

Unwanted People and Desired Citizens

Contemporary Attitudes, Challenges and Perceptions
of Migration and Integration



Edited by

**Cezary Smuniewski, Andrea Zanini,
Cyprian Aleksander Kozera, Błażej Bado**

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Research team: Cezary Smuniewski (principal investigator),
Andrea Zanini (co-investigator 1), Cyprian Aleksander Kozera
(co-investigator 2), Marcin Górnikiewicz (co-investigator 3)

Peer review

Prof. Radosław Bielawski
Prof. Bogusław Jagusiak

Translator/Language editor

Adam Petrétis
Elżbieta Puławska

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Agnieszka Miłaszewicz

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Legal Status of Foreigners in Light of the Constitution of the Republic of Poland

Abstract

The article aims to present a consideration of the constitutional regulation of the legal status of foreigners in Poland, with particular reference to the situation of Ukrainian citizens who, as a result of Russia's armed aggression, had to leave their country. The Polish legislature enacted specific solutions regulating the legal status of these persons in the Republic and specified in detail the forms of assistance from which they can benefit. The analysis of these solutions in the context of constitutional guarantees leads to the conclusion that they made it possible to secure the possibility of exercising rights and freedoms by citizens of Ukraine in the territory of the Republic of Poland at such a difficult time, which posed a significant challenge both from a legislative and organizational perspective. The creation of a formal and legal basis, in such a special situation, required, among other things, the procedure for legalization of residence, which was simplified, the provision of a place and means of existence, and in the next stage access to the labor market and education. This article attempts to review selected legal solutions from the perspective of the catalog of constitutional rights and freedoms, noting that these solutions are temporary, which is due to the dynamics and complexity of the conflict in Ukraine. Within the framework of the research conducted, the dogmatic-legal method was mainly used.

Keywords: migrants, foreigners, Constitution of the Republic of Poland, rights, freedoms and constitutional obligations, refugees from Ukraine

1. Introduction

Migrations constitute a phenomenon that has accompanied mankind for centuries. Depending on the situation in which a country found itself, on the conditions affecting the level of its prosperity and security, their scale and intensity developed differently in different historical periods.

Nowadays, they lack a single established pattern, which is manifested, among others, in the change of directions in which migrations take place.

In the 19th century, impoverished people chose mainly the United States as the main destination of their journeys. Today, the largest migration flows come from countries outside of Europe, where living the conditions are hard or fights are being waged. The countries a significant number of emigrants originated from, are now accepting immigrants themselves (Ireland, Italy, Spain). Moreover, demographics also exerts an impact on migration, as wealthier countries are experiencing negative or low birth rates, while Asia and Africa vice versa (Freeman 2007: 102).

The Constitution of the Republic of Poland (hereinafter: the Polish Constitution) constitution does not use the term "migration" or "migrants" though it uses the term "foreigner" which according to the legal definition means "anyone who does not have Polish citizenship." (Act 2023/519: Article 3(2)) As issues related to the terms and conditions for foreigners' entry into the territory of the Republic of Poland, transit across this territory, stay in it and leave it are regulated by the Act (2023/519) on foreigners, for the purposes of this work, the understanding of "migrant" is assumed as identical to "foreigner" being aware though that these terminological concepts are not completely equivalent. A migrant may be a foreigner, but it may also be a Polish citizen who changes his or her whereabouts by moving around the territory of the Republic of Poland, not necessarily leaving it. In addition, there is also the phenomenon of illegal migration that would need to be discussed in a separate study.

The place and status of an individual in a democratic state is determined by creating appropriate legal norms, both under the Basic Act as well as acts of a lower order. Regulation of rights and obligations at the constitutional level of both Polish citizens and foreigners is important because it allows them to be properly protected. Since law is of a social character, it must respond on an ongoing basis and be adapted to the changing situation; otherwise it will only become a meaningless and useless record, which, although formally applicable, has no real impact on what is happening in the state and in the society. The considerable dynamics of changes that take place not only in the country but also abroad, the complexity of relations in various spheres of the functioning of the state cause that the law, in particular the Constitution, should be treated at the same time as a basic determinant ensuring its durability and internal stability.

As a transit country Poland, the largest one in Central and Eastern Europe, has always been a territory across which the migration stream

flowed. Poles themselves often migrated in quest of better living conditions. The history from before 24 February 2022 shows, however, that all these processes were vestigial as compared to those that occurred in connection with Russia's military aggression against Ukraine. Considering these events and the fact that as a result of the war many Ukrainian citizens crossed the border with Poland, often deciding to stay on its territory, addressing the status of foreigners in Poland seems to be necessary and fully justified.

The main problem that arose during the research can be expressed in the question: "How has the legislator shaped the legal status of foreigners in Poland and do the mechanisms and guarantees laid down in legal acts provide sufficient grounds for effective protection of the rights of foreigners in Poland?" An important part of the article has been devoted to the legal situation of refugees from Ukraine, considering it in terms of their ability to exercise the fundamental rights and freedoms guaranteed in the Polish Constitution to every human being. The basic method used during the study was the dogmatic/legal method.

2. Rights of foreigners in the Polish Basic Act

The Constitution of the Republic of Poland of 1997, defining the subjective scope of rights and freedoms, indicates that they are due to persons and citizens. As a country that has been bound by international standards for protection of human rights, Poland is obliged to protect fundamental rights and freedoms of each individual, regardless of their nationality. However, this does not mean (apart from fundamental rights and freedoms) that the positions of both groups: citizens and foreigners are legally the same. The differences between them are a natural consequence of having citizenship, understood as "a legal relationship between the individual and the state, from which legal consequences arise, as defined in the national law of a state and in international law, as well as the rights and obligations common to all persons having this citizenship, unless a special status has been granted to certain groups." (Banaszak 2017: 364) The Polish Basic Act uses the term "foreigner" – in Art. 37 and Art. 56. This does not mean, of course, that these persons have been deprived of the rights and freedoms under constitutional law, but only shows that the legislator reserved some of them only for Polish citizens, describing others as due to "everyone" and thus also those who do not have this [Polish] citizenship (Garlicki 2020). The key provision here is Art. 37 pursuant to which "1. Anyone,

being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution. 2. Exemptions from this principle with respect to foreigners shall be specified by statute.” (Constitution 1997/483: Article 37) As Bogusław Banaszak (2012: thesis 5) rightly points out, the second section should not be understood literally, because it is not that there is a single statute laying down exceptions, and that they can only be established by means of an act of the statutory rank. Moreover, the mere possibility of creating exceptions is subject to control and requires compliance with other constitutional norms, including, in particular, taking into account limit clauses (*inter alia* Art. 2, Art. 31(3), Art. 32 of the Polish Constitution) (Safjan, Bosek 2016: thesis 2). The principle of universality of rights and freedoms expressed in Art. 37 does not cover obligations, although such options were considered during the work on the constitution. Ultimately, however, it was recognized that imposing the same obligations on foreigners as on Polish citizens is unfounded, because this solution does not exist in the constitutional provisions of other countries and, in addition, most of the foreigners stay on the territory of the Republic of Poland only as tourists (Constitution 1997/483: Article 37). Therefore it can be concluded that any person who is not a Polish citizen and who has legally arrived on the territory of the Republic of Poland will enjoy all the rights and freedoms provided for in the Constitution, except those, which have been reserved exclusively for Polish citizens. Hence the author intentionally does not discuss all constitutional rights and freedoms and focuses on those that explicitly refer to foreigners.

In Art. 56, the legislator stated the “1. Foreigners shall enjoy the right of asylum in the Republic of Poland in accordance with the principles specified by statute. 2. A foreigner who seeks protection from persecution in the Republic of Poland may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.” (Constitution 1997/483: Article 56) There are two rights arising from the content of the above provision: the right of asylum and the right to obtain a refugee status. Both rights have been provided only for foreigners or stateless persons, because Polish citizens benefit from protection guaranteed by the state, also during their stays abroad. Monika Florczak-Wątor points out that in relation to an asylum seeker, as well as to some extent a person with a refugee status, protection granted by the state is analogous to that enjoyed by Polish citizens; however, it is not the same, since as has been already mentioned, in accordance with Art. 37(2) of the Polish Constitution, it is possible to provide for exceptions

in this respect. Moreover, as the above cited author also emphasizes, constitutional regulations do not prejudge that you can apply for only one of the statuses, there is no specific order in applying for these rights, and a refusal to grant one of them does not exclude the possibility of seeking the other (Florczak-Wątor 2021). It should be noted that the granting of an asylum or a refugee status is optional and is the responsibility of the state which, as a sovereign entity, independently exercises its territorial authority (Szwed 2020: 349). Constitutional provisions do not regulate in detail how individual forms of protection should be applied, but ordinary statutes and international agreements with which Poland is bound do. It is worth emphasizing that Art. 56 of the Constitution has been included in the catalogue of rights and freedoms of a personal nature. It seems interesting that in Art. 79 of the Basic Law the legislator excluded the possibility for a foreigner to lodge a constitutional complaint in a situation whereby the rights covered by Art. 56 have been violated. Such action of the legislator, which consists in depriving foreigners of a subjective right, raises a number of doubts and questions as to its compliance with international law. The resulting contradiction is particularly evident in relation to a refugee status, because under the provisions of the Geneva Convention every refugee is guaranteed the right of free access to the courts in the territory of the countries – signatories of the Convention, and in the country where a refugee has a permanent residence, he should benefit from national treatment as regards access to the courts (Kowalczyk 2014).

3. Constitutional obligations

Today, an individual's obligations towards the state are usually constitutional obligations, although the way they are regulated may significantly vary. B. Banaszak points out four types of regulations occurring in this respect: "1. The provisions of the constitution lay down an obligation unrelated to an individual's right; they are sufficiently precise to be directly applicable (...); 2. The provisions of the constitution establish an obligation unrelated to an individual's right: they have a character of a program or moral maxims only; 3. The provisions of the constitution compound an obligation with an individual's right. Thanks to this, the same good protected by the Constitution is subject to regulations that formulate both a right and an obligation, which underlines its importance. Regulations of this type can be both of a direct and a program nature. 4. The provisions of the

Constitution indirectly establish an obligation by conferring specific powers on the state.” (Banaszak 2007)

Migration to another country is not only associated with the possibility of exercising rights and freedoms on its territory, but also entails a number of obligations arising from the need to maintain it and care for its welfare. The catalogue of human and civil responsibilities has been included in Art. 82–86 of the Polish Constitution. As it has been already mentioned, Art. 37 does not explicitly impose constitutional obligations on persons staying under the jurisdiction of the Polish state though without its citizenship, which does not mean, that they are not their addressees. Similarly, the establishment of a separate sub-chapter with six articles within the Polish Constitution does not exhaust all obligations incumbent on a person and citizen, but only indicates those recognized by the legislator as most important. With a view to the fact that part of the obligations are directed exclusively at Polish citizens, the focus has been laid on those that are applicable to citizens and foreigners alike. It should be emphasized, however, that it is citizenship that should be treated as a “foundation” for the catalogue of rights and obligations of an individual towards the state (Adamczyk 2018: 4).

Art. 82 of the Polish Constitution establishes two obligations loyalty to the Republic of Poland, as well as concern for the common good, the former having been particularly emphasized by the legislator. This obligation is addressed only to citizens and is of a legal nature. It is also an obligation whose implementation has its sources in morality understood here as a sense of a spiritual bond with one’s own state and the need to act for its good. However, this provision does not indicate the types of behavior that could be considered contrary to loyalty. On the basis of literature, however, it could be recognized that this concerns such behaviors as espionage, weakening of the armed forces, or passing to the enemy side (these acts were enumerated by the 1952 Constitution) (Działocha, Łukaszczuk 2016).

Art. 83 of the Polish Constitution is of particular importance in the context of the discussed issues. According to its content, everyone is obliged to abide by the law of the Republic of Poland. The term “everyone” used here should be considered broadly, both as a citizen, a foreigner, a stateless person, as well as a juridical person or an organizational unit without legal personality. It is hard to disagree with Wiesław Skrzydło, in whose opinion: “therefore, if the state is the common good of all citizens, it acts in accordance with their interests, and the law as a regulator of social, political and economic relations is created in a democratic way, it is a natural duty

of all to abide by this law. No one may be released from this obligation either and the Constitution does not provide for any exceptions in this respect.” (Skrzydło 2013) This obligation also applies to persons migrating to the territory of the Republic of Poland who, in the event of a violation of law, cannot rely on their lack of knowledge justifying it with having other than Polish citizenship. A Latin paroemia “ignorantia iuris nocet,” meaning “not knowing the law is harmful” shall apply also to this category of people. This does not mean, however, that the state cannot or should not take action to help migrants learn about the law in force in Poland. NGOs that provide free of charge legal assistance to these people are also very active in this area. After the outbreak of war in Ukraine, as a result of the arrival of many refugees to Poland from that country, familiarizing the people who arrived on the territory of Poland with the Polish legal system became one of the priorities. This enabled these people, *inter alia*, to obtain a PESEL statistical number, take up a job or use various forms of support offered by the Polish state. Implementation of the obligation to abide by the law of the Republic of Poland is complex because, as noted by Monika Haczkowska (2014), it requires knowledge not only of generally applicable regulation, but also EU and internal law, norms and non-legislative rules.

Art. 84 provides for the obligation to bear public burdens and levies, including taxes as specified by statute. Interesting reflections on this topic have been made by Piotr Pietrasz (2022: 123–127), who in his scientific article extensively discussed the material scope of the obligation laid down in Art. 84. The above-mentioned author notes that there is no legal definition of “public burdens and levies.” However, giving these levies a public character determines the purpose for which they have been established. Following this line of thought, it should be stated that they are used by the broadly conceived state, including public administration, to carry out the tasks that have been imposed on them. The commented provision also implies a universal obligation to maintain the Polish state by persons who are under its jurisdiction, thanks to which it can function as a sovereign entity and care for the common good (Florczak-Wątor 2021). Already in 1995, the Constitutional Tribunal in one of its rulings emphasized that “The task of the parliament is therefore to shape the tax policy in such a way that the established tax system provides the state with stable income enabling implementation of assumed expenses, and at the same time influences economic, social and social behavior of taxpayers. The parliament is responsible to its electorate for choosing the right goals and

methods of operation. Ensuring budgetary equilibrium is a constitutional value, as the state's ability to operate and resolve its various interests depends on it (K. 18/92)." (Judgment 1995/2)

The duty to defend the Homeland is another constitutional obligation expressed in Art. 85 of the Basic Act. It is a civic duty, though it may be directly associated with the need of migration. In the event of a threat to the Homeland, it should be understood as an obligation to return to and defend it, and thus leave one's whereabouts, even if it is outside the country. When on 24 February 2022, Russia perpetrated armed aggression against Ukraine, the Ukrainians living abroad were required to report for military service. A relevant resolution was adopted by the Cabinet of Ministers of Ukraine on 30 December 2022 (*Pobór do wojska* 2023). What is more, the Ukrainian citizens who were capable of defending the country were banned from leaving it due to general mobilization. Certain categories of persons were exempted from this ban, including the persons performing service during mobilization or war in state authorities other than the army; the persons recognized by the medical and military commission as temporarily unable to serve – up to 6 months after the decision; men and women who had at least three children of less than 18 years of age; single parents; etc. (*Jakie grupy mężczyzn* 2023). In its Art. 136, the Polish Constitution (1997/483) provides that in the event of an immediate external threat to the state, the President of the Republic of Poland, at the motion of the Prime Minister, orders general or partial mobilization and use of the Armed Forces to defend the Republic of Poland. Exemptions from the obligation to do military service in the event of the announcement of mobilization and during war are provided for in Art. 541 of the Act (2022/2305) of 11 March 2022 on the defense of the homeland and are specified in greater detail in the Ordinance (2022/2559) of the Council of Ministers of 17 November 2022 on exemption from the duty to do active military service in the event of the announcement of mobilization and during war.

Art. 86 formulates a constitutional obligation to care for the condition of the environment. Its wording shows that everyone, i.e. both the citizens and persons without Polish citizenship, is obliged to care for the condition of the environment. What is more, these persons are responsible for the deterioration caused by them, and the principles of this responsibility are set out by statute. As correctly noted by Bartosz Rakoczy (2013) "the environment and its protection is a special concern for the legislator, since in the name of these values obligations are imposed already in the very

Constitution. This is a manifestation of the consistency of the constitutional legislator in the area of environmental protection. First, the legislator made the principle of sustainable development a basic systemic principle, and then recognized that environmental protection may be a premise for limiting the rights and freedoms, and imposed an obligation of care for the environment." On the other hand, it is impossible not to notice that the environment itself can also be a factor causing the emergence or intensification of migration processes. We are then talking about so-called environmental migrations. The simplest example of such migrations is when people leave the place where they live because of fear for their own lives or health, with the threat coming directly from nature (e.g. as a result of an earthquake, flood, etc.). The environment can also affect economic values, and thus indirectly contribute to making the decision to migrate (when, for example, drought causes crop failure) (Krajewski 2019: 150).

4. Citizens of Ukraine in Poland after 24 February 2022

On 24 February 2022, Russia invaded Ukraine and the war that began then has been going on for over a year. Although the Russian narrative consistently uses the term "special operation," no one doubts what its real purpose is. The hybrid operations carried out, the attacks on civilians led to a humanitarian crisis (Krzykowski 2022: 95), and Poland as a neighboring country was particularly involved in aid activities. It is estimated that since the outbreak of war, the Polish-Ukrainian border has been crossed by over 11,498 million citizens of this country, of whom 9,724 million returned to Ukraine (*Ilu uchodźców z Ukrainy* 2023). For some people, Poland was only a intermediate stop on their way to Western Europe, which does not change the fact that those people, even though temporarily, stayed on the territory of the Republic of Poland. Such a large scale of migration had consequences in many area of the functioning of Polish state, starting with border crossing, through organizing necessary humanitarian activities, to long-term actions aimed at providing the Ukrainian citizens with the possibility of legal stay and employment, health care, as well as education for children and youth. All actions taken required a legal basis, which was adopted in the form of a special act of 12 March 2023 on assistance to the citizens of Ukraine in connection with the armed conflict on the territory of that state (Act 2023/103). According to already discussed Art. 37 of the Polish Constitution, whoever is under the authority of the Republic of

Poland, enjoys the freedoms and rights provided for in the Constitution, while exceptions relating to foreigners are specified by statute. Thus, every citizen of Ukraine legally sojourning in the territory of the Republic of Poland under its jurisdiction was covered by the regulation of Art. 37. Enabling such a large number of people the exercise of these rights and freedoms became a serious legal, and above all organizational and logistic challenge. It is worth looking at what solutions the Polish authorities adopted in the most important areas, i.e. ensuring the right to housing, the right to work, the right to study or health protection. Owing to the complexity of the issues discussed, and above all the changes that were introduced along the development of the situation, the discussion has been limited here to comparing constitutional and statutory aspects.

The provisions of Art. 52 of the Polish Basic Act guarantee everyone freedom of movement within the territory of the Republic of Poland and the choice of place of residence and stay. At the same time, the content of the program norm laid down in Art. 75 indicates that public authorities should pursue policies that meet the housing needs of citizens, in particular to prevent homelessness, support the development of social housing and support the activities of citizens aimed at obtaining their own housing. This article does not create any subjective right to housing on the part of an individual; however, referring to the principle expressed in Art. 30 concerning protection of human dignity it can be recognized, that the right to live in decent conditions is one of the basic human rights regardless of citizenship. The housing situation of war refugees from Ukraine differs from that of both Polish citizens and foreigners not covered by the Special Act and refugees from other countries. The forms of assistance provided for by the Act are addressed to war refugees from Ukraine in Poland who stay here legally and declare their intention to remain on its territory. Pursuant to the Act, the stay of persons who came to Poland after 24 February 2022 should be considered legal and they may remain in its area for a period of 18 months. A question arises, what shall happen when the statutory period expires? It could be expected that due to ongoing hostilities this deadline may be extended, but so far no decisions are known to have been made. Among the refugees from Ukraine arriving in Poland, only a few had relatives or friends who could give them a roof over their heads, while others had to be offered shelter. Pursuant to Art. 12(1)(1–4) of the Act, voivodships were granted the right to provide assistance to Ukrainian citizens consisting in: giving accommodation, providing full board, providing transport to the places of accommodation, between them or to

centers run by the Head of the Office for Foreigners under the provisions of the Act (2023/1504) of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland or places where medical care is provided to Ukrainian citizens, or transit places from which they will be transported to the destination where medical care will be provided to Ukrainian citizens; financing travel by public transport and specialized transport for recumbent persons or persons with disabilities, in particular to place or between places (Act 2023/103). Such assistance, in accordance with Art. 98 of the Act, may also be granted by local government units, unions of local government units, associations of local government units and the metropolitan union. In order to meet even temporarily the housing needs of refugees, Art. 12a allowed – for the needs of collective residence of Ukrainian citizens during the period until 31 August 2023 – temporary use of buildings commissioned for use, including collective residence buildings that do not meet the requirements of technical, construction, fire and hygienic and sanitary regulations for such buildings, if, with this manner of use, the conditions present therein ensure that the basic requirements in the field of: 1) load capacity and stability of structures and operational safety; 2) fire safety; 3) hygiene, health and the environment have been met (Act 2023/103).

When, as a result of Russia's armed aggression, refugees from Ukraine began to flow massively into Poland, many Poles invited them into their homes, offering accommodation and meals. To compensate these persons for the costs incurred and to support them, it was decided in Art. 13 that everyone, in particular a natural person running a household, who would provide, at their own expense, accommodation and meals to Ukrainian citizens referred to in Art. 1(1), a cash allowance may be granted at their request for a period of no more than 120 days from the date of arrival of a Ukrainian citizen on the territory of the Republic of Poland. The payment period may be extended in particularly justified cases (Act 2023/103).

Apart from the forms of assistance mentioned above, pursuant to Art. 29(1) and Art. 30(1) of the Act (2023/103), refugees were allowed to apply for social assistance, both financial and non-financial (protected housing, special purpose allowance, etc.), and under Art. 31 the possibility of using a one-off cash allowance of PLN 300 for housing charges (Bończak-Kucharczyk 2022). Apart from the forms mentioned above, the legislator also provided for assistance in the form of lending to a citizen of Ukraine, a building or a part thereof in order to meet housing needs temporarily (Art. 68), conclusion of an occasional lease agreement with a Ukrainian

citizen (Art. 69) and lending or renting a residential premises to a war refugee from Ukraine by a social housing initiative (Art. 70) (Act 2023/103).

The stay of war refugees from Ukraine in the territory of the Republic of Poland is in many cases long-term. As a result of destructions caused by military operations, many of them have nothing to go back to, and thus decide to stay permanently or indefinitely in Poland. The need to find and take up a job is a natural derivative associated with the need to support oneself and one's family. The right to work arises from Art. 65 of the Polish Constitution, which gives everyone the freedom to choose and practice an occupation and to choose a workplace, with exceptions specified by statute. At the same time, in section 5 this provision sets the direction for conducting a public policy, which is to be aimed at full, productive employment by implementing programs to combat unemployment, including organizing and supporting vocational guidance and training as well as public and intervention works. The basic legal acts regulating employment of foreigners in Poland include: the Act (2023/519) of 12 December 2013 on foreigners and the Act (2023/735) of 20 April 2004 on promotion of employment and labor market institutions, as well as implementing acts thereto. The provisions of the Act (2023/103) of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict are therefore a kind of *lex specialis* vis-à-vis these regulations, authorizing the Ukrainian citizens to work on the territory of the Republic of Poland on simplified terms. In its Art. 22, the special statute regulates access to the Polish labor market. In literature it is noted that this provision applies not only to the Ukrainian citizens whose stay on the territory of the Republic of Poland is recognized as legal pursuant to Art. 2 of the Act, but also all Ukrainian citizens residing in Poland legally as of the date of entry into force of this Act. Thus, every Ukrainian citizen during their stay compliant with applicable regulations may take up a job with a Polish employer. The use of the term "stay compliant with applicable regulations" had not previously existed in the law on foreigners, but it caused that employment could be taken up both under the provisions of the special Act as well as under separate regulations (Szmida, Sawicki 2022: thesis 2, 3). This article allowed the Ukrainian citizens legally residing in Poland to take up employment without the need to carry documents legalizing their work. For even greater simplification of the entire procedure, the employer's sole obligation is to notify the competent local labor office of the fact of employment within 14 days of its occurrence. An additional facilitation was the use of the ICT praca.gov.pl system used for making

notifications. The relevant provisions require a contract to be drawn up in a language that the new employee understands. Until finding a job, a Ukrainian citizen can register as an unemployed or jobseeker and all administrative procedures are the same as for a Polish citizen (with an indication, that applications should be created in a language that the applicant understands) (Drembkowski 2022: thesis 3).

As part of helping the Ukrainian citizens, the Polish authorities also introduced the possibility of applying for a PESEL statistical number, which enabled them, among others, starting their own business in Poland or using healthcare. They might also have a trusted profile to facilitate settling official matters (*Uzyskaj numer PESEL* 2023).

The right to health protection has been expressed by the lawmaker in Art. 68, which reads that “1. Everyone has the right to health protection. 2. Citizens, regardless of their financial situation, are guaranteed by public authorities equal access to publicly funded healthcare services. The conditions and extent of providing benefits are specified by statute. 3. Public authorities are required to provide special healthcare to children, pregnant women, disabled people and the elderly. 4. Public authorities are obliged to combat epidemic diseases and prevent the negative consequences of environmental degradation for health. 5. Public authorities shall support the development of physical culture, especially among children and young people.” (Constitution 1997/483) Detailed regulations that apply to medical care provided to the Ukrainian citizens have been provided for by the legislator in Art. 37 of Act (2023/103) on assistance to Ukrainian citizens (...). According to its content, medical aid is to be provided for Ukrainian citizens on the same terms as for Polish citizens, and the costs of these services shall be covered by the special-purpose subsidy from the state budget, the administrator of which is the Minister of Health. Of course, the beneficiaries of this aid are not all Ukrainian citizens, but only those whose stay in Poland is considered legal under Art. 2(1) of the Act, i.e. who arrived in Poland after 24 February 2023. The scope of the right to healthcare services includes primarily Ukrainian citizens, but also non-Ukrainian spouses of Ukrainian citizens, Ukrainian citizens holding the Polish Charter, members of the immediate family of a Ukrainian citizen holding the Polish Charter; children that have been born in Poland, if their mother is a Ukrainian citizen or a non-Ukrainian wife of a Ukrainian citizen – who arrived in Poland after 24 February 2022 (Drembkowski 2022). As it has been mentioned, healthcare is provided to Ukrainian citizens on the same terms as to Polish citizens, but the following were excluded

from guaranteed services: spa treatment, spa rehabilitation, as well as administration of medicinal products issued to healthcare users under health policy programs of the minister responsible for health (Kacprzak-Szymańska 2022).

Art. 70 of the Polish Constitution guarantees everyone the right to education, stating that schooling is compulsory for all until their 18th birthday. The vast majority of the civilians fleeing from the war in Ukraine were children, for whom such rules and conditions had to be created so that they could continue their education interrupted by the war. In its Art. 59, the Act (2023/103) on assistance to Ukrainian citizens (...) contains statutory authorization for the minister competent for education and upbringing to determine by way of ordinance the organization of education and care for children and young people who are Ukrainian citizens and whose stay on the territory of the Republic of Poland has been recognized legal under Art. 2(1), in particular as regards appraisal, grading and graduation, conducting exams, organizing the functioning of the educational system units, conducting enrolment proceedings and introducing separate regulations in this respect, taking into account adjustment of the process of education and care to the needs and capabilities of children and young people who are citizens of Ukraine. The authorization was implemented by means of an ordinance of the Minister of Education and Science of 21 March 2022, which was replaced by Ordinance (2022/795) of 8 April 2022 amending the regulation on the organization of education, upbringing and care of children and young people who are citizens of Ukraine. These issues could well become the subject of a separate study, so the focus of this one has been only on the main assumptions of including Ukrainian children into the Polish educational system. Enrolment of Ukrainian children and adolescents who are at the compulsory schooling age (i.e. between 7 and 18 years of age) to public schools does not differ significantly from enrolment of children of Polish citizens. Due to the fact that migrations from Ukraine are going on all the time, admission to schools also takes place the year round. The condition for enrolling a child in school is filing an application to the school master, the rule being that children should be accepted by the primary school in their area of residence, and other schools – as far as possible. Which class will the new student attend is decided by the documents issued by the school abroad, and if parents do not have such documents, this is determined basing on the parents' statement about the sum total of the years of schooling abroad. This principle is general and it may be subject

to exceptions. Because of the language barrier resulting from the foreigners' lack of knowledge of the Polish language, Polish authorities organized a learning support system including: participation in additional Polish language lessons, implementation of learning in the form of a preparatory grade, help of a person who speaks the language of the country of origin employed as teacher's assistant as well as additional compensatory classes as regards teaching subjects organized by the school's governing body, though not longer than for a period of 12 months (*Zasady przyjmowania dzieci* 2023).

5. Conclusions

Nowadays, it is hard to imagine a democratic state in which the legal status of an individual, in particular their rights and freedoms, are not regulated at the constitutional level. The supremacy of the Constitution in the system of sources of law and its special legal power make it perceived as a guarantor of a certain *status quo*. The multitude of changes that mankind happens to be facing in the 21st century, often difficult and demanding closer cooperation between the actors of the international arena, is slowly becoming our daily life. On one hand, the intensity of the development of science and new technologies translates into elimination of further barriers restricting states and societies, and on the other, it is increasingly restricting them. Migrations are not a phenomenon that has developed today, but their shape and features have definitely been evolving over centuries. However, some of their causes have remained unchanged – people always left the areas where fighting took place, where war continued. The conflict across our eastern border, which Ukraine has been facing for over a year, has caused a scale of refugees that Poland has not dealt with so far. The challenge that appeared before the entire Polish state, its authorities and citizens required an immediate response, and so it happened. Millions of Ukrainian citizens who crossed the Polish-Ukrainian border received the necessary help and support. Staying on the territory of the Republic of Poland as foreigners being under the jurisdiction of the Republic of Poland, pursuant to the Basic Act they became entitled to exercise their rights and freedoms guaranteed therein, and at the same time obliged to perform specific obligations. The Polish legislator has long ago created a number of legal regulations defining the legal status of foreigners in Poland, but in a situation of such a large influx of people in a relatively short

period of time they could and would probably prove to be insufficient. Considering the above, as early as on 12 March 2022, i.e. just 16 days after Russia's aggression against Ukraine, the Polish parliament adopted emergency solutions to stabilize and organize the situation in the state. Time is needed to assess the effectiveness of the adopted solutions, and given that they are still in force and are applicable, full assessment and analysis, according to the author, should be postponed at least until the time for which they have been foreseen expires. However, it is worth emphasizing at this stage that the scale of actions taken and their multifaceted nature have become a novelty on a global scale.

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Izabela Stańczuk

MA in administration and national security, assistant at the Department of State and Law Sciences of the Faculty of Law and Administration of the War Studies University in Warsaw. Her research interests focus on constitutional law, national and ethnic minorities and migration processes in the modern world. Her recent publications are: Stańczuk, I. (2022), *Constitutional duty to protect the borders of the Republic of Poland in light of the crisis on the border with Belarus*, "Przegląd Prawa Konstytucyjnego", 3 (67): 249–265; Stańczuk, I. (2023), *Combating epidemic diseases as a constitutional duty of public authorities*, "Polish Journal of Applied Sciences", 9 (4): 35–38.

E-mail: i.stanczuk@pracownik.akademia.mil.pl, <https://orcid.org/0000-0003-2446-8428>.
