

UDC 342.9

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Zarovna, Iryna (2022). Powers of the State Migration Service of Ukraine for making public policy on migration according to domestic legislation. *Entrepreneurship, Economy and Law*, 3, 84–90, doi: <https://doi.org/10.32849/2663-5313/2022.3.12>

## POWERS OF THE STATE MIGRATION SERVICE OF UKRAINE FOR MAKING PUBLIC POLICY ON MIGRATION ACCORDING TO DOMESTIC LEGISLATION

**Abstract. Purpose.** The purpose of the article is to identify the powers of the State Migration Service of Ukraine in accordance with domestic legislation.

**Results.** The establishment of the State Migration Service of Ukraine as a central executive body implementing public policy on migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of natural persons, refugees and other categories of migrants defined by legislation became a significant milestone in the resolution of issues of State migration policy in Ukraine. The practical activities of the State Migration Service of Ukraine are functionally oriented towards public service, involving the provision of many administrative services in the field of citizenship, immigration, emigration, etc. The effectiveness of the State Migration Service depends on its perfect legal and regulatory framework. The article identifies the powers of the State Migration Service of Ukraine in the field of migration in accordance with domestic legislation. It is noted that the legal and regulatory framework for the activities of the State Migration Service of Ukraine in the field of migration policy is the law-making by the authorities within the scope of their competence, aimed at regulating the activities of the State Migration Service of Ukraine on the implementation of public policy on migration with a view to streamlining, ensuring and guaranteeing it. It is emphasised that the leading feature of the legal and regulatory framework for the implementation of State migration policy by the State Migration Service of Ukraine is a human-centric focus. The powers of the State Migration Service are defined in accordance with the laws and legal regulations of Ukraine.

**Conclusions.** It is concluded that legislation should regulate the issue of interaction between the State Migration Service of Ukraine and other central executive bodies on making State migration policy. To this end, it is proposed to establish an inter-ministerial coordinating body. Its activities shall be regulated on the basis of the relevant Regulations, which, inter alia, clearly delineate the powers of each body, which will contribute to the further development of State migration policy of Ukraine at the present stage.

**Key words:** State migration service, State migration policy, State authority, powers, legal and regulatory framework, interaction.

### 1. Introduction

The activities of any State authority, including in the field of migration policy, requires the existence of a certain regulatory framework for it, which the scientific literature defines as “legal framework”, “regulatory framework”, “legal and regulatory framework”, etc. Establishment of the State Migration Service of Ukraine (hereinafter referred to as the SMS) as a central executive body implementing public policy

on migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of natural persons, refugees and other categories of migrants defined by legislation became a significant milestone in the resolution of issues of State migration policy in Ukraine. The practical activities of the SMS are functionally oriented towards public service, involving the provision of many administrative services in the field of citizen-

ship, immigration, emigration, etc. The effectiveness of the State Migration Service depends on its perfect legal and regulatory framework.

The issues of the legal and regulatory framework in general, and State migration policy in particular were under the focus in the studies by domestic and foreign scholars such as: S. Alyeksieiev, O. Bandurka, V. Batchaieva, Y. Bielousova, N. Blok, R. Voitovych, S. Husariiev, M. Latynin, O. Lukashov, O. Malynovska, S. Mosondz, V. Olefir, O. Skakun, O. Tykhomyrov, M. Yavorskyi, and others.

The purpose of the article is to identify the powers of the State Migration Service of Ukraine in accordance with domestic legislation.

## **2. Specificities of the legal framework governing the activities of the State Migration Service of Ukraine**

S.S. Alekseev argues that the legal regulatory framework is a system of legal remedies (legal provisions, legal relations, individual orders, etc.) effective, regulatory and organisational influence used to regulate, protect, develop social relations in accordance with social needs (Alekseev, 1995, p. 209). According to the authors of the teaching manual on the theory of State and law under the editorship of S.D. Husariiev and E.D. Tykhomyrov, the legal regulatory framework is a purposeful and effective influence of law, used to regulate and improve specific social relations through legal remedies alone. The subject matter of the legal regulatory framework is specific social relations that require to be regulated by law rather than other social norms (Husariiev, Tykhomyrov, 2017, p. 256). According to A.F. Skakun, the legal regulatory framework is the regularising of human behaviour through legal regulations designed for their repeated application under circumstances envisaged by them (Skakun, 2001). V.V. Kopieichykov argues that the legal regulatory framework is an effect of law on public relations through certain legal remedies, first of all, the rules of law (Kopieichykov, 1997, p. 217). In A.M. Bandurka's opinion, the legal regulatory framework is a purposeful, regulatory and organisational activity aimed at implementing regulatory possibilities of legal provisions and other special legal remedies into public relations with a view to their regularising and progressive development (Bandurka, 2018, p. 344).

Therefore, despite the absence of a single term in the scientific literature, all these definitions are synonymous and have common features, which include: first, the legal and regulatory framework is primarily an action, a process; second, it aims to regulate the conduct of the parties to certain social relations; third,

the regulatory effect is made on the basis of the legal provisions that constitute the system; fourth, the legal regulatory framework has positive or negative legal effects; fifth, it is ensured by the State.

Thus, the legal regulatory framework for State migration policy is the activities of the State aimed at establishing provisions of law governing the conduct of parties to social relations in the field of migration policy, with a view to their regularisation, protection and security by certain legal remedies.

The legal and regulatory framework for the activities of the SMS of Ukraine in the field of migration policy is the law-making by the authorities within the scope of their competence, aimed at regulating the activities of the SMS of Ukraine on the implementation of public policy on migration with a view to streamlining, ensuring and guaranteeing it.

The legal basis for regulating the activities of the SMS of Ukraine is a system of provisions of law governing its activities. The leading feature of the legal and regulatory framework for the implementation of State migration policy by the SMS of Ukraine is its conformity with the needs of ensuring human and civil rights and freedoms, determined by the human-centric model of building a modern Ukrainian society (Kovbasiuk, Vashchenko, Surmin, 2012, p. 348). These provisions are enshrined in the Constitution of Ukraine, stipulating that human rights and freedoms and their guarantees determine the content and orientation of the State's activities; affirmation and safeguarding of human rights and freedoms is the main responsibility of the State (Constitution of Ukraine, 1996).

The issue of citizenship and the safeguarding and protection of their rights are regulated by the following provisions of the Constitution of Ukraine: "Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics" (art. 24); "A citizen of Ukraine shall not be deprived of citizenship and of the right to change citizenship. A citizen of Ukraine shall not be expelled from Ukraine or extradited to another state. Ukraine guarantees care and protection to its citizens who stay beyond its borders" (art. 25); "Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure

established by law” (art. 26). The international treaties in force, to which the Verkhovna Rada of Ukraine consented to be bound, and which under article 9 of the Constitution of Ukraine is part of the national legislation of Ukraine, are of importance in regulating the activities of the SMS (Constitution of Ukraine, 1996).

Certain constitutional provisions are reflected in the legal regulations governing the activities of the SMS of Ukraine. In particular, Law of Ukraine 2235-III “On Citizenship of Ukraine” of January 18, 2001 defines the principles of equality before law of Ukrainian citizens regardless of the grounds, procedure and moment of acquiring Ukrainian citizenship; retention of Ukrainian citizenship regardless of the place of residence of the citizen of Ukraine (Law of Ukraine On Citizenship of Ukraine, 2001). Law of Ukraine 3671-VI “On refugees and persons in need of subsidiary or temporary protection” of 08 July 2011 establishes the legal status of persons, recognised as refugees or persons in need of subsidiary protection: persons who have been granted the status of a refugee or a person in need of subsidiary protection enjoy the same rights and liberties and are bound by the same obligations as the citizens of Ukraine, except for cases established by the Constitution and the Laws of Ukraine, as well as international treaties to which the Verkhovna Rada of Ukraine consented to be bound (art. 14). These include the rights to: movement, free choice of place of residence, free exit from the territory of Ukraine, except for restrictions established by law; work; entrepreneurship not prohibited by law; health care, medical care and health insurance; recreation; education; freedom of thought and religion; sending individual or collective written communications or personal communications to State and local authorities; officials and officers of these bodies; to own, use and dispose of their property, the results of their intellectual and creative activity; to appeal to the court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers; application for protection of their rights to the Human Rights Commissioner of the Verkhovna Rada of Ukraine; free legal assistance in accordance with the established procedure. A person recognised as a refugee or a person in need of subsidiary protection has the same rights as Ukrainian citizens in marriage and family relations (art. 15) (Law of Ukraine on Refugees and Persons in Need of Subsidiary or Temporary Protection, 2011).

According to Law of Ukraine 3773-VI “On the Legal Status of Foreigners and Stateless Persons” of September 22, 2011, “1. Foreigners and stateless persons who are legally pres-

ent in Ukraine enjoy the same rights and freedoms, as well as and bear the same obligations as citizens of Ukraine, except as provided by the Constitution, laws or international treaties of Ukraine. 2. Foreigners and stateless persons under the jurisdiction of Ukraine, regardless of the legality of their stay, have the right to recognition of their legal personality and fundamental human rights and freedoms” (art. 3) (Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, 2011).

Therefore, the constitutional provisions regulate the human-centric orientation of the legislation governing the activities of the SMS in Ukraine. The latter is a system of legal regulations, that is, an interconnected set of legal regulations, hierarchically structured from legal regulations of supreme legal force to legal regulations of lower legal force and interdependent in case of legal regulations of equal legal force. The hierarchy of legal regulations shall be considered as a correlation, established by the Constitution of Ukraine, of legal regulations consisting in subordination of legal regulations of the lowest legal force to legal regulations of the highest legal force, in establishment of interrelationships and interdependence between these legal regulations, in determination of the place of each type of legal regulations in the system of legislation (Draft Law of Ukraine On Legal regulations, 2008).

Next, the focus should be on the legal regulations of Ukraine, which determine the powers of the SMS to make public policy on migration. It should be noted that the law that is the leading regulatory source, designed to normalise the main issues of life, to rank most stable rules of behaviour as general (Alekseev, 2019, p. 80). In the study, such laws are: Law of Ukraine 2235 “On citizenship of Ukraine” of January 18, 2001, Law 3671 “On refugees and persons in need of subsidiary or temporary protection” of July 08, 2011, Law 3773 “On the legal status of foreigners and stateless persons” of September 22, 2011, Law 2491 “On Immigration of June 07, 2001.

### **3. Powers of the State Migration Service of Ukraine**

The Law of Ukraine “On Citizenship of Ukraine” defines the powers of the central executive body responsible for making public policy on citizenship, such as: implementation of the decisions of the President of Ukraine on citizenship; taking decisions on establishing or registration of Ukrainian citizenship in accordance with the Law; taking procedural steps to become a citizen or to renounce Ukrainian citizenship; submitting applications together with the opinion to the Commission under the President of Ukraine on issues

of citizenship; revocation, within the scope of powers, of the decisions taken to formalise the acquisition of Ukrainian citizenship in the cases provided for by law; once every six months, the Commission under the President of Ukraine on issues of citizenship on the implementation of the decisions of the President of Ukraine on citizenship, etc. (Law of Ukraine On Citizenship of Ukraine, 2001).

Following the Law of Ukraine “On Refugees and Persons in Need of Subsidiary or Temporary Protection”, the powers of the central executive body implementing public policy on refugees and persons in need of subsidiary or temporary protection, are as follows: to decide on the recognition as a refugee or a person in need of subsidiary protection, on the loss, withdrawal of refugee status or subsidiary protection and on the annulment of the decision to recognise a refugee or a person in need of subsidiary protection; to submit proposals to the Cabinet of Ministers of Ukraine on the need to adopt a decision on temporary protection and on the termination of temporary protection; to make a decision on the withdrawal of temporary protection for a foreigner or stateless person; to coordinate cooperation between the executive authorities on issues relating to refugees and persons in need of subsidiary or temporary protection; to consider complaints about the decision on the refusal to accept an application for recognition as a refugee or a person in need of subsidiary protection, on the refusal to register documents for recognition as a refugee or a person in need of subsidiary protection, and on the revocation of these decisions, if they were taken in violation of the law, etc. (Law of Ukraine on Refugees and Persons in Need of Subsidiary or Temporary Protection, 2011).

The Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” does not contain a separate article on the powers of the central executive body implementing public policy on migration. The analysis of this legal regulation shows the following powers: to accept applications for the issuance or extension of temporary residence permits, to take measures to collect information from the place of birth of such a person, the countries or places of his/her previous and long-term residence, as well as the country of origin of his family members, to decide on the recognition of a stateless person, on the prohibition of entry into Ukraine for a period of three years, on the voluntary or forced return of foreigners and stateless persons, to decide on the issue of voluntary or forced expulsion, on reducing the period of temporary stay of a foreigner and a stateless person in the territory of Ukraine, to cancel the decision on recognition of a stateless per-

son on the grounds stipulated by the law, to keep a register of persons who have applied for or refused to be recognised as stateless, to issue identity card refunds, etc. (Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, 2011).

According to article 6 of the Law of Ukraine “On Immigration”, the central executive body implementing public policy on immigration: receives applications on issuance of immigration permits, accompanied by documents, specified in this Law, from individuals, staying in Ukraine legally; checks, whether the documents, submitted for issuance of immigration permits are duly made, check compliance with the due requirements, necessary for issuance of these permits and absence of reasons to refuse issuance of these permits; makes decisions to issue immigration permits, to refuse to issue immigration permits, to withdraw immigration permits and issue copies of these decisions to the persons involved; issues and withdraws permanent residence permits in cases, stipulated by this Law; register persons, who submitted applications on issuance of immigration permits and persons, who have been issued these permits (Law of Ukraine on Immigration, 2001).

By-laws defining the powers of the SMS should include the Resolution 360 of the Cabinet of Ministers of Ukraine “On the approval of the Regulations on the State Migration Service of Ukraine” of 20 August 2014 (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulation on the State Migration Service of Ukraine, 2014), as well as Order 265 of the SMS “Service On approval of the Regulations of the State Migration Service” of October 14, 2014 (Order of the State Migration Service On approval of the Regulations of the State Migration Service, 2014).

The Regulations on the State Migration Service of Ukraine include the following established powers: analytical ones, which may include a review of the practice of applying the legislation on issues within the competence of the SMS; the analysis of the migration situation in Ukraine, problems of refugees and other categories of migrants; the collection and analysis of information on the conditions under which such protection is granted in the countries of origin of refugees and persons in need of subsidiary or temporary protection in Ukraine; prognostication, development of current and long-term forecasts on issues within the competence of the SMS; law-making, development of proposals for improving legal regulations, regulations of the President of Ukraine and the Cabinet of Ministers of Ukraine, legal regulations of the ministries and their submission to the Minister of Internal Affairs in

accordance with the established procedure; organisational ones, performance of the function of the customer for the production and delivery of forms of documents confirming the identity and citizenship of Ukraine, and documents confirming the identity and special status, as well as goods, works and services to ensure the establishment and functioning of the Unified State Demographic Register; monitoring and supervision, monitoring of compliance by the registration authorities with legislation on the registration of the residence of individuals; State control, in accordance with law, over compliance with legislation on migration (immigration and emigration), including combating illegal (unlawful) migration and citizenship, refugees and other categories of migrants defined by legislation in cases provided for by law, bringing violators to administrative liability; coordinating ones, providing methodological and technical assistance to registration authorities in ensuring interaction between registers of territorial communities; registration, keeping relevant records and registers; information, providing within the scope of the powers provided by law, formation of information resources (databases, data banks) on personal data of individuals (including their biometric data, parameters), other information resources, necessary for the fulfilment of the tasks assigned to the SMS; enforcement, the conduct of proceedings on matters within the competence of the SMS; the provision of administrative services; powers of international integration, the implementation of international cooperation, participation in the drafting and conclusion of international agreements on citizenship, migration, refugees, persons in need of other forms of protection, registration of natural persons and readmission; ensuring within its powers the implementation of the international treaties concluded by Ukraine.

Furthermore, the Regulations on the SMS regulate the interaction of the SMS with other State and local authorities, in particular with the Verkhovna Rada of Ukraine and its bodies, the President of Ukraine and the Administration of the President of Ukraine, the Cabinet of Ministers of Ukraine and the Secretariat of the Cabinet of Ministers of Ukraine, central and local executive authorities and local self-government bodies. Cooperation with the Verkhovna Rada of Ukraine consists in the consideration of deputy appeals and requests, preparation of materials for holding an hour of questions to the Government, as well as for parliamentary hearings, hearings in committees of the Verkhovna Rada of Ukraine. In cooperation with the Secretariat of the Cabinet of Ministers of Ukraine on issues arising in relations with

the CMU, the SMS shall hold consultations on the procedure for the preparation of draft legal regulations and other documents submitted to the Cabinet of Ministers of Ukraine, monitoring the implementation of decisions of the Cabinet of Ministers of Ukraine, as well as other issues. Cooperation with other executive authorities includes consideration of appeals, proposals, other materials and documents submitted by central and local executive authorities, local self-government bodies, ensuring timely coordination of draft legal regulations, which are submitted for consideration by the Cabinet of Ministers of Ukraine.

In addition, regarding the issues of public policy on migration (immigration and emigration), including countering illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants defined by legislation, the SMS cooperates quite actively with the Ministry of Internal Affairs, the Security Service of Ukraine, the Ministry of Foreign Affairs of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine and the State Customs Service of Ukraine. To date, the issue of interaction between the SMS of Ukraine and these bodies is still not regulated by law. To this end, in order to coordinate the performance and decision-making, within the competence of SMS, as well as to delineate their powers, an inter-ministerial coordinating body should be established. Its activities shall be regulated according to the Regulations on Inter-Ministerial Coordinating Body.

#### 4. Conclusions

Consequently, nowadays it should be noted that there have been significant improvements in the legal and regulatory framework for the activities of the SMS regarding public policy on migration (immigration and emigration), including countering illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants defined by legislation. The amendments made to the laws of Ukraine on the powers of the SMS show the human-centric direction of migration legislation in general and the activities of the SMS in particular. The issue of interaction between the SMS of Ukraine and other central executive bodies on making State migration policy is still not regulated by law. To this end, it is proposed to establish an inter-ministerial coordinating body. Its activities shall be regulated according to the relevant Regulations, which, inter alia, clearly delineate the powers of each body, which will contribute to the further development of State migration policy of Ukraine at the present stage.

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## ПОВНОВАЖЕННЯ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ ЩОДО РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ МІГРАЦІЇ ВІДПОВІДНО ДО ВІТЧИЗНЯНОГО ЗАКОНОДАВСТВА

**Анотація. Мета.** Метою статті є визначення повноважень Державної міграційної служби України відповідно до вітчизняного законодавства.

**Результати.** Створення Державної міграційної служби України як центрального органу виконавчої влади, який реалізує державну політику у сферах міграції (імміграції та еміграції), у тому числі протидії нелегальній (незаконній) міграції, громадянства, реєстрації фізичних осіб, біженців та інших визначених законодавством категорій мігрантів, стало значною віхою у вирішенні питань державної міграційної політики в Україні. Практична діяльність Державної міграційної служби України характеризується публічно-сервісною функціональною спрямованістю, що полягає

у наданні багатьох адміністративних послуг у сфері громадянства, імміграції, еміграції тощо. Ефективність діяльності Державної міграційної служби України залежить від її досконалого нормативно-правового врегулювання. Стаття присвячена визначенню повноважень Державної міграційної служби України у сфері міграції відповідно до законодавства України. Зауважено, що нормативно-правове регулювання діяльності Державної міграційної служби України у сфері міграційної політики – це правотворча діяльність уповноважених органів влади у межах їхніх компетенцій, спрямована на регламентацію діяльності Державної міграційної служби України щодо реалізації державної політики у сфері міграції з метою її упорядкування, забезпечення та гарантування. Акцентовано, що провідною ознакою нормативно-правового регулювання діяльності Державної міграційної служби України щодо реалізації державної політики у сфері міграції є його людиноцентрична спрямованість. Визначено повноваження Державної міграційної служби України відповідно до законів та підзаконних нормативно-правових актів України.

**Висновки.** Зроблено висновок про необхідність законодавчого регламентування питання взаємодії Державної міграційної служби України з іншими центральними органами виконавчої влади з питань реалізації державної міграційної політики. З цією метою запропоновано створити міжвідомчий координаційний орган. Його діяльність слід регламентувати на підставі відповідного Положення, в якому, зокрема, чітко розмежувати повноваження кожного органу, що сприятиме подальшому розвитку державної міграційної політики України на сучасному етапі.

**Ключові слова:** державна міграційна служба, державна міграційна політика, орган державної влади, повноваження, нормативно-правове регулювання, взаємодія.

*The article was submitted 11.04.2022*

*The article was revised 02.05.2022*

*The article was accepted 23.05.2022*