LEGAL REGULATIONS REGARDING ASSISTANCE TO UKRAINIAN CITIZENS
IN CONNECTION WITH THE ARMED CONFLICT ON THE TERRITORY OF THAT STATE

1. The armed attack of the Russian Federation against the territory of Ukraine on February 24, 2022 turned the war between those countries, which had been ongoing since 2014, into the largest military conflict in Europe after the Second World War. The aggressor’s plan to actually liquidate Ukraine as an independent state within a few days failed. The Ukrainian nation has not succumbed to violence. Instead, it has stood up and fought and has been defending its independence, assisted by its allies, for more than a year now. Thus, the blitzkrieg planned by the aggressor has turned into a long-term conflict, resulting in pain and suffering to millions of Ukrainians. In those dramatic moments, many of them, including women and children, sought a shelter in the neighbouring countries, e.g. on the territory of the Republic of Poland. According to UNHCR (the United Nations High Commissioner for Refugees), in the first few months of the war almost 5.5 million people emigrated from Ukraine to the neighbouring countries, the vast majority of them (over 4 million) to Poland. While a large part of them have already returned to their homeland, Poland still hosts several million of Ukrainian citizens. Here they have found a safe haven, financial assistance and – very often – also employment.

2. The European Union law has developed protective instruments to be applied in the event of a mass influx of refugees from the war zones. This is the so-called temporary protection provided for in Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The temporary protection consists in guaranteeing legal entry and residence, the right to work and financial and medical assistance to refugees. With regard to Ukrainian citizens, detailed rules of protection are listed in the Implementing Decision of the Council of the European Union of 4 March 2022. In the decision, the Council recognized the fact of a massive influx of refugees from Ukraine, thus ordering the activation of special measures provided for in Art. 5 of Directive 2001/55/EC (e.g. ensuring adequate accommodation, necessary social assistance, obtaining livelihoods, medical care, access to the labour market and education, etc.). The temporary protection measures are applicable in all Member States of the European Union.

The scale of the migration of Ukrainian citizens required additional formal arrangements aimed at regulating their legal status, as the usual protective measures provided for the event of such a situation were found to be insufficient, especially since the above-mentioned Directive defines only the minimum standard of protection granted, and Member States may decide to afford more extensive rights to people fleeing the war in Ukraine. Therefore, a law was adopted relatively quickly, which defined a special legal regime for the legalization of the stay of Ukrainian refugees in Poland. The piece of legislation in question is the Act of March 12, 2022 on the assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state. Covered by the Act are not only Ukrainian citizens, but also non-Ukrainian spouses of Ukrainian citizens, provided that they entered the Republic of Poland from the territory of Ukraine in connection with military operations conducted within the latter.

The purpose of the Act was to create a specific temporary basis for a legal stay of the Ukrainian citizens who, as a result of the hostilities, were forced to leave their country of origin and entered the territory of Poland holding an appropriate entry permit. Therefore, the Act is intended to solve the problems related to ensuring the legality of the stay of people coming from the territory of Ukraine. It is a specific piece of legislation, supplementing the existing law on the status of foreigners.

The Act lays down, above all, specific rules for employment of Ukrainian citizens residing legally on the territory of the Republic of Poland, rules for their being assisted by public authorities, the establishing of a special fund to finance the assistance, specific rules for extending the periods of legal stay of Ukrainian citizens in this country, certain rights of Polish citizens and Ukrainian citizens entering from the territory of Ukraine who are students, academic lecturers or researchers, special regulations regarding the education, upbringing and care for children and students being the citizens of Ukraine, specific rules for undertaking and conducting business activity by Ukrainian citizens in Poland, as well as particular rules for distributing medicinal products and medical devices intended for humanitarian aid delivered on the territory of Ukraine.

3. As far as the legalization of the stay of Ukrainian citizen having arrived on the territory of Poland since February 24, 2022 is concerned, the Act recognizes the stay of such a person as legal within 18 months from that date, unless his or her status is regulated in a different way (e.g. the person has a residence permit or is vested in a refugee status). The stay of a child born on the territory of the Republic of Poland to mother who came to Poland...
after the start of Russian aggression is also considered legal. The above regulations mean the creation of a simplified procedure that allows for a quick and simple legalization of the stay of refugees from Ukraine on the territory of Poland. This is important inasmuch as the “ordinary” rules concerning the applying for a stay in Poland provide for a much longer and definitely more complex procedure. This, in the extraordinary situation of a mass arrival of Ukrainian citizens seeking shelter from the dangers of war, would block the operation of the entire system and result in actual deprivation of aid sought by those most needing it.

Pursuant to the Act of March 12, 2022, citizens of Ukraine residing legally in Poland may apply for a PESEL number, i.e. a personal number within the Universal Electronic System of Population Records, which is assigned to Polish citizens and foreigners residing in Poland. Using the PESEL number, different public services and benefits (e.g. health services) may be accessed. In addition, citizens of Ukraine have been provided with access to the public mobile application referred to as mObywatel. This required the establishing of a special register containing photographs of Ukrainian citizens having been assigned a PESEL number, thanks to which arrangement there are no technical obstacles for the persons to obtain and use the services of the public mobile application now.

A citizen of Ukraine is deprived of the right of legal residence referred to above in the event of a departure from Poland for a period longer than 30 days.

4. The Act also regulates the issue of legalizing a further stay of the Ukrainian citizens who entered the territory of the Republic of Poland directly from the territory of Ukraine in connection with military operations conducted in their country of origin. They will be granted a temporary residence permit for a period of 3 years from the date of issue of the decision. The temporary residence permit may be withdrawn whenever this is required for reasons of state defense or security or the protection of public safety and order or where the Ukrainian citizen has been entered into the list of foreigners whose stay on the territory of the Republic of Poland is undesirable. Additionally, the Act provides for admission to the Polish labour market of those Ukrainian citizens who reside here on the basis of the temporary residence permit outlined above. A citizen of Ukraine granted a temporary residence permit is entitled to work in the territory of the Republic of Poland with no need to hold a work permit.

As for the situation of persons who stayed on the territory of Poland on the day of Russia’s aggression against Ukraine, the Act has provided for the extension, by operation of law, of the validity of the residence permits until 31 December 2022. On the same basis, the validity of residence permits held by Ukrainian citizens, the validity of which permits expired within a period starting on February 24, 2022, has been extended.

5. Public administration authorities have been obliged by the Act to offer social assistance to Ukrainian citizens, Voivodes (heads of the state administration of provinces) and local government bodies may provide assistance consisting in, among others: accommodation, all-day collective meals, transport to the place of accommodation, providing cleaning and personal hygiene products and accessories and other products. This assistance is granted for no longer than 120 days from the date of the first entry of the citizen of Ukraine into the territory of Poland. Provision of further assistance may be made conditional upon financial participation of the beneficiaries. Free assistance may be afforded for a longer time as regards people in a tough life situation (e.g. the disabled, pregnant women, minors or women over 60 and men over 65).

The Act of March 12, 2022 has also provided for a number of legal solutions aimed at increasing the housing stock intended to satisfy the needs of Ukrainian citizens (like, for instance, temporary approve for use of buildings that do not meet all the technical conditions required by law, if the buildings, nevertheless, meet the basic requirements of safe use, fire safety and hygienic conditions). Supporting the persons that offer accommodation to the Ukrainians with a special cash benefit has also been provided for.

6. With a view of ensuring the financial resources necessary for funding and supporting the implementation of the tasks intended to help Ukrainian citizens, an Aid Fund was established at Poland’s Bank Gospodarstwa Krajowego [the Domestic Economy Development Bank]. The Fund’s resources are used to finance or subsidize the tasks related to providing support to Ukrainian citizens affected by the armed conflict on the territory of Ukraine (both the tasks carried out on the territory of the Republic of Poland and outside it). The legal arrangements regarding the Assistance Fund are modelled after the currently applicable, specific solutions for the financing and supporting of the tasks related to counteracting the COVID-19 pandemics. The Assistance Fund may be supplied, among others, by subsidies coming from the state budget.

7. The Act in question provides for a broad access to the Polish labour market by the Ukrainian citizens whose stay has been recognized as legal. A precondition for that is the employer’s notification of the competent labour office, within 7 days from the date of commencement of work by a Ukrainian citizen, of the respective person having been entrusted with the job. Failure to meet the condition means his or her inability to perform work without a work permit. Thanks to the provision, it is easier to the Ukrainian citizens migrating in connection with the armed conflict to find a job, as they are released from the obligation to have a work permit, while the situation on local labour markets can be successfully monitored. The Act on the assistance to Ukrainian citizens in connection with the armed conflict on the territory of Ukraine allows the citizens to take up employment simply upon a declaration made by them. i.e. with no need to seek a work permit for a period of 18 months (starting from February 24, 2022). Meanwhile, the general rules of the Act of 20 April 2004 on employment promotion and labour market institutions provide for a similar solution concerning Ukrainian citizens for a period of 24 months. Thus, a citizen of Ukraine having arrived in Poland after February 24, 2022 is allowed to work without a work permit altogether over a span of 42 months (from the earlier mentioned February 24, 2022). After registering with labour offices, the citizens of Ukraine can take advantage of such labour market services as job placement or vocational counselling and training.
It should be noted, however, that the Minister of Labour may set limits on access to the labour market by Ukrainian citizens residing legally in the territory of the Republic of Poland for reasons of public order and security and if guided by the principle of complementarity of employment of foreigners versus Polish citizens.

Regardless of the above mentioned facilitations, it is possible to Ukrainian citizens legally residing in the territory of the Republic of Poland to undertake and conduct business activity on terms and conditions applicable to Polish citizens.

Of course, it should be noted that having access to Poland’s labour market entails, in principle, becoming subject to the Polish social security system. This involves the obligation to make, from the remuneration received, contributions to Zakład Ubezpieczeń Społecznych (Social Insurance Institution) and gives the person involved the right to benefits and other social insurance performances under the rules applicable to Polish citizens.

In addition, the Act includes a number of special provisions regarding the possibility of employing Ukrainian citizens at universities, the Polish Academy of Sciences and research institutes. Moreover, in schools attended by children of Ukrainian refugees, additional persons may be employed to render assistance in the teaching processes.

8. Under the extraordinary situation of an armed conflict, solutions aimed at protecting the well-being of minors who crossed the border without their parents or legal guardians, and often without any adult supervision at all, were also established. Polish family courts are not empowered to appoint a legal guardian in a situation where the minor is deprived of guardianship only because the parents are staying in the territory of another state. Therefore, specific rules allowing for the appointment of temporary guardians were laid down, to represent solely the minor citizens of Ukraine and take care of them and their property. The temporary guardian is established by the guardianship court competent for the place of residence of the minor. Proceeding in such case have been formalised as widely as possible, and some actions may even be taken by the court ex officio. The urgency of cases of this type makes courts to act immediately, both as regards the examination of the case and the issue of a final decision, which should be taken no later than 3 days of the date of receipt of the application by the court (or a receipt by the court of information about the need to appoint a temporary guardian). In the first place, the court should determine whether the function of a temporary guardian can be entrusted to a relative, an in-law or other person who guarantees a proper performance of the duties of the guardian, if the person in question has agreed to be appointed as one. Only in a situation where no such persons are available, appointed as a temporary guardian may be the person indicated by a social welfare entity. In addition, the Act also introduces certain facilitations in the establishment of foster care where it is not possible to appoint a temporary guardian.

The Act also states that in order to ensure care to children under the age of 3 who are citizens of Ukraine, the requirements for the operation of nurseries and other facilities providing care for small children may be eased (as regards, for instance, placing a larger number of children there, creating new nurseries with standards that are lower compared to today’s regulations etc.).

9. The citizens of Ukraine have been included in the Polish family support system, which means that they are entitled to a number of social benefits, such as: family benefits (e.g. the family allowance, care benefits, various types of benefits granted in a situation of fortuitous events, etc.), childcare benefits (the so-called “500 plus”, i.e. a benefit of PLN 500 PLN monthly until the child turns 18), family care capital (PLN 12,000 for the second and subsequent child aged 12 to 35 months), co-financing of a stay in a nursery, the so-called school starter kit (PLN 300 for the purchase of textbooks and school supplies). If the right to the benefit is limited by the income criterion, then the family member that remains in Ukraine is not taken into account for the purpose of calculating the amount of the family income per person.

The Act provides for the option of extending support in the form of a one-off cash benefit supposed to cover, in particular, the expenses for food, clothing, footwear, personal hygiene products and housing rental, in the amount of PLN 300 per person. In addition, Ukrainian citizens are embraced by the Polish social assistance system, i.e. may be provided assistance in connection with poverty, homelessness, unemployment, disability, fortuitous events or other types of crisis situations. Additionally, social assistance benefits may include, among others, food aid, free psychological help or supporting the needs of people with disabilities.

10. Citizens of Ukraine residing legally on the territory of Poland have gained access to the medical care, including the right to use medical clinics and hospitals. These entities provide medical assistance under contracts concluded with the National Health Fund, and the costs of financing medical services for Ukrainian citizens are covered by the state budget.

11. In many cases, a significant portion of the assistance offered to Ukrainian citizens has rested on the shoulders of ordinary citizens who accepted the refugees into their homes and took care of them, at least until they could become self-sustainable. Therefore, the legislator has provided for financial support to people undertaking such activities. Pursuant to the Act, each entity, in particular a natural person running a household, who will secure, at his or her own expense, accommodation and meals to Ukrainian citizens having come to Poland in connection with the war, may be granted a cash benefit on that account, at his or her request, for no longer than a period of 120 days from the date of arrival of the citizen of Ukraine in the territory of the Republic of Poland. The amount of this benefit is PLN 40 per person per day and may be increased by the voivode (governor) in justified cases, e.g. where the accommodation and meals were offered to Ukrainian citizens before the date of entry of the Act into force or when the entity providing accommodation and meals to Ukrainian citizens is an organizational entity, legal person or entrepreneur.
The period of payment of the benefit may be extended in particularly reasonable cases (e.g. where the assistance is provided to the disabled, the elderly or to pregnant women or persons bringing up a child up to 12 months of age, etc.).

12. As can be seen, the Polish state reacted very quickly to the crisis caused by the influx of a very large number of people from the war-torn Ukraine. Of course, in the first days, the focus was on emergency aid - receiving the refugees and providing them with necessary support. The Polish society showed great generosity in this respect. Many Ukrainians found shelter in private homes, boarding houses and hotels. Despite the large numbers of people having come to Poland from Ukraine, not a single temporary camp for refugees was established. Of course, some of the people stayed with friends or relatives already living in Poland, but most found accommodation with Polish families or were received by Polish entrepreneurs. The widespread collections of clothes, food and money made it possible to provide first aid to people in need, often feeling lost in a new country, not knowing the language and local customs and habits. There is no need to say that it was also necessary to get the state involved, hence legal grounds had to be quickly created for special actions, which, considering the extraordinary situation, had not been earlier supported by the applicable law. Such foundations were, in fact, established by the above-discussed Act of March 12, 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state. Despite many shortcomings of the piece of legislation in question, resulting from a very quick pace of the parliamentary proceedings, the Act made it possible to create a legal framework for the state agencies to take up assistance to the citizens of Ukraine on a systematic basis. Facilitating the legalization of stay was of key importance, as only the persons that legally stay in Poland are entitled to use benefits and public services offered by our state to foreigners residing on its territory. As it is rightly pointed out in the literature, the Act of March 12, 2022 was not intended to grant Ukrainian citizens special rights which they would not have if residing legally in Poland. The issue was about shortening and simplifying the procedure of legalization of stay for those refugees from Ukraine who directly crossed the borders of Poland from February 24, 2022. This was required in the special war-related situation and the influx of huge numbers of Ukrainian citizens looking for a safe place to stay. And it should be said that they did find such a safe shelter, and thanks to the Act in question, were also covered by the Polish social benefit system.

Summary

Jakub Stelina. Legal regulations regarding assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state.

The author discusses the principles of assistance to Ukrainian citizens who came to Poland in connection with the war caused by the aggression of the Russian Federation on February 24, 2022. Under the law of the European Union, the assistance is provided for by Council Directive 2001/55/EC of July 20, 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. However, detailed rules of assistance are laid down by the Polish Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state. The Act was not intended to grant to Ukrainian citizens special rights which they would not have if residing legally on the territory of Poland; its purpose was to shorten and simplify the procedures of legalization of stay for those refugees from Ukraine who directly crossed the borders of Poland from February 24, 2022. Thanks to legalizing their stay, they gained access to the labour market and public services in Poland.

Key words: the war between Russia and Ukraine, refugees, assistance to Ukrainian refugees, the rights of refugees, the right of a refugee to stay and work.