

**Конституційне право. Конституційне процесуальне право.
Адміністративне право. Адміністративне процесуальне право. Митне
та податкове право. Міжнародне право. Муніципальне право**

THE LEGAL STATUS OF INTERNATIONAL STUDENTS IN UKRAINE

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The legal status of foreigners and stateless persons is determined by the Constitution of Ukraine, the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection” other laws of Ukraine and the international treaties of Ukraine. If an international treaty of Ukraine sets other rules than those stipulated in “The law of Ukraine on the Legal Status of Foreigners and Stateless Persons”, the rules provided in the international treaty of Ukraine shall apply.

Foreigners and stateless persons, who stay in Ukraine on legal grounds, have the same rights, freedoms, and obligations as the citizens of Ukraine, with the exceptions set in Constitution, laws and international agreements with Ukraine.

Foreigners and stateless persons, who stay under the jurisdiction of Ukraine notwithstanding the legal grounds, are entitled to the recognition of their legal capacity as well as the basic human rights and freedoms.

Foreigners and stateless persons must strictly follow the Constitution and the laws of Ukraine, other legislative acts, as well as never breach the rights and freedoms, honor and dignity of other persons, interests of society and state.

Foreigners and stateless persons, who arrived in Ukraine for study purposes and received a temporary residence permit, stay on the territory of Ukraine on legal grounds. The residence permit is issued upon the corresponding application form of a foreigner or a stateless person, a valid medical insurance, a certificate proving the enrollment at the university in Ukraine, and the obligation of the educational establishment to notify the main executive migration authorities that the student was expelled. Foreigners and

stateless persons, who study in the educational establishments in Ukraine, can enter and leave Ukraine based on their passport and temporary residence permit.

Residence permit is issued for the study period, which is indicated in the corresponding order of the educational establishment on the set study period for the foreign students. The documents that prove university enrollment of a foreigner or a person without citizenship include the orders of the educational establishment on their acceptance and the set study period for the foreign students. Residence permit is issued to the foreign students based on the study period indicated in the document certifying their enrollment at the Ukrainian university.

Upon the expiration of the residence permit, a foreigner or a stateless person must withdraw the registration of their residence and move out of the country within the period of seven days. Meanwhile, the permit of stay is submitted to the hosting educational establishment, which shall return it to the corresponding local authority or office of State Migration Service of Ukraine at the place of residence of a foreigner or a stateless person within ten days of their withdrawal of the residence registration. Failure to submit the residence permit is considered invalid by the authorities.

International students living in Ukraine temporarily must register a new residence address within thirty days after their withdrawal of the residence and arrival in new residence place. The residence address is registered on the day of the document application. The residence may be also registered simultaneously with the withdrawal of registration of the prior residence address. Foreign students who did not comply with the legislative requirements regarding residence registration bear responsibilities set by law. Incompliance with the set order of movement and change of the residence by the foreigners and persons without citizenship leads to a penalty in the amount of thirty to fifty non-taxable minimum incomes of the citizens (according to part 1, art. 203, of Code of Ukraine on Administrative Offenses).

The rights of foreigners and stateless persons are directly related to the legal grounds of their stay in Ukraine; in case of any breach of certain conditions of their stay set by the state, the latter hold responsibility which is divided into general and special. General responsibility occurs when the foreigners who committed a crime are held responsible on common grounds like the citizens of Ukraine. Special responsibility includes the following cases:

disobedience of the order of stay in Ukraine and the transit across the territory of the country; reduced time period of the temporary stay in Ukraine and the ban on the entry to the country; forced return and expulsion from Ukraine. If these breaches do not presuppose the administrative or criminal charges, the period of a legal stay for a foreigner or a person without citizenship may be reduced. The period may be also reduced if a foreigner or a stateless person has no more grounds to continue their stay in Ukraine. Foreigners and stateless persons hold administrative responsibility according to part 1 of the Code of Ukraine on Administrative Offenses. Foreigners and stateless persons shall pay a penalty in the amount of thirty to fifty non-taxable minimum incomes of the citizens in the following cases of the breach of the rules of stay in Ukraine: residence in Ukraine on the basis of invalid or expired documents, employment without proper permission if it is required according to the Ukrainian legislation, incompliance with the set order of movement or change of residence, refusal to move out of the country after the expiration of the permit of stay, failure to appear in the educational establishment or a workplace within the set time limits and without any serious reasons, as well as violation of the rules of transit over the territory of Ukraine, except for the part two of this article.

According to the Law, foreigners can be forced to return to their country of origin or any other third country based on such resolution of the local authorities and the officials of State Migration Service of Ukraine, or expelled on the basis of the corresponding court resolution following the lawsuit of the local authorities or the officials of the State Migration Service of Ukraine. The resolution on the expel of foreigners or stateless persons can be complemented with a further three-year ban on the entry to Ukraine. The period of the entry ban to Ukraine is calculated starting from the date of resolution. Forced return presupposes the foreigner to move out of Ukraine following the corresponding resolution of the local authorities or the officials of the State Migration Service of Ukraine and accompanied by a further message sent within 24 hours articulating the grounds of the prosecutor's resolution, properly arranged documentation, acknowledgement of the foreigner's volunteer entry in Ukraine within the specified timeframe, and exercise of the further control over this obligation of a foreigner. For the purpose of control over the foreigner or the stateless person who is forced to move out of the country, such foreigners or persons without citizenship may be accompanied to the state border checkpoint.

Forced return is not applied to the juvenile foreigners and persons without citizenship under 18 years old, as well as to those staying in Ukraine under the Law “On refugees and Persons in need of subsidiary or temporary protection in Ukraine”.

The activity of the criminal groups in the sphere of illegal migration is characterized by the search of new strategies and mechanisms of organization of illegal transfers of the foreigners to Ukraine with their further movement to the countries of West Europe. Therefore, the so-called “student” channel (entry of foreigners illegally under the guise of students in the Ukrainian educational establishments) should be taken into account. The “student migrants” turn to the service of physical or legal authorities that prepare their invitation to the higher educational establishments in Ukraine, which serves as the basis for their Ukrainian visa application. As such, the administration of the educational institutions must take administrative law measures to prevent illegal immigration and crimes both by and towards foreigners. Particularly, it is important to consider the responsibility of the administration of the educational institution to follow the Ukrainian legislation in relation to the legal status of foreigners and stateless persons as well as the diligent fulfillment of the obligations of the hosting countries.

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ПРИНЦИП ВОЄННОЇ НЕОБХІДНОСТІ ТА ЙОГО ЗАКРІПЛЕННЯ У МІЖНАРОДНОМУ ГУМАНІТАРНОМУ ПРАВІ

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Розповсюдженість збройних конфліктів низької інтенсивності у наш час обумовлює питання щодо спроможності міжнародного гуманітарного права адекватно регулювати засоби та методи, що застосовуються під час їх ведення. У зв'язку із цим підвищеної актуальності набуває принцип воєнної необхідності, що поряд із відмежуванням комбатантів і некомбатантів та пропорційністю утворює засади законного застосування сили під час бойових дій.

Міжнародне гуманітарне право у найбільш загальному розумінні являє собою компроміс між вимогами гуманності та воєнною необхідністю [1, с. 27]; у свою чергу остання є сукупністю потреб, пов'язаних із веденням бойових дій для перемоги над супротивником. Природно, що далеко не всі потрібні на війні дії (засоби, методи) можна назвати необхідними. Відтак воєнна необхідність повинна розглядатись також і як певне обмеження воюючих сторін, принцип, що не є протилежним гуманності, а навпаки, поряд із нею виступає засадничим для визначення поведінки учасників збройного конфлікту.

Якщо звернутись до історії формування міжнародного гуманітарного права, то ще Г. Гроцій висловлювався на користь обмеження поведінки воюючих сторін безпосередньо потребами війни: «Усі битви, що не слугують меті ані отримати належне, ані припинити війну, спрямовані виключно на задоволення честолюбства силою... суперечать обов'язку християнина та самій людяності» [2, с. 708-709]. Розвиваючи цю точку