (603,700 sq. km.) and the eighth-largest one by population (42 million people) in Europe.

The starting point of Ukrainian statehood was Rus as a powerful state in IX-XIII centuries. The state of Rus was destroyed by Mongol invasion in 1240. In the absence of own state, Ukrainian nation lived for over 300 years governed by Lithuanian State and Polish-Lithuanian Commonwealth and Austria-Hungary States. Moreover, its lands were under the occupation of the Moscow State for almost 200 years. The Ukrainian nation regained its independence in 1648–1774 and 1917–1922 respectively. Ukraine has been a founding member of the United Nations since its founding. However, Ukraine became a fully independent State in 1991.

Ukraine's legal system belongs to the Romano-Germanic legal family. The main sources of law are the Constitution and other laws of Ukraine. Case law of the European Court of Human Rights are sources of law in Ukraine. By-laws issued by the Government, the President and ministers play a significant role in public administration³.

¹ Valentyn Halunko

² The Constitution of Ukraine.

³ For example: The procedure for extending or reducing of the duration of foreigners' stay in Ukraine. Government Resolution No.150 of 15.02.2012.

For example: *The procedure for extending or reducing of the duration of foreigners' stay in Ukraine. Government Resolution No. 150 of 15 February 2012.*

Foreigners, who stay in Ukraine on legal grounds, enjoy the same rights and freedoms and also have the same obligations as citizens of Ukraine, except for several political rights and duties.

Foreigners are required to abide the Constitution and laws of Ukraine, other legal regulations, not to infringe on the rights and freedoms, honour and dignity of other people, interests of society and the Ukrainian State⁴.

Ukrainian people profess European values, are highly diligent, are moderately religious, and respect the right to private property. Ukrainian citizens kindly refer to foreigners. However, most of Ukrainian citizens do not speak English.

All emergency operators speak English at the "B 2" level: the State Emergency Service (Tel. 101), the Police (tel. 102), Medical Help (ambulance) (tel. 103).

⁴ On the legal status of foreigners and stateless persons. Law of 02 September 2011.

The Basis for the Legal Status of Foreigners in Ukraine⁵

According to the Constitution and laws of Ukraine, foreigners and stateless persons (hereafter referred to as foreigners) who stay in Ukraine legally enjoy the same rights and freedoms as well as have the same obligations as the citizens of Ukraine, except for political rights and duties. Furthermore, persons who are illegally residing in Ukraine due to various circumstances are under the protection of the Ukrainian State⁶.

Foreigners may use the first principle of the legal and regulatory framework: they are permitted whatever is not prohibited by law. Their rights are not exhaustive. Provided that they do not violate the rights, freedoms and interests of others.

According to **the national regime**, foreigners throughout Ukraine enjoy the same scope of rights as Ukrainian citizens and legal entities.

Foreigners enter the territory of Ukraine with the presence of the passport and visas obtained. International treaties have established that citizens of 58 countries may enter Ukraine without visas. They are all member countries of the EU, Paraguay, the USA, Israel, etc.⁷ The term of stay of the foreigners in Ukraine, is usually limited to 90–180 days.

⁵ Volodymyr Kurylo, Vira Halunko

⁶ Illegal migrants may be placed in the centres of temporary stay for foreigners and stateless persons.

⁷ Under current countering COVID-19, restrictions may be imposed on the entry into Ukraine of foreigners from certain States with a high incidence of disease.

Foreigner's registration is carried out at the checkpoints on the State border by the State Border Service of Ukraine.

Foreigners should abide by rules of stay in Ukraine, in particular, they should not violate rights and freedoms of citizens, rules of entry; principles of national security of Ukraine; customs' and tax regulations; rules of public order. They have to respect State symbols of Ukraine (flag, emblem, and anthem).

In case of a loss of the passport or any other ID in Ukraine, a foreigner should immediately notify a territorial agency or a unit of State Migration Service, which shall issue a corresponding statement on a loss to the foreigner. Foreigners may freely leave the territory of Ukraine.

Chapter 1

General information on the Legal System of Ukraine

1.1 The legal system of Ukraine⁸

The legal system of Ukraine is an integral element of Ukrainian statehood. Historically, the legal system of Ukraine has been shaped by Christian ethics and the provisions of Magdeburg and Polish-Lithuanian law. It has been influenced by the Austro-Hungarian Imperial and, unfortunately, Russian legal tradition.

Nowadays, Ukraine's legal system is being transformed into an integrative one. It reflects the European integration development vector of the Ukrainian State and is characterized by the approximation of Ukrainian law to EU law.

The elements of the Ukrainian legal system are:

- the legal component: provisions of law, legal principles and the legislation system;
- the ideological component: the legal ideology, legal ethics, legal education, legal psychology;
- the practical component: law-making, law application and law interpretation;
- the subjective component: legal subjects, such as natural persons, legal entities, the State, social communities, etc.

⁸ Mariia Novikova

The key features of the Ukrainian legal system are:

- fundamental human rights and freedoms provided by law and guaranteed by the State;
- relation to the Romano-German legal family: division into private and public law, the dominance of legal regulations in the system of sources of law and the codification of sources of law;
- a transitional state of affairs characterized by a shift from pseudo-socialist, oligarchic and corrupt factors in law to the practical construction of a democratic State based on the rule of law;
- Euro-integration vector of development;
- establishment of a legal system of benefits for individual social groups;
- development of the public service system.

The sources of modern Ukrainian law are legal regulations (the written Constitution laws and other legal regulations), Ukraine's international treaties in force, principles of law, case law and legal science.

The law system of Ukraine involves public and private sectors of law. Public sectors are constitutional law, administrative law, criminal law, penal law, criminal procedure law etc. Private sectors are civil law, family law, labour law, environmental law, land law etc.

The legal system of Ukraine enables to consolidate and implement the domestic and foreign policy of the State. Its development is based on the membership in the European Union. The strategic elements of the European integration policy of the Ukrainian State are programme documents, such as the Association Agreement between Ukraine and the European Union, etc.

1.2 Legal liability of foreigners⁹

Foreigners are required to follow the Constitution and laws of Ukraine and other laws and regulations. They must not infringe on the rights and freedoms, the honour and dignity of others, the interests of society and the State. Violation of Ukrainian legislation entails legal liability. Legal liability in Ukraine is a system of State coercive measures (punishments).

The purpose of legal liability is to protect and restore violated human rights and freedoms, to ensure law and order, and to prevent the commission of new offences.

Legal liability is applied *on the basis of the principles* of justice, legality, imminence, expediency, justification and humanism.

The key types of legal liability are administrative, criminal, labour and civil. Other types of legal liability concern a narrow range of subjects. For example, constitutional liability.

Criminal liability is the type of legal liability, which provides for the application of criminal punishment. Criminal punishment is applied to natural and legal persons guilty of a criminal offence (criminal misdemeanour or crime). Acts recognized as criminal offences are listed in the Criminal Code of Ukraine. Other acts are not criminalized. Criminal liability is incurred solely on the basis of a court judgement.

Civil liability is liability of a natural or legal person for breach of contractual obligations, for non-contractual property damage, as well as for violation of personal property and non-property rights. The objective of civil liability is to protect the rights of the owner. The Civil Code of Ukraine is the main regulatory instrument in this sector.

Labour liability is divided into disciplinary and material liability. Labour liability is provided for in the Labour Code of

⁹ Mykola Novikov

Ukraine. Disciplinary liability is incurred for breach of work discipline. It entails the imposition of a disciplinary penalty, such as reprimand or dismissal.

1.3 Ukrainian Judiciary¹⁰

Justice in Ukraine operates based on the rule of law following European standards and ensures the right of everyone to a fair trial. According to the constitutional principles of separation of powers, judicial power in Ukraine is exercised by independent and impartial courts.

Justice in Ukraine is administered exclusively by the courts. Delegation of the functions of courts or appropriation of such functions by other bodies or officials shall be prohibited. The independence and immunity of judges shall be guaranteed. Any influence on judges shall be prohibited.

Ukraine has a three-level system of justice, its activities are based on the principles of the rule of law, publicity, openness, comprehensive consideration of cases, independence, collegiality, validity, and binding effect of its opinions. Ukrainian courts are endowed with legal, financial, and constitutional freedom.

The judiciary is formed on the principles of territoriality, specialization, and instance. The judicial system consists of local courts, courts of appeal; the Supreme Court. The Supreme Court is the highest judicial body in the system of courts of general jurisdiction. Higher specialized courts operate to consider certain categories of cases. Higher specialized courts include the High Intellectual Property Court and the High Anti-Corruption Court. These courts are the highest judicial bodies of the specialized courts.

¹⁰ Inesa Kostenko

Local courts of the first instance are the most numerous. Local general courts are district courts formed in one or more districts or districts in cities, or in districts, and cities. Local commercial courts are district commercial courts. Local administrative courts are district administrative courts and other courts defined by procedural law. Local general courts hear civil, criminal, administrative and administrative offenses. Commercial courts resolve disputes concerning economic activity, namely: concerning the implementation of business activities, shares, securities, bankruptcy, etc. The jurisdiction of administrative courts extends to cases in public law disputes, in particular, disputes of individuals or legal entities with subjects of power over appeals against its decisions, actions or omissions, disputes between subjects of power.

The courts of the second instance are courts of appeal. Civil and criminal cases and cases of administrative offenses are heard by the courts of appeal established in the districts. For consideration of commercial and administrative cases, these are the Commercial Courts of Appeal and the Administrative Courts of Appeal, respectively.

The last and highest instance in the court system is **the Supreme Court**. The Supreme Court is the highest court in the judicial system of Ukraine, which ensures the stability and unity of judicial practice.

Higher specialized courts. These are the High Court of Intellectual Property and the Higher Anti-Corruption Court. To consider certain categories of cases in the judicial system, there are higher specialized courts as courts of first and appellate instances. The highest specialized courts are the High Court of Intellectual Property and the High Anti-Corruption Court of Ukraine. Higher specialized courts hear cases under their jurisdiction, analyse judicial statistics, study and summarize case law, and inform the Supreme Court of the result.

1.4 National Police of Ukraine¹¹

It is always possible that the foreigner should enter into legal relations with the police. In most cases, the police bear the burden of protecting foreigners in the event of unlawful attacks. **The National Police of Ukraine (the police)** is the central body of the executive power, which serves society by ensuring the protection of human rights and freedoms, combating crime, and providing public security and order. Police activities are carried out under a special Law¹².

The objectives of the police are to provide police services in:

- 1) Ensuring public safety and order;
- 2) Protecting human rights and freedoms, as well as the interests of society and the State;
- 3) Countering crime;
- 4) Providing assistance services to persons who need such assistance for personal, economic, social or emergency reasons.

The police officer is a citizen of Ukraine who has taken the Police Officer's Oath, serves in the relevant positions in the police and has been awarded a special police rank. The police officer has a service ID and a personal badge.

The police officer is a representative of the State in the course of exercising police powers vested. The legitimate demands of a policeman are binding on foreigners and other persons. Interference with the police officer's activities, obstruction of the performance of his or her respective powers, noncompliance with the legitimate instructions of a police officer, and any other unlawful acts against a police officer shall entail liability established by law.

¹¹ Olena Syniavska

¹² On National Police. Law of Ukraine.

To accomplish objectives assigned, the police take measures to respond to offences provided for in the Code of Administrative Offences and the Criminal Procedure Code.

Police officers may apply police measures to protect foreigners from unlawful infringements. A **police measure** is an act or set of preventive or coercive measures that restrict certain human rights and freedoms and are applied by the police as established by law to ensure the exercise of the police powers vested. Police measures are applied on the grounds and in the manner prescribed by law.

A police measure is applied to accomplish police powers exclusively. A police measure chosen shall be:

- Legitimate, that is, a police officer is prohibited to apply any other measures than those prescribed by the laws of Ukraine;
- Necessary, that is, another measure cannot be applied to exercise police powers or the application of another measure will be ineffective, as well as the police measure applied will cause the least harm to both the addressee of the measure and other persons;
- reasonable, that is, the harm caused to the legally protected human rights and freedoms or to the interests of society or the State in applying a police measure does not exceed the good to be protected by its application or the threat of harm posed;
- effective, that is, the application of a police measure ensures the exercise of police powers.

A police measure shall be stopped if its purpose has been achieved, if impossibility to achieve the purpose of the measure is evident or if there is no need for further application of the measure.

The State compensates the harm caused to a natural or legal person by the decisions, actions or inactivity of a police body or unit, or to a police officer in the course of exercising their powers.

1.5 State Migration Service of Ukraine¹³

The State Migration Service of Ukraine implements government policy in the sectors of migration (immigration and emigration), including countering illegal (unlawful) migration, citizenship, registration of persons, refugees and other categories of migrants.

The State Migration Service of Ukraine provides **services to foreigners**, as follows:

Special permission to enter the occupied territory of Ukraine (Autonomous Republic of Crimea). According to the document, the entry of foreigners and stateless persons into and from the temporarily occupied territory of Ukraine is carried out through control posts with a passport and a special permit, issued by the territorial authority of the State Migration Service of Ukraine.

Extension of stay in Ukraine. The duration of stay of foreigners who are nationals of States with visa entry requirements, as well as of stateless persons, is limited by the validity of the visa. In other words, a foreigner or a stateless person may be temporarily present in the territory of Ukraine during the period of authorized stay granted by the visa, but not more than until the last day of validity of the visa.

Issuance of a temporary residence permit. A temporary residence permit grants a foreigner or a stateless person rights to temporarily reside on the territory of Ukraine. Territorial bodies of the State Migration Service of Ukraine produce and issue temporary residence permits with a contactless electronic chip.

Issuance of an immigration permit. Immigration is the entry into Ukraine of foreigners or stateless persons for permanent residence. Immigrating to Ukraine requires an immigration permit. It can be of two types:

¹³ Oleksandr Svitlychnyi, Olena Korotun

1. Within the quota set by the Cabinet of Ministers of Ukraine for a calendar year. They may be persons of science and culture whose immigration is in the interests of Ukraine; highly-qualified specialists and workers of increased demand for the Ukrainian economy; persons who have invested in the economy of Ukraine sums in a foreign convertible currency that make up at least 100,000 USD; persons who are brothers or sisters, grandparents, grandchildren or granddaughters of Ukrainian citizens; persons who were citizens of Ukraine earlier; the immigrant's parents, husband (wife) and minor children; persons who have continuously resided in Ukraine for three years from the date of granting the status of a victim of human trafficking; persons who have served in the Ukrainian armed forces for three or more years.

2. An immigration permit beyond the quota shall be granted to one of the spouses if the other spouse is a Ukrainian citizen and the couple has been married for more than two years, the children and the parents of Ukrainian citizens; persons who are guardians or trustees of Ukrainian citizens or whose guardians or trustees are Ukrainian citizens; persons who have the right to acquire Ukrainian citizenship on the grounds of territorial origin; persons whose immigration is of State interest to Ukraine; foreign Ukrainians, spouses of foreign Ukrainian and their children if they come and stay in Ukraine together.

To move to Ukraine for permanent residence, a foreigner shall apply for an immigration permit from the State Migration Service of Ukraine. Application forms for immigration permits are available on the official website of the State Migration Service of Ukraine (dmsu.gov.ua).

Issuance of residence permits to foreigners and stateless persons who have immigrated to Ukraine for permanent residence.

The residence permit is the only document that certifies the identity of a foreigner or a stateless person and confirms the legal grounds for permanent residence in Ukraine. It is made in the form of a card with a contactless electronic chip, issued to foreigners or stateless persons who have an immigration permit to Ukraine or before the decision to terminate Ukrainian citizenship permanently, have resided in Ukraine permanently and remained permanently residing in its territory after such a decision.

Execution and issuance of invitations to foreigners and stateless persons to obtain visa documents for entry into Ukraine. The ground for issuing a short-term visa is, inter alia, an invitation from a legal entity registered in Ukraine, issued on an official form, or a notarized invitation from an individual.

Issuance of a stateless person's identity document for travel abroad. Identity documents are issued to stateless persons who have reached the age of 16 and permanently reside in Ukraine. By way of exception, if it is required by the State a person seeks entrance to, or by the international organization in the activity thereof a person intends to participate, identity documents may be issued to a stateless person under 16 years of age.

Liability for violation by foreigners of the term of stay in Ukraine. If foreign nations and stateless persons who have come to Ukraine for a temporary purpose (business, education, employment, tourism, else), have violated the term of stay in Ukraine specified by Ukrainian laws, they shall be administratively liable for that violation in the form of a fine.

It is important to know! Foreign lawbreakers may be forcibly returned or forcibly expelled to the country of origin or the third country.

1.6 Advocacy in Ukraine¹⁴

A powerful **advocacy** performs in Ukraine ensuring the implementation of legal protection, representation and rendering other types of legal assistance in a professional manner as a non-governmental self-governing institution. Advocacy of Ukraine is made up of all lawyers of Ukraine who are entitled to perform a legal practice.

In case of legal problems, a foreigner should contact a lawyer. Lawyers that work as advocates are the best. They can reliably restore violated rights of foreigners and/or protect from unreasonable accusations of breaking the law for affordable pay or by providing free legal assistance.

Lawyers can provide foreigners with:

- Legal information, advice and clarification, compilation of applications, complaints, proceedings and other legal documents;
- Protection of rights, freedoms and legal interests of detained, accused, convicted people, as well as foreigners who are under consideration of extradition to a foreign country;
- Legal assistance to the witness in criminal proceedings, victim representation in the proceedings of administrative offense, representation of the rights and obligations of the victim in criminal proceedings;
- Representation of foreigners' interests in courts during civil, commercial, administrative proceedings and in other State agencies.

Advocates are forbidden: to use information obtained against the rights of the client; to disclose information that constitutes advocacy secrets; to refuse legal assistance.

¹⁴ Serhii Koroied, Larysa Soroka, Kseniia Kurkova

1.7 Notary in Ukraine¹⁵

Ukraine has an effective Latin notarial system. It involves private and public notaries entrusted with the duty to certify rights as well as the facts of legal significance and to perform other notary acts in order to provide them with legal certainty.

Notaries perform the following key notary duties:

- certify transactions (contracts, wills, powers of attorney, requirements for notarization of the transaction, etc.);
- take measures to protect the ancestral property,
- issue a certificate of inheritance;
- issue certificates of ownership of a share in the joint property of the spouses on the basis of a joint application or in the event of the death of one of the spouses;
- issue purchase certificates through public tender (auctions);
- describe the property of the individual who is recognized as missing or whose residence is unknown;
- impose and lift the ban on the alienation of immovable property (property rights to immovable property) subject to public registration;
- demonstrate authenticity of copies (photocopies) of documents and extracts from them;
- certify the authenticity of signatures on documents;
- certify accuracy of document translations from one language to another;
- certify the fact that an individual or legal entity is the executor of the will;
- certify the fact that the individual is alive;
- certify the presence of a person in a particular location;
- certify the time of submission of the documents;

¹⁵ Oleksii Drozd, Serhii Rozsokha

- take money and document deposits;
- commit executive inscriptions;
- take documents for storage.

Notaries may be entrusted with other notarial acts in accordance with the law. Notaries receive a fee for their notary acts, an amount thereof is determined by an agreement between the private notary and a client. Ukraine has applied a liberal system of notaries' activities. They are numerous. Notary services' prices are relevantly low due to a competition between notaries. Private notaries' offices are located on almost every crowded street (district).

Chapter 2

Basic Questions and Answers on the Administrative Law of Ukraine for Foreigners

2.1 Why do foreigners need knowledge of the administrative law of Ukraine¹⁶?

From the first moments of the stay in Ukraine, a foreigner enters into legal relations regulated by administrative law. This is done immediately, since the foreigner is required to pass the border and customs controls, thereby becoming a subject of administrative and legal relations. Further, applying for an administrative service, or simply walking around Ukrainian cities, the foreigner directly or potentially interacts with the public authorities of Ukraine and follows certain administrative rules.

Therefore, foreigners constantly come into contact with administrative law, sometimes without even paying attention to it.

Administrative law regulates relations between individuals (including foreigners) and public administrators¹⁷

***For example:** 1) a foreigner who rents a car is a driver and is required to follow traffic rules, which are a form of administrative*

¹⁶ Valentyn Halunko, Viacheslav Boiko, Andrii Kudin

¹⁷ The main public administrators in Ukraine are the executive authorities, local governments and their officials.

law; 2) in administrative service centres, the foreigner receives a permanent residence permit.

The key objectives of administrative law are the rights, freedoms and legitimate interests of individuals, including foreigners, and the public interest of entire society.

By law and intrinsic rights, they should ensure the virtues of citizens fairly and properly, in accordance with the rule of law. A citizen is a client, a government is a service.

A national public service has only three main tasks: 1) to assist when necessary; 2) not to interfere if not required; 3) to distinguish the former from the latter¹⁸.

It is worthwhile for foreigners to know their administrative rights and how to enforce them through the implementation of administrative law.

In general, administrative law enables foreigners:

- 1) to obtain administrative services;
- 2) to feel safe while in public places;
- 3) to move in safe transport;
- 4) to work, study and rest in safety;
- 5) to enter to Ukraine and return;
- 6) to engage in business;
- 7) to receive protection and assistance from the State and local self-government bodies;
- 8) in case of violation of rights, freedoms or interests, to apply to administrative bodies with a complaint and to the administrative court with a request for their renewal.

Therefore, knowledge of administrative law enables foreigners to feel safe, to receive administrative services, to defend violated rights, freedoms and interests.

¹⁸ A citizen is a client, a government is a service: President of Ukraine outlined the priorities of reforms in Ukraine. <https://www.president.gov.ua/news/gromadyanin-kli-lyent-vlada-servis-prezident-u-kanadi-nazvav-p-56169>

2.2 What is the rule of law¹⁹?

The rule of law is a fundamental principle of the legal order of the Ukrainian State. It applies to all State authorities and local self-government bodies and their officials. Moreover, this principle is a high-level legally binding norm.

The rule of law means that human rights and freedoms are not the consequence of guarantees established in legal regulations adopted by the State. On the contrary, official public documents are a consequence of intrinsic human rights. After all, the doctrine of the intrinsic implies that human rights and fundamental freedoms are not granted by the State, but these are the intrinsic rights inherent in the human being by nature and belong to the human being as a creation of Nature and therefore they are inalienable.

The specificities of the rule of law principle are:

- Human being with his/her rights and freedoms are recognized as the core value, while all other values, including the government and law, are secondary;
- The legislation and law are not equal, the legal regulation which violates the human rights is not legitimate, is not binding, and its implementation is criminal;
- The legislation that complies with the theory of natural right, is binding and non-compliance with it entails punishment;
- The rule of law determines the content and direction of the State's activities, for example court and public administrators.

Therefore, the rule of law means that public administrators recognize the law as the highest value that ensures rights and freedoms of Human being and public interest of society.

The administrative proceeding is of a special importance in the system of institutional enforcement of the rule of law. The content

¹⁹ Kateryna Chyzhmar, Oleksandr Lavrynovych

of the rule of law principle in administrative proceedings include elements, such as: the possibility to apply to an administrative court for the protection of rights, freedoms and interests directly on the basis of the Constitution of Ukraine; ensuring consideration of and decision on a public legal dispute before an administrative court in the absence of legislation governing the disputed relationship, its incompleteness, ambiguity or contradiction; application of the European Court of Human Rights' case law in the administrative court.

2.3 What rights and freedoms of foreigners are provided for by the administrative law of Ukraine?²⁰

In Ukraine, human rights and freedoms are not a gift of the State. These are natural virtues that the State of Ukraine provides to all people under its jurisdiction. In Ukraine, foreigners and stateless persons have legal rights and freedoms. Most of these rights are inalienable. Everyone in Ukraine, including foreigners, has a natural right to life, health, honour and dignity, inviolability and security.

Foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and bear the same obligations as citizens of Ukraine, except as provided by the Constitution, laws or international treaties of Ukraine.

It is important to know! No one and never, in particular the State, according to the law, can deprive a foreigner, irrespective of the legality of his/her stay in the territory of the State, of natural rights and freedoms.

²⁰ Valentyn Halunko, Diana Levchenko, Hanna Danylenko

Foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms and bear the same duties as citizens of Ukraine, except as restricted by the Constitution, laws, or international treaties of Ukraine²¹.

MAIN RIGHTS, granted to foreigners along with citizens of Ukraine.

Personal: the right to life and health, freedom, personal inviolability, inviolability of domicile and privacy of personal data, marriage to a citizen of Ukraine, freedom of movement (during stay on legal grounds in Ukraine), choice of residence – in case of obtaining a residence permit;

Economic: inviolability of property rights, doing business, investing, the right to work – after obtaining a work permit by a foreigner.

Social: to freedom of integrity, to education, social protection, vacation – in the case of official work.

SPECIAL RIGHTS, granted exclusively to foreigners:

- the right to entry to Ukraine with a national passport, as specified by the international treaty on visa-free regime between Ukraine and the State of citizenship of the foreigner, or a visa obtained in the prescribed manner²²;
- to temporary or permanent residence;
- to family reunion;
- to appropriate support during stay in the centres of temporary stay for illegal migrants;
- to transit;
- to be recognized as refugees or persons requiring additional or temporary protection, or asylum;

²¹ Law of Ukraine on the legal status of foreigners and stateless persons of 22 September 2011.

²² This rule does not apply to foreigners and stateless persons who cross the state border of Ukraine seeking recognition as refugees or persons requiring additional or temporary protection or asylum.

- to go to trial in case of forced return or forced deportation outside Ukraine;
- to prohibition of forced deportation to the countries where a foreigner will suffer harassment for racial, religious, national or political reasons, or there is a risk that a person will suffer harassment and humiliation or the death penalty.

Various branches of law, such as civil, administrative and criminal, ensure and protect rights and freedoms of foreigners. However, administrative law provisions apply most frequently.

Therefore, the provisions of administrative law ensure (protect) virtually all natural and special rights and freedoms of foreigners in Ukraine.

2.4 The administrative and legal status of foreigners and stateless persons in Ukraine²³

The law of Ukraine distinguishes categories of foreigners as follows: **A foreign national** is a person who is not the citizen of Ukraine, holding citizenship (nationality) of another State or States. **A stateless person** is a person that under applicable law is not recognized as a citizen by any of the States. **A refugee** is a person who is not the citizen of Ukraine and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, citizenship, membership of a particular social group, or political opinion someone who is outside the country of citizenship and cannot enjoy the protection of that country unable or is unwilling to enjoy that protection owing to such, or having no citizenship and being outside the country of his/her former permanent residence, cannot or is unwilling to return to it owing to the above-mentioned fears.

²³ Khrystofor Yarmaki

It is important to know! Foreigners and stateless persons under Ukrainian jurisdiction, regardless of the legality of their stay, have the right to recognition of a legal personality before the law and fundamental human rights and freedoms. Most of these rights are inalienable, namely the right to life, health, honour and dignity, integrity and security.

The Constitution of Ukraine establishes the national legal regime for foreigners in Ukraine. Foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms, as well as bear the same duties as citizens of Ukraine, except as restricted by the Constitution, laws, or international treaties of Ukraine.

Although the rights of foreigners are relatively equal to those of citizens, it should be noted that the national legal regime for foreigners has certain restrictions: they are not fully equal in rights and duties to Ukrainian citizens.

For example: *Foreigners in Ukraine do not enjoy most political rights, except the constitutional right to appeal and the opportunity to join voluntary organizations, shall not hold office (President of Ukraine, judge, prosecutor, policemen, to be in the positions of public servants, sea and air crews) etc.*

Foreigners who stay in Ukraine are grouped into: permanent residents of Ukraine; temporary residents of Ukraine (students, tourists, temporary workers, etc.); crossing the territory of Ukraine in transit.

Foreigners and stateless persons have the right to temporarily staying in Ukraine if they have arrived: for official employment; for study; for work in the offices of foreign economic entities in Ukraine; for work in branches or representative offices of foreign banks, registered in the prescribed manner, for implementing cultural, scientific, educational activities.

Foreigners and stateless persons' rights and freedoms realisation shall not harm the interests of Ukraine, rights and lawful interests of its citizens or other people staying in Ukraine.

Accordingly, foreigners and stateless persons may immigrate to Ukraine for permanent residence. **Immigration** is arrival at Ukraine or stay in Ukraine of foreigners and stateless persons in the manner prescribed by law with the purpose of the permanent residence. Correspondingly, **an immigrant** is a foreigner or stateless person, granted an immigration permit and entered Ukraine for permanent residence, or staying in Ukraine on legal grounds and was granted an immigration permit and continued his/her stay in Ukraine as permanent resident.

***It is important to know!** If a person intentional to be recognized as a refugee or a person requiring complimentary protection crossed the state border of Ukraine in the manner prescribed by the law of Ukraine, he/she shall apply to the central executive authority that implements public policy in this sector.*

2.5 What rights and freedoms do foreigners enjoy in Ukraine²⁴?

According to the legal status of foreigners, they shall enjoy some rights and freedoms as well as bear some duties. Foreigners and stateless persons' rights and freedoms realisation shall not harm the national interests of Ukraine, rights and lawful interests of its citizens or other people residing in Ukraine.

Foreigners and stateless persons are equal before the law, regardless of their origin, social and property status, race,

²⁴ Irina Ryzhenko, Olena Halahan

nationality, gender, language, attitude to religion, type and nature of occupation and other circumstances.

According to **the national regime**, foreigners who stay in Ukraine shall enjoy the same scope of rights as citizens and legal entities of Ukraine. The national legal regime is unconditional: it applies to foreigners and stateless persons, regardless of whether Ukrainian citizens have similar rights in the countries of foreigners' citizenship. The effect of the national regime on foreigners has certain restrictions: they are not fully equal in rights and duties to Ukrainian citizens. This regime generally applies to businesses of foreign persons, foreign goods, copyright protection, international civil proceedings, etc.

At the legislative level, Ukraine creates conditions for equal rights for citizens of other States and Ukrainian citizens. At the regulatory level, legal relations involving foreign citizens and legal entities are characterized by the presence of a 'foreign element'²⁵.

***It is important to know!** Foreigners are not restricted in their right to freedom and personal inviolability, to protection from interference with their privacy, family, conscience, home, correspondence, telephone and telegraphic communications and respect for their dignity.*

The national regime enables foreign nationals to enjoy their rights: to investment and business; to work; to rest; to health care²⁶; to social protection²⁷; to private property and housing; to property

²⁵ The concept of a foreign element is provided for in the Law of Ukraine "On Private International Law" no. 2709-IV of 23 June 2005, the analysis thereof testifies to the protection of foreign citizens and legal entities from infringements on their rights and legitimate interests.

²⁶ Procedure for providing medical care to foreigners and stateless persons..., approved by Resolution of the Cabinet of Ministers no. 121 of 19 March 2014.

²⁷ On compulsory State pension insurance. Law of Ukraine no. 1058-IV of 9 July 2003.

and personal non-property rights; to education; to enjoyment of cultural achievements; to participation in associations of citizens; to marital and family relations; to protections of personal rights; to travel throughout Ukraine and choice of residence, etc.

Foreigners and stateless persons have the right to apply to the courts and other State bodies for the protection of their personal property and non-property rights.

Frequently, the national regime, applied to foreign nationals and stateless persons in Ukraine, does not preclude the application of certain elements of the most-favoured regime, special (preferential, privileged) regime or reciprocity.

According to the purpose of the stay in Ukraine, a foreign national may receive a temporary or permanent residence permit, certificate of a foreign Ukrainian, stateless person, refugee or a person requiring additional protection; a temporary certificate of a citizen of Ukraine; a certificate of a person granted a temporary protection. A stateless person who is a permanent or temporary resident of Ukraine, but does not have a travel ticket, shall receive a stateless person's document for travel abroad, that is, a document that identifies the stateless person when crossing the state border of Ukraine and staying abroad.

2.6 What are duties and restrictions of foreigners in Ukraine?²⁸

The national regime enables foreigners not only to enjoy the same rights as the citizens of the country of residence but also bears responsibilities established by the legislation of Ukraine. Foreigners and stateless persons are obliged to strictly abide by

²⁸ Irina Ryzhenko, Olena Halahan

the Constitution and the laws of Ukraine, other legal regulations, avoid undermining the rights and freedoms, honour and dignity of others, the interests of society and the State.

Foreign nationals have slightly fewer economic, social and cultural rights than Ukrainian citizens. In particular, the State does not provide all categories of foreigners with rights such as the right to protection against unlawful dismissal, to social protection or higher education.

Foreigners who stay in Ukraine on legal grounds are required to have a valid passport document duly registered. Foreigners can move within the territory of Ukraine and choose their place of residence in the manner prescribed by the Cabinet of Ministers of Ukraine. Restrictions on movement and choice of place of residence are possible when necessary to ensure the security of Ukraine, protect public order, health, and the rights and legitimate interests of its citizens and other residents of Ukraine. If foreigners and stateless persons who stay temporarily in Ukraine change their place of residence, they are obliged to notify the State Migration Service of Ukraine.

Foreign nationals are excluded from most political rights, such as the right to form political parties, trade unions and to participate in the conduct of public affairs and referendums. Foreign nationals and stateless persons are also not subject to military duty. In cases provided for by law, foreigners and stateless persons, who stay in Ukraine on legal grounds, may perform voluntary military service in the armed forces of Ukraine.

Foreigners and stateless persons who engage in independent professional business, use the subsoil for mining purposes are considered residents and are required to file an annual tax return within a specified period of time, and report on their income, both from Ukraine and foreign, and their sources²⁹.

²⁹ Tax Code of Ukraine.

The right to a visa may be restricted to a foreigner or a stateless person. Such restriction may be to ensure the national security of Ukraine, public order, to counter crime, or if necessary, to protect public health, rights and lawful interests of the citizens of Ukraine and other residents of Ukraine.

If foreigners and stateless persons have lost legal grounds to stay in Ukraine, they shall voluntarily return to the country of origin or a third country in the time established. A foreigner or a stateless person may be expelled from Ukraine if it is necessary for safeguarding public health, rights and lawful interests of the citizens of Ukraine, or if actions of such person are contrary to the interests of Ukraine's national security or public order.

National legislation enables Ukraine to apply restrictive measures, such as retorsion, to foreign nationals of a particular country in response to unfriendly or unjust acts of that State against Ukrainian citizens.

For foreign nationals, a special procedure is established for the exercise of the right to freedom of movement, free choice of the place of residence and the right to freely leave the territory of Ukraine. The legal grounds for the stay of foreigners and stateless persons in the territory of Ukraine are the registration in the territory of Ukraine of a passport or a permanent or temporary residence permit, or documents certifying the status of refugee or asylum in Ukraine.

Free choice of the place of residence is restricted in administrative divisions, which are: in the border zone; on the territories of military facilities; in areas that are restricted areas; in the territory where, in case of danger of spread of infectious diseases and poisonings of people, special conditions and a mode of residence of the population and economic activity are entered; in territories in respect of which martial law or a state of emergency has been imposed. Free choice of the place of residence is also restricted to foreigners who do not have legal grounds to stay in Ukraine.

Ukrainian legislation imposes certain restrictions on foreign nationals, such as priests, religious preachers, tutors and other representatives of foreign organizations, who stay temporarily in Ukraine and may practise religious teaching, administer religious ordinances, or practice other canonical activities only in those religious organizations that invited them³⁰.

Foreigners and stateless persons may be restricted in the right to freely leave the territory of Ukraine if their departure is contrary to the interests of Ukraine's national security. Departure from Ukraine of foreigners and stateless persons may be temporarily prohibited by the court until they fulfil their property obligations to individuals and legal entities in Ukraine, unless otherwise is stipulated by the international treaties of Ukraine.

Ukrainian legislation may establish special rules of access to individual territories if this is required by the interests of Ukraine's national security or public order, human life and health³¹.

Foreigners and stateless persons may be denied the entry in Ukraine, stay in the territory of Ukraine for the purpose of transit through the territory during the time of stay in case of the absence of grounds for this and of adequate financial support to cover costs of the foreigner or stateless person's stay in Ukraine, or the relevant receiving party's guarantees. The procedure for confirmation of adequate financial support and its volume is determined by the Cabinet of Ministers of Ukraine.

The entry of foreign nationals into the territory of Ukraine from countries (localities) where particularly dangerous diseases have been registered is permitted in the presence of documents, provided for in international treaties and in Ukraine's health

³⁰ On freedom of conscience and religious organizations. Law of Ukraine.

³¹ Civil Code of Ukraine.

legislation³². Moreover, if foreign nationals or stateless persons living with HIV but their behaviour poses a threat to health, rights and lawful interests of the citizens of Ukraine, they may be expelled from Ukraine in the manner prescribed by law³³.

For example, in order to prevent the spread in the territory of Ukraine of respiratory disease COVID-19, caused by coronavirus SARS-Cov-2 (hereinafter COVID-19), for the duration of the quarantine, in particular from 00 a.m. on 28 August 2020 till 00 a.m. on 28 September 2020, foreigners and stateless persons were prohibited³⁴ from entering the territory of Ukraine. Certain categories of foreigners were allowed to enter Ukraine in the presence of a health insurance policy covering risks associated with COVID-19 treatment and observation.

2.7 What does public administration do for Foreigners?³⁵

Public administration is an inalienable subject of administrative and legal relations. It is always a public intermediary between the foreigner and other subjects of administrative law in public legal relations.

Public administration is executive authorities, local self-government bodies (their officials) and public organizations performing delegated executive functions, empowered by law to provide administrative services to foreigners, to protect their

³² On ensuring the sanitary and epidemic welfare of the population. Law of Ukraine.

³³ On combating the spread of diseases caused by human immunodeficiency virus (HIV) and legal and social protection of people living with HIV. Law of Ukraine.

³⁴ On protection of the population against infectious diseases. Law of Ukraine. Resolution of the Cabinet of Ministers of Ukraine no. 641 of 22 July 2020 "On the introduction of quarantine and the stepping up anti-epidemic measures in the area with a significant spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2".

³⁵ Nataliia Lytvyn

rights and freedoms, and at the same time to take negative measures against foreigners if they violate the rules governing their stay in Ukraine.

However, it must be considered that: executive authorities and local self-government bodies may act only in the manner prescribed by the Constitution and laws of Ukraine.

The aim of public administration is human rights and freedoms, as well as the public interest of the State and entire society. The subject of public administration in relations with a foreigner is an official of a State executive authority or an executive committee of local self-government bodies.

The key functions of public administration in respect of foreigners are:

- provision of support for foreigners when they need it³⁶;
- ensuring law and order, security in both public and private places, with the permission of the owners or with the approval of the court;
- provision of administrative services to foreigners;
- support, provision, safeguard and protection of refugees and other foreigners who objectively need it;
- protection and defence of national security, the principles and norms of public morality and Ukrainian cultural traditions;
- ensuring equal conditions for foreigners to do business, protection of foreign businesses from raids and corrupt individuals.

The State Migration Service of Ukraine is of particular importance for foreigners due to implementing public policy in sectors, such as citizenship, migration, registration of individuals,

³⁶ For example: The Patrol Police of the National Police of Ukraine renders assistance to foreigners who have lost their way or become a victim of an offense.

refugees etc. The State Migration Service carries out the procedures for the acquisition of Ukrainian citizenship and the termination of Ukrainian citizenship and submits the relevant documents to the Commission for citizenship issues under the President of Ukraine, decides on an immigration permit, participates in addressing the labour migration and education in Ukraine of foreigners and stateless persons; issues permits for permanent residence and permits for temporary residence in Ukraine, as well as for travel abroad, decides on the extension of temporary stay of foreigners and stateless persons in Ukraine, registers and issues the identity and citizenship documents to citizens of Ukraine, in accordance with the law, it performs law application and law enforcement functions, within the limits of its powers etc.

2.8 What is the public interest in the activities of public administrators³⁷?

Public administration entities act only in the public interest, neither in a private interest nor in a corporate interest. Beyond this category, the activities of public administration are unlawful.

The public interest is the totality of intrinsico existing historical, needs, values, aspirations, goals of Ukrainian society, ensured and protected by public administration entities using public administration instruments in the manner prescribed by law.

The public interest is not only dissociated from the private interest but is broader than the public interest. After all, it covers the totality of the common needs, values, aspirations of society.

³⁷ Tetiana Kolomoiets

The public interest encompasses the interests of all members of society, but this does not mean that it is simply a set of interests of individuals, a set of private, personal interests. The public interest is, in fact, a combination of interests that are important to any member of society.

***For example:** the right of foreigners in Ukraine to be in safe public places, to live in comfortable hotels, to breathe clean air, to receive high-quality administrative services, to appeal against the decision of public administration entities, to have the assistance of a lawyer and an interpreter, to freely leave the territory of Ukraine, etc.*

Moreover, no conditions are required for a person to have such an interest, therefore, the public interest is an interest that any person has unconditionally.

The public interest, by its very nature, reflects the balance of public and private interests, the state of affairs in and development of the major sectors of society, it is situational and depends on the conditions of society development and on contemporary national realities, its implementation and protection are a priority task for all public authorities, for which purpose they are empowered to use endorsed instruments of public administration.

The public interest may be grouped according to various criteria, for example according to the subject, into: the interest of the State, the Ukrainian nation, the Ukrainian people, the territorial community, foreigners who legally stay in Ukraine and illegal foreigners.

In order to ensure and protect the public interest, a system of public authority entities exist, and the national legislation provides for the framework for their activities and the application of public authority's means, such as control, supervision, responsibility, appeal, recourse, mediation etc.

2.9 How public administration is carried out in Ukraine³⁸?

The externals of the exercise of legal activities by the executive power is public administration.

Public administration as a form of the exercise of public power is characterized as:

- 1) an external of performing the executive power's tasks (functions);
- 2) exercised with the purpose of satisfying the public interest;
- 3) negatively disassociated from:
 - a) legislative activities;
 - b) court and criminal proceedings;
 - c) political activities;
 - d) activities aimed at the satisfaction of private.

Therefore, public administration is the administrative activities of public administration entities, the externals of the tasks (functions) of the executive power, is implemented in order to satisfy the public interest and is negatively dissociated from legislative judicial and political activities.

The key types of public administration are:

1. Provision of administrative services to foreigners

For example: issuance of visas for entry into Ukraine; issuance of temporary residence permits.

2. Performance of executive activities by public administrators

For example: passport and customs control at the entry of foreigners in Ukraine; the patrol police's assistance to a foreigner who has lost his way.

³⁸ Kyrylo Dramarenko

2.10 How the administrative law of Ukraine interacts with European administrative law?³⁹

Administrative law as a branch of legal system, belonging to a broader category of public law, where it is situated closest to constitutional law, has not the same meaning and scope in various legal systems within the Europe, on international, supranational and national levels. Although the expression and concepts of administrative law (*Verwaltungsrecht, droit administratif*) differ from one national system to another, it is possible to agree upon a common definition of administrative law as being the set of principles and rules applying to the organisation and management of public administration and to the relations between administration and citizens.⁴⁰

Ukraine is a member or an observer of several international organizations on European continent such as Council of Europe (from 1995), Organization for Security and Co-operation in Europe (from 1995), European Bank for Reconstruction and Development (from 1992), Central European Initiative (from 1996), Common Economic Space (from 2003), Community of Democratic Choice (from 2005), United Nations Economic Commission for Europe (from 1947) etc. Ukraine is also a potential candidate for the following organizations: European Union, NATO, and Central European Free Trade Agreement. Their legal framework in one or another way interacts with administrative law of Ukraine introducing concept of Europeanization of administrative law.

³⁹ Olesya Radyshevska

⁴⁰ Schwarze J. Administrative Law under European Influence: On the Convergence of the Administrative Laws of the EU Member States. London: Sweet & Maxwell, 1996. 840 p.

The notion of Europeanization becomes broader once we diversify any of the directions in question. This may happen with regard to the directions of exchange, by acknowledging that the European traffic in ideas and influence is not composed of only one-sided top-down impulses, but necessarily also includes the bottom-up original creation of a European common model and its later repetitive interactions with national laws. Alternatively, the broader notion may also recognize and embrace the plurality of actors. It will see the process of Europeanization as not being restricted to just the exchange between the EU and the national level but as also including the law and practice established under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the *case law* of the European Court of Human Rights (ECtHR) as well as the horizontal comparative dimension among the individual EU Member States⁴¹ and third countries such as Ukraine.

There exists as yet no comprehensive definition of European administrative law which addresses the overall concept, content, and system of this area of law. While the term primarily refers to the administrative law of the European Union, it need not be defined so narrowly. There are also specific administrative legal regulations within the framework of the Council of Europe (COE) and Organization for Security and Co-operation in Europe (OSCE) such as conventions and recommendations, as well as general principles of law.

For Ukraine the interaction of European administrative law has minimum of two dimensions. One is mainly political in character and represents the return to European values, democratic principles, ideas of rule of law, human rights protection, good

⁴¹ Bobek M. Europeanization of Public Law / The Max Planck Handbook in European Public Law. Vol. I: The Administrative State; Ed. by S. Cassese, A. von Bogdandy, P. Huber. Oxford: Oxford University Press, 2017. P. 631–673.

governance, good administration etc. The most important step to this direction – joining the Council of Europe in 1999, active participation in its work, and ratification of acts of *hard law* (about 230 conventions), e.g. ECHR (1950), the European charter of local self-government (1985), and many others.

The Council of Europe also introduce big scope of normative acts of *soft law* – recommendations, although legally non-binding, usually address a specific (human rights) topic in a comprehensive manner and refer to existing legally binding standards, e.g. Recommendation CM/Rec(2007)7 on good administration, Recommendation Rec(2004)20 on judicial review of administrative acts, Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law, Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties, Recommendation Rec(87)16 on administrative procedures affecting a large number of persons ect. From 2006 the decisions and *case law* of the ECHR are sources of administrative law of Ukraine used by national administrative courts.

Another dimension of interaction is the European integration and actions related to preparations of Ukraine to the European Union (EU) accession. Ukraine's desire to join the EU dates back to 1994 when the government declared that integration to the EU is the main foreign policy objective. As a result, the political application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other, started in November 2014, except for the Deep and Comprehensive Free Trade Area (DCFTA), which entered into force in January 2016⁴².

⁴² The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part. Official Journal L 161. 29.5.2014. URL: [https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:22014A0529\(01\)](https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:22014A0529(01))

The Agreement amounts to a charter for Ukraine`s modernization through alignment on EU norms, EU principles, assuring respect for core European values, concepts of *good governance* and *good administration*.

If we attempt to systematise the main administrative law principles common to western European countries, we could distinguish the following groups: 1) reliability and predictability (legal certainty); 2) openness and transparency; 3) accountability and 4) efficiency and effectiveness. Many principles of EU administrative law are embedded in the EU Treaties, the Charter of Fundamental Rights of the EU (2000), European Parliament resolution with recommendations to the Commission on a Law of Administrative Procedure of the EU (2013), and *case law* of the The Court of Justice of the EU. For example, EU administrative procedural law is codified in the Charter of Fundamental Rights of the EU: article 8 on protection of personal data, 20 on equality before the law, 21 on non-discrimination, 41 on the ***right to good administration***, 42 on the right of access to documents, 43 on the European Ombudsman, 47 on the right to an effective remedy and to a fair trial, 48 on presumption of innocence and right of defense.

The European standards of ***good governance*** have been articulated in «Principles of Public Administration» developed by SIGMA in close cooperation with the EU. They define what good governance entails in practice, and outline the main requirements for a well-functioning administration. The Principles are derived from international standards and requirements, as well as good practices in the EU Member States and countries of the Organization for Economic Cooperation and Development. The Principles defines the following reform areas: public policy development and coordination (strategic

planning of government policies, quality of regulation and public policies in general, including requirements for evidence-based policy making and public participation); the modernization of public service, human resources management; ensuring accountability of public administration (transparency of work, free access to public information, transparent organization of public administration with clear lines of accountability, possibility of judicial review); the service delivery (delivery standards and safeguards of administrative procedures, quality of administrative services, e-government); public financial management (administration of taxes, preparation of state budget, execution of state budget, public procurement system, internal audit, accounting and reporting, and external audit)⁴³.

But the question can arise «Can administrative law of EU be used directly by Ukrainian public administration and people of Ukraine, including foreigners, right now?» The answer is simple: NO to *hard law* (except EU Association Agreement and directives in Annex), and YES to *soft law*, doctrine of European administrative law, and EU values, if Ukraine wants to be a part of the EU and the European legal (administrative) sphere, important an actor on European arena. Ukraine needs to be democratic open legal state, implementing of rule of law, EU principle, and provision of EU Association Agreement. It`s ambition but manageable task: in 2019 the Constitution of Ukraine (1996), caring for the strengthening of civil harmony on Ukrainian soil, already reaffirms the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine.

⁴³ European Principles for Public Administration, OECD/SIGMA 1999, Vol. 27. URL: <http://www.sigmaxweb.org/publicationsdocuments/36972467.pdf>

2.11 What are the major sources of administrative law in Ukraine⁴⁴?

The sources of administrative law are a means of externalizing the administrative and legal provisions, certifying their public binding nature (means, forms of expression and the affirmation of public freedom), thus regulating administrative and legal relations.

Sources of administrative law are:

- national sources of administrative law, that is, the Constitution, other laws of Ukraine and by-laws;
- international sources of administrative law, that is, international treaties; international organizations' acts;
- court decisions (case law), that is, decisions of the Constitutional Court of Ukraine and the Supreme Court of Ukraine, the European Court of Human Rights, other international judicial institutions.
- informal sources of administrative law, that is, norms of intrinsic law, that is, general principles of law; customs and traditions; norms of morality.

In continental European countries, particularly in Ukraine, the major sources of administrative law are ***legal regulations***, that is, laws, decrees, decisions, orders, etc.

National sources of administrative law. Administrative law regulates a wide range of public relations. Its provisions are in numerous instruments of varying legal force. The externals of administrative law are dozens of laws, for example 'On the provision of administrative services,' 'On the framework for state supervision (control) in the field of economic activity,' in several codes, such as the Ukrainian Code of Administrative Offences, the

⁴⁴ Olena Gulac, Lyudmila Holoviy

Code of Administrative Procedure, the Customs, Tax, Water, Land ones and several thousand by-laws and regulations.

The Constitution of Ukraine as the major source of administrative law. The provisions of the Constitution of Ukraine are directly applicable and are at the same time the basis for the establishment of a system of administrative law sources for the formation, development and refinement of special principles, functions, forms and methods of administrative activity and administrative procedures for ensuring the public rights, freedoms and legitimate interests of the individual and the citizen by public administration, of the State and general public interest of society.

Legislative acts (legal regulations). Laws constitute the main body of the legislation in Ukraine, since they shall govern the most important public relations. **The law** is a legal regulation adopted by the Verkhovna Rada of Ukraine, it regulates the most important public relations, expresses the will and interests of the Ukrainian people, has the highest legal force in relation to other regulations, is mandatory and protected against violation by all means of the State.

By-laws (regulatory) as a source of administrative law. By-laws and regulations are issued under the law, in accordance with the law and for its implementation.

By-laws are classified into types according to appropriate criteria.

According to the issuer:

- Resolutions of the Cabinet of Ministers of Ukraine;
- Decrees of the President of Ukraine;
- regulatory orders of the heads of oblast and district State administrations;
- decisions, regulatory rulings and appeals of local self-government bodies;
- decisions of the executive committees of local Councils of People's Deputies;

- instructions, orders (regulatory) of the heads of ministries and other central executive authorities;
- orders (regulatory) of the heads of departments and divisions of local State administrations and executive committees of local councils of people's deputies;
- orders (regulatory), instructions of administrations of enterprises, institutions and organizations in the performance of delegated State executive functions.

Therefore, by-laws are secondary regulations issued by subjects of public administration (in the course of administrative activities) on the basis of the law, in accordance with the law and for its implementation, to ensure the efficient and timely provision of executive functions.

International sources of administrative law. *International treaties ratified by the Verkhovna Rada are sources of administrative law. Moreover, if a national (internal) provision of law conflicts with an international in Ukraine, the international provision is applied.*

Today, dozens of international treaties are in force in Ukraine the provisions thereof should be applied to regulate administrative and legal relations, for example:

- Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;
- European Convention on the Extradition of 13 December 1957;
- United Nations Framework Convention on Climate Change of 9 May 1992.

Legal regulations of the European Union. According to the provisions of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, and the National Program for the Approximation of Ukrainian Legislation to European Union Legislation, sources of administrative law of

Ukraine are legal acts of the European Union. According to them, Ukraine has undertaken to bring its laws and other regulations into line with European Union law.

The primary sources of EU law are: *Constituent Treaties*: Convention on Certain Institutions Common to the European Communities (1957); Council Act on Direct Election to the European Parliament (1976); Single European Act (1986); Maastricht Treaty on European Union (1992) with its protocols and declarations; the Treaty of Amsterdam on the European Union with its protocols and declarations (1997); the Treaty of Nice of 2001; the Treaty establishing a Constitution for Europe of 29 October 2004; conventions between Member States.

Secondary sources of law are legal regulations of Community institutions:

regulations – general legal acts. They are binding in all their elements on all subjects of EU law and are acts of direct effect for EU Member States, that is, the government and judicial authorities of all Member States shall apply them, regardless of whether a certain State acts in favour of their adoption;

guidelines, the main difference from regulations is that the guideline usually specifies the objective and the results to be achieved, but leaves it to the national authority to determine, in what form or through what procedures and mechanisms this objective can be achieved;

decisions of the Council or the EC (European Commission), the distinguishing feature thereof is its individual, not general nature.

While binding on their addressees, they mostly deal with specific, often technical, issues and are binding only on the entities addressed.

“Soft Right.” Ukraine, as an active participant in international and European cooperation, as a member of the United Nations,

the Council of Europe, as well as taking into account European integration intentions, should also consider legal regulations of 'soft law,' that is, institutional, recommendatory provisions in relevant sources, such as documents of international intergovernmental organizations. The determining factor in the formation of the provisions of 'soft law' are the activities of the United Nations that has adopted many recommendatory documents. The most important sources of 'soft law' by the UN are: Universal Declaration of Human Rights (1948); Universal Declaration on the Human Genome and Human Rights (1997); Declaration on Human Cloning (2005); Declaration on the Rights of Indigenous Peoples (2007).

Judicial decisions. Courts and judges apply the law. However, gaps in the law and contradictions in certain provisions of legal instruments pervert the course of justice. Therefore, judges are required to draw up separate principles (provisions) aimed at correcting the shortcomings in the regulations in force. Such principles (provisions) may be applied by other courts (judges) in similar cases. They are also important for public administration due to explanations (recommendations) needed for the functioning of the latter in their content.

The Verkhovna Rada of Ukraine, from its perspective on the goals and tasks of the legal and regulatory framework for relevant public relations, is authorized to create new legal regulations. The capacity of the court (judges) in this field is limited by the legal regulations in force. That is, the court (judge) can only specify or supplement legal regulations by its decision.

The case law of the European Court of Human Rights is a source of administrative law, providing for types of case law.

The decisions and judgements of the Constitutional Court of Ukraine that interpret the provisions of the Constitution and laws of Ukraine and find the provisions of the relevant legal regulations unconstitutional (revoked) are binding.

Supreme Court's decisions. When deciding on a legal provision to be applied to disputed legal relations, the court shall consider the judgements of the Supreme Court of Ukraine, as set out in the decisions adopted on the basis of considering applications for review of a judicial decision. Moreover, subjects of administrative law shall organize their activities in accordance with the provisions of the decisions of the Supreme Court of Ukraine.

Informal sources of administrative law. Together with the sources of administrative law in the form of a document, that is, formalized, **non-formalized sources** can comprise administrative law provisions.

The rule of law requires the State to imply it into law-making and law-application, in particular into laws that, first and foremost, shall be grounded in social justice, freedom, equality and the like. One indication of the rule of law is that the law is not limited to legislation as one of its forms, but includes other social regulators, such as *morals, traditions, customs*, etc., which are legitimized by society and are based on the historically achieved cultural level of society. All these elements of the law are united by a quality corresponding to the ideology of justice, the idea of law, largely reflected in the Constitution of Ukraine.

The sources (provisions) of administrative law recorded in a formalized source are in a certain hierarchy owing to their legal force. The legal force of the source (provision) of administrative law depends primarily on the legal status of the issuer. In case of *an administrative provision diversity*, the provision of supreme legal force applies. If a diversity case arises: 1) between legal regulations of the same hierarchical level, that is, by the same issuer, but at different times, the legal regulation (provision) most recently adopted is applicable; 2) between general and special legal regulations of the same hierarchical level, the latter applies.

2.12 What instruments of public administration are applicable for the rights and freedoms of foreigners⁴⁵?

As a carpenter has his planer tool, so the public administration has its specific legal tools that enable them to perform their tasks.

The public administration instrument is the external of the groups, homogeneous both in essence and in legal nature, of the public administrators' administrative acts, carried out within the competence prescribed by law in order to achieve the desired public result.

In order to protect the rights, freedoms and interests of foreigners, as well as the public interest of the Ukrainian State and national civil society, the public administrators may apply the following instruments of the public administration:

- to issue legal and regulations;
- to issue individual acts;
- to conclude administrative contracts;
- to perform other legally binding actions;
- to carry out maintenance operations.
- to prepare plans for approval and execution;
- to implement actual actions;
- to apply means: encouragement, persuasion and administrative coercion;
- to apply administrative and legal regimes;
- to monitor (supervise);
- to use electronic government.

⁴⁵ Olha Pravotorova, Olena Yara

2.13 Who and How Provides Administrative Services to Foreigners⁴⁶?

The creation of convenient and accessible conditions for foreigners to obtain administrative services is one of the major tasks of the State and local self-government bodies. It is precisely on the quality of these services that every foreign citizen appreciates the State's concern for him/her and the level of respect for rights and dignity.

Administrative services for foreigners are, in the vast majority of cases, provided by the administrative service providers through **administrative service centres**.

The key administrative services provided to foreigners are:

- issuing a temporary residence permit with a contactless electronic medium;
- issuing immigration permits to foreigners or stateless persons in Ukraine;
- extension of stay of foreigners or stateless persons in Ukraine.

For example: *in order to obtain a residence permit, a foreigner submits to the Administrative Service Centre a passport document, a certified Ukrainian translation of the foreigner's passport document, a health insurance policy and a copy thereof, a document confirming the payment of the administrative fee.*

In our country, the leading factor in ensuring the comfortable access of foreigners to information on public services is the development of an appropriate **public service information card**. Hard copies of such cards are available on information stands, as well as electronically on a website or other Internet resources.

⁴⁶ Anfisa Nashynets-Naumova

Administrative Service Centres provide easy access to premises for the reception of foreigners and stateless persons, including the provision of adequate facilities for the access of persons with disabilities.

Electronic administrative services and access to information on administrative services, using the Internet, are provided through the Unified State portal of administrative services, which is the official information source on administrative services in Ukraine.

In Ukraine, a Unified State portal of administrative services enables foreigners to obtain certificates and documents required without leaving their homes. This portal contains all the information about the services, all the requirements. In addition, an Electronic Digital Signature (EDS) authorization service is provided.

The introduction of an effective advising system is important because of improving access to information for foreigners in administrative services required. In particular, depending on the type of information and their providers, **advising** in 'one-stop-shop' should be grouped into:

- 1) Organizational (provided within the reception, such as orders, instructions). That is, it will deal with organisational issues of 'one-stop-shop': general information about its location (addresses, transport); structure; competence; work schedules; management; reception of clients;

- 2) Specific, professional or legal, provided by the personnel who receive the documents. That is, such advising deals with: information about a specific State service; the procedure for obtaining it; the list of necessary documents; the deadlines for submission.

Advising can be provided in two ways: by personal communication with clients; by remote information to clients in response to their request through appropriate technical means of communication.

2.14 What measures of administrative coercion and in what cases can law enforcement bodies of Ukraine impose on foreigners?⁴⁷

Foreigners, who stay in Ukraine, are subject to administrative liability on the same grounds as Ukrainian citizens. In other words, foreigners and stateless persons are subject to administrative penalty according to Art. 24 of the CAO, such as fines, administrative expulsion from Ukraine for administrative offences that grossly violate law and order.

In addition to administrative penalties provided for by Art. 24 of the CAO, foreigners may be subject to other types of administrative penalties established by law, such as: forced return from Ukraine; the ban on further entry to Ukraine⁴⁸.

***Please, be informed!** Administrative expulsion is a form of administrative penalty, while forced return and forced expulsion are administrative coercive measures.*

It should be noted that the State border service of Ukraine decides on forced return and forced expulsion from Ukraine only in respect of foreigners and stateless persons, detained within the controlled border areas when attempting or after illegally crossing the state border of Ukraine.

Forced return – is the decision of executive authorities, which obliges the person to be solely responsible for leaving the territory of Ukraine.

GROUNDS for forced return of foreigners or stateless persons are:

- their actions violate the law on legal status of foreigners;

⁴⁷ Oleg Reznik

⁴⁸ Code of Ukraine on Administrative Offenses.

- actions that are contrary to the interests of Ukraine's national security or public order;
- if it is necessary for safeguarding public health, rights and lawful interests of the citizens of Ukraine;
- attempt or illegal crossing of the State border of Ukraine.

Collective forced expulsion of foreigners is forbidden. The decision on forced return can be appealed in court.

Foreigners are subject to forced expulsion if their actions violate the law on legal status of foreigners and stateless persons or are contrary to the interests of Ukraine's national security or public order, or if it is necessary for safeguarding public health, rights and lawful interests of the citizens of Ukraine.

Imposition of forced expulsion on foreigners and stateless persons requires:

- the presence of laws providing for administrative expulsion;
- commission of an administrative offence, which is a gross breach of the law and order.

GROUNDS for forced expulsion of foreigners or stateless persons are:

- failure to fulfil the decision on forced return within the prescribed period without valid reasons;
- reasonable grounds to believe that foreigners or stateless persons will avoid fulfilment of this decision, except in cases of detention of a foreigner or a stateless person for illegal crossing of the State border of Ukraine beyond the points of crossing of State border of Ukraine and their transfer to the border protection authorities of neighbouring state.

If such grounds are found, the bodies of the State Migration Service, the State Border Guard Service and the Ukrainian Security Service, depending on the circumstances in which foreigner has been found/detained, shall immediately file a petition to the administrative court.

A petition for forced expulsion shall not be filed in relation to foreigners and stateless persons, if grounds for their forcible expulsion are found at border crossing points (control points) during their departure from Ukraine.

Foreigners and stateless persons are prohibited from further entry to Ukraine for five years. The term of the ban on further entry into Ukraine is calculated from the date of making such a decision and is added to the term of the ban of entry into Ukraine that the person has had before.

2.15 What is the administrative liability of foreigners in Ukraine?⁴⁹

In Ukrainian legislation, a number of provisions establish the liability of foreigners for committing immigration offences. Administrative offences concerning immigration are any foreigners' act or inactivity contrary to the requirements of Ukrainian legislation in that field. This entails administrative liability.

GROUNDS for administrative liability for committing offences by foreigners are⁵⁰:

- residing in Ukraine without a residence permit, with invalid documents or expired documents;
- employment without a corresponding permit;
- failure to comply with the established procedure for movement and change of place of residence;
- evading departure from Ukraine after the corresponding duration of stay has expired;

⁴⁹ Alla Rubanenko

⁵⁰ Code of Ukraine on Administrative Offenses: Scientific commentary.

- failure to appear at the designated place of study or employment within the defined period after entering Ukraine without valid reasons;
- intentional failure by a foreigner or stateless person to comply with a decision of an authorized State body on the ban of the entry into Ukraine.

It is important to know! *Foreigners and stateless persons, who stay in Ukraine, are subject to administrative liability on the same grounds as citizens of Ukraine.*

HOWEVER, grounds for excluding administrative liability are: an extreme necessity (Art. 18 of the CAO); necessary defence (Art. 19 of the CAO).

The law provides for **penalties** for the above-mentioned administrative offences.

The representatives of the State supervisory authorities shall, upon detection of the offence, draw up a report on the offence. A fine shall be imposed on the foreigner, who is guilty of an offence, in the amount regulated by law.

It is not only foreigners who can be prosecuted for immigration offences. As a rule, when foreigners apply for residence in Ukraine, the identity information on the receiving party is indicated. Such persons are liable for certain types of offences relating to the stay of foreigners in Ukraine. Article 204 of the CAO provides for the liability of the receiving party. Administrative liability of the receiving party is applied in the same manner as for foreigners.

Foreigners-offenders may be forcibly returned or expelled to the country of origin or a third country.

Forced return applies to foreigners if their actions violate the law on legal status of foreigners and stateless persons or are contrary to the interests of Ukraine's national security or public order, or if it is necessary for safeguarding public health, rights and lawful interests of the citizens of Ukraine. In these cases, the decision to enforce the return may be accompanied by a ban on further entry to Ukraine for three years.

Forced expulsion applies on the grounds of the court decision in cases of failure to comply with a decision on forced return within the established term without valid reasons, or if there are reasonable grounds to believe that the foreigner or stateless person will evade such a decision. Forced expulsion shall be accompanied by a ban on further entry to Ukraine for five years.

Please consider that Art. 204-1 of the CAO (illegal crossing or attempt of illegal crossing of the State border of Ukraine) does not cover cases of return to Ukraine of Ukrainian citizens who have been victims of crimes related to trafficking in persons without documents, as well as in cases of arrival of foreigners or stateless persons in Ukraine with the intention to be granted asylum or be recognized in Ukraine as refugees or persons requiring additional protection, if they have submitted an application for asylum or an application for recognition as a refugee or a person, requiring additional protection, in accordance with the Law of Ukraine "On refugees and persons requiring additional or temporary protection."

If foreign citizens and stateless persons after arrival in Ukraine for a temporary purpose (business, study, employment, tourism, etc.) have violated the term of stay established by Ukrainian law, they incur administrative liability, provided for by Article 203 of the CAO (penalty of fine).

2.16 What role do Administrative Courts play in Protecting the Rights and Freedoms of Foreigners in Ukraine?⁵¹

Article 55 of the Constitution of Ukraine guarantees that everyone has the right to protect their rights and freedoms from violations and unlawful encroachments by any means not prohibited by law. The right to protection applies to foreigners as well. Thus, article 3 of the Law of Ukraine "On the legal status of foreigners and stateless persons" provides that foreigners and stateless persons who are legally present in Ukraine enjoy the same rights and freedoms, as well as bear the same obligations as citizens of Ukraine, with exceptions established by the Constitution, laws or international treaties of Ukraine.

The exercise of the right to protection guaranteed by the Constitution of Ukraine is possible through the use of the following means and mechanisms provided for by the Constitution and laws of Ukraine:

- the right by any means not prohibited by law to protect the rights and freedoms from violations and unlawful encroachments (part 4 of Article 55 of the Criminal Code), that is, the right of a person to use their own compulsory or warning actions against the offender (self-defence);
- the right to apply to the competent authorities (state authorities, law enforcement agencies, courts, prosecutor's offices, local self-government bodies, public associations) with a request to prevent, stop the violation or restore the violated rights or freedoms;
- the right of a person, authorized by law, on their own initiative or at the request of a foreigner, to apply operational

⁵¹ Oleksandr Sytnykov

measures against violations of their rights or freedoms (the Ukrainian Parliament Commissioner for Human Rights);

- every person is guaranteed the right to appeal directly to the court to protect their rights and freedoms (Article 8 of the Constitution of Ukraine);

- the right of a foreigner to apply for the protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant. (part 3 of Article 55 of the Constitution of Ukraine).

Consequently, protection of the rights and freedoms of foreigners in Ukraine is carried out in an out-of-court and (or) judicial procedure.

Non-judicial means of protecting citizens' constitutional rights and freedoms by the mechanism of appeal and dispute resolution are divided into administrative, public and through authorized bodies.

However, it should be recognized that the main tool for protecting the rights, freedoms and interests of foreigners in Ukraine is the appeal to the court, the high efficiency and effectiveness of which is confirmed by practice and statistics.

One of the main advantages of the judicial form of protection of the rights, freedoms and legitimate interests of subjects is that the jurisdiction of courts, according to Article 124 of the Constitution of Ukraine, extends to all legal relations that arise in the state.

Most of these legal relations are in the sphere of public relations that arise between private individuals (individuals and legal entities) and public authorities (state authorities, local self-government bodies and officials).

In order to protect the rights, freedoms and (or) legitimate interests of citizens (including foreigners) from illegal behaviour

of subjects of power, a system of specialized administrative courts has been created and operates in Ukraine.

The system of administrative courts consists of the following sections: the Supreme Court – the administrative court of cassation; administrative courts of Appeal; district administrative courts; local general courts that deal with certain categories of administrative cases.

Administrative proceedings have their advantages over other types of legal proceedings (civil or economic).

For example, public authorities have more opportunities and influence on the exercise of their powers in public relations than an ordinary person, including in court. Due to administrative proceedings, the existing inequality in the legal status of a person and a public authority or its official is levelled, since administrative legislation has created special mechanisms to balance the possibilities of protecting a person's rights before the court.

First of all, this is the principle of official clarification of all the circumstances in the case, which consists in the active position of the court to demand evidence in the case and clarify all the circumstances necessary to resolve the dispute (part 4, 5 of Article 11, part 2 of Article 69, part 5 of Article 71 of the CAP of Ukraine).

Further, administrative proceedings provide for the duty of the subject of authority to prove the legality of his decision, action or omission, if he denies the administrative claim (part 2 of Article 71 of the CAP of Ukraine).

In addition, if one incorrectly chooses the way of protection or has incorrectly identified the claim, the administrative court may go beyond the claim, if it is necessary to effectively protect the rights and to choose the method of protection of violated rights (part 2 of Article 11, part 2, Article 21 CAP of Ukraine).

2.17 What is the procedure for filing an administrative action to Administrative Court⁵²?

Ukraine has a system of administrative courts that carry out administrative proceedings to protect individuals against violations by subjects of authority.

Before filing an action to a court, is it necessary to determine which rights of the foreigner have been violated and who violates them? The manner of protecting the rights violated and the court to which the action should be brought depend on this.

How to prepare an application to the administrative court?

The application is submitted in writing and in accordance with article 160 of the Code of Administrative Procedure (hereinafter the CAPU). In administrative proceedings, the preparation and submission of an action are specific, so it is better to make use of the services of a lawyer in order to file a qualitative action.

If a foreigner has financial difficulties and has no means of paying for the services of a lawyer, Ukraine has a system of free legal assistance, which includes the Legal Aid Coordination Centre and specialized free legal aid bodies, available at: <https://www.legad.gov.ua/> or by free telephone: 0 800 213 103.

How to determine the competent court in your case? An action in administrative proceedings is brought before the court of first instance, that is, local administrative courts (local courts of general jurisdiction as administrative courts (district, district in cities, city and city district courts) and county administrative courts.

1. *Local courts of general jurisdiction, as administrative courts*, hear a small number of administrative cases. However, they are competent to hear cases involving the stay of foreigners and stateless persons in Ukraine concerning:

⁵² Oleksandr Sytnykov

- forced return of foreigners or stateless persons to the country of origin or a third country;
- forced expulsion of foreigners or stateless persons outside Ukraine;
- detention of foreigners or stateless persons to identify and/or to ensure forced expulsion of foreigners or stateless persons outside Ukraine;
- the extension of detention of foreigners or stateless persons to identify and/or to ensure forced expulsion of foreigners or stateless persons outside Ukraine;
- detention of foreigners or stateless persons until the decision on their recognition as refugees or persons requiring complimentary protection in Ukraine;
- detention of foreigners or stateless persons to ensure their transfer on the grounds and procedures established by the international treaties of Ukraine.

In addition, if the foreigner is subject to administrative liability, the decision of the administrative authority may be appealed also to the local court of general jurisdiction.

2. *County administrative courts* are in the regional centres of Ukraine and in Kyiv, as well as Sevastopol. County courts have jurisdiction over all administrative cases, without exception, except those referred to local courts of general jurisdiction.

How much time is allowed to go to court? As a general rule, an action may be brought before a court within six months of the day the foreigner learns of the violation of his/her rights, freedoms or interests.

What does a legal action cost? For filing a non-property action to the administrative court, you shall pay a court fee in the amount provided for by the Law of Ukraine ‘On Court Fees,’ which is 0.4 times the minimum subsistence level for able-bodied persons.

2.18 What is important to know for a foreigner in administrative detention?⁵³

Administrative detention is the optional forced procedure to be followed in the case of an administrative offence, if the identification of an offender, a record of the offence (if this is necessary and if it has not been possible to draw it up) is required to ensure the proper and timely handling of the offence and respect for all the rights of the offender (Articles 260–263)⁵⁴.

Administrative detention is a temporary restriction of individual rights. Detention requires to respect the principle of humanity and legality, while the use of violence and threats must be prohibited. Ukraine strictly observes human rights and freedoms and protects them.

The Constitution of Ukraine recognises an individual, his/her life and health, honour and dignity, inviolability and security as the highest social value. Human rights and freedoms, as well as guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State⁵⁵.

Detained foreigners may not be deprived of the rights recognized in the Universal Declaration of Human Rights (1950), the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, and the United Nations Convention Relating to the Status of Refugees.

The foreigner has the right: to a free interpreter; to free legal assistance from Ukraine (if the foreigner refuses free assistance,

⁵³ Anatolii Berlach, Valeriia Chernyshova

⁵⁴ Code of Ukraine on Administrative Offenses.

⁵⁵ The Constitution of Ukraine.

he/she has the right to seek defence counsel independently or to defend him/herself); to have access to all information and documents on detention and the offence; to file applications and appeals against the actions of the detainers; to file a complaint with the court on the unlawfulness of the actions of officials, on the use of force or threat, and procedural irregularities in detention.

Detention for more than 3 hours shall be in places of temporary detention. The head of the place is responsible for compliance with the law in the course of detention.

In such places, a foreigner who has been detained has the right to engage in non-contact sports and exercise; to order daily necessities and hygiene, tobacco products, books, magazines in the quantities they require. These items are purchased by the head of the detention body. The head buys the items only at the shops where the transaction recorder is installed, and then gives the detainee, together with the certificate, in the presence of two witnesses and an interpreter (if necessary); to have everyday items, medicines (after obtaining permission from a medic); to receive money transfers, money, parcels, medicines.

Upon apprehension, a person's belongings may be temporarily taken from him or her and returned after his or her release. A specific document on the seizure of items is drawn up and is attached to the administrative case file.

A detainee is obliged to comply with the demands of the administration of the body where he/she is detained and not to violate the security of other persons. The detention of a foreigner shall be reported to the diplomatic or consular post of the foreigner's country of nationality⁵⁶.

⁵⁶ Instruction on the procedure for holding detained persons in bodies (subdivisions) of the state border. Order of the Ministry of Internal Affairs of Ukraine no. 352 of 30 March 2015.

It is important to remember that detention must be documented – the record of detention that a detainee has the right not to sign, which is stated separately in the record. When a foreigner is detained, the State is immediately obliged, through an agency, to inform the relatives of the detainee or close persons or the foreigner's employer if the foreigner works in Ukraine.

It is important to know, that a detained foreigner has the right to free an interpreter and a lawyer from Ukraine. If a foreigner refuses to defend him/herself free of charge, the issue of finding a lawyer is a matter for the detainee. The detainee has the right to defend him/herself.

Administrative detention of a foreigner may be carried out by an internal affairs body (National Police of Ukraine), a border service, the Ukrainian Security Service and migration authorities.

Under Ukrainian law, administrative detention may last **no more than three hours**. The term of administrative detention may be extended **up to 72 hours** in order to establish the circumstances of the offence or information about an unknown foreigner if the foreigner has attempted to cross or illegally crossed the State border of Ukraine; violated the requirements for crossing the border of Ukraine; violated the ban on entry into Ukraine; violated the requirements for staying in Ukraine; violated the requirements for transit through Ukraine.

Administrative detention is used not always, but only in cases where it is not possible to draw up a record of the offence at the place where the offence has been committed, the law enforcement body of Ukraine cannot identify the foreigner or when it is impossible to establish all the necessary circumstances of the offence.

In case of administrative detention, a foreigner should know that the presumption of innocence is applied in Ukraine.

This means that a foreigner is presumed innocent until guilt has been established by the public authorities in accordance with the law.

2.19 What is the procedure for administrative liability of foreigners?⁵⁷

Article 16 of the Code of Administrative Offences provides for that foreigners and stateless persons, who stay in Ukraine, are subject to administrative liability on the same grounds as Ukrainian citizens. The question of liability for administrative offences committed in the territory of Ukraine by foreigners who, in accordance with the laws in force and the international treaties of Ukraine, enjoy immunity from the administrative jurisdiction of Ukraine is resolved through diplomatic means⁵⁸.

In fact, the status of a foreigner creates the dual nature of such persons' liability: on the one hand, the foreigner is under the protection of his/her State, on the other, he/she is obliged to follow the legislation of Ukraine and is liable for offences committed in its territory.

It is mostly important to remember for a foreigner who is administratively liable that Ukraine is responsible for the observance of human rights and strictly monitors the compliance of all procedures with internationally recognized standards.

Foreigners in Ukraine are subject to a separate additional form of administrative punishment, that is, expulsion from Ukraine for administrative offences that grossly violate the order (Article 23 of the Ukrainian Code of Administrative Offences). The specificities

⁵⁷ Anatolii Berlach, Valeriia Chernyshova

⁵⁸ Code of Ukraine on Administrative Offences.

of expulsion are provided for in Article 30 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons.”

Offences that only a foreigner can commit are listed. For example: violation of the rules on stay in Ukraine and transit through the territory of Ukraine (Article 203 of the Ukrainian Code of Administrative Offences); failure to comply with the decision prohibiting entry into Ukraine (Article 203-1 of the Ukrainian Code of Administrative Offences); violation of employment, admission, housing, registration and documentation procedures for foreigners and stateless persons (Article 204 of the Ukrainian Code of Administrative Offences); illegal crossing or attempt of illegal crossing of the State border of Ukraine (article 204-1 of the Code of Administrative Offences).

These elements of offences are general and imply specific lists of acts found to be violations. Persons, who have entered Ukrainian territory illegally because they have been victims of human trafficking offences for the purpose of obtaining asylum, refugee status or additional protection shall not be held liable.

In Ukraine, the commission of these offences shall predominantly entail the administrative pecuniary penalty, that is, a fine, and illegal crossing of the State border of Ukraine (crossing the border outside the crossing points, without documents or with forged documents) shall entail confiscation of the instrument of violation and administrative detention.

The competent authorities draw up a report on committing an administrative offence. The report shall record details of the place and time of commission of the offence, the offender’s data, the circumstances of the offence and other information required by law. Cases requiring no record are specified in the Code (Article 258).

The offender shall be informed of his/her rights, in a language known to him/her. If necessary, the State shall provide the person

with an interpreter. The foreigner has the right to inform his/her relatives of his/her whereabouts if necessary. The foreigner also has the right of recourse to consular or diplomatic offices.

Once a report has been drawn up, an administrative case is made and submitted to the State Border Service (for offences under Articles 203 and 203-1 of the Ukrainian Code of Administrative Offences), to the Ukrainian Court (for the commission of offences under Articles 204 and 204-1 of the Ukrainian Code of Administrative Offences).

In case of other offences, as mentioned above, foreigners are subject to administrative liability on the common grounds. In other words, the Ukrainian Code of Administrative Offences establishes a body for each offence to qualify and to consider and adjudicate the case.

It should be noted that the amount of the fine depends on the number of circumstances of committing the offence. The amount shall be determined at the discretion of the person deciding on its imposition.

Ukrainian legislation provides for a number of mitigating and aggravating circumstances. The amount of the penalty applicable to a foreigner depends on their presence. *Mitigating circumstances* are the guilty party's sincere repentance; prevention of harmful consequences of the offence by the guilty party, voluntary compensation of damage or remediation of the harm caused; commission of the offence under the influence of a strong mental disturbance or a combination of difficult personal or family circumstances; commission of the offence by a minor; commission of the offence by a pregnant woman or a woman with a child under the age of one.

Accordingly, *aggravating circumstances* are the unlawful conduct continuation, despite the requirement of the authorized persons to stop it; a homogenous offence, repeated within

a year, for which the person has already been administratively punished; commission of an offence by a person who has previously committed a criminal offence; involvement of a minor in an offence; commission of the offence by a group of persons; commission of the offence in a natural disaster or other emergency; commission of an offence while intoxicated. The body (official) that imposes an administrative penalty, depending on the nature of the administrative offence, may not consider it an aggravating circumstance.

There are three circumstances which exclude administrative liability of a person: **the extreme necessity** (elimination of the danger threatening State or public order, property, rights and freedoms of citizens and the established administrative order, if the danger, under the circumstances, could not be eliminated by other means and if harm caused is not greater than the harm avoided); **the necessary defence** (an act committed in defence of State or public order, property, rights and freedoms of citizens and the established administrative order against unlawful encroachment by causing harm to the offender, if the limits of necessary defence and insanity have not been exceeded).

The Ukrainian Code of Administrative Offences provides for measures to ensure effective proceedings: administrative detention; body and luggage searches; confiscation of belongings and documents; temporary confiscation of driver's licences; temporary seizure of vehicles by authorized units of the National Police; temporary seizure of vehicles by parking inspectors; suspension of a person from driving; by riverine and small-scale vessels and an alcohol, narcotic or other intoxication testing or testing the medication effects, which reduce their attention and reaction time.

Administratively liable foreigners enjoy all the rights recognized by international law. It is prohibited to use violence and to inflict physical harm, torture or humiliation on a person.

2.20 Specificities of administrative liability of foreigners for offences related to trafficking in narcotic drugs, psychotropic substances and precursors⁵⁹

Under the legislation of Ukraine, narcotic drugs are:

- **Dangerous:** heroin, morphine, opium and other drugs; amphetamines such as Methedrine and Methamphetamine, injectable; Codeine.
- **Less dangerous:** amphetamine-type stimulants: Benzedrine and Barbiturates.
- **Least dangerous:** Cannabis; amphetamine-type drugs of reduced activity, LSD.

In the Ukrainian Code of Administrative Offences, Article 44 regulates the illegal production, purchasing, storage, transportation or sending of narcotic drugs or psychotropic substances without the purpose of selling in small amounts. Such acts impose penalty up to 25–50 times minimum wages or correctional works for the term from 20 up to 60 hours or 15 days of administrative detention.

*The specificity of this provision is that Article 44 includes **cancellation of administrative liability** for the acts envisaged under this article in case of a voluntary handing over these dangerous substances by a person.*

Today in Ukraine an Order of the Ministry of Health of Ukraine “On approval of charts of small, large and especially large amounts of narcotic drugs, psychotropic substances and precursors that are in illegal circulation” is in force. This gradation is based on the Defined Daily Dose (DDD) of the use of narcotic drugs:

- a) Small, not exceeding 10 DDD;
- b) Large, from 100 to 1,000 DDD;

⁵⁹ Borys Kindiuk

c) Especially large that exceeds 1,000 DDD.

These amounts determine the elements of the offence and the application of criminal or administrative punishment. The amounts of narcotic drugs of plant origin in the form of extracts, decoction and liquids are calculated on the basis of criminological methods, converted into solid matter.

It is important! Foreigners should know that DDDs set up in Ukraine differ considerably in comparison with those applied in other countries.

Type of drug	Ukraine	Russia	Germany	Cyprus	Portugal
Heroin	from 0,005 g	0,5 g	1–2 g	0,5 g	1 g
Cocaine	from 0,02 g	0,5 g	1–2 g	10 g	2 g
Cannabis	from 5 g	6 g	6–14 g	30 g	25 g
Amphetamines	from 0,15 g	0,2 g	3 g	20 g	1 g

It is important to know that the Free Legal Aid Centres provide foreigners with significant assistance in the protection of their rights, there foreigners can obtain full free primary legal assistance. In addition, the State of Ukraine may ensure that a foreigner has the right to the services of a free interpreter from a language in which he or she is fluent, as well as the translation of his or her documents in writing.

2.21 Refugees in Ukraine⁶⁰

In Ukraine, refugees have a special legal status which grants them special subjective rights regarding legal and institutional public protection.

⁶⁰ Valeriia Riadinska

Persons may apply for refugee status in Ukraine if they:

- 1) are foreigners or stateless persons;
- 2) have a well-founded fear of being persecuted for reasons of race, religion, nationality (citizenship), political opinion, or membership of a particular social group in the country of their nationality;
- 3) cannot enjoy or are unwilling to enjoy the protection of that country of nationality;
- 4) have no grounds to be recognised unsuitable for protection;
- 5) are willing to be granted refugee status and take active actions to do so.

The State Migration Service of Ukraine is a central executive authority that implements national policy regarding refugees and provides administrative services related to granting foreigners or stateless persons with refugee status⁶¹.

The procedure for granting refugee status is a type of administrative procedure regulated by administrative law, carried out by the bodies and subdivisions of the State Migration Service of Ukraine, and is sequential interrelated proceedings in the course thereof asylum-seekers are granted such status.

The purpose of the procedure for granting refugee status is to recognise whether a person needs international protection from persecution.

Stages of the procedure for granting refugee status: an application for recognition as a refugee; acceptance of the application for recognition as a refugee; preliminary consideration of the application for recognition as a refugee; issuance of documents for deciding on recognition as a refugee; consideration of the application for refugee status; preparation of a decision

⁶¹ Regulations on the State Migration Service of Ukraine. Approved by the Resolution of the Cabinet of Ministers of Ukraine no. 360 of 20 August 2014.

on the application consideration; adoption of a decision on the application for refugee status.

The following are subject to appeal: refusal to accept an application for refugee status; a decision on refusal to issue documents for deciding on recognition a person as a refugee; and refusal to grant refugee status. Appeals can be submitted to a higher authority of the State Migration Service or to the courts.

Applications for refugee status are submitted to the territorial authority of the State Migration Service (within 5 working days from the moment of crossing the State border) or to the State Border Service of Ukraine (during illegal crossing of the State border of Ukraine).

During acceptance of a foreigner or stateless person's application for refugee status he/she is invited for a personal interview, aimed to identify an extra information which is necessary to verify the facts given by the applicant or his/her legal representatives. During the interview an applicant is provided with a free lawyer and an interpreter. The authorities to which the applicant for refugee status submits determine him/her identity.

At the present stage, Ukrainian legislation, which provides for the concept, conditions for granting status of refugees, is almost entirely adapted to the provisions of international law, such as the 1951 United Nations Convention relating to the Status of Refugees, the Statute of the Office of the United Nations High Commissioner for Refugees, the 1967 Protocol relating to the Status of Refugees. The main act regulating the procedure for granting refugee status is the Law of Ukraine "On refugees and persons in need of additional or temporary protection" no. 3671-VI of 08 July 2011⁶².

⁶² On refugees and persons in need of additional or temporary protection. Law of Ukraine.

2.22 How Business is administered in Ukraine⁶³?

Ukraine is a social State with a market economy that in all sectors, in particular in the public administration of business, implements EU standards. This means that Ukraine has adopted a social and not liberal economic model characterized by the protection of property rights, freedom of business, healthy competition and strong social policies. The latter leads to a significant public redistribution of finance, and thus to a strengthened public administration, in comparison with States that use a liberal economic model.

Foreigners have the right to do business under the same conditions as Ukrainian citizens. Moreover, business with foreign investment has benefits.

The first factor of public business administration is state registration. This is easy to do. A foreigner wishing to do business is required to register with a legal entity or buy its corporate share. Individual entrepreneurs have the right to engage in business in Ukraine. Public registrars, often private notaries, carry out registration. It shall be carried out within 24 hours of receipt of the documents. By default, a new business is registered under the common taxation system. In order to change it, a business entity is required to submit an electronic application to the State Fiscal Service⁶⁴.

Businesses shall pay taxes and other mandatory payments in timely manner and in full. Therefore, *the second factor* in state regulation of business is tax administration. It is carried out electronically⁶⁵.

⁶³ Olha Hetmanets

⁶⁴ On State registration of legal entities, individual entrepreneurs and public organisations: Law of Ukraine.

⁶⁵ Tax Code.

The third factor of public administration arises when a business entity is willing to engage in licensed activities. Then a license is required⁶⁶.

The fourth factor is customs administration, arising when a business entity is engaged in foreign economic activity⁶⁷.

The fifth factor of public administration is the right of public administrators authorized by law to exercise State supervision (control) in the field of economic activity⁶⁸.

In addition, the public administration of business is carried out with regard to the issues: compliance with standards, technical conditions and other requirements related to its quality and certification by the producers and manufacturers; compliance with sanitary and veterinary regulations; collection, processing and disposal of waste; compliance with trade, transport, public utilities and consumer protection laws.

2.23 What is the procedure for employment of foreigners in Ukraine?⁶⁹

Foreigners who have come to Ukraine for work and have obtained a temporary residence permit shall be deemed lawfully residing on the territory of Ukraine during the period of their work in Ukraine. It should be noted that a permanent or temporary residence permit is a document that confirms the right of a foreigner or stateless person to permanent or temporary residence in Ukraine.

⁶⁶ On licensing of economic activities: Law of Ukraine.

⁶⁷ Customs Code.

⁶⁸ On Basic Principles of State supervision (control) in the field of economic activity. Law of Ukraine.

⁶⁹ Iryna Orlovska

Ukrainian employers have the right to employ foreigners and stateless persons on the territory of Ukraine on the grounds of a permit issued by the territorial bodies of the central body of the executive authorities, implementing State employment and labour migration policies⁷⁰.

The Law of Ukraine “On employment of the population” provides for the conditions for issuing work permits and temporary residence permits for a special and general category of foreigners. According to it, preferred categories of foreigners and stateless persons, who are willing to be employed in Ukraine, are: foreign highly paid professionals; founders and shareholders of the legal entity established in Ukraine; graduates of a university listed in the top 100 of a renowned world ranking; foreign creative professionals; foreign IT professionals. This category of foreigners has two preferences: the absence of a statutory minimum wage requirement for such workers and the period of employment permit validity. The permit is granted for the period of the employment agreement (contract) but not for more than 3 years.

The other categories of foreigners and stateless persons applying for employment in Ukraine are granted work permits and temporary residence permits in a general manner. Moreover, if necessary, this period may be extended if the employer contacts the employment centre in a timely manner, at least one month before the expiry of the permit.

A foreigner may hold several managing positions (part-time) without limitation. However, employment permits shall be granted for each position. Moreover, it is allowed to work in conjunction

⁷⁰ Since December 2019, the Cabinet of Ministers of Ukraine has designated the Ministry of Economic Development, Trade and Agriculture as the main body in the system of central executive authorities responsible for the formation and implementation of national labour policy.

The territorial bodies of the central executive authority implementing public policy in employment and labour migration are the State Employment Centre of Ukraine and its regional employment centres throughout Ukraine.

with other positions in the same company, but only for no more than 60 calendar days per year.

The procedure for obtaining a work permit may be divided into stages.

Stage 1 – Preparation of documents. The employer is required to prepare the following documents for work permit:

1) the employer's application that confirms that the position employing a foreigner or a stateless person does not require Ukrainian citizenship and that such position does not grant access to state secrets;

2) notarized copies of the foreigner or stateless person's passport with a translation into Ukrainian;

3) colour photographs of a foreigner or a stateless person 35 mm x 45 mm;

4) a copy of the draft employment agreement (contract) with a foreigner or a stateless person, certified by the employer.

The employer is required to file additional documents for employment of graduates of top 100 universities; creative professionals; foreign seconded workers; intracompany assignees; persons in respect of whom it is decided to issue documents for granting refugee status or persons in need of additional protection⁷¹.

It should be noted that all documents issued by a foreign country in a foreign language, issued for the purpose of obtaining a work permit for a foreigner, are required to be translated into Ukrainian, certified according to the legislation of the issuing country and legalized in the Ministry of Foreign Affairs of Ukraine.

Stage 2 – Submission of documents. The employer submits the prepared documents to the territorial body of the central executive authority that implements national policy regarding employment

⁷¹ The list of such documents is provided for by the Law of Ukraine "On employment of the population".

and labour migration. In addition, Kyiv Administrative Service Centres accept documents for issuing permits, extending their validity, amending existing permits, and issuing work permits and temporary residence permits.

After receipt of documents, the State authority reviews the conformity with the requirements of the legislation in force in Ukraine and decides on granting the permit within 7 working days and on prolongation within 3 working days.

If the work permit is granted (a decision can be sent by e-mail), in order to employ foreigners and stateless persons in the territory of Ukraine, the employer is required to pay a fee within 10 working days after the decision on granting or renewing the permit, otherwise the decision is revoked.

The amount of the State fee depends on the period for which the permit is issued or renewed:

- One to three years – six minimum wages for able-bodied persons, established by law as of 1 January of the calendar year in which the employer submits the documents⁷²;

- Six months to one year – four minimum wages for able-bodied persons, established by law as of 1 January of the calendar year in which the employer submits the documents;

- Up to six months – two minimum wages for able-bodied persons, established by law as of 1 January of the calendar year in which the employer submits the documents.

Stage 3 – Submission of a copy of the employment contract.

After obtaining a work permit, the employer is required to enter into an employment agreement (contract) with a foreigner or stateless person within 90 calendar days upon issue of the permit, and within 10 days after the employment agreement (contract) is

⁷² The minimum wage is a value of a range of foodstuffs, a range of non-food items and a minimum range of services enough to meet the basic social and cultural needs of the individual, sufficient to ensure the normal functioning of the human body and to preserve health.

entered into to provide a copy, certified by the employer to the territorial body of the central executive authority that implements national policy on employment and labour migration. That is, the maximum period for this stage is 100 calendar days upon issue of a work permit for foreigners and stateless persons.

Stage 4 – Issuance of a temporary residence permit in Ukraine. In addition to granting a work permit, a foreigner or stateless person is required to legalize his or her stay by obtaining a visa⁷³. Obtaining a permit for employment of a foreigner is a ground for obtaining an appropriate visa, registering a temporary residential address in Ukraine and issuing a temporary residence permit for the period of such a permit.

For the purpose of registering temporary residence of the foreigner in Ukraine, the foreigner submits to the Consular Office of Ukraine at his or her permanent residence and to the Migration Service duly certified copies of the work permit of a foreigner or stateless person; a visa form filled and signed following the requirements; copies of passport pages; two photographs 30 mm x 40 mm; a document confirming the payment of the consular fee, in case the foreigner is not exempt from payment; a valid health insurance policy.

Visa processing lasts 15 calendar days upon submission of all necessary documents. If the documents or information submitted need to be reviewed, the processing may take up to 30 days.

Please, be informed! *At the stages of obtaining a work permit or obtaining a visa, an employer or a foreigner or a stateless person may be refused only on the grounds specified by the legislation in force.*

⁷³ Under the Regulations on visas for entry into and transit through Ukraine, approved by the Resolution of the Cabinet of Ministers no. 118 of 1 March 2017, persons entering Ukraine for the purpose of employment are granted with a long-term visa (denoted by the letter D, in the machine-readable area – VD).

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