

Marta Mochulska,
Ph Doctor,
Ivan Franko University of Lviv

Comparative study of the constitutional and legal regulation of the status of the foreign compatriots in the Republic of Poland and Ukraine

In this article, the author makes a comparative analysis of the constitutional and legal status of the foreign compatriots in Ukraine and the Republic of Poland. The article describes the conditions for granting, suspension and refusal of the status of the foreign compatriot under the laws of these countries. It draws a comparison between the catalogue of rights and freedoms of persons who are holders of the Pole's Card (also known as *Polish Charter* or *Polish Card*) and Foreign Ukrainians. Shortcomings of the legal regulation of the status of Foreign Ukrainians in Ukraine are revealed. Some aspects of the legal status of foreigners in the Republic of Poland and in Ukraine are described. It is suggested to improve the current legislation of Ukraine governing the legal status of Foreign Ukrainians, as well as to conclude a number of international agreements on social security and labour activity of Foreign Ukrainians and on regulation of migration flows.

Keywords: Foreign Ukrainians, citizenship, constitutional and legal status, foreigner, Pole's Card.

Relevance of the research. The geographic proximity of Ukraine and Poland, the similarity of their legal systems, common history, traditions, and mentality creates favourable conditions for intensification of migration processes between these countries. Poles are one of the largest minorities in Ukraine. According to the All-Ukrainian Census, 219179 people, who live in Ukraine, express their affiliation to the Polish nation; 19195 people consider Polish as their native language ¹. A part of ethnic Ukrainians have Polish roots and mental connection with Poland. The last census in Poland showed that there were about 51 thousand Ukrainians in Poland. Therefore, many citizens of Ukraine choose Poland as their place of residence, employment or education. Citizens of the Republic of Poland often visit Ukraine not only with a purpose of short-term tourism, business trip, etc., but also to carry out constant professional or business activities, learn and pursue public activities in Ukraine.

That is why the **purpose** of this article is to carry out a comparative study of the peculiarities of the legal status of the foreign compatriots in Ukraine and in the Republic of Poland.

¹ About the number and composition of the population of UKRAINE according to the data of the All-Ukrainian population census 2001: <http://2001.ukrcensus.gov.ua/results/general/nationality/>

The basis for the legal regulation of the status of Foreign Ukrainians is the Constitution of Ukraine, which sets forth the duty of the State to promote the consolidation and development of the Ukrainian Nation², and the Law of Ukraine "On Foreign Ukrainians"; in Poland, the status of ethnic Poles living in Ukraine is regulated by the Law "On the Pole's Card".

One of the main aspects, which especially deserve our attention, are the conditions of granting the status of the foreign compatriot.

An individual acquires the Foreign Ukrainian status under the following conditions: 1) Ukrainian self-identification; 2) Ukrainian ethnic origin or origin from Ukraine; 3) a written application; 4) the age of 16; 5) lack of Ukrainian citizenship.

The Pole's Card can be granted to a person who declares his/her belonging to the Polish nation and meets several requirements: 1) demonstrates his/her connection to Polishness by at least his/her basic knowledge of the Polish language, which he/she considers his/her native language, and the knowledge and observance of Polish traditions and customs, and 2) in the presence of the Consul of Republic of Poland makes a written declaration of belonging to the Polish nation; 3) proves that at least one of his/her parents or grandparents or both great-grandparents were of Polish nationality or had Polish citizenship or provides a certificate from the Polish or Polish Diaspora organization that confirms the active involvement in activities related to the Polish language and culture or the Polish national minority for at least the last three years. Legal limits are set regarding the citizenship of the person who intends to obtain the Pole's Card (the person who has the citizenship of the Republic of Armenia, Republic of Azerbaijan, Republic of Belarus, Republic of Estonia, Georgia, Republic of Kazakhstan, Kyrgyz Republic, Republic of Lithuania, Republic of Latvia, Republic of Moldova, Russian Federation, Republic of Tajikistan, Turkmenistan, Ukraine and Republic of Uzbekistan).

¹ The Constitution of Ukraine // Bulletin of the Supreme Council of Ukraine. – 1996. - No30. – Page 141. – [Electronic resource]. – Access: <http://zakon4.rada.gov.ua/laws/show/254k/96-bp>.

¹ The Law of Ukraine "On Foreign Ukrainians" // Bulletin of the Supreme Council of Ukraine – 2004. - No25. –Page 343. – [Electronic resource]. – Access: <http://zakon4.rada.gov.ua/laws/show/1582-15>.

¹ Act on the Pole's Card of September 7, 2007 – [Electronic resource]. – Access: http://viza.vn.ua/img/2012/06/KP_ustawa-viza.vn_.ua_.pdf

Ukraine does not set limits on the subject – the status of the Foreign Ukrainian can be granted to a person regardless of the country of his/her citizenship. Another difference is the condition of the knowledge of the state language, the knowledge and observance of Ukrainian traditions and customs. The Ukrainian legislation does not provide for such condition. This command of the state language to the extent necessary for communication is required only at the acquisition of the citizenship of Ukraine.

In Ukraine, as in the Republic of Poland, the status of the foreign compatriot is granted only to a person who is not a citizen of Ukraine, or Poland respectively.

The volume of rights of the Pole's Card holder is quite broad; the Card holder: is exempted from the obligation to obtain a work permit under the conditions specified in the legislation; may engage in economic activities under the same conditions as Polish nationals; has the right to carry out research, to take up doctoral studies and other forms of education, as well as to participate in the scientific research under the conditions specified by the law with the right to apply for scholarships and other assistance provided to foreigners; has the right to study in different forms of learning; has the right to receive free medical services in case of emergency to the extent specified in the legislation; has the right to enjoy 37 per cent discount rail fares in Poland; is entitled to free admission to state-operated museums (Art. 5 and 6 of "The Act on Pole's Card").

The Ukrainian legislation sets forth a lower amount of rights for Foreign Ukrainians determining that within the territory of Ukraine, Foreign Ukrainians enjoy the same rights and bear the same responsibilities as a citizen of Ukraine and, apart from the established exceptions, have the right to conduct work activities; annually, quotas are set for Foreign Ukrainians for admission to higher educational institutions of Ukraine within the limits of the state order.

As we see, the legislation of the Republic of Poland contains a more detailed statement of the conditions of granting the status of the foreign compatriot than the legislation of Ukraine.

We should mention that the way how the legal status of the foreign compatriot is granted based upon the decision of the competent organ or the official. The decision on granting the status of the Foreign Ukrainian is taken by the National Commission for Foreign Ukrainians, while the decision on granting the Pole's Card is taken by the Consul at the applicant's place of residence.

The legislation of both states determines the reasons for refusal to grant the status of the foreign compatriot.

The Ukrainian law provides only three reasons for refusal to grant the status of the Foreign Ukrainian: 1) acts committed by the applicant, which contradict the interests of national security of Ukraine; 2) submission of false information or false documents to obtain the appropriate status; 3) violation of other requirements stipulated by the Procedure of the processing and issuance of the status of the Foreign Ukrainian.

The Consul of the Republic of Poland decides to refuse granting the Pole's Card if: the applicant does not meet the requirements for granting the Pole's Card; applying for the Pole's Card, the applicant submitted documents containing incorrect personal data or false information, and if the applicant testified untruthfully or concealed the truth or, with the aim of using, forged or tempered with the document or used such a document as authentic ; the applicant repatriated from the Republic of Poland and the Polish People's Republic on the basis of repatriation agreements concluded in 1944-1957 by the Republic of Poland or the Polish People's Republic with the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic, the Lithuanian Soviet Socialist Republic and the Union of Soviet Socialist Republics to one of the countries that are party to these agreements; the applicant acquired Polish citizenship or permanent residence in the Republic of Poland; there is the consideration of defence, security or the protection of public order of the Republic of Poland; or the applicant has harmed the essential interests of the Republic of Poland.

The individual who has acquired the status of the foreign compatriot may lose it in the presence of the defined grounds.

Among the grounds for terminating the status of the Foreign Ukrainian, the Ukrainian legislation provides for: 1) the individual's submitting of the relevant application on the day of its registration with the National Commission; 2) acquisition of Ukrainian citizenship by the Foreign Ukrainian; 3) if the status was acquired due to submission of deliberately false information or forged documents; 4) if, within six months from the date of the change of the name, surname, nationality or place of residence, the individual has not notified the Ministry of Foreign Affairs of Ukraine or diplomatic missions of Ukraine abroad of the fact; 5) if the individual has committed acts against the national security of Ukraine; if the individual has submitted false data or forged documents to obtain the appropriate status.

The possibility of losing the status of the Foreign Ukrainian if the individual has failed to notify the Ministry of Foreign Affairs of Ukraine or diplomatic missions of Ukraine abroad within six months from the date of the change of the name, surname, nationality or place of residence seems to be inappropriate. No doubt, this is the reason for expiry of the certificate of the Foreign Ukrainian because it contains the personal data, nationality and country of residence. But depriving the individual of the status of the Foreign Ukrainian because of the late notification of the change of the name, surname, citizenship or residence is too harsh a consequence for such a minor infringement. In this case the individual will have to re-apply to the National Commission for obtaining the status of the Foreign Ukrainian, to prove repeatedly his/her ethnic origin, to pay the appropriate fee, and to wait for the decision of the Commission and for the issuance of the certificate of the Foreign Ukrainian. Such a complicated procedure does not encourage the interest of Ukrainians living abroad in maintaining connections with Ukraine by way of obtaining the status of the Foreign Ukrainian.

The Consul of the Republic of Poland mandatorily revokes the Pole's Card, if: after having acquired the Pole's Card its holder behaves disgracefully in relation to the Republic of Poland or Poles; applying for the Pole's Card, the applicant submitted documents containing incorrect personal data or false information, and if the applicant testified untruthfully or concealed the truth or, with the aim of using, forged or tempered with the document or used such a document as authentic; the applicant has acquired Polish citizenship or permanent residence in the territory of the Republic of Poland; there is the consideration of defence, security or the protection of public order of the Republic of Poland; or the applicant has harmed the essential interests of the Republic of Poland; the Card holder has renounced the Pole's Card.

As we see, the Polish legislation sets forth the legal status of the foreign compatriots in more detail and provides them with a wider catalogue of rights and freedoms. This is primarily due to the large number of individuals who claim to obtain the Pole's Card or are already its holders. In Ukraine, there are problems with the implementation of the legislation that defines the status of Foreign Ukrainians.

Among the problems of the Foreign Ukrainian, the Foreign Ukrainians state the following ones: inefficient activities of the diplomatic and consular offices of Ukraine abroad, failure to comply with the requirements of the Ukrainian language regime, the lack of international agreements to ensure social, civil and national rights Ukrainians in the countries of their residence, problems with the pension provision for the Foreign Ukrainians, who, prior to their leaving abroad, had worked at Ukrainian enterprises, as well as for those who had received their pension before leaving Ukraine for abroad.

Within the framework of the analysis of the legal regulation of the status of the foreign compatriots in Poland and Ukraine, it is necessary to examine the main aspects of the legal status of foreigners in these countries. In Ukraine, the constitutional and legal status of foreigners is governed by the Constitution of Ukraine, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" of September 22, 2011, The Law of Ukraine "On refugees and

persons in need of additional or temporary protection" of July 08, 2001, the Law of Ukraine "On Immigration" of June 07, 2001, the Law of Ukraine "On freedom of movement and choice of residence in Ukraine" of December 11, 2003 and other acts. The regulation on the rights, freedoms and obligations of foreign citizens and stateless persons are set forth by Article 26 of the Constitution of Ukraine, which stipulates that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same obligations as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. The principles of the legal status of foreigners and stateless persons in Ukraine are also defined in Article 2 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons". Foreigners and stateless persons have the same rights and freedoms and perform the same obligations as citizens of Ukraine, unless otherwise provided by the Constitution, laws of Ukraine and international treaties of Ukraine.

Foreigners and stateless persons are equal before the law regardless of their origin, social and property status, race and nationality, sex, language, religion, occupation and other circumstances.

This implementation of the rights and freedoms by foreigners and stateless persons should not harm the national interests of Ukraine, the rights, freedoms and legitimate interests of citizens and other persons residing in Ukraine. Foreigners have the right to engage in Ukraine in investing activities, foreign economic activity and other types of business activities provided by the law of Ukraine. Such persons have the right to work, to rest, to social security, to housing, to education, to use cultural achievements, to participate in associations of citizens, to move within the territory of Ukraine and to choose the place of residence. They have equal rights with citizens of Ukraine and obligations in marriage and family relations, and they are guaranteed the right to freedom of conscience as citizens of Ukraine.

A number of obligations are imposed on foreigners staying in the territory of Ukraine, including the following ones: to respect and observe the Constitution and laws of Ukraine; in exercising their rights and freedoms, not to harm the national interests of Ukraine, the rights, freedoms and legitimate interests of citizens and other persons residing in Ukraine; to take good care of the historical and cultural monuments and other cultural values and etc.

The subject of regulation of the Law of the Republic of Poland "On foreigners" of December 12, 2013 is somewhat different from the subject of regulation of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" of January 22, 2011. It can be easily seen even when reading the names of the sections of these legislative acts.

Law of the Republic of Poland "On Foreigners" regulates the following issues: the sphere of the Board of Immigration; rules for crossing the border; crossing the border with local border traffic; invitation; the procedure of issuance, prolongation and cancellation of visas; application for and acquisition of the permit for temporary residence and employment, education, research, and doing business; stay of foreigners who are victims of trafficking in the territory of the Republic of Poland; the procedure for obtaining a temporary residence permit due to circumstances that require a short stay or due to other circumstances; stay and residence permit for a long-term resident of the EC; checking the legality of stay of foreigners in the territory of Poland and the foreigner's obligations to return; consent to stay on humanitarian grounds and tolerant residence; transit of foreigners through the air space; the procedure of arresting and detention of a foreigner after putting him in a security post or after putting him in the detention centre for foreigners; register lists of foreigners; penal provisions.

The Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" regulates the principles of the legal status of foreigners and stateless persons; reasons for the stay of foreigners and stateless persons in the territory of Ukraine; entry of foreigners to Ukraine and departure from Ukraine and, principles of liability of foreigners and stateless persons.

The Constitution of Poland sets forth the freedom of movement and choice of residence of foreigners, and Article 52 of the Polish Constitution stipulates that the person, whose Polish origin has been confirmed by the law, has the right to settle in Poland for a permanent term⁵.

However, only citizens of Poland may use a number of political rights such as the right to information about the activities of public authorities, to participate in referendums and to elect the President of the Republic, deputies, senators and representatives in local government and so on.

The duties imposed on foreigners under the Constitution of the Republic of Poland include: observe the laws of the Republic of Poland to pay taxes, to take care of the state of the environment and others.

Conclusions. Both Ukraine and Poland pay due attention to the status of foreigners and foreign compatriots, because the preservation of national unity, maintaining ties with compatriots permanently residing abroad, is an important prerequisite for the development of civil society. Each country should support foreign compatriots and should not break relations with them.

After analysing the legislation of the Republic of Poland and Ukraine relating to the regulation of the legal status of foreign compatriots and foreigners, we can conclude that in Poland the legal regulation of these issues is more thorough and more detailed. In Ukraine, the legal rules governing certain matters are in different normative acts.

The Republic of Poland provides a wider catalogue of rights for its foreign compatriots than Ukraine, which can be explained by higher financial and organizational capabilities.

The problems of implementation of the legislation regarding the examined issues in Ukraine acquire a significant resonance. Indeed, as the former Ukrainian World Congress President Askold Lozynsky correctly stated, “the old generation passes away, the new generation is somewhat indifferent to the Ukrainian cause, although

¹ The constitution of the Republic of Poland. – Electronic resource. – Access: [http://orka.sejm.gov.pl/opinie7.nsf/nazwa/1526_u/\\$file/1526_u.pdf](http://orka.sejm.gov.pl/opinie7.nsf/nazwa/1526_u/$file/1526_u.pdf)

the English speaking Ukrainians have preserved the mental connection with the land of their parents”.

It is necessary to create an effective mechanism of interaction with foreigners of Ukrainian ethnicity, to maintain their commitment to their Ukrainian identity⁷. In the legal field, one of the priority measures should be the improvement of the legislation regulating the status of Foreign Ukrainians, the increase of benefits for persons who have received this status, the organization and co-financing of joint activities that are necessary to protect the Ukrainian diaspora and to awake the interest of young Ukrainians in maintaining their connections with Ukraine.

That is why the law of Ukraine on the status of Foreign Ukrainians needs to be improved in view of the positive experience of such a regulation in the Republic of Poland.