

# **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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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?<sup>28</sup>**

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

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<sup>28</sup> 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 sources<sup>29</sup>.

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<sup>29</sup> 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 them<sup>30</sup>.

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 health<sup>31</sup>.

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

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<sup>30</sup> On freedom of conscience and religious organizations. Law of Ukraine.

<sup>31</sup> Civil Code of Ukraine.

legislation<sup>32</sup>. 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 law<sup>33</sup>.

*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 prohibited<sup>34</sup> 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?<sup>35</sup>

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

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<sup>32</sup> On ensuring the sanitary and epidemic welfare of the population. Law of Ukraine.

<sup>33</sup> 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.

<sup>34</sup> 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".

<sup>35</sup> Nataliia Lytvyn