

EUROPE WITHOUT BARRIERS

**DOCUMENTS SECURITY
AND MIGRATION POLICY:
ASSESSMENTS AND RECOMMENDATIONS
OF THE INTERNATIONAL WORKING GROUPS
FOR UKRAINE**

KYIV — 2011

The publication encompasses the research developed by the experts of international sector working group studying “migration policy” and “document security” issues as they serve as important components for Ukraine’s way towards visa free regime in its relations with the EU.

The publication includes analysis and evaluations of the conformity level of current state policy with the standards of the European Union in the sphere of migration and readmission, identity documents security as basic requirements for implementing the tasks and criteria of the Action Plan on Visa Liberalisation.

Expert conclusions and recommendations, international experience of reform implementation within the defined state policy areas constitute the methodological and practical value of the publication.

Documents Security and Migration Policy: Assessments and Recommendations of the International Working Groups for Ukraine

Policy Paper

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CONTENT

FOREWORD.....4

**MIGRATION POLICY: ASSESSMENTS AND RECOMMENDATIONS
OF THE INTERNATIONAL WORKING GROUPS FOR UKRAINE...6**

Executive Summary.....6
Actual Migration Processes in Ukraine.....9
Tasks of Migration Policy of Ukraine in the Context
of Visa Dialogue with the EU.....29
The Most Important International Experience46
Conclusions and Recommendations.....54

**DOCUMENTS SECURITY: ASSESSMENTS
AND RECOMMENDATIONS OF THE INTERNATIONAL
WORKING GROUPS FOR UKRAINE.....57**

Executive Summary.....58
Modern Standards of Documents Security.....60
Analysis of Current Situation in Ukraine63
The Most Important International Experience74
Recommendations.....79

FOREWORD

Visa free regime with the EU is an ambitious goal and this subject has been in the focus of close public attention for several years. The rhetorical level of Ukrainian politics demonstrates the unity in desire and political promises to ensure the freedom of movement within the Schengen area for Ukrainian citizens in the nearest future.

In autumn 2010 Ukraine received the Action Plan on Visa Liberalisation from the European Union and it was an important practical result of the Ukraine-EU visa dialogue.

The development of the National Plan on visa regime liberalisation for Ukraine on behalf of the EU served as the reaction of Ukrainian authorities to receiving the long awaited signpost from the EU. The implementation of the National Plan was launched in April 2011 after the relevant Action plan was approved by the President of Ukraine.

The document sets up specific list of tasks and terms for their realization listing the agents responsible for necessary reforms in the sphere of justice, freedom and security.

The EU in particular expects quality changes and reforms in the spheres relating to document security, migration and readmission and border protection.

Realization of clear tasks in these spheres should show the principal capability of Ukrainian authorities to implement European standards aimed at receiving visa free regime with the EU.

In order to promote effective implementation of the Action Plan by the relevant authorities, “Europe without Barriers” initiated creation of international professional expert groups experienced in studying the level of readiness of the defined visa and migration policy areas as indispensable elements of the movement of Ukraine towards launching visa free regime with the EU.

Working groups were formed on the basis of trilateral principle of choosing the

experts representing Ukraine, EU Member States and Western Balkan countries that have positive experience in implementing the tasks and criteria for a visa free country.

The publication serves as one of the outcomes of the efforts made by Ukrainian and European experts working on migration and document security issues. They offer independent analysis and evaluations of the conformity level of current state policy in the defined areas with the criteria of the Ukraine-EU Action Plan on Visa Liberalisation.

The research includes conclusions and recommendations, algorithm for reforms and activities aimed at optimization and improvement of the state policy in the defined areas and bears informational scientific and practical value for all participants of the process of implementation of the National Action Plan on Ukraine-EU Visa Liberalisation.

On behalf of the Public initiative “Europe without Barriers”,
Iryna Sushko

MIGRATION POLICY: ASSESSMENTS AND RECOMMENDATIONS OF THE INTERNATIONAL WORKING GROUPS FOR UKRAINE

Ukraine is stereotypically considered to be the country of higher migration risk related to the immigration of the citizens of Ukraine, however real risks are mostly not in the area of migration potential of the country but in the low level of readiness of the country to form and implement comprehensive, modern and institutionally and regulatory ensured migration policy.

EXECUTIVE SUMMARY

Migration situation in Ukraine is rather stable. The country achieved a point of the certain migration equilibrium.

Migration potential of Ukraine is moderate and doesn't provide a substantial threat to any other country (or group of countries). Only 7,9% of Ukrainians expressed in 2010 consistent will to emigrate.

Ukrainian migration policy is fragmentary: a number of essential migration policy elements are either not developed enough, or completely absent from Ukrainian practice.

Ukrainian migration policy is not integrated enough in the regional context and does not fully make use of opportunities of cooperation with foreign partners, above all, with the European Union, in order to improve migration policy standards in general and to adopt modern technologies in particular.

Ukrainian institutional needs in the field of migration management are above all connected with overcoming the gap between current conceptual

and operational challenges and tasks, on the one hand, and the existing institutional capacity, on the other.

In December 2010 State Migration service (SMS) was re-established by the President's Decree (under the Ministry of Interior). This is a step in right direction, however challenges of the SMS institutional capacity remain rather strong.

The government is developing legislation aimed to modernize Ukraine's migration policy, making it adequate to the current challenges and European standards. However, without wide vision and deep understanding of the migration situation in the country, migration legislation will not be effective. Current views on migration situation and migration flows in Ukraine are not correct and that is why certain propositions concerning migration management will not be proper..

As the exit labour migration abroad is the dominant migration trend in Ukraine, there is an obvious need to develop national policy to make it regular, legitimate, to ensure protection of human rights of labour migrants as well as reintegration of the returnees into Ukrainian society.

Ukraine lacks any additional protection mechanisms applied in the countries of Europe, those that are provided for the persons facing serious danger in their home land due to the military conflict or mass violation of human rights, who are exposed to the risk of death penalty, tortures, inhuman or undignified treatment or punishment in case of return to their homeland. Additionally, there are no mechanisms for protection on humanitarian grounds of human trafficking victims not necessarily falling under the Convention provisions on refugee status but needing international assistance.

Migration sphere reforms should become an integral part of the institutional transformations in the context of European integration policy in the context of the EU-Ukraine Association Agenda adopted in 2009 as a practical transitional instrument to assist Ukraine to ensure proper implementation of the future Association Agreement.

Action Plan on Visa Liberalisation (APVL) presented by the EU to Ukraine on November 22, 2010, should become a guideline of the reforms. A special block of APVL is dedicated to migration policy issues.

Due to APVL the new opportunities emerge not only to solve well-understandable problems but also to launch debating the issues which have never even touched by the debates over migration legislation.

The migration policy should be considered in a complex manner, not restricted to punishment measures, enforcement and control. Horizontal cooperation should be developed between different governmental bodies as well as between the government and the civil society.

ACTUAL MIGRATION PROCESSES IN UKRAINE¹

Migration situation in Ukraine

According to the data of the migration analysis annually conducted by the State Statistics Committee of Ukraine, in 2007–2009 total number of registered movements in Ukraine including all migrants regardless the directions for their travels, regions and types of settlement, correspondingly amounted to 14,997,000, 14,066,000 and 12,722,000 people. Division of migrants according to the flows shows that inner regional movement of people dominates in Ukraine, making up 58,1%, 57,9% and 57,7% of general number. Regional resettlement of the population between rural areas and urban settlements is still the main type of migration (within regions, territorial autonomy).

Intraregional migration constitutes a considerable part of migration movement in Ukraine: the scale of regional movements of the population from one region to another within the country during 2007–2009 amounted to more than one third of gross migration (36,8%, 37,4% and 38,2% respectively). The smallest share of migration flows connects Ukraine with CIS countries, Baltic countries and far abroad: interstate migrant exchange between these countries provided for only 5,1%, 4,3% and 4,1% of total migration in the country in 2007–2009 pp. For comparison we should note that the share of external migration in 1999–2000 was 11,2% and 9,4% respectively.

During 2000s Ukraine experienced the diversification of interstate migration flows. If the total number of registered movements of the population between Ukraine and other states including all migrants regardless the directions for their travels and countries of destination

¹ This Chapter has been developed by Iryna Prybytkova, Doctor of science, Leading research fellow of the Institute of Sociology, National Academy of Sciences of Ukraine

decreased by 2, migration exchange with the far abroad countries during the same period reduced by 2,2 and with CIS countries — by 1,9. Contribution of CIS countries into gross migration increased in 2002–2008 from 71,9% to 74,3%, and of the far abroad countries — decreased from 28,1% to 25,7%. Thus, the geography of interstate flows in Ukraine is gradually turning into the spatial structure for migration movements of the country existing at the beginning of the 1990s.

Changes in the size and structure of migration flows are followed by the improvement of migration situation in Ukraine. Already in 2005 Ukraine turned into the country admitting immigrants and its migration losses over 2004–2005 are compensated by former citizens from CIS countries. However, for the first time since 1990s the increase of the population due to migration exchange with the far abroad countries was recorded in 2006. Over the next years this tendency intensified. Even though the size of migration flows from abroad is small, the very fact shows the turning point in the development of migration situation in Ukraine and its transformation from the country of emigrants into the country of destination for immigrants both from CIS and far abroad countries. Migration situation in Ukraine is stable now. The country is in the position of the new migration balance that it has been trying to achieve for 18 years. A certain stage of transformational changes in this sphere has been completed.

Migration potential of Ukraine

According to the monitoring results of social changes in Ukrainian society annually conducted by the Sociology Institute of Academy of Sciences of Ukraine since 1992, in 2000s almost every fifth Ukrainian was a potential migrant and was eager to leave its place of residence (19,3% in 2000, 21,1% in 2004, 20,1% in 2006 and 19,6% in 2010). At the same time in 2010 11,2% of those wanting to leave chose another locality in Ukraine and only 7,9% of Ukrainians intended to leave the territory of former USSR.

In 2000 the number of those wishing to leave their place of residence was larger: 14,4% expressed their wish to resettle within Ukraine and 9,6% — outside the territory of former USSR. The number of potential migrants indecisive about their place of destination was the largest: in 2000 it equaled to 17,0%, and in 2010 — to 18,3%. The main reasons that could provoke the intention of Ukrainians to leave their places of residence included harmful ecology conditions and the desire to find a new job (in 2000 15,4% and 18,0% respectively and in 2010 16,7% and 19,9%). Other reasons are mentioned less often. As a rule since the beginning of 2000 Ukrainians preferred to look for new employment. Almost half of the residents see the environmental conditions in their place of residence as harmful or extremely harmful (59,2% in 2002 , 46,4% in 2006 , 41,1% in 2010).

Migration potential of Ukrainian youth deserves special attention. According to the survey conducted by Democratic Initiatives Foundation and “Ukrainian Sociology Service” company among young people in Ukraine in December 2009 and January 2010 only 13,8% of young people aged 18–34 intended to leave their country forever. Much more often Ukrainian youth was determined to stay temporary abroad: 29,9% of young Ukrainians intended to leave for other countries for a certain period of time. However, more than half of Ukrainian young people did not express the inclination to emigration (51,5%). It should be mentioned that similar survey concerning potential migration intention of the youth held in 2003 showed that the share choosing the home land was basically the same — 50,9%.

How long do potential migrants intend to stay abroad? Young Ukrainians planned an average trip to foreign countries for 3–4 years. As a rule, young people do not plan to stay for more than 5 years outside their native country. The shares of those intending to stay in foreign countries for different period are about the same: for one year — 22,1%, 2 years — 23,8%, 3 years — 22,1% and finally 5 years — 21,3%. In 2003 the period for eventual stay abroad was much shorter for potential migrants. Ukrainians defined the longest period for staying abroad as lasting 2 years (9,3%).

Only 6,0% of young Ukrainians intended to stay abroad for 5 years. Thus, over the last 7 years the duration of staying abroad for Ukrainian youth has significantly increased in their migration intentions.

Why do young people intend to go abroad? Young Ukrainians mention labour migration as the main reason for traveling abroad (65,1%). 2,2 times less often Ukrainian youth intends to realize its touristic interests (30,1%) and only 5,5% of them plan to study outside their country. In comparison with 2003 the number of young Ukrainians wishing to work abroad has increased by 2,9 (from 22,4% to 65,1%).

Potential migrants make the choice of the country for realizing different interests depending on their preferences, availability of information and development of migration networks. Thus for young Ukrainians Russia (19,0%), Great Britain (12,2%), Germany (11,7%), the USA (11,2%), Italy (10,2%) are priority countries. In 2003 Germany (14,1%) and the USA (12,3%) were the most desirable countries for young Ukrainians. Only 5,8% of potential migrants mentioned Russia at that time. Therefore the geography of destination countries has considerably changed.

What encourages young Ukrainian people to constantly search for better life outside their own country? Most often young people name three reasons influencing their migration choice: economic, financial and socio-cultural. Very seldom they point out to political or national grounds.

Primarily financial reasons influence migration directions of Ukrainian youth: they believe that they will be able to earn more abroad. 51,5% of young people adhere to such position. 48,5% of Ukrainian youth note the impact of economic reasons (lack of financing in the industry they are working in, lack of perspective for Ukrainian economy in general). Less often they mention social and cultural reasons (better living conditions, higher cultural level, etc.). 39,7% of young citizens mention such factors influencing their migration directions and plans. Another 23,5% of this age group mention the opportunities for professional/career growth and another 17,6% of young Ukrainians point to the family reasons (their

relatives live abroad) in their migration choice. It should be mentioned that in 2003 young people in Ukraine were almost indifferent answering the questions about the factors influencing the formation of their migration plans: financial reasons were noted by only 8,3% of the surveyed; 6,4% mentioned economic reasons; 4,4% — social and cultural reasons; 2,3% — motivated their desire to leave the country by the lack of perspectives for career or professional growth.

External labour migration of Ukrainian population

The interest towards the problem of foreign labour migration has increased and intensified over the last years. Dynamics, structure and intensity of labour migration flows from Ukraine and perspectives for its development under the conditions of world financial and economic crisis are of the biggest interest nowadays. That is why we consider it necessary to detect characteristic features for labour migrants as a separate social and professional group; create a collective social and demographic portrait of a worker abroad; discover the evaluations made by Ukrainians concerning the world financial and economic crisis and the survival strategy they choose under such conditions; detect the peculiarities of employment of migrants and the reasons for their return to the homeland.

Community of labour migrants as a separate professional group. Labour migrants constitute a community uniting people with rather high adaption level to market economy conditions. They choose and realize such market strategy where self employment and entrepreneurship are dominant. They are ready to take the risks, they rely mainly on their own work and resources, they cultivate the values typical for middle class representatives while their welfare level is much closer to the “new poor” rather than “new middle class”. They are characterized by the rational choice of living strategies, harmonized with available social and economic resources, high social and motivational tension stimulating them to overcome difficulties in applying these resources;

engagement in different entrepreneur activities; new standards and conduct examples on the labour market, specific models of social behaviour, system of values; external policy orientations and internal policy choice. This group contains significant potential for self organisation and national mobilization.

Labour migrants are sort of market idea missionaries, entrepreneurship idea bearers, pioneers on the foreign labour markets. They constitute a social and professional group which is undoubtedly “class forming” and will later be incorporated into a multi layer middle class that is developing in the country. The prevalence of young people, males and residents from small towns and rural areas in this group shows, on the one hand, the engagement of the most active individuals in the processes of economic and social relations transformation, and on other hand, it demonstrates the penetration depth of modernization reforms and their not always positive outcomes into the wide masses.

The author made such conclusions in 2002 in the process of in-depth analysis of social monitoring data concerning Ukrainian society conducted by the Sociology Institute of the Academy of Science of Ukraine since 1992. The country has changed over the last 8 years. The world became different and it is falling deeper into the system financial and economic crisis. Does it influence the dynamics, structure and intensity of labour migration flows from Ukraine and in what way? Have labour migrants changed? What are the perspectives for development or reduction of external labour migration?

Collective social and demographic image of foreign labour migrants. Contrary to the popular mass media reports on abandoned children devoid of maternal care, the children are much more often left without the care of their fathers: females make up only one third of foreign labour migrants, while the share of males is two thirds. Three fourths of Ukrainian citizens working abroad are married: 64,7% of marriages are registered and 9,6% — are civil. Comparatively small share is made up of the divorced — 7,1%, there are twice as many people who have never been married (13,5%). Mostly people of active working age participate in the foreign labour migration

from Ukraine: 70,2% are 30–55 years old and 17,7% have not reached 30. Labour migrants of older age comprise only 12,1%. Average age of Ukrainian migrant worker is 41–42 while the rest of the citizens on average are 46 years old. Majority of labour migrants finished secondary school (38,6%), or vocational secondary school (32,3%). 12,6% of Ukrainians working abroad obtained higher education, while the same share (12,7%) is occupied by the persons with primary or incomplete secondary school.

As before, about two thirds of guest workers are rural area residents (34,8%) and residents from small towns (29,1%). Only every third labour migrants comes from a city with the population of more than 250 thousand people (34,8%). As before, the main share of Ukrainian citizens working abroad is made up of people from Western Ukraine (43%). Residents of central regions make up one fourth of the group (27,4%). Ukrainians from the Eastern Ukraine are less often engaged into this process (19%) and even fewer number of residents of Southern region work abroad (13,3%). Thus, the geography of foreign labour migration remained without significant changes.

World economic crisis and its consequences as seen by Ukrainians. According to their own evaluations the absolute majority of Ukrainians has already suffered from the disastrous collapse of the mechanisms regulating the world economy and supporting the balance of world financial system. Every fifth Ukrainian family considers their current situation to be disastrous. More than half of the interviewed characterize the situation in the family as rather vulnerable but not disastrous. Such view is more characteristic for families whose members have never been abroad (62,4%). Families of labour migrants give such evaluations less often (54,4%). At the same time they see the level of world financial and economic crisis impact as insignificant for their family (19,6% comparing to 15,6%).

The crisis has primarily hit the purchasing parity of Ukrainian families: purchases of clothes, shoes and other items are less often (61,8%). Every second family buys certain food products less often. The situation is predictable as family budget has considerably shrunk in every third household due to

the lack of salary or pension payments or incomplete payments. Every fifth family faced the problems of unemployment or part time work. People were facing difficulties in paying out bank credits, while bank clients can not receive their deposit dividends. It should be mentioned that families of labour migrants mention the shortening of food consumption less often (43,0% comparing to 52,2%) though unemployment affected their budgets to a larger extend (25,9% comparing to 20,4%). Labour migrants more often face difficulties with credit payments. In other cases they face the same financial difficulties as other citizens.

Ukrainians are realistic about the potential long term consequences of world financial and economic crisis. They believe that the most possible evidence of crisis in Ukraine are increased unemployment (68,9%) and rapid downfall of living standards (66,0%) that are developing together with industry production crisis (62,4%) and collapse of national financial system (40,0%). According to their estimates, it will be followed by the rise of crime level and organized crime groupings (31,0%). At the same time internal political struggle will intensify and interparty conflicts will become more often (26,4%), service sphere and system of social support will be narrowed (20,8%) and the environmental situation will rapidly deteriorate (16,3%).

It should be mentioned that Ukrainians are surprisingly united in developing the hierarchy of future miseries and turmoil. The evaluations given by the labour migrants practically do not differ from the national ones. Our citizens show solidarity concerning eventual terms of overcoming negative consequences of current financial and economic crisis. Only three out of ten Ukrainians (30,5%) expect to see “the light in the tunnel” in two years and even much later (not being precise when exactly). Optimists who expect to overcome difficult crisis in economy during the next two years are fewer — only every tenth out of the respondents. Unreasonable euphoria concerning rapid triumphal victory in fighting crisis poverty in the nearest months is characteristic for less than one percent of Ukrainian population.

However, majority of our citizens (59,4%) are hesitant while answering the question concerning the period necessary to overcome crisis.

Survival strategy in terms of financial and economic crisis. Ukrainian citizens do not expect rapid recovery of the economy and improvement of living standards. That is why they are already developing survival strategies. Most often they choose the position of active protests however not resorting to violence (73,5%). Less often they prefer the position of patient waiting in order to preserve peace and harmony in Ukraine (62,8%). There are much fewer rebels ready to resort to violence or fight for positive changes in the country and society (14%).

Regardless the readiness for protests and even violence present in the intentions among some Ukrainians, in general they have peaceful plans for improvement the quality of their life and achieving higher welfare for their families. Those Ukrainians who have experience in working abroad follow the more active position. More often they plan to improve financial status of their families in the nearest two-three years (60,8% comparing to 46,9%), living conditions (39,9% comparing to 27,3%) as well as the quality of leisure and recreation (29,1% comparing to 21,4%). In order to implement their intentions labour migrants intend to change their employment for more prestigious and better paid job (24,0% comparing to 15,3%) or start (enhance) their own business (17,1% comparing to 7,2%). Finally, they plan to achieve success in professional sphere in other ways (10,1% comparing to 5,6%).

Contrary to labour migrants the rest of the citizens as a rule tries to preserve their social status (34,2% comparing to 21,5%). Both categories equally often plan to increase their educational level and professional qualifications (13,2%) and get a promotion (7,5%). In any case, the respondents usually say that they will make maximum efforts to realize their goals and family interests. Such active people are seen more often among labour migrants (66,4% comparing to 39,8%). Citizens who have never worked abroad tend to be passive and prefer considerable direction: not to make too much efforts

in life, be happy with what they have, follow the flow (21,3% comparing to 13,5%). However, every fifth Ukrainian has not made a choice concerning the life strategy. People face real difficulties adjusting to current situation.

One third of our citizens are constantly searching for their calling in life, on the contrary, another third is not eager to adjust to the current realities, it follows random directions in existence, and awaits changes for the better; every seventh has not managed to find any answers. Unfortunately, the share of those who are active in the new way of life and who consider market relations to be a natural living standard is rather small in Ukraine — only 18% of Ukrainian population. It should be mentioned that labour migrants are characterized by higher adaptation level towards current difficult situation. There are more active individuals who managed to find their place in the new life among them (22,9% comparing to 17,5%), while those who do not want or could not adjust to current situation are fewer (22,9% comparing to 35,0%).

It should be mentioned that 17,1% of labour migrants and 7,2% of Ukrainian citizens who didn't work abroad plan to start or enhance their own business in the nearest two-three years. Actually the possibility to realize the entrepreneurship initiative (create private enterprises, run business, farming) seems attractive for many more Ukrainians. Almost half of the citizens (46,4%) consider such perspective as probably important or extremely important for themselves. Such people are seen more often among labour migrants — on average they constitute 60,1% of people working abroad. Those who consider the possibility to become an entrepreneur to be important for themselves are by 1,6 time more often among labour migrants than among other groups of citizens: 31,6% comparing to 19,3%.

Inclusion of citizens into privatization processes is an important condition for entrepreneurship initiative. Though the level of citizen participation in this process was not low in Ukraine, it hardly influenced the development of the national business. The objects for privatization were mostly flats, houses or garden lots, garages. 13,1% of Ukrainians received privatization property certificates and only 6,0% of them exchanged them for the company stocks.

Another 6,7% of the citizens sold the certificates to other persons. Land lots were privatized by only 5,1%. Only 1% of the surveyed were brave enough to buy out an enterprise and only 0,3% participated in the auction or tender in order to buy an enterprise. More than one fourth of the respondents (28,8%) did not take part in the privatization processes at all. Participation level of labour migrants in privatization was slightly higher. However it related to mainly personal and not business interests.

Searching for a job. The surveyed mainly belonged to the hired workers group (78,2%). Self employment is hardly present in Ukraine, people who are working for themselves constitute only 7,4%. The number of people engaged in their own family business is even less (2%). Hired workers are fewer among labour migrants (68,8% comparing to 79,2%). However, they work for themselves by 2.8 times more often (17,8% comparing to 6,4%) and by 1,4 time are more engaged in their own family business (2,5% comparing to 1,7%) than other citizens.

Three out of ten adult Ukrainians currently do not work and those who work, are not employed in the field of their specialization. Most often it happens due to low revenues (30,8%) or abundance of human resources on the labour market with the same specialization (34,6%). It is quite difficult to find another job in the place of residence. Citizens who look for well paid employment in their specialization field face the biggest difficulties (77,6%). It is quite difficult to get a well paid job not even in the field of specialization (68,1%). Those who want to preserve their qualifications even without high earnings still have to look for their niche on the job market for quite long (54,0%). Finally, every second Ukrainian (54,2%) believes that it is difficult to find any job within the place of residence.

Are there difficulties in job placement, whether current unemployment rate and low wages were decisive reasons for people to look for a job outside their place of residence? Most often experts use these reasons to explain labour migration flows from Ukraine. However labour migrants point out to other reasons apart from these and they rank them accordingly. More than half of them

(56,7%) name low wages as primary reasons, every second (51,0%) mentions the desire to improve living conditions. We should comment that the need to improve the quality of life without any doubt is caused by scanty finances available to our citizens. Lack of money in the family budget makes people choose employment abroad in order to accumulate investment resources necessary to solve household issues: buy a house, electrical appliances, a car, pay for the flat or house repairs (38,2%). And only then they name such reason for employment abroad as the lack of job at home (27,3%). However, financial reasons constantly appear in further discussions concerning the grounds for looking for employment abroad: the need to earn money for education (19,7%), pay out debts (10,2%) and finally start their own business (9,6%).

The list includes personal reasons: 12,7% of labour migrants expect to arrange their personal life and another 6,4% hope to get rid of family issues (conflicts, divorce, etc), 1,3% plan to reunite with the husbands, wives, children or other family members abroad. And only some respondents explain their choice by the fact they were not satisfied with their work conditions or working place at home (5,7%).

One half of foreign labour migrants is comprised of “recruits” who have once visited other countries for employment purposes and another half consists of “experienced” who have worked abroad two, three and more times. Both groups are different not only in terms of periodicity of traveling abroad but also in their motivations for working abroad. Thus, „recruits” more often complain about low salary and failed attempts to find a job at home, they more often expect to arrange their personal life abroad. On the contrary “experienced” labour migrants as a rule plan to improve their living conditions, earn finances for education and debt payments and solve their household issues.

What makes labour migrants return home? First of all nostalgia and loneliness. Every fourth returnee names these reasons. Every fifth returned because they made enough money. The same number of migrants (19,4%)

made such a choice because their work permit expired. Every second returned due to family reasons, primarily the desire to reunite with the family at home. Every sixth had health problems and every tenth did not like the life abroad. Only few people returned in order to start a business at home, the contract expired for others; someone was not lucky to find a job abroad or was deported for breaking the law. We should underline the small number of labour migrants (14,2%) who returned home in order to rest before their next trip to work abroad.

Those who worked abroad only once, return home either due to health reasons or other grounds, most common of which is the dismissal due to contract expiration, low wages, unattractiveness of the life abroad, but primarily — persistence of the family to make them come home. Labour migrants who worked in other countries several times, more often mentioned such reasons as expired contract or work permit, the intention to start their business at home and certainly family reasons. They form the core group of labour migrants planning to rest at home before the next trip abroad.

Self-evaluation of the family welfare level and status positions in social hierarchy

Financial and status self identification of Ukrainians show major divergences in terms of welfare level among labour migrants and the rest of the citizens who have never been abroad (Table 1). Even though labour migrants tend to consider their family level to be deplorable, poor or middle beginner level, rather than to in the better off group, they demonstrate lower level of divergence in their earnings and financial status (51.2% comparing to 45.6%). On the contrary, Ukrainians who have never been abroad see the proportion between poor, better off and wealthy citizens as an alarming evidence of deeper financial inequalities in Ukraine (63.2% comparing to 35.4%). Both groups fear that their families will fall under the category

with less income and financial means. Much fewer citizens expect increase in their financial status. According to the evaluations of labour migrants, proportion between poor and better off people is 49.0% to 39.5% among them; while the same proportion among the rest of the citizens is 62.2% to 27.6% according to their own estimates.

Table 1
Self-evaluation of family welfare level, %

Level of financial welfare according to the estimates of Ukrainian families	All citizens of Ukraine		Including			
			Those who have worked abroad		Those who have never worked abroad	
	March-April 2009	September-October 2009	March-April 2009	September-October 2009	March-April 2009	September-October 2009
Deplorable	1,8	4,7	0,6	1,3	1,9	5,0
Poor	21,3	23,6	15,2	15,9	21,9	24,4
Low middle	39,1	32,7	35,4	31,8	39,4	32,8
Middle	31,8	24,6	38,0	31,2	31,2	24,0
Better off	3,8	3,8	6,3	8,3	3,6	3,4
Well off	0,7	0,2	1,3	-	0,6	0,2
Wealthy	-	0,1	-	0,6	-	0,1
Difficult to answer	1,5	10,3	3,2	10,9	1,4	10,1
Total	100,0	100,0	100,0	100,0	100,0	100,0

Our citizens plan to fight poverty by looking for a new job. However, this method is popular only among labour migrants (71.1% comparing to 58.8%). Ukrainians who do not travel outside the country, show

significantly higher level of frustration: every fourth does not have any plans on how to overcome the crisis, while only every eleventh labour migrant showed inclinations to passive behaviour. It should also be mentioned that 13,3% of labour migrants plan to leave their places of residence to look for luck in other city, region or county and only 3% of Ukrainians speak about such possibility.

Table 2
**Self-evaluation of status position in social hierarchy
within Ukrainian society (%)**

Levels of social hierarchy	All citizens of Ukraine		Including			
			Those who have worked abroad		Those who have never worked abroad	
	2002	2009	2002	2009	2002	2009
1 — the lowest	17,3	11,1	8,3	4,5	18,4	11,7
2	24,0	19,0	17,7	16,0	24,8	19,2
3	31,7	36,9	37,0	41,7	31,0	36,5
4	21,8	24,9	27,6	29,5	21,2	24,5
5	4,2	6,1	8,3	7,0	3,8	6,0
6	0,4	1,0	1,1	0,0	0,2	1,2
7 — the highest	0,6	1,0	0,0	1,3	0,6	0,9

Self evaluation of labour migrants concerning their position in the social hierarchy has become more optimistic over the last 8 years. We can state the same about the changes in evaluations of their status positions of the citizens of Ukraine who have never been abroad. As before labour migrants usually give higher evaluations of their social status (Table 2). Their share (41,7%) preferred the third level of potential social hierarchy, which is closer to the golden middle, its fourth level where three out of ten labour migrants placed their families. Every fifth sees himself and his family

on the “social bottom” — on the first two levels. It should be mentioned that according to labour migrants’ evaluations every fifth family occupied this position in 2002 (26%). Table 2 data show that now they put themselves and their families mostly on the second, third and fourth levels, more often than others they consider themselves as representatives of the middle class (38,2% comparing to 27,8%). At the same time the rest of our citizens denies their affinity to this level (57,4% comparing to 47,1%) even though their self evaluation has increased within the social hierarchy over the last 5 years. Today they less often refer their families to the “social bottom” comparing to 2002 (30,9% comparing to 43,2%). 24,5% of Ukrainians working in the country and who have never been abroad, prefer the fourth level of the social hierarchy, 36,5% — the third one.

In general the process of labour migration has become more stable and institutionalized, many myths were created about it and as a result it was perceived as a sharp national problem. This issue is discussed within political, journalist and expert circles and quite often the discussions do not correspond to the reality. Army of labour migrants is not increasing and is not decreasing, its core has been formed and it unites the most active and strong individuals. Their experience in terms of employment in foreign countries cannot be underestimated and it is worth studying in order to understand the principles of internal and external labour market formations in terms of globalization and especially nowadays when the financial economic crisis is present in practically all countries.

Internal labour migration of Ukrainian population

As in Soviet times, labour pendulum migration is one of the forms of internal migration in the country. It was always based on the labour migration of rural citizens to the urban localities. In 1960–1985 rural population that was always occupied in different economy branches of urban localities has increased by 2,7 times and as of January 1st 1986 it equaled to 16,898,000

people. Over 1960–1985 a share of pendulum migrants in the total number of rural population of active working age increased by 3,7 times and at the beginning of 1986 it was 19,4%. Thus every fifth village resident of the active working age was working in the city. Decrease in the total number of rural population due to its natural and migration losses over the last twenty years has definitely influenced the absolute size of pendulum labour migration. However, this decrease was not significant. As of January 1st, 2005 the number of countryside residents working outside their localities equaled to 15,238,000 people and their share out of total number of working countryside residents equaled to 40,2%.

28,5% out of this number were working in towns and larger villages. Currently the number of villages with no economic activity actors reaches 49,3% out of total number of all rural localities. That is why their residents are destined to look for a job outside their permanent place of residence. The problem of looking for a job in small towns also exists. The development of labour migration inside the country creates a counter instrument for the external migration as it moves the population from the rural areas and small towns and thus it strengthens their demographic potential.

Urgent issues of legal framework for migration policy of Ukraine

During 1990s legal basis for migration policy was created in Ukraine, main principles and directions were defined in the Presidential Decree dated October 18th, 1997 # 1167. In 2001 new versions of the laws of Ukraine “On the Citizenship of Ukraine” were adopted as well as the Law “On Immigration”. In 2002 Ukraine joined the 1952 Convention and 1967 Protocol relating to the Status of Refugees, became a full fledged member of the International Migration Organisation. However, during the next years the development of migration policy slowed down. On June 15th, 2007 The National Security and Defence Council of Ukraine after having reviewed

the issue of state migration policy concluded that it lacked conceptual definition.

The situation is unclear in terms of another important decision of the National Security and Defence Council of Ukraine by which the Cabinet of Ministers is entrusted with the creation of a single executive body in the migration field — the State Migration Service. Though the necessity for creating a single migration management body was clear to all relevant institutions, they weren't able to develop a united view on its structure and competences.

On June 24th 2009 the government created a State Migration Office of Ukraine on the basis of the State Department on the Citizenship, Immigration and Personal Registration, liquidating the latter. The Office was meant to become the central executive body and the Minister of Interior on behalf of the Cabinet of Ministers had to direct and coordinate its activities. However, due to changes of Ministry of Interior scale of competence (official reasoning) President V. Yushchenko twice suspended the validity of the Cabinet of Minister's decree. Finally the Cabinet of Ministers of Ukraine approved the Regulation dated July 7th 2010 # 559 "On the Issues of the State Migration Management" by which the State Migration Office was liquidated, even though it was never created and by this the previous competences in the field of migration were returned to the Ministry of Interior and the State Committee on Nationalities and Religions.

Nevertheless the issue of creation the State Migration Service has been resolved. By the Presidential Decree # 1085 dated December від 9th 2010 "On Optimizing the System of Central Executive Bodies" the State Migration Service of Ukraine was created and its functions included implementation of state policy on citizenship, immigration and personal registration matters, as well as on migration within the legislation on refugees. The Decree # 1085/2010 also liquidated the State Committee on Nationalities and Religions. Activities of the State Migration Service are directed and coordinated by the Cabinet of Ministers of Ukraine via the Minister of Interior.

The Service was finally established. We hope that it will provide the solutions to urgent problems in the sphere of migration policy of Ukraine. Without wide vision and deep understanding of the migration situation in the country, migration legislation will not be effective. Current views on migration situation and migration flows in Ukraine are not correct and that is why certain propositions concerning migration management will not be proper. On the level of strategic planning it will be useful to harmonize the goals of migration policy with the actual demographic and economic situation in the country as well as social and psychological state of its citizens.

Taking into account that currently labour migration abroad is the strongest migration process in the country, the issue of state policy development in the sphere of migration management and ensuring the protection of the rights of Ukrainian citizens going to work abroad as labour workers remains.

Article 25 of the 1996 Constitution of Ukraine states that “Ukraine guarantees the support and protection for its citizens abroad”. That is why in case when their rights and freedoms are violated during the stay outside the country they can count on diplomatic protection from Ukraine. However as it is stated in the special report presented by Ombudsman of Verkhovna Rada of Ukraine Nina Karpachova in 2003, the lack of the national migration policy concept and a single state body responsible for development and implementation of such policy causes loss of state control in this field. As a result labour migration processes outside Ukraine are mainly spontaneous or are managed by commercial intermediary structures that are not held liable for people. Mechanisms for state protection of Ukrainian labour workers abroad are not efficient. The country does not have efficient system for collecting, processing and analyzing the statistic and institutional data on migration of Ukrainians abroad. According to Nina Karpachova, limited number of diplomatic missions staff abroad as well as work overload in most cases do not allow for adequate migrants support.

Ombudsmen emphasized the issue of protecting the rights of labour migrants abroad again in her report to the President “On Approval of the Main Principles on National Migration Policy and Creation of Civil National Migration Service of Ukraine” (May 2010). She emphasized the urgent need to ensure the protection of millions of Ukrainian citizens working abroad as well as migrants and refugees in Ukraine, create a body for the migration management with the special status that would be civil and not law enforcement.

TASKS OF MIGRATION POLICY OF UKRAINE IN THE CONTEXT OF VISA DIALOGUE WITH THE EU²

Migration policy has not yet become a priority for Ukrainian authorities regardless the fact that according to media reports existence of migration problems is among social concerns. Society is equally keenly responsive to trips abroad that are quite often accompanied by violation of rights of Ukrainian citizens, and to entry of foreigners into the country, in particular those who use our state for mostly illegal transit to the West. At the same time there is a paradox when the migration issue in Ukraine is addressed in the context not related to migration rather than due to its large scope and its questionable consequences. For example, it is spoken about during the elections, as there is a need for the votes of citizens living abroad or in connection to budget deficit trying to partially pay it off with earnings of citizens employed abroad. Quite often migration is used in political and interdepartmental struggle for dominance, authority, allocation of state funds or as an argument to receive international aid.

Under such circumstances the society is left disoriented and the migration issue is regarded as a critical one, citizens create unjustified myths, mostly in the form of various phobia. In addition, the emphasis on migration issues in relations with EU, including visa dialogue is perceived with suspicion. Difficulties Ukrainian citizens face when applying for Schengen visas cause the feeling of frustration and dissatisfaction. According to the large scale survey conducted in 2009 by the Market Technologies Bureau together with PR-bureau “Diyelovo” (more than 3 thousand respondents were surveyed in 130 localities all over Ukraine) more than half of Ukrainians (45%) believe that they are discriminated in Europe³. Besides, public discussions often interpreted the interconnection of the Agreement on the Facilitation of the

² This chapter has been drafted by Olena Malynovska, Counselor at the Headquarters of the National Institute for Strategic Studies, Kyiv.

³ Tied by a Visa: Travelling Experience of Ukrainians http://www.dieslovo.com.ua/ua_projects_010609.html

Issuance of Visas for Ukrainian citizens and the Agreement on Readmission as well as the requirements to organize adequate border and migration control as the egoistic attempts on behalf of the EU to transform Ukraine into the “buffer zone”, “sump” for illegal immigrants who are trying to reach the wealthy European countries. Such perceptions were repeatedly exploited by the opponents of European integration in order to discredit it in the eyes of citizens. For example, we can mention the draft laws registered in Verkhovna Rada (Parliament) of Ukraine last year on suspension of the Agreement on Readmission and reintroduction of visa regime for the the EU citizens entering Ukraine.

If we forget the emotional declarations and assessments, the main point of similar proposals was trying to prove the fact that EU requirements in the field of migration primarily correspond to the interest of the EU itself, while they turn into additional burden for Ukraine. In order to be fair we must agree that indeed, if we take into account the perspective of visa free travel around Europe for Ukrainians, the EU is trying to protect itself from migration threats originating in Ukraine. However, if we review the documents on partnership, potential association or visa dialogue, migration issues are listed as important but not the primary ones. Europe is much more concerned with democracy and human rights safeguards in Ukraine, fight against organized crime and corruption.

At the same time, the Action Plan on Visa Liberalisation, presented to Ukraine during Ukraine-EU Summit in November 2010, includes many provisions dealing directly with migration. Even though the document security is a primary issue, the second block of the Action Plan mostly deals with migration issues. However, its title “Illegal Migration Including Readmission” shows that migration problems are interpreted rather narrowly and are limited to the aspect the EU is particular interested in. Apart from the section on border migration, this Block includes the “Migration Management” and “Asylum Policy” sections. A number of issues listed in the 4th Block of the Action Plan deal with fundamental rights; in

particular freedom of movement within Ukraine and anti-discrimination can be attributed to the migration issues.

Let us review the main provisions of the Action Plan on migration and try to determine what concrete tasks it puts forward for Ukraine in the sphere of migration policy; to what extent the solution of these problems can improve the level of migration processes management and how it benefits the state and its citizens.

Legislation Gaps

The first stage of the Action Plan on Visa Liberalisation implementation envisages “**approval of the national strategy on migration management**”. Such provision appears due to the fact that Ukraine has not yet decided on the necessary migration policy and has not approved a clear and comprehensive guide for authorities and society in this field.

The first attempts to create the concept of migration policy date back to the middle of 1990s. The Presidential Decree from October 18th 1997 dealing with the foundation for social policy included the section on migration policy with the definition of its basic principles: free exit and entry of Ukrainian citizens; equality before the law for the foreigners and citizens of Ukraine; diversified treatment towards different categories of immigrants depending on the national interests of the state.

According to this document, the major principles of migration policy should be: promoting repatriation of Ukrainians and Ukrainian natives of other nationalities; return of the persons who were previously deported on nationality grounds; assisting refugees; foreigners’ immigration management. The Presidential Decree on main principles for social policy dated 2000 amended previously defined policy tasks with the following issues: protection of social and economic interests and rights of Ukrainian immigrant workers; preservation of labour and intellectual potential of the state; creation of legal, social and economic basis for external labour

migration regulation in response to mass employment of Ukrainians abroad which unfolded spontaneously and was often illegal⁴.

These reference points played an important role in development of Ukrainian migration policy, facilitated legislation creation and accedence to the recognized international legal documents. However, they were limited in time as the Decrees listed tasks set out only for several years. In addition, after they were approved there were many changes in dynamics and structure of migration flows in the world and Ukraine.

At the beginning of the new millenium the development of migration policy of Ukraine considerably slowed down. Even though dozens of draft laws were put forward, only some of them were approved by Verkhovna Rada, mostly those dealing with amendments and changes to the existing legislation.

On the one hand, urgent tasks of creating the basis of migration policy and legislation, with the primary aim to reject autarchy from the Soviet times and guarantee human rights including freedom of movement, were completed. On the other hand, the role of migration policy under the new conditions was not seen when not only rejection of totalitarian past was discussed, but also ensuring orderly movement of the population being open to the external world and participation in the international labour market and globalization processes.

On June 15th, 2007 the National Security and Defense Council of Ukraine having reviewed the issue of state migration policy made the conclusion that the policy remains conceptually undefined. Its principles, strategic tasks, current goals and standards of human rights protection are not set.

In order to implement the Council decision approved by the Presidential Decree⁵, the Cabinet of Ministers entrusted the Ministry of Justice with the

⁴ On main principles of social policy for 1997–2000: Decree of the President of Ukraine dated October 18, 1997. # 1167; On main principles of social policy for the period till 2004: : Decree of the President of Ukraine dated May 24, 2000. # 717/2000. — www.president.gov.ua.

⁵ On the decision of the National Security and Defense Council of Ukraine dated June 15, 2007 “On Ukrainian national Migration Policy Principles and Urgent Measures for its Efficiency Improvement”. : Decree of the President of Ukraine dated July 20, 2007. # 657.

Concept draft of national migration policy of Ukraine. However, the drafting process was determined to fail. Firstly its development was entrusted to the institution competent in the legislation field and not migration. Secondly, the old draft law, developed in the late 1990s and already rejected by the Parliament, was taken as a basis, even though the migration situation has significantly changed since then. Thirdly, the Ministry of Justice collected and tried to take into account all proposals submitted by other ministries and institutions. As a result it failed to develop a single strategic vision of the problem. The draft law listed numerous repetitions and it looked more like an action plan for specific authorities rather than a legal act of conceptual nature.

On April 1st, 2009 Verkhovna Rada rejected the draft law submitted by the Cabinet of Ministers on the Concept of migration policy. Shortly after the government developed the new draft law and submitted it to the parliament in September 2009 though the document did not substantially differ from the previous one: after the revision the text was just shorter, amended and edited. Several days later a group of members of parliament registered an alternative draft law. Some experts saw it as intentional hindering of the law making process. However, such situation existed not only in the field of migration law making but concerning other governmental initiatives as well. Alternative proposals were put forward by the members of parliament under the conditions of existing confrontation between power branches which resulted in decision delay.

The Research Experts Department of the Verkhovna Rada of Ukraine was very critical of the two law making attempts. Sharp critical remarks pertained to the draft law submitted by the Members of Parliament as according to the conclusions made by the Research Experts Department the document was more of a “newspaper article” rather than a regulatory act. Nevertheless, on February 16th, 2010 the Parliament rejected the governmental draft law and at the first reading it adopted the draft submitted by MPs. Although at the second reading on July 1st 2010 only 56 votes supported this initiative and consequently it was rejected as well.

At the same time, the need for the National Migration Policy Concept has not been met. It is still present not just because it is impossible to proceed with improvement of migration management without clear definition of its strategic goals and principles; but also because according to the National Security and Defense Council decision mentioned above, a number of important draft laws on migration regulation had to be submitted after the Concept approval. Thus its absence blocked any law making process causing deference in processing the new version of extremely important regulation on legal status of refugees and stateless persons. The need for such document is long overdue. On addition, the asylum and subsidiary refugee protection mechanisms issues have not been legally settled⁶.

Taking into account existing preconditions and the Presidential Decree, in July 2010 the Cabinet of Ministers of Ukraine resumed its work on a different document version soon after the MPs had repeatedly failed to approve the attempt of state migration policy concept definition. The Ministry of Justice of Ukraine presented the draft law for public discussion on its website and sent it to competent institutions for harmonization. However, the draft law did not contain any substantial changes comparing to the previous governmental document which had been already rejected by the MPs, the new document was basically its revised copy. At the same time a group of MPs registered their own draft law in the Parliament as well, and this version just copied the document submitted before, not introducing any quality changes. Therefore, the context of two contrasting documents was created again. The idea to approve the state migration policy Concept of Ukraine by the Presidential Decree was put forward in order to escape such context.

⁶ Asylum procedure for foreigners in Ukraine is defined in the Article 26 of the Constitution of Ukraine. Applying current law of Ukraine “On Refugees” showed the need for such additional protection mechanism as humanitarian protection. Legislative regulation of asylum and subsidiary protection issues was to be defined in the new law version “On Refugees”; according to The National Security and Defence Council decision its draft was to be submitted to the parliament in two months after the approval of the State Migration Policy Concept.

If this idea is realized Ukraine will finally acquire the Concept of state migration policy. However, according to the Constitution migration issues are regulated exclusively by the laws (Article 92), that is why there is a reservation concerning possible approval of the Concept by the Presidential Decree and secondly, failed attempts to approve the relevant document reflect (apart from political struggle not related to migration) the fact that there is no consensus within society concerning the migration policy and its goal is perceived too narrowly, mainly in the context of fighting against illegal migration flows coming to Ukraine.

Regardless, the State Migration Policy Concept approval will bear indisputable positive effect. First and foremost it will unblock further law making process and it will result in implementing the tasks of the Action Plan on Visa Liberalisation that emphasizes priority migration issues requiring legislative regulation.

These issues include improvement of the rules for migrants' entry and stay, fight against illegal migration, even though the law makers have always been focused on these problems which is attested by a number of draft laws (approved or rejected by the parliament) aimed at settling these issues. The requirement for measures on **reintegration of Ukrainian returnees** seems like a novelty as it has not been previously included in the national legislation. Thus the Action Plan provides a chance to not only settle legislative issues that have been already addressed, but also to start discussion of the issues which have not been previously discussed in the legal context.

First of all it should be mentioned that even though due to the illegal migrant readmission practices the society is primarily concerned with return of foreign citizens, coming mostly from exotic countries and illegally entering Western Europe via Ukraine, the results of the Agreement implementation show that the number of trespassers was much higher among Ukrainian citizens comparing to foreigners: during the first nine months of the Agreement on Readmission validity 573 persons were admitted from neighboring countries, out of whom 357

were citizens of Ukraine, 157 — CIS citizens and 89 citizens of other countries⁷. The deportation circumstances for our citizens from EU countries are certainly different. However, if we exclude clear criminal components which are most likely present, majority of the deported are labour immigrants who were working in other countries without necessary permits. Some of them could be victims of human trafficking, fraud or exploitation. While the foreigners deported to Ukraine under the Agreement on Readmission will benefit from not quite comfortable but specially equipped placements with provided accommodation, food, medical aid and even legal consultations, Ukrainian citizens deported to the country are left alone with their problems, though they certainly need support, employment help and probably psychological or medical care.

The measures on reintegrating successful migrants who voluntarily return to their home land after having worked abroad are equally important. Moreover, taking into account the demographic situation in Ukraine, quite possible labour force deficit in the nearest future, promoting return of the citizens who went abroad for employment purposes should occupy the key position in the state migration policy structure. It will help to preserve the population and reinforce labour resources at the account of workers who acquired new, sometimes extremely valuable experience of production and management.

Council of Europe pointed out to the necessity of reintegration policy for Ukraine. For example, the Action Plan for Ukraine for 2008–2011 emphasizes the necessity to develop reintegration programs for returning migrants⁸. However, currently the church, non-governmental and international institutions are the ones providing assistance for returnees. Repatriates do not benefit from any state support, though in many cases persons who have been working abroad for a long time, need such support:

⁷ Chumak V. The readmission is not as scary as they say //Dzerkalo Tyzhnya (Weekly Mirror). — 2010. — # 40. — October 30th — November 5th.

⁸ Council of Europe. Action Plan for Ukraine 2008 — 2011. — DSP(2008)15

they are under serious psychological stress as they returned to a different family and society; at the age of 40–50 having lost their qualifications and previous social ties while working abroad, they face difficulties finding a job, the acquired savings are seldom sufficient to start their own business and create their own working place, the credit interests are unreasonably high. As a result repatriates quite often had to seek employment abroad again after having spent their savings in 1,5–2 years. It is a paradox, but this tendency intensified during financial and economic crisis, as the conditions for employment and starting small enterprise in Ukraine grew worse⁹.

Representatives of non-governmental organisations, in particular unions of Ukrainian migrant workers abroad have continuously appealed for the new law on legal status of the citizens employed abroad that would list measures on returning migrants' reintegration. However, practical actions in this direction have not taken place. The Action Plan encourages expectations that state authorities will take into account the initiative of immigrants and will jointly work on the necessary document. The document should define the responsibilities of persons going for employment purposes abroad (for example, officially appoint guardians for minor children staying at home), state guarantees of their rights, responsibilities of competent authorities, responsibility of the state in securing the rights and freedoms of workers. The law could include the requirements for intermediary services offering employment abroad, liability of intermediaries and the role of public institutions in the process of employing citizens outside Ukraine. Specific law provisions should be devoted to the migrant insurance mechanisms, including pension insurance and methods to include the duration of service outside Ukraine into the pension record. However, the central position in the law should be devoted to the activities on promoting the return of migrants and productive usage of funds earned abroad; in particular

⁹ "Ukrainian Greece": reasons, problems, perspectives (based on the results of interviewed labour migrants) /Levchenko Y.B. [et al] — K.: Agency "Ukraine", 2010.

regulations for the practical solutions of the relevant issues, introduction of target programs on the state and regional levels.

The next policy task stipulated in the Action Plan is the introduction of the **monitoring of migration flows**, both legal and illegal, in order to provide reliable and constantly updated information on the situation, as any management decision will be made blindly without it.

In order to stop speculations on the questions whether immigrants are burden for the state, whether emigration scale turned into a threat, and whether migration processes contribute to the growth of crime rate, etc., official statistics should provide complete and clear answers to such questions. The components of migration statistics should be enhanced, while means of information collection should be diversified. For example, through sample surveys of households in order to detect labour migrants or immigrants to Ukraine among them and find out their level of integration into the society. The researches that are currently only sporadic should become systematic and should be implemented with defined periodicity.

Apart from the state migration statistics, internal statistics compiled by a number of institutions, for example, internal affairs agencies, custom office, etc. belongs to the informational basis in the migration sphere as well. It requires settling the issue of comparing the data from different sources, and setting the order of their exchange and application entailing intensified activity coordination of different institutions. Therefore it constitutes a very important policy task.

Adequate informational basis for approval of administrative decisions in the migration sphere provides for not mere collection but also proper interpretation of the required data, i.e. systematic scientific research. Taking into account that international migration belongs to the phenomena affecting different social aspects, such researches should be multidisciplinary in order to provide full image of migration situation development. However, at the moment there is no specialized center for migration studies

in Ukraine capable of uniting expert work on different research fields; its creation is long overdue.

Development of policy provisions and legislation **on asylum** in compliance with international legal standards and EU standards is an important component of the Action Plan. Recently Ukraine has been repeatedly criticized by the reputable international human rights organisations for the serious drawbacks in the refugee protection system, for example, the criticism was sharp in the recent report developed by Human Rights Watch¹⁰. One of the biggest legislation gaps relates to the fact that it provides for protection only on the basis of the UN Convention Relating to the Status of Refugees from 1951, i.e. to the victims of prosecution based on the concrete criteria listed in the Convention. At the same time, Ukraine lacks any additional protection mechanisms applied in the countries of Europe, those that are provided for the persons facing serious danger in their home land due to the military conflict or mass violation of human rights, who are exposed to the risk of death penalty, tortures, inhuman or undignified treatment or punishment in case of return to their homeland. Additionally, there are no mechanisms for protection on humanitarian grounds of human trafficking victims not necessarily falling under the Convention provisions on refugee status but needing international assistance. Adequate protection of children seeking asylum who arrived to Ukraine not being accompanied by adults entails a number of legal issues. Currently about 100 of underage asylum seekers residing on the territory of Ukraine who are separated from their family are registered in the UN Refugee Agency. Though the number of this most vulnerable category is not big, the access to the procedure of assigning refugee status for the minors is significantly complicated due to the absence of clear procedures of appointing legal guardian for the child and determining its age. There are no special placements for such children,

¹⁰ Buffeted in the Borderland: The Treatment of Asylum Seekers and Migrants in Ukraine. December 2010.

and that is why they have to reside together with the adults, live in rented flats, being exposed to the risk of violence.

Apart from legislative gaps on asylum there are many problems with the existing legislation implementation. It especially relates to the limited number of placements in the temporary locations for refugees that cannot accommodate everyone, including persons belonging to the most vulnerable groups, i.e. unaccompanied children, children from incomplete or large families, etc. Lack or inadequate status of interpreters constitutes another serious problem. As a rule migration services choose them among the refugees or asylum seekers and as a result the accuracy or neutrality of the translation of official conversations with asylum seekers is questionable.

Lack of adequate programs for local integration of refugees is another drawback in the relevant policy of Ukraine, at the moment the UN Refugee Agency and non-governmental organisations deal with this problem in Ukraine but not the state. Obviously this direction is emphasized in the Action Plan for a reason. Securing non-discrimination of foreigners, actual fight against hate crimes can be added to this, which is stipulated in the paragraph 2.4.3 of the Action Plan provisions.

Organisation of the refugee protection system, ensuring their integration in Ukrainian society is needed not only to implement international requirements and national legislation but also to increase the efficiency of illegal migration fight listed as one of the key provisions of the Action Plan. Annually 2 thousand applications for refugee status are registered in Ukraine. At the same time 33 persons acquired this status in 2007, 155 — in 2008 and 156 in 2009. A certain share of rejected applicants could have applied for additional protection mechanisms if such mechanisms existed. They cannot be sent out from the country as it would breach Ukraine's commitments rising from important international legal documents, for example, European Convention on fundamental rights and freedoms. The fate of those who were rejected or escaped the procedure before it ended is not known. Obviously, some

of them renew their attempts to reach European countries or stay on the territory of Ukraine illegally.

Institutional aspect

Insolvency of many legal issues in the migration sphere to a large extent is caused by the lack of adequate management structures in this field, capable of developing and lobbying the advancement of relevant draft laws, forming public opinion, coordinating the activities of central and local authorities in migration sphere, cooperating with civil society, monitoring migration situation, improving migration statistics, stimulating scientific researches. That is why it is not surprising that the Action Plan provides for creation of **effective institutional structure for migration management**.

Currently migration management in Ukraine is divided between several ministries and institutions. First attempts of creation a single body for migration management date back to 1996 and since then they seemed as attempts to overtake competences, budget funding and human resources between the Custom Office, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice and State Committee on Nationalities and Religions (formerly on nationalities and migration matters). Though the need for a single body on migration management has not been questioned, the institutions failed to develop a united vision of its shape and competences. Ministry of Labour and Social Policy responsible for labour migration management practically did not participate in these discussions, as none of the attempts presupposed the transfer of labour migration issues to the Migration Service competence, even though this type of migration flow is the largest and most socially significant in Ukraine.

In 2002 the draft law on state migration service establishment reached the level of plenary meeting of the Verkhovna Rada of Ukraine. However, MPs rejected it, as they considered that creation of another law enforcement agency as listed in the proposal did not meet the interests and needs of the country.

Nevertheless the issue of the concentration of executive functions in the migration sphere was not removed from the agenda partially because it was viewed as an important issue of cooperation with the EU, including continuous ambitions to get visa free regime. Ukraine-EU Action Plan on Justice and Home Affairs that was approved in 2002 and updated in 2007 provided for Migration Service setting up.

According to the aforementioned National Security and Defense Council decision from 2007, the Cabinet of Ministers had to create the State Migration Service. In summer 2008 the government completed this task by approving the resolution on renaming the Department on Citizenship, Migration and Personal Registration Matters at the Ministry of Interior into the Department of Migration Service and authorizing the Ministry of Interior with functions of executive body especially competent in the migration matters. However, this decision was suspended by the Presidential Decree as an unconstitutional one, as according to the Constitution the functions and structure of law enforcement agencies as well as basics of migration process regulation are defined exclusively by the laws. Besides, it contradicted the Council decision defining the creation of an independent central executive body in the field of migration¹¹.

In response to the Presidential Decree the Cabinet approved new regulation according to which the State Migration Department was formed and the Ministry of Interior had to direct its activities. Nevertheless, this regulation was suspended by the Head of the State. Moreover, he filed a claim to the Constitutional Court. Such position was supported by the Ombudsman as she considered it to be impractical to entrust the social migration issues to the law enforcement agency.

¹¹ Some issues of state administration in the field of migration policy. Regulation of the Cabinet of Ministers dated June 18, 2008, # 558. — www.zakon.rada.gov.ua; On suspending the Regulation of the Cabinet of Ministers of Ukraine from June 18, 2008, # 558. Decree of the President of Ukraine # 643/2008 dated July 21, 2008 — www.president.gov.ua

“The War” of regulations and decrees concerning migration agency did not end. In June 2009 the new governmental regulation was approved on creating an independent executive body, namely the State Migration Service on the basis of the State Department on Citizenship, Migration and Personal Registration Matters at the Ministry of Interior and the Department on Refugee Matters at the State Committee on Nationalities and Religions. This regulation transferred a part of the functions, property and staff from these institutions to the new agency¹². Criticisms addressed to the government related to the fact that it exceeded its authority and approved the decision belonging to the Presidential field of competence.

Before the decision of the Constitutional Court was made the government had amended its Regulation in order to avoid the accusations in unconstitutional changes of the Ministry of Interior functions and resources. In this way, the Migration Office did not have the functions of fighting illegal migration which was the task for the Ministry of Interior; the detention centers for illegal migrants remained within the structure of the Ministry of Interior. However, the changes concerning the number of Ministry of Interior staff and division of its property could not be avoided, so the grounds for claiming unconstitutionality remained. The Court reviewed this matter several times and on February 17, 2010 it confirmed unconstitutionality of certain provisions of the Regulation approved by the Cabinet of Ministers.

Confrontation between power branches concerning the issue of State Migration Service establishment caused numerous negative outcomes. For example, since the approval date of governmental Regulation the competence on the refugee status decision was transferred to the Migration Office, the State Committee of Ukraine on Nationalities and Religion that was previously responsible for implementing the Law of Ukraine “On Refugees” did not make any decisions. The number of asylum seekers,

¹² On creating State Migration Office. Regulation of the Cabinet of Ministers of Ukraine, dated June 24, 2009 # 643. — www.zakon.rada.gov.ua

whose applications for refugee status in Ukraine were processed longer than stipulated by the law, reached about 800 persons. Another several hundred foreigners who had appealed previous decisions in the court were not able to obtain or prolong the validity of residence certificates and the State Committee was devoid of the relevant competences. Thus, more than thousand of foreigners stay in Ukraine without relevant legal status regardless constant brave state rhetoric about fighting illegal migration.

In her report to the Head of the State “On Approval of General Basics of The State Migration Policy and Creation of Civil State Migration Service of Ukraine” (May 2010)¹³, Ukrainian Ombudsman Nina Karpachova pointed out the issue of institutional migration policy maintenance in Ukraine to the new president of Ukraine. For example, she emphasized the urgent need to secure the interests of millions of Ukrainian citizens working abroad as well as of migrants and refugees in Ukraine, and with this aim create the governmental agency with special status making it civil in nature rather than law enforcement.

Taking this into account as well as other conditions and the request of the President of Ukraine the Cabinet of Ministers of Ukraine approved the Regulation on July 7th 2010 # 559 “Certain Issues of State Management in the Field of Migration”. The Regulation abandoned the State Migration Service that was never created in practice and returned the previous competences in the sphere of migration to the Ministry of Interior and the State Committee on Nationalities and Religions. Under existing conditions it was probably a predictable step and perhaps the only correct decision enabling further adequate operation of relevant institutions.

However, such situation did not last long. In terms of the administrative reform initiated by the President of Ukraine in 2010, the decision to establish the State Migration Service was announced; such a body would be empowered to implement national policy on citizenship, immigration and

¹³ Ukraine needs strong State Migration Office as an independent civil agency with a special status — Nina Karpachova. — www.gazetaukrainska.com.

personal registration, as well as on the migration matters according to the Law on Refugees¹⁴. In other words, the decision of the previous government to create State Migration Service on the basis of relevant departments of the Ministry of Interior and the State Committee on Nationalities and Religions was resumed, with the latter being liquidated as a result of the administrative reform.

Under such conditions all critical remarks concerning relevant decision that were expressed before, including those made by the Ombudsman remain relevant. The most serious doubts relate to the question whether the State Migration Service will turn into the institution capable to provide effective migration management as it is created on the basis of police departments and only a part of the competences in the field of migration was transferred to it, not including labour migration. Nevertheless concentration of main functions in migration area in one institution will lead to positive results and will benefit to its organisation.

¹⁴ On central executive authority optimization . Decree of the President of Ukraine # 1085/2010 dated December 9, 2010. //http://www.president.gov.ua/documents/12584.html

THE MOST IMPORTANT INTERNATIONAL EXPERIENCE

Poland¹⁵

The most important for Ukraine elements of Polish experience in the area of migration policy are the inter-agency coordination, rational approach to the countering illegal migration and efficient cooperation between the government and the civil society.

Efficient domestic inter-agency coordination

In Ukraine — as in Poland — there is no single governmental body with competences that encompass all migration and migrant issues. However, the Polish practice of cooperation between different ministries and agencies attests to the fact that the majority of problems can be solved through cooperation between them, or even by well thought-out organisation within one agency. Moreover, mutual assistance is not just possible between power structures (such as the Ministry of Internal Affairs and the Border Guard). There are also examples of well-established cooperation between executive and other structures.

In particular, the National Labour Inspectorate (*Państwowa Inspekcja Pracy*), a special body which is subordinate to the *Sejm* and is authorized to check labour legislation compliance, effectively cooperates with the Border Guard and police when conducting checks on employers using foreign labour. Joint document checks allow them not only to detect offenders, but also to apply coercive measures against them when necessary — which would be impossible if Labour Inspectorate officials acted on their own.

¹⁵ This chapter has been developed by Andriy Starodub, Institute for Euro-Atlantic cooperation, Kyiv. More details on this issue see in: *Towards a comprehensive migration policy: Applying Polish Experience in Ukraine*, Kyiv, IEAC, 2011.

It is important to develop a system of exploitation of resources that are available within one agency. For instance, in view of the multiethnic character of migration flow, the Border Guard and Illegal Migrants Temporary Detention Centres need interpreters in exotic languages. Full-time or part-time hiring of such specialists by each Centre where illegal migrants are housed is too expensive. Instead, every head of a regional department of the Border Guard has information about interpreters who cooperate with other departments and Detention Centers. If needed, it is possible to quickly summon such a specialist to the section of the border where a certain language skill is needed.

The significance of this experience for Ukraine is clear, due to its obvious lack of financial resources for migration programmes. So, rational use of the present capabilities of the various services can also produce considerable results.

Moving away from the priority of repressive solutions

One of the cornerstones of modern Polish migration policy is recognition of the fact that migration problems cannot be settled exclusively by police measures. Numerous amnesties for illegal migrants have given opportunities to thousands of migrants of Vietnamese and Armenian origin who came to the country shortly before or after the collapse of the Soviet Union and socialist block to settle legally and successfully integrate into Polish society. The government plans to announce one more amnesty, which can be used by immigrants from the former USSR, including quite a large number of Ukrainians. Poland has resisted the temptation to apply repressive measures even in the case of openly criminal actions (e.g. the hijacking by emigrants from Chechnya, mainly women, of a train to

Strasbourg)¹⁶. There are no limitations on the activities of human rights NGOs, which monitor whether migrants' rights are respected.

Poland's experience might serve as an obvious example, showing that the adoption of such an approach does not lead to an increase in migration flow nor open up a vast range of options for violations on the part of migrants. Unfortunately, such a philosophy is not accepted at all levels of the Ukrainian state machine — most officials still prefer rather repressive measures.

Cooperation with non-governmental organisations and think-tanks and wide-ranging discussions on the social problems of migration

The traditional drawback of Ukrainian decision making practices in the migration sphere is their “behind-closed-doors” nature — as a rule, drafts laws are prepared by ministries or certain MPs without public discussion. Independent professionals are only invited to participate in individual cases, while non-governmental organisations and, in particular, associations of migrants themselves and organisations which provide services and assistance to migrants are ignored altogether. In this context, the Polish experience testifies to the effectiveness of an active dialogue between all stakeholders and open public discussion on the problems.

To illustrate the differences in approaches and intensity levels of cooperation with NGOs, one can compare the information available on the official websites of Polish and Ukrainian agencies. For instance, the Polish Ministry of Labour and Social Policy not only has a special section

¹⁶ Czeczeni nie pójdą do więzienia za protest (Chechens will not go to prison for taking part in a protest)// <http://poland.indymedia.org/pl/2009/12/48893.shtml>. Migrants from RF and Georgia (mainly of Chechen nationality) organized this as a protest against the actions of the Polish government, which significantly increased the number of refusals to grant refugee status to migrants from that region.

on cooperation with NGOs,¹⁷ but it has also created a separate portal which covers all aspects of this cooperation, including a database of projects implemented by NGOs etc.¹⁸

The website of the Ukrainian Ministry of Labour and Social Policy has a section titled “Civil society organisations”;¹⁹ but it is usually only updated once every three months, and the update is rather nominal. What appears even more nominal is the content of the corresponding section on the website of the State Committee of Ukraine on Nationalities and Religions²⁰ (for comparison — see the corresponding section of the website of the Office for Foreigners (*Urząd do Spraw Cudzoziemców*)).²¹

However, this problem is not only one of Ukrainian bureaucracy, but also reflects the considerably more active position of Polish NGOs. Thus, the process of learning from Poland’s experience should simultaneously apply to both government and civil society in Ukraine.

Thus, in our opinion, the main lesson in the shaping of migration policy which Ukraine can learn from Poland is that the foundations of such policy should be: a rational approach to the solution of concrete problems, flexibility and efficiency in making administrative decisions, and broad involvement of society in discussions regarding pressing migration issues.

¹⁷ <http://www.mpips.gov.pl/index.php?gid=641>

¹⁸ <http://www.pozytek.gov.pl>

¹⁹ http://www.mlsp.gov.ua/control/uk/publish/category?cat_id=41899

²⁰ http://www.scnm.gov.ua/control/uk/publish/category?cat_id=132376

²¹ <http://www.udsc.gov.pl/Wspolpraca,z,institucjami,pozytku,publicznego,1138.html>

Serbia²²

Some vital migration challenges of Serbia, such as refugees and IDP problem (after the wars of the 1990s) are not actual ones for Ukraine. At the same time, such issues as migration legislation and institution building, inter-agency coordination, visa policy modernisation, migration profile creation should be considered carefully.

During the period 2008–2010 for the first time in the Republic of Serbia, a comprehensive migration flows monitoring policy had to be established, and a Serbian migration profile defined.

Strategy

Migration Management Strategy was adopted on July 23, 2009²³. Recommendations and measures provided for in the Strategy:

- Contents of the Serbian migration profile shall be defined in accordance with the European integration requirements, taking into account specific characteristics of the Republic of Serbia.
- The Serbian migration profile shall be updated on regular basis
- Statistics shall be harmonised with EU standard requirements
- Normative and technical conditions shall be established for data exchange among relevant institutions
- Gather information, statistics and reports on migration in RS.
- Designate an institution responsible for data gathering
- Follow migration movement trends

The Strategy also lays the foundations for an institutional framework for migration policy development. It is defined in line with competences and

²² This chapter has been developed by Vladimir Petronijevic and Miroslava Jelacic, Group 484 (Belgrade, Serbia). See more on Serbian experience in: *How to achieve visa-free travel with the European Union: Western Balkans' experience for Ukraine*, Kyiv, EWB, 2011.

²³ RS Official Gazette 59/09

duties that ministries and state institutions have in the area of migration within the Law on Ministries, other laws and appropriate normative acts and Strategies.²⁴

Coordination

In February 2009, the Government established a Coordination Body for Migration Monitoring and Management²⁵ composed of ministers who are, within their purview, in charge of certain migration aspects. The Commissariat for Refugees is in charge of vocational, operational and administrative-technical tasks for the Coordination Body. The Coordination Body submits to the Government a written progress report every 90 days.

For Ukraine there should be a different body (as the Commissariat for Refugees is a specific Serbian institution connected to the legacy of the 1990s), but overall migration policy requires coordination because it is not possible to concentrate all the responsibility in one hand even if the Migration Service is created.

Legislation

Very important Law in this field is the Law on Foreigners²⁶. Provisions of this Law which are of special importance refer to the establishment of central database which will encompass data recorded in special records (total of 21 records — 16 of the Ministry of Internal Affairs and 5 of the Ministry of Foreign Affairs).

The central database can be used by authorised police officers in the Ministry of Interior, authorised civil servants of the Ministry in charge of

²⁴ Migration Management Strategy, July 2009, p.4

²⁵ RS Official Gazette 37/09

²⁶ RS Official Gazette 97/08

foreign affairs and diplomatic-consular offices of the Republic of Serbia, for the purpose of performing their duties in accordance with competences provided for in this Law. Being authorised by the Minister in charge of internal affairs, the data from the central database can be used by other state institutions, when necessary, for the purpose of performing duties in their purview.

Changes of visa policy

With regard to movement and stay of foreigners in the Republic of Serbia, the Law on Foreigners also introduced types of visas in line with the Schengen standards. The Law defines requirements for entrance and stay of foreigners in the country, possibility of registering their residence through Internet, the existing types of visas that have been abolished and the new ones introduced (A — airport transit visa, B — transit visa, C — short stay visa and D — long stay visa). As regards visa types, it must be noted that, unlike before, D visa — for temporary stay — can also be obtained at diplomatic-consular offices of the Republic of Serbia. Tourist pass has been repealed, and border permit, which is issued under strictly regulated conditions and through the procedure stipulated by the Law, has been introduced. Temporary stay, which was previously regulated by by-laws, has been introduced. The law stipulates exceptionally high penalties for either aliens who violate provisions of the law or for citizens, physical and legal entities who do not report the stay of an alien.

Work on the establishment of the Visa Information System has not been finalised yet. A visa system of a county is a part of state security and its ability to manage borders in a coordinated manner. Establishment of such a system will provide support for the work of diplomatic-consular offices, as well as to the tasks regarding documentation checks on border posts which are the responsibility of the Ministry of Interior. Main holders of

the project implementation are the Ministry of Interior and the Ministry of Foreign Affairs. The solutions envisaged by the project are based on Schengen Catalogue best practices and in accordance with the EU Consular Instructions²⁷.

²⁷ Migration Management Strategy in the Republic of Serbia, July 23 2009, p. 16

CONCLUSIONS AND RECOMMENDATIONS

Migration policy of Ukraine requires serious reforms, which are not possible without high-quality strategic planning, coordination, resources and political will.

Over the last decade the migration policy creation process in Ukraine that was rapidly developing in the 1990s has been paused and its goal and principles have not been defined. Lack of determined work in this sphere causes abundant and sharp problems and they require immediate solutions without any delays. Primarily it relates to the labour migration from Ukraine as during demographic crisis it constitutes a serious threat for labour and intellectual potential of the nation; entails the need to protect the rights of labour migrants, ensure their legal employment abroad, and encourage their return to the homeland and reintegration; causes accumulation of foreign immigrants on the territory of the state, including asylum seekers, as their legal status definition is unreasonably complicated, while clear actions on their integration into Ukrainian society are virtually missing.

As Ukraine has recently joined world migration processes, the society and authorities have not yet realized the need for active migration management. Understanding of migration situation does not meet the current requirements because of existing migration statistics weaknesses and deficiency in adequate scientific assessments of people's movement. Migration legislation contains numerous shortcomings, while institutional setup is not complete. The need to correct these deficiencies has been repeatedly addressed by the Head of the State and the government, it has also been discussed in the parliament. However, relevant solutions were hindered due to political confrontation and interdepartmental struggle.

Under such conditions the impact of European migration policy which became one of the main directions for the domestic and external EU policies, as well as cooperation with the EU Member States in the sphere

of migration can have significant positive implications to ensure the exit of this issue out of the deadlock.

Migration issues were always a part of the agenda between Ukraine and the EU and its Member States. Firstly, migration is inherently an international phenomena and therefore it cannot be regulated exclusively by one country; secondly, migration policy in a democratic society must comply with certain principles, in particular on human rights, developed by the international community and enshrined in recognized international legal instruments, thirdly, efficiency of international cooperation in migration sphere and capacity of the state in migration management are interrelated and interdependent.

The Action Plan on Visa Liberalisation with Ukraine presented on November 22nd 2010, practically does not contain any issues that have not been discussed previously on the national and international levels, in particular in the Ukraine-EU Action Plan on Security, Justice and Home Affairs, Association Agenda or within the framework of the Eastern Partnership. It only emphasizes the issues, solutions of which are needed and will be beneficial for Ukraine.

At the same time the experience of the EU accession of the new Member States shows that implementation of European norms and standards made a significant positive impact on public administration improvement, especially in the field of migration. That is why existence of the Action Plan and its implementation can be regarded as an important external impetus for solving current issues in Ukraine in the sphere of migration.

While choosing the ways and methods for the Action Plan implementation attention should be paid to the international experience in improving migration policy and advancement towards visa free regime of those countries that acquired EU membership and third countries, primarily Western Balkan states. However we should take into account specific Ukrainian political realities, migration situation, available resources as simple copying of foreign experience can't be productive as well.

Nevertheless, experience of Poland in liberalising the access of foreigners (including Ukrainians) to the national labour market is positive by all means, as Ukrainians are the largest group of temporary foreign workers in the country. Ensuring legal migration of Western Balkan countries their citizens and acquiring visa liberalisation with the EU is another positive example.

International experience also shows that migration policy record, as well as institutional setup cannot be done behind the scenes, exclusively by the efforts of the officials; independent experts, NGO representatives should also be involved and wide public discussion should take place.

Migration policy should be regarded in complex, its understanding should not be limited by mere control and coercive measures; meaningful cooperation between different institutions and between the government and civil society should be established.

A legal basis is an essential element of the first phase of reforms, which should foresee development of a clear legal framework for the distribution of power and cooperation of different institutions, as well as filling legislative gaps to ensure all relevant policy elements (such as asylum policy).

Coordination of migration policy should be ensured by a high governmental level in order to overcome administrative resistance, which will arise because of the inevitable redistribution of power and resources.

DOCUMENTS SECURITY: ASSESSMENTS AND RECOMMENDATIONS FOR UKRAINE DEVELOPED BY THE INTERNATIONAL WORKING GROUP

The urgent need to reform the system of identity documents in Ukraine is caused primarily by two groups of factors:

Firstly, by the objective need to provide the citizens of Ukraine with the identity documents of today's technical level in compliance with international standards, adopted to most popular electronic reading systems and providing necessary protection from forgery and illegal usage; the necessity to create modern, integral, transparent and non corrupt system of identity documents and appropriate databases, removing the rudiments of Soviet era in the sphere of personal documents.

Secondly, the aim to implement the Action Plan on Visa Liberalisation, introduced to Ukraine by the EU on November 22nd 2010, as soon as possible.

The required implementation of the Program to fulfill the decisions and provisions of the Warsaw Conference on common fight against terrorism calls for improving the forms of existing documents including maintenance document protection and usage control on an adequate level. The Program provides for changing the production of documents for personal identification and Ukrainian citizenship confirmation in compliance with the EU requirements and the Resolution on Fight against Terrorism # 1373 of UN Security Council dated September 28th, 2001.

EXECUTIVE SUMMARY

The identity document system in Ukraine does not match European standards according to most parameters, as technical characteristics of main identity documents are mostly archaic; the conditions for data collection and storage do not correspond to minimum requirements; the system of state procurement in this sphere is extremely non transparent, and the process of designing and realizing the necessary changes is deferred and partial.

As a result, **at beginning of 2011 Ukraine is lagging behind almost all countries of Eastern Europe (not to mention the EU Member States) in providing their citizens with modern identity documents.**

Ukraine has to initiate, develop and implement comprehensive program of modernizing the whole system of national identity documents.

The following aims should be reached:

- Adoption of adequate legal framework that would establish clear and transparent procedures of personalization, production, storage and delivery of ICAO-compliant identity documents. Upgrading the norms regulating the standards of production, storage and application of identity documents from the level of by-laws (Resolution of the Cabinet of Ministers) to the level of law, primarily by adopting the Law on identity documents.
- Phasing out the production and gradual withdrawal out of circulation all identity documents, whose technical characteristics are not in compliance with ICAO rules and the EU standards.
- Introduction of biometric technologies into identity documents on the basis of strict adherence to the EU standards of personal data protection.
- Arranging the whole system of identity documents, legislative confirmation of its comprehensive list and removal of the documents

that are inherited from totalitarian times (primarily, “internal passport” of the citizen of Ukraine)

- Ensuring transparency and accountability of the public procurement in terms of identity documents production and related services.
- Creation and maintenance of the functioning system for international information exchange (primarily with the EU Member States) concerning the stolen, lost and forged identity documents.

CURRENT STANDARDS OF DOCUMENTS SECURITY

The basic modern types of identity document include the biometric passport in order to travel abroad and ID card. Both documents contain electronic information chip apart from existent means of physical protection.

The International Organisation of Civil Aviation, ICAO, is the leading institution setting technical requirements for identity documents. Its recommendations are implemented by the governments of most countries of the world (190 Member States). Standards developed by ICAO are set as Annexes to the ICAO Chicago Convention, which is the basic document of the organisation approved in 1944. 18 Annexes were approved²⁸.

Standardization of immigration and custom procedures is one of the ICAO functions defined in the Chicago Convention. These functions are realized by the Convention Annex 9 “Facilitation”. The requirements for technical characteristics of travel documents are listed there²⁹ (such documents are used not only for personal identification, they can also be shown at border crossings according to international legal regulations).

Currently the 12th Edition of this Annex is valid which was approved on November 24th 2005. Item 3.9 of the document states: Contracting Parties should incorporate biometric data in their machine readable passports, visas and other official travel documents, using one or more optional data storage to supplement the machine readable zone. The technical requirements for such zones are specified in the Document Doc 9303 “Machine readable travel documents”³⁰.

According to the current edition of the Annex 9 the image of passport holder is the necessary information for biometric identification of the

²⁸ ICAO Conventions. Annexes 1–18. http://www.icao.int/icao/net/anx/russian/info/annexes_booklet_ru.pdf

²⁹ On bio-passport <http://biodocs.narod.ru/articles/AboutPassport.html>

³⁰ Annex 9 to ICAO Chicago Convention http://www.icao.int/icao/net/anx/russian/info/annexes_booklet_ru.pdf

person (the shape of human face has specific individual characteristics and it is stored on the chip in the digital form). Other biometric information in the passport (fingerprints, eye retina, hand geometry, etc.) is used optionally based on the decision of the country.

At the beginning of 2011 26 out of 27 EU Member States (apart from Cyprus) issue biometric passports for their citizens in order to travel abroad. Most EU Member States switched to the biometric passports of “second generation”. In 2012 EU Member States will completely stop issuing non-biometric passports to travel abroad and ID cards.

Russian Federation having introduced the biometric passport in order to travel abroad back in 2006, stopped issuing the passports of old type after March 1st 2011 and currently issues exclusively biometric passports to its citizens.

Republic of Moldova having introduced biometric passport to travel abroad in 2008, started issuing exclusively biometric passports to its citizens since January 2011.

Western Balkan countries (Serbia, Montenegro, Bosnia and Herzegovina, Macedonia, Albania) introduced biometric passports in 2008–2009.

Georgia started issuing biometric passports in April 2010.

Turkey started issuing biometric passports in June 2010.

Armenia declared launching the production of biometric passports and ID cards with electronic signature since September 2011.

Absence of Ukraine on the list mentioned above causes significant problems in the context of implementation of the Action Plan on Visa Liberalisation provided for Ukraine by the European Union on November 22nd 2010; lowers the capacity of Ukrainian state to effectively combat numerous offences, related to identity documents; undermines trustworthy attitude towards the state (and the holders of the documents issued by this state) on international arena.

Existing situation in Ukraine provokes numerous cases of identity documents misuse, forgery, theft and fraud; causes doubt concerning

inappropriate storage of relevant databases. As a result, imperfect identity documents create the ground for such type of international crime as human trafficking, including children as it is often accompanied by kidnapping and document forgery.

Even if there is positive experience in issuing modern identity documents, lengthy struggle for state contracts that was carried out (and is still ongoing) by extremely brutal methods. It causes significant reputation loss both for leading market participants and the state in general and as a result it leads to overall low level of trust even to those identity documents presented by Ukrainian citizens that include high level of technical protection.

Currently Ukraine does not have the exact date of switching to the basic identity documents produced according to modern samples. Previously the Ministry of Internal Affairs declared the intentions to introduce biometric passports starting 2012. After the introduction of the Action Plan on Visa Liberalisation the Minister of Interior of Ukraine Anatolij Mogyliov foresaw the launch of electronic biometric passport production in 3–4 months. He also added that if the law regulating issuance of such passports is approved by Verkhovna Rada of Ukraine, they will be issued in several weeks after such approval. Ministry of Interior also intends to gradually change internal passports of Ukrainian citizens for ID cards but concrete terms are not stated³¹.

³¹ Ukraine will start the production of biometric passports start in summer http://vidido.ua/index.php/pogliad/article/v_ukraini_vlitku_rozpochnet_sja_vigotovlennja_biometricnih_pasportiv/

ANALYSIS OF CURRENT SITUATION IN UKRAINE

Situation in Ukraine is contradictory: some efforts to proceed with the relevant standards of identity documents are hindered by a number of negative factors.

On the one hand, Ukraine has necessary technical capacities in order to produce modern identity documents. On the governmental level the awareness concerning the necessary reforms in the sphere of identity documents issuance has increased.

On the other hand, the pace of making all necessary decisions is very slow and is accompanied by high level of conflicts caused by the competition in terms of future access to significant public funds. The understanding of technical standards of documents is often simplified when the transition to new technical standards of documents is perceived as sufficient step not taking into account necessary reforms in the system of personal identification, guaranteeing appropriate conditions for collection, transmission and storage of identity data, maintaining transparency and integrity of the whole system of identity documents production and issuance.

The progress is hindered primarily due to the low level of priority of this issue for institutions and decision makers, competition between specific groups of influence for the access to state procurement contracts and high level of corruption in all relevant spheres.

Legislation

Contrary to the traditional European practice Ukraine does not have the *Law on Identity Documents* or the *Law on Travel Documents*. Regulatory and legal framework concerning the issuance of basic identity documents is limited to the by-laws — Resolutions of the Cabinet of Ministers and it is not sufficient taking into account current European practice.

The attempts to initiate legislative acts regulating the whole relevant sphere were made, however they were not supported due to different reasons, in particular lack of political will on behalf of parliamentary majority and general low quality of the suggested documents.

Now the Ministry of Justice works on the draft law of Ukraine “*On Identity Documents*” in the context of implementation of the Action Plan on Visa Liberalisation.

Ukraine also lacks the *Law on National Registry of Citizens* (and thus electronic registry doesn't exist). As a result the state does not have comprehensive and adequate answer to the question how many citizens of Ukraine and other states currently reside in Ukraine, how many people have legitimate right to obtain relevant identity documents.

There is a lack of political will on behalf of the government concerning the necessity to introduce the National registry of the citizens and approve the relevant Law.

The analysis of the status quo concerning the most important types of identity documents in Ukraine is provided below.

“Internal passport” of the citizen of Ukraine

Existing Ukrainian “internal” passports are the rudiments from Soviet times and they cannot fully function as modern identity documents. In the best case these documents correspond to the level of 1980s in their technical characteristics, they can easily be forged and they cannot protect their holders from illegal usage.

The sample of the passport of the citizen of Ukraine (“internal passport”) was approved by the Resolution of Verkhovna Rada of Ukraine on 26.06.1992 # 2503–XII³², valid now in the edition from February 23rd 2007. This document follows the tradition of Soviet internal passport system

³² Verkhovna Rada of Ukraine; Resolution, Provision dated 26.06.1992 # 2503–XII <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2503-12>

that was introduced in order to control migration, residence, employment and other aspects of life in the totalitarian state.

Millions of such passports are still in use, quite often they are filled out manually, the photo is affixed and is not even laminated with protective tape. The document does not have the expiry date as according to Soviet tradition it had to “accompany” the person during his or her lifetime. Consequently, the technological sample of this document has not been updated and the development of modern protection technologies does not influence the level of technical protection of the passport of Ukrainian citizen in any way.

Passport of the citizen of Ukraine (internal) is issued to persons who are over 16 years old for unlimited period of time. When the person reaches 25 and 45 the new photo of passport holder must be affixed into the passport.

As the passport of the citizen of Ukraine (internal) is the main document identifying the person, it is widely used for concluding the contracts, bank operations, notary acts, etc. In addition, “internal passport” is needed in order to receive the passport to travel abroad.

Hundreds of cases of illegal usage of internal passports for fraudulent purposes are registered annually; in particular in order to register the “butterfly” companies, make sham agreements on real estate property, etc. Mostly it is caused by archaic conditions for passport issuance, corruption in the relevant system, unsatisfactory level of technical protection.

As of the start of 2011 the government has not declared the program (or at least a clear vision) for replacing these passports with modern identity documents for personal identification of the citizen (plastic machine-readable ID-cards). It means that in this issue Ukraine is lagging behind the most of European and CIS countries.

Moreover, in 2010 the Ministry of Interior mentioned possible introduction of “hybrid” internal and international passport in Ukraine (likely having in mind the unique experience of Belarus in this issue).

Only in November 2010 in the context of reviewing the EU Action Plan on Visa Liberalisation for the first time the officials from the Ministry of Interior openly acknowledged the urgency of this problem. For example, on November 19th, the director of State Department on the citizenship, immigration and personal registration at the Ministry of Interior Yevgen Mamonov noted that “today the issue of ID card introduction is a very important one and this card may substitute the internal passport in the future”³³.

Passports for travel abroad (“international passports”)

The situation with international passports of the citizens of Ukraine reflects the complexity of relations inside the national administration system where the state, corporate and business interests are closely intervened. Lagging behind most neighbours in this issue is unjustified in financial and technological aspects (the state has sufficient financial and technological capacities). The reason lies in the competition between certain groups to get access to expensive contracts that would be covered by substantial funding from the state budget and payments from the citizens who applied for international passports.

4 types of passport for travel abroad were used in Ukraine after it gained independence:

- Passports of former USSR;
- Passports of 1994 with the affixed colour picture laminated with the special paper;
- Passports of 2000 with integrated digital photo;
- Passports of 2007 with polycarbonate page.

Passports of former USSR were valid during the first years of independence and till their expiry date. Even after the introduction of the first sample of Ukrainian passport in 1994, international Soviet type

³³ ID-cards may be issued in Ukraine instead of internal passports, Liga. News, 19.11.2010 <http://news.liga.net/ukr/news/NU106917.html>

passports could still be obtained, especially in the periphery. Such passports are not in circulation now.

Passports of Ukraine to travel abroad were issued since 1994 according to the Resolution adopted by the Presidential Decree signed by Leonid Kravchuk # 491/93 dated October 28th 1993³⁴, and its sample was approved by the Resolution #354 of the Cabinet of Ministers of Ukraine dated June 4th 1994. According to the Presidential Decree #1218/96 dated December 14th 1996 the previous sample was insignificantly changed and that is why we consider them to be the same type of document. This type of passport looked like a burgundy book with the inscription “Ukraine. Passport” written in Ukrainian language, while the prevailing international tradition provides for cover inscriptions in two languages — written in the state language of the country and in English.

This passport contained the affixed colour photo. After the text and photo were inserted, the internal left side of the cover was taped. The bottom part of the first page of the passport included the space for holder’s signature. Number of pages — 32 (passports for 64 or 96 pages were also planned). The bottom part included the line along the whole width of the page for machine readable information. The exact place of inscription and data on passport holder were set according to the valid recommendations of ICAO at that time (ICAO. Doc.# 9303).

The passport was valid for ten years. However, the passport issued before May 12th 1997 could be prolonged for another 10 years after the date of expiry. Later such possibility was cancelled, that is why since 1997 all Ukrainian international passports are valid for 10 years and it is in compliance with international standards.

The problem of stopping the production of such passports was acute for a long time. Until 2010 the passport was not fully “ousted” either by the next version (passport with the integrated photo of 2000) or even by

³⁴ Verkhovna Rada of Ukraine. Legislation. <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=491%2F93>

the passports with polycarbonate page (2007 sample). The last series of 50 thousand passports of 1994 sample was produced based on the Resolution of the Cabinet of Ministers in July-August 2010 ordered by the Ministry of Foreign Affairs of Ukraine. Such decision was made due to the fact that diplomatic missions of Ukraine abroad do not have technical capacities to collect personal data for passports of modern type. At the same time citizens of Ukraine permanently residing abroad face the problem of their passport expiry.

The only possible way for the Embassy to issue the new passport is to use the samples of 1994 where the photo can be affixed (another option is for the person to travel to Ukraine in order to change the passport and it may often be burdensome, especially for people living in far away countries).

Apart from the needs of the Ministry of Foreign Affairs the 1994 passports were issued in Ukraine until 2010 (it was made as an exception, mainly for state officials) as well.

Thus the expiry date of the last 1994-type passports is 2020 which certainly creates a problem as holders of such passports rely on them and have the right to use such passports during their validity term. It contradicts to the requirements of the Action Plan on Visa Liberalisation as such passports do not meet the ICAO requirements and should be changed as soon as possible (traditionally the term is 3 years since the beginning of visa liberalisation process with the EU).

Passport with integrated digital photo (sample of 2000) did not look different from the previous one, it was also a burgundy book with the inscription “Ukraine. Passport” written only in Ukrainian.

The main difference from the previous sample is the absence of the affixed photo. Instead, the digital image of the passport holder is placed. This sample was a step forward together with the optical and many other protection elements and more advanced technology for machine readable information. This document hypothetically provided for application of electronic information chip but such innovation was never realized.

However, this sample was being introduced very slowly. At the beginning of 2005 due to the lack of financing, the equipment for production of such passports was installed only in the departments of visas and registration in Kyiv, in most Ukrainian cities the citizens were able to receive only 1994–type passport up to 2007. The expiry date of the last portion of such passports is May 2017.

The first attempt to switch to another standard — **passport with polycarbonate page** was made in 2004 when the President L. Kuchma at the end of his term signed the Decree # 1465/2004 dated 10.12.2004 according to which new standard was introduced. However, when the new President V. Yushchenko took the post the Decree was annulled and the transition to the new passport standard was deterred for another 2,5 years.

Finally, on February 23rd 2007 Verkhovna Rada of Ukraine approved the Resolution # 719 setting up the new passport standard using polycarbonate page. On the basis of this Resolution of Verkhovna Rada the Cabinet of Ministers developed and approved the new Resolution dated June 26th, 2007 # 858 “On Adopting Technical Description and the Sample of Passport of the Citizen of Ukraine in Order to Travel Abroad” that introduces new type of international passports into circulation and determines its introduction process.

Government contract in order to produce the key element of the new passport — the polycarbonate page was given to EDAPS Consortium created in 2004, it is still the executor of the contract.

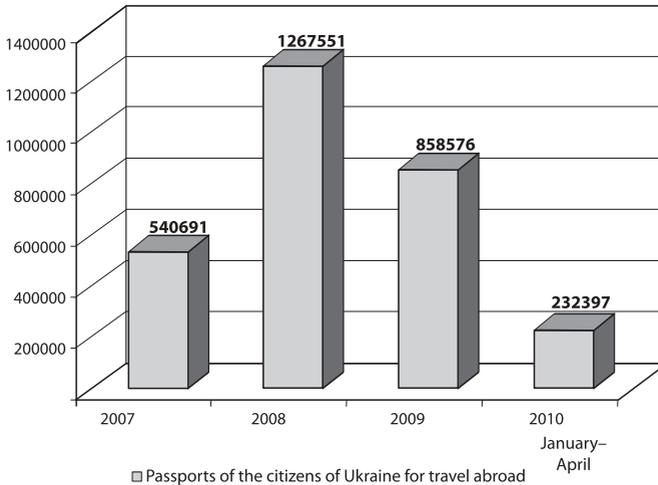
At this stage the issue of international passports production is politicized and is turning into a scandal which is caused by apparent conflict of political and commercial interests. The stakeholders accuse each other in corruption, misused fund distribution, neglecting national interests, etc. Such collisions, still present now, significantly undermined the confidence towards institutions and enterprises engaged into the process of producing international passports in Ukraine.

Introduction of the new passport standard in the summer 2007 led to crisis caused by a considerable pause in issuing the previous types

of passports and setting up the system for issuing new passports with polycarbonate page. Long queues appeared. Persons who ordered the new type of passports in June-July 2007 received them only in autumn. Situation was stabilized only in 2008 when the record number of passports to travel abroad was issued since the time of independence — 1 million 267 thousand 551 passport. Over the next year this indicator decreased significantly likely due to the impact of economic crisis and consequent general decrease in purchasing parity of the citizens of Ukraine (see Diagram 1).

Diagram 1.

The statistics of passports for travel abroad issuance (with polycarbonate page — from the moment of new standard introduction in June 2007) — EDAPS Consortium data.



Now this type of passport is the only one issued to the citizens of Ukraine who need documents in order to travel abroad.

Other Identity Documents

Breeder documents should be also taken into account, not only international and national identity document (in the case of Ukraine — “internal passport”) but also a number of other documents used for the identification of person.

Ukrainian **Child travel document** for travel abroad is a blue book valid for 3 years. Its technical standard is archaic and does not meet ICAO requirements (affixed photo laminated with a tape, it looks like the standard of 1994 international passport). As a result, not all countries of the world recognize Ukrainian Child travel document. For example, among EU Member States Malta does not recognize it and such situation complicates travels to this country and potentially to the other EU Member States.

The practice of affixing the photo of the child into the passport of one of the parents still exists. In this case the personal data of the child are either typed or written manually in the passport. Such practice does not meet current security standards as well, that is why some countries (for example, among MSs, Portugal) do not allow the children with such documents to travel and do not issue visas for them.

Existing sample of the **birth certificate of Ukraine** is approved by the Resolution of the Cabinet of Ministers of Ukraine #1025 dated November 10th 2010. However, in general it does not differ significantly from the original Ukrainian sample introduced in 1992.

This document is the basis for issuing the travel document for a child and the passport of the citizen of Ukraine (internal) when the person reaches 16. The document is a colour piece of paper with minimum protection means.

Like internal and international passports, Ukraine still issues internal and international driver’s licenses.

Currently there are 7 (seven!) types of driver’s license including those issued during Soviet times. It is caused by the fact that until recently the

validity of the driver's license in Ukraine did not have the expiry date. Such practice did not meet international standards, primarily the provisions of Vienna International Convention on Road Traffic (1968).

Such situation induces the practice when Ukrainian driver's license is either not recognized abroad (old samples) or are recognized only in certain countries. Currently there are two international agreements regulating the issue of recognizing national and international driver's license outside the country of issuance: International Convention on Road Traffic signed in Geneva on September 19th 1949 and International Convention on Road Traffic signed in Vienna on November 8th 1968. Countries that signed only the Geneva Convention require the existence of international driver's license under the standard approved in the Annex to the Convention.

At the same time absolute majority of the countries of Europe and CIS also signed the Vienna Convention regulating mutual recognition of national driver's licenses.

Ukraine joined Vienna Convention, consequently according to the Article 41 (driver's license) paragraph 2 item a) and c) all Contracting Parties of the Vienna Convention must recognize Ukrainian national and international driver's licences.

However, in 2004 the Convention was amended by the provisions according to which not any national driver's licenses are recognized but only the ones in compliance with the Annex 6.

National driver's license even of the modern standard (approved by the Cabinet of Ministers in January 2010) does meet the criteria of paragraph 6, Annex 6 as not **all** records are transliterated in Latin alphabet.

In addition, up to March 2011 all types of national driver's license did not have an expiry date.

On March 1st 2011 the government approved the Resolution "On Amending the Order of Issuance of Driver's License and Allowing the Citizens to Drive" stipulating that the new driver's license of international standard will be issued for 50 years, though it was previously reported that

the Cabinet of Ministers was considering the possibility to limit the expiry date to 10 years according to European practice.

By this Regulation *the government made partial decision which is a step forward but it does not guarantee the recognition of Ukrainian driver's license by all countries participating in the Vienna Convention.*

Now since March 1st 2011 the national driver's license will be issued for 50 years in the form of plastic card. Its sample was approved by the government in January 2010.

At the same time "international" driver's license is issued for 3 years on the basis of individual request by the Department of State Vehicle Patrol on the basis of national driver's license. It is a passport-type book with the affixed photo. This document is not valid independently, it basically serves as the appendix to the national driver's license.

Such circumstances restricts Ukrainians who travel around the world to use their driver's licenses as valid identity documents.

THE MOST IMPORTANT INTERNATIONAL EXPERIENCE

Systematic reforms on documents security is rather new area of internal policy. Almost all the experience available is rather new, connected to the EU visa liberalisation process. Romania, Bulgaria, Serbia and other Western Balkan countries in the recent past as well as Eastern Partnership countries such as Republic of Moldova accumulated certain experience to learn relevant lessons.

Serbia³⁵

According to the recent data by the Serbian Ministry of Interior, about 2 mln 700 thousand biometric passports have been issued since 2008. This is a significant number — more than one third of population is able to benefit now from the visa free regime to the EU.

National Assembly of the Republic of Serbia adopted the Law on Travel Documents³⁶, which entered into force in October, 2007. For the first time in Serbian history, the Law has introduced a biometric travel document for the purpose of protection and security of travel documents. The Law encompasses standards imposed by the EU regulations and standards of the International Civil Aviation Organisation (ICAO), which stipulate that by 2010 all countries must introduce travel documents with integrated photograph and mechanically readable zone.

The issuance of biometric passports for applications submitted in the territory of the Republic of Serbia started in July, 2008. Originally, the issuance of biometric passports for the applications submitted out of the territory of Serbia, at diplomatic-consular offices throughout the world, should have started in October 2008, when technical conditions for data

³⁵ This chapter has been developed by Vladimir Petronijevic and Miroslava Jelacic, Group 484 (Belgrade, Serbia). See more on Serbian experience in: How to achieve visa-free travel with the European Union: Western Balkans' experience for Ukraine, Kyiv, EWB, 2011..

³⁶ Official Gazette of RS No. 90/07

transferring were met. In this way, the collected data will flow into the Ministry of Foreign Affairs, from where it will, via protected connection, reach the Personalisation Centre in the Ministry of the Interior for production.³⁷ This procedure was however initiated at the end of 2008, and only at 4 out of 66 diplomatic-consular offices of RS.

The implementation of the Law on ID Cards and the Law on Travel Documents has produced initial confusion in police offices responsible for receiving requests for issuance of new ID cards and passports. Due to large crowds, the offices extended their working hours and started scheduling appointments for submitting documents for new ID cards and passports. The need for improving capacities of the entire system for issuing biometric ID cards and passports has been even more highlighted in the middle of 2008 when relevant organs stopped issuing old, the so-called blue passports. Up to that date, Serbian citizens could choose between old and new, biometric ones. The original expiry date of old passports, stipulated by the Law on Travel Documents, was December 31, 2008 and it was already prolonged three times- firstly, until December 31 2009, then until December 31 2010, and with last changes until the end 2011. Old ID cards cease to be valid five years after the enforcement of the Law on ID Cards, in July 2011.

There still remain a large number of Serbian citizens who don't have biometric passports. On the plus side, however, from this year the Ministry of the Interior began production of the improved second generation of biometric passports, containing chips that hold fingerprint information, in accordance with the ICAO and EU standards³⁸

In regards to administrative measures for ensuring integrity and security of personalisation process and distribution of travel documents, "personalisation of travel documents is centralised and falls under the competence of the Information Technology Administration of the Ministry of the Interior.

³⁷ Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 9.

³⁸ Source: Zorica Djokic Milosavljević, Ministry of Interior, Head of the Department for travel documents and Readmission, interview October 2010

It is a part of the system which includes acceptance of applications for document issuance, data processing and personalisation. When citizens submit an application for the issuance of new passport, the processed data, through telecommunication and information system of the MoI, reaches the data preparation system. Via protected connection, the prepared encrypted data is transmitted to personalisation, what implies laser engraving of alphanumeric data and inscription of data on the chip. After that, visual and electronic control of passports produced is conducted. Information on produced passports is returned via the same tunnel into MoI. Through a courier service of authorised MoI officers, personalised passports are forwarded to the point of issuance.

The Ministry of Foreign Affairs of the Republic of Serbia is not perform personalisation of travel documents, but only data acquisition for personalisation purposes in the premises of the Ministry for diplomatic and official passports and in diplomatic consular missions of the Republic of Serbia abroad for ordinary passports. Delivery of personalised diplomatic and official travel documents from the Ministry of the Interior to the Ministry of Foreign Affairs is made through official couriers, with all necessary security measures. Delivery of personalised travel documents to diplomatic consular missions of the Republic of Serbia abroad will be made through DHL³⁹.

In regards to ensuring a high level of security of breeder documents and identification cards, the Ministry of Interior applies the procedure in compliance with the European and ICAO standards. By passing the Law on Identification Card⁴⁰ and the Rulebook on Identification Card⁴¹, the recommendations of the Council of Europe for implementation of the project for integrated automated system for identity documents personalisation are incorporated, and in this way the need to follow the world's technology trends in the field has been satisfied.⁴²

³⁹ Report on Readiness, Visa Liberalisation with Serbia, October 2008, pages 14–15

⁴⁰ Official Gazette of RS, 62/06

⁴¹ Official Gazette of RS, 11/07

⁴² Report on Readiness, Visa Liberalisation with Serbia, October 2008, page 22

Security of documents necessary for obtaining biometric passports (registers — citizenship and birth certificates) has been most poorly assessed in the expert report of EC. This is particularly related to registers from the territory of Kosovo.

Serbian Assembly in year 2009 adopted the Law on Registry Books⁴³, prepared by the Ministry of State Administration and Local Self-government. Due to the Law, the national register which are established, enabling citizens to obtain their certificates faster, regardless of the place registry books are kept. Furthermore, the certificate do not have expiry dates. The issuance of certificates without expiry date started from January 2010. They are now on new forms, prepared by the Institute for Manufacturing Banknotes and Coins. All the data are protected from fraud, guaranteed by the Constitution, and the collected data can be used only for the intended purpose. The forms used so far have not had adequate protection. The law foresees that all the organs responsible for keeping registry books are obliged to provide electronic data evidence within the five-year period, which will enable the creation of the national register of citizens.

Kosovo is still apart of visa liberalisation process. As prerequisite for visa liberalisation, Serbian Government has adopted the Regulation which established the separate passport issuing procedure for the Serbian citizens who reside in Kosovo and Metohija. They are obliged to submit breeder documents directly to Ministry of Interior Directorate which has been established by this Regulation. Residence of Kosovo and Metohija are not entitled to travel without visas to EU countries. This regulation does not apply on Serbian citizens from Kosovo and Metohija who have IDP status.

Republic of Moldova

The transition to biometric international passports was carried out in two stages in Moldova. At first, since 2008 biometric passport standard

⁴³ RS Official Gazette 20/09

was introduced as an option, i.e. the citizens who were applying for new passports had the option to order either biometric or regular passport. As the biometric passport was much more expensive and there were no evident preferences for the bearers of biometric documents, most citizens preferred regular passports.

As a result, during 2008–2010 only about 20 thousand of biometric passports were issued, i.e. only about 0,5 % of Moldovan population were in possession of such documents. The price for the biometric passport was rather high — about 75 Euro, making up about 50% of the average monthly salary in RM.

Since the beginning of 2011 the government of Moldova stopped issuing the passports of the old type and exclusively biometric passports have been issued since then. At the same time the government took measures to reduce the price of the passport, however the date of transition to the more affordable fee was postponed for several times. The promise given by the government to reduce the passport fee to 24 Euro was not kept for a long time.

Finally in spring 2011 the fee was reduced to 40 Euro that generally corresponds to an average value of the biometric passport in the countries of Eastern and South Eastern Europe.

It is important to mention that Moldova has implemented reforms in the sphere of internal identity documents — its citizens have been receiving plastic identity cards for several years already. These cards substituted “internal passports” of the Soviet type.

Experience of Moldova is especially valuable as this country having received the Action Plan on Visa Liberalisation two months later than Ukraine, in January 2011, belongs to the same group as Ukraine in the process of visa liberalization with the EU and that is why its achievements show that Ukraine is lagging behind in this respect.

RECOMMENDATIONS

Legal framework:

The most optimal instrument for normative and legal regulation of the document security issues is the **adoption of the specific relevant Law of Ukraine “On Identity Documents”** that would clearly define:

- All main types of identity documents
- Terms and conditions for their issuance
- Production procedure
- Agents who are allowed to be involved into production, storage and distribution of identity documents
- Conditions and procedures of document validity termination

The experience of Serbia is worth mentioning, as in 2007 the country approved the law “On travel documents”. The law entered into force on October 9th of the same year and it was declared as corresponding to the relevant European standards; it took into account the recommendations given by the Council of Europe and the EU.

The principal innovations for Ukraine developed in this law should include:

Defining the clear list of the documents that can be officially used to identify the person and the cases when such identification is needed.

Maximum integration of the documents for “internal” and “international” usage. Ending the practice of having “parallel” standards of internal and international passports, driver’s licenses, etc.

Introduction of legal basis in order to issue the documents with biometric data (we speak about not only the passport to travel abroad, but also about the plastic ID card with biometric data, driver’s license and other documents).

This law should amend the Law of Ukraine “On Protection of Personal Data” in the part relating to creation of adequate condition for collection,

storage and application of biometric data in order to produce identity documents.

Ukrainian legislation should incorporate recommendations and directives of the European Union from 2004 and 2006 regulating the content and protection of the passport and electronic chip including biometric information: digital face photo and finger prints as well as technical characteristics of the electronic chip: its structure, type, content of the information, its compatibility with relevant information reading equipment and software.

It is important to approve the **Law on National Registry of the Citizens** and take the measures in order to actually create such registry in the form of electronic database including the full list of persons who are in possession of the document confirming the identity of the citizen of Ukraine (at this stage — the so-called “internal passport”), when and where the passport in order to travel abroad was issued; children under the age of 16 who received their birth certificates in Ukraine as well as the list of foreigners having permanent residence permit in Ukraine.

Passport of the citizen of Ukraine:

The existence of the two parallel passport systems (internal and international passports) is the rudiment of the totalitarian system and it should be abandoned.

Ukraine has to abandon the current standard of internal passports and introduce plastic identity card of the citizen of Ukraine containing the electronic information storage device.

The government should take measures in order to suppress the public scandal setting around the issue the passport issuance in order to travel abroad and remove the reasons causing suspicion of corruption in this area. The role of state should be intensified and the impact of commercial interests in this issue should be decreased.

Public procurement tender on new passport type production services containing biometric data should be carried out in a transparent way, its conditions should be not specified in order to match the exclusive contractor. Ordering relevant services without organizing the tender is not acceptable as it entails mistrust in the whole state system of personal document issuance.

The state needs to make and announce the decision that the passports of 1994 (with the affixed photograph) issued over the last years will be taken out of circulation before the stipulated 10 years of their validity (it is desirable to do this over the next three years) and exchanged free of charge (or at a considerable discount price) for the passports of the new type.

Travel document for a child:

The same technological principles as in the case of the passport of the citizen of Ukraine in order to travel abroad should be applied in the production of the travel document for a child (polycarbonate page, integrated digital photo, electronic data storage device, modern protection instruments).

Driver's license:

The transition to the integrated driver's license (for internal and international usage) valid for 10 years should be made. The current validity period for 50 ears is unjustifiably lengthy in the case of identity document.

Such license should look like a plastic card with integrated photo and electronic data storage device, fully written in Ukrainian and English languages.

