

UDC 341.1

Dmytro Neofita

Lviv Polytechnic National University

Ph. D student

Theory of Law and Constitutionalism Department

Institute of Law, Psychology and Innovative Education

dmytro.b.neofita@lpnu.ua

ORCID: 0000-0001-8412-3654

LEGAL STATUS OF FOREIGNERS IN UKRAINE: THEORETICAL AND LEGAL REVIEW

<http://doi.org/10.23939/law2022.34.191>

© *Неофіта Д.*, 2022

The concept of the person of a foreigner and a person without citizenship can be considered in two aspects – social and legal. Researching and understanding the essence of the legal and social status of foreigners and stateless persons allows us to find out their place and role in society and every democratic state as its members. It explains the legal status and relationship with citizenship of another state, content and personal their right to work under the current law national and international legislation legal remedies and this right.

The Constitution of Ukraine 1996 establishes that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine, except as provided by the Constitution, laws, or international law agreements of Ukraine. They may be granted asylum in the manner prescribed by law; so far, the legal status of foreigners, stateless persons, and refugees is precisely regulated by recent Ukrainian legislation.

The author tries to analyze the current Ukrainian legislation on the legal status of foreigners, to highlight the strong and weak sides, opportunities, challenges, and threats. The author supports some academic proposals to codify the current legislation on the status of foreigners in Ukraine by adopting a single codified act. Looking further, the author aims to provide suggestions for improving the relevant legislation to the requirements of the European Union (keeping in mind not only the Association Agreement between the European Union and Ukraine but ongoing communication in 2022 on fast-track accession to the EU).

Key words: foreigner, stateless person, immigration, refugee, a person in need of additional protection, a person in need of temporary protection.

Introduction. The Constitution of Ukraine of 1996 significantly democratized the legal status of a person and a citizen, which is also favorable for ensuring the status of foreign citizens and refugees living in our country. To understand the basics of their legal status, Art. 26 of the Basic Law establishes that foreigners and stateless persons who live in Ukraine legally enjoy the same rights and freedoms, as well as have the same responsibilities as citizens of Ukraine – except as provided by the constitution, laws, or international treaties of Ukraine, they may be granted asylum in the manner prescribed by law. When considering a foreigner in the social aspect, we must first remember that he is a person with his inalienable rights, freedoms, and responsibilities. In characterizing the social essence of man, it is fundamentally

important to understand him as a citizen. A person has a specific set of characteristics – legal affiliation to a state, falls under its laws other regulations, and harmonizes their behavior with the legal principles of this particular state. The basis of a person's legal status is the legal relationship of citizenship.

The research aims to conduct a theoretical and practical study of the legislation on the status of foreigners in Ukraine, to form proposals for improving the relevant legislation based on the use of practical experience in the migration service.

Analysis of the study of the problem. The process of drafting legislation on the legal status of foreigners began after the proclamation of Ukraine's independence. In legal science, the legal status of foreigners and stateless persons has been the subject of the work of many well-known legal scholars. First of all, we should mention such as O. Bobokal, I. Boyko, O. Zarzhytsky, I. Kovalishyn, S. Chekhovych.

Basic material statement. The fundamental rights, freedoms, and responsibilities of foreign citizens and stateless persons residing or temporarily staying in Ukraine are determined by the Constitution of Ukraine [1], the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" (No. 3773-VI 2011) [2], The Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" (No. 3671-VI 2011) [3], the Law of Ukraine "On Immigration" (No. 2491-III 2001) [4] and other acts of legislation of Ukraine. At the constitutional level, foreigners enshrined the same rights and freedoms as civil Ukraine, except for the exceptions established Constitution, laws, and international treaties thieves ("Constitution of Ukraine", 1996). Foreigners in Ukraine cannot use political rights that belong exclusively to citizens of Ukraine (join political parties, participate in the referendum, implement active and passive right to vote, they are not subject to the obligatory military service. Almost always, military service not in the state of his citizenship claims for termination of citizenship). The right to education, health care, housing, business activities can be carried out only by foreigners who permanently reside in Ukraine. Constitution Ukraine (1996) provides asylum for foreigners and stateless persons in a procedure established by law. According to S. Chekhovych, in Ukraine, there is a conflict between the right of the state to provide asylum and the right of an individual to seek and use asylum. The resolution of this legal conflict should be based on the fundamental principles of the Constitution of Ukraine. Given that Ukraine is a democratic, social and legal state (Article 1 of the Constitution), it recognizes and operates the rule of law (part one of Article 8 of the Constitution), human rights must dominate the state's interests. The main duty of the state is also its main duty, which is to affirm and ensure human rights and freedoms, which are inalienable and inviolable (Article 21 of the Constitution). That is, granting asylum is both a right and a state's duty [8, p. 14–17]. Bobokal Olena in the article "Constitutional issues: the legal status of aliens in Ukraine" emphasizes the practical regulation of the status of aliens, which based on a comprehensive analysis of existing approaches and concepts, and concludes about the need to classify types of aliens [9, p. 101–107].

The peculiar nature of the legal status of a foreigner in any country consists of two elements: the legal status of a citizen of his country and the legal status of a foreigner. At the same time, a foreigner and a stateless person are subject to the state's sovereign authority in whose territory he is located, is falls under its jurisdiction, and must comply with the constitution and laws of the host country.

The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" of February 4, 1994, stipulates that a foreigner is not a citizen of Ukraine and is a citizen (subject) of another state or another state or states. A stateless person is a person no state considers its citizen by following per its legislation. This law also defined the legal status, enshrined the fundamental rights, freedoms, and responsibilities of foreigners and stateless persons residing or temporarily staying in Ukraine, and determined the procedure for resolving issues related to their entry into Ukraine or exit from Ukraine. It should be noted that the above the law provided for the rights of foreigners and stateless persons to investment and entrepreneurial activities, employment, equal with the citizens of Ukraine, the right to rest, the right to health care, the right to social protection, the right to housing, personal, intangible rights, the right to education, the right to

use cultural achievements. Article 16 of the Law guaranteed the right to participate in associations of citizens, but foreigners and stateless persons could not be members of political parties in Ukraine.

On June 28, 1996, the Constitution of Ukraine was adopted. Article 26 guarantees foreigners the same rights and freedoms as citizens of Ukraine, except for the exceptions established by the constitution, laws, and international treaties. Foreigners in Ukraine may not enjoy the political rights granted to citizens of Ukraine, join political parties, participate in referendums, participate in voting, and the obligation to perform military service does not apply. The rights and freedoms granted by the constitution can be exercised only by foreigners who permanently reside in Ukraine. The Constitution of Ukraine (1996) grants asylum to foreigners and stateless persons in the manner prescribed by law.

Only foreigners who permanently reside in Ukraine may fully exercise the rights and freedoms provided by the constitution and current legislation of Ukraine.

The jurisdiction of Ukraine does not extend to foreigners who have diplomatic or consular privileges and immunities by following per under international agreements. Their presence means the inviolability of the person, inviolability of the home, immunity from jurisdiction, fiscal immunity, customs privileges, etc.

It should be noted that foreigners enjoying full immunity from the jurisdiction of Ukraine include:

- Heads of the diplomatic missions.
- Members of the diplomatic staff of missions.
- Family members of heads of the diplomatic missions and families of the diplomatic staff of missions.
- Representatives of foreign states (heads of state, government, etc.).
- Members of parliamentary and governmental.
- Employees of some international organizations.

However, these persons shall not be immune from civil jurisdiction if they enter into civil law relations as private individuals with appropriate claims, which is outside the scope of their official functions.

Partial immunity from the jurisdiction of Ukraine is enjoyed by: heads of consular missions, consular officials, members of their families, employees of the administrative and technical staff of the diplomatic mission, diplomatic couriers, etc. These persons enjoy privileges and immunities only in respect of their official activities.

Foreigners and stateless persons may enter and leave Ukraine on valid national passports or documents that replace them. At the same time, they must obtain entry and exit visas unless otherwise provided by the legislation of Ukraine and international treaties of Ukraine.

In June 2001, the Law of Ukraine “On Refugees” was adopted, which defines the legal status of a refugee in Ukraine, the procedure for granting, loss, and deprivation of refugee status, and establishes state guarantees for the protection of refugees. According to the Law, Ukraine contributes to preserving the unity of refugee families. The law defined the powers of executive bodies that decide on the granting, loss, and deprivation of refugee status. In July 2011, the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection” was adopted, which defines the procedure for regulating public relations in the field of recognition as a refugee, person in need of additional or temporary protection, loss and deprivation establishing the legal status of refugees and persons in need of additional protection and who have been granted temporary protection in Ukraine. This law defines the concepts of “refugee”, “person in need of additional protection”, “person in need of temporary protection”. By following under the Law, the procedure for consideration of applications for recognition as refugees or persons in need of additional or temporary protection has been updated. The law meets the requirements of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

Also, the legislation on the legal status of foreigners should include the Law of Ukraine “On Immigration”, which defines the conditions and procedure for immigration of foreigners and stateless persons to Ukraine. The law defines the concept of immigration quota, the procedure for granting an immigration permit, and the refusal to grant an immigration permit.

The normative legal act, which mainly determines the status of foreigners in Ukraine, enshrines the basic rights, freedoms, and responsibilities of foreign citizens and stateless persons staying in Ukraine, as well as establishes the procedure for their entry into Ukraine and departure from Ukraine, is the Law of Ukraine “On the legal status of foreigners and stateless persons” of September 22, 2011, No. 3773-VII. According to this law, a foreigner is a person who is not a citizen of Ukraine and is a citizen (subject) of another state. A stateless person is a person no state considers its citizen by following per its legislation. This law determines the legal status of foreigners in Ukraine, establishes the fundamental rights, freedoms, and responsibilities of foreign citizens and stateless persons residing or temporarily staying in Ukraine, and determines the procedure for resolving issues related to their entry into Ukraine or leaving Ukraine, as well as establishes the grounds for liability for violation of the order of stay in Ukraine, transit through its territory.

There are three categories of foreigners, which:

- permanently reside in Ukraine to acquire Ukrainian citizenship;
- are permanently in Ukraine for employment;
- are temporarily on the territory of Ukraine for all other purposes.

When making changes and additions to the specified legislation must be guided by the actual provisions Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Agency, and their members, on the other hand, in 2014 (“Association Agreement”, 2014), which envisages the introduction of comprehensive dialogue on key issues in the field of migration, including illegal migration, combating human trafficking. It is necessary to consider when making changes to legislation difficult situations in eastern Ukraine and Crimea. It also seems appropriate to hold codification of legislation on the legal status of foreigners, through development and adoption a single codified act on the status of aliens, as legislation on the status of foreigners consists of the Law of Ukraine “On Legal status of foreigners and stateless persons”, “On immigration”, “On refugees and people in need additional or temporary protection”. New regulations must be regulated relations concerning the legal status of foreigners and stateless persons, the order of entry into the territory of Ukraine and departure from the territory of Ukraine, law, and responsibilities of foreigners and stateless persons, the legal status of refugees and asylum seekers, rights and duties of asylum seekers, aliens, and stateless persons with refugee status or a person in need of additional or temporary protection.

It should be noted that the State migration service of Ukraine has developed a project Law of Ukraine “On protection of foreigners and stateless persons” (“Projekt Zakonu”, 2020), which is proposed: to systematize forms national and international protection; and expand the conceptual and categorical apparatus of legislation in the field of protection foreigners and stateless persons; to establish the procedure for accepting applications for the protection of persons held in the institutions of the previous imprisonment, temporary detention facilities foreigners and stateless persons; to improve the procedure for accepting applications for protection at the state borders of Ukraine; set common and accelerated form of protection procedure; set procedural standards related to conducting individual interviews with applicants protection, proof and evaluation of applications for protection, confidentiality during the procedure providing protection; settle the issue of dismissal seekers of protection from criminal and administrative positive responsibility; determine the order integration of protected persons.

It is also necessary to hold discussions in the legal community on the introduction into the legislation of Ukraine of the category of persons – non-citizens. This status is enshrined in law in the new legal acts of Latvia, Estonia. So, by following per under the law of 12.04.1995 “On the status of citizens of the former USSR who are not have the citizenship of Latvia or any other state “are considered non-citizens persons who are not and have not been citizens of which country, other than the USSR, which the following requirements: “On July 1, 1992, they were independent of the status specified in residence permit registered on the territory of Latvia, or their last registered place of residence before July 1, 1992, was in the Republic of Latvia, or a court decision established the fact that they are not less than ten years without delay were on the territory of Latvia”, as well as their children who have not received any citizenship [5].

The purpose of the bill is to improve the rules on the stay of foreigners and stateless persons in Ukraine, increase the level of responsibility of foreigners and their host for violating the law on the legal status of foreigners and stateless persons, simplify procedures for extending the stay of foreigners in Ukraine, exchange of temporary residence permits in Ukraine.

The norms of the draft Law aim to harmonize the norms of legislative acts regulating public relations in the field of migration and correspond to the simultaneously submitted draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative Offenses (to improve migration legislation)”, register. No. 4411, which strengthens administrative liability for violations of the legislation on the legal status of foreigners and stateless persons.

Conclusions. To summarize, we can conclude that the legal status of foreigners is separate independent interconnected elements:

1. The legal status of foreign citizens.
2. The legal status of stateless persons.
3. The legal status of refugees.
4. The constitutional and legal status of immigrants in Ukraine.

The process of formation and improvement of legislation on the status of foreigners continues. The provisions of the Association Agreement between Ukraine and the EU must be followed when making changes and additions. The difficult situation in eastern Ukraine and Crimea must be taken into account when amending the legislation. It also seems appropriate to codify the legislation on the legal status of foreigners by developing and adopting a single codified act on the status of foreigners.

Taking into account the best practices of Latvia, the Ukrainian legislation should establish the category of “stateless”, which should include persons who temporarily or permanently reside in Ukraine after August 24, 1991, arrived in Ukraine after August 24, 1991, for employment, training; as well as persons who have been granted asylum in Ukraine for political reason.

REFERENCES

1. Constitution of Ukraine. (1996). [Constitution of Ukraine from June 28, 1996, No. 254k/96-VR]. (n.d.). URL: zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian].
2. Convention relating to the Status of Refugees: International doc. 28 July. 1951 r. Convention Relating to the Status of Refugees of July 28, 1951. *Official Gazette of Ukraine*, 5, 178 [in Ukrainian].
3. Convention for the Protection of Human Rights and Fundamental Freedoms: International doc. from November 4. (1950). [Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950]. *Government Courier*, 215 [in Ukrainian].
4. On protection of foreigners and stateless persons: The draft Law of Ukraine of April 24. (2020). URL: <https://dmsu.gov.ua/diyalnist/konsultacziy-z-gromadskisty/gromadske-obgovorennya/proekt-zakonu-ukrajni-pro-nadannya-zaxistu-inozemczyam-ta-osobam-bez-gromadyanstva.html> [in Ukrainian].
5. Protocol relating to the Status of Refugees: International doc. from December 16. (1966). (n.d.). URL: https://zakon.rada.gov.ua/laws/show/995_363 [in Ukrainian].
6. Section 1 and Section 8 Law “On the Status of those Former U.S.S.R. Citizens who do not have the citizenship of Latvia or that of any Other State” – Vvc.gov.lv. 2022. [online] URL: https://vvc.gov.lv/export/sites/default/docs/LRTA/Citi/On_the_Status_of_those_Former_U.S.S.R_Citizens.doc [Accessed March 22, 2022] [in English].
7. 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: June 27 2014 URL: https://zakon.rada.gov.ua/laws/show/984_011# [in Ukrainian].
8. Chekhovych, S. (2000). Institute of asylum law as a constitutional and legal guarantee of human rights protection. *Law of Ukraine*. No. 4. P. 14–17 [in Ukrainian].

9. Bobokal O. (2013). Constitutional issues: the legal status of aliens in Ukraine State and Law. *Legal and political sciences*. Issue 61. P. 101-107 [in Ukrainian].

Дата надходження: 06.04.2022 р.

Дмитро Неофіта

Національний університет “Львівська політехніка”,
аспірант кафедри теорії права та конституціоналізму
Інституту права, психології та інноваційної освіти
dmytro.b.neofita@lpnu.ua
ORCID: 0000-0001-8412-3654

ПРАВОВИЙ СТАТУС ІНОЗЕМЦІВ В УКРАЇНІ: ТЕОРЕТИЧНО-ПРАВОВИЙ ОГЛЯД

Зазначено, що поняття особи іноземця та особи без громадянства можна розглядати у двох аспектах – соціальному та правовому. Дослідження та розуміння сутності правового та соціального статусу іноземців та осіб без визначеного громадянства дає змогу з'ясувати їхнє місце та роль у суспільстві та кожній демократичній державі як її членів. Роз'яснюється правовий статус і взаємозв'язок із громадянством іншої держави, зміст і особисте їх право на працю згідно з чинним законодавством національного та міжнародного законодавства, засоби правового захисту і це право.

Конституцією України 1996 р. встановлено, що іноземці та особи без громадянства, які на законних підставах перебувають в Україні, користуються тими ж правами і свободами і несуть такі самі обов'язки, як і громадяни України, крім випадків, передбачених Конституцією України 1996 р., законами або міжнародно-правовими договорами України. Їм може бути надано притулок у встановленому законом порядку; поки що правовий статус іноземців, апатридів (осіб без визначеного громадянства) та біженців врегульовано нещодавнім національним законодавством України.

Проаналізовано чинне українське законодавство про правовий статус іноземців, виділено переваги та недоліки, можливості, виклики та загрози. Автор поділяє пропозиції академічної спільноти і щодо кодифікації чинного законодавства про статус іноземців в Україні шляхом прийняття єдиного кодифікованого акта. Дивлячись у майбутнє, розглянуто окремі пропозиції щодо вдосконалення базового національного законодавства відповідно до вимог Європейського Союзу (маючи на увазі не лише Угоду про асоціацію між Європейським Союзом та Україною, а й поточну комунікацію у 2022 р. щодо прискореного вступу України до ЄС).

Ключові слова: іноземець, особа без визначеного громадянства, імміграція, біженець, особа, яка потребує додаткового захисту, особа, яка потребує тимчасового захисту.