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**ADMINISTRATIVE AND LEGAL STATUS OF  
THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP OF UKRAINE**

**Summary**

The article investigates administrative and legal frameworks of the Department of Immigration and Citizenship of Ukraine activity. The features of formation and reformation of the migratory service are exposed on the modern stage. Basic tasks and forms of activity of service in the field of realization of public migratory policy are defined.

**Key words:** administrative and legal status, Department of Immigration and Citizenship of Ukraine, authority, function, form and methods of activity.

**Formulation of the problem.** The legal basis of LCA is under formation and therefore requires certain changes, additions to existing regulations and adopting new ones. Thus, in accordance with the provisions of the State Migration Service of Ukraine is the central body of executive power with activity directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine. DMS Ukraine is part of the executive power and formed to implement the state policy in the areas of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other categories of migrants by the legislation. Today there is a change of essence passport and registration system, the transition from control to its supervisory

nature, the main purpose of which is to ensure individuals by the Constitution of Ukraine and other regulations the rights, freedoms and legitimate interests.

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**The purpose of the article.** The article studies the administrative and legal status of the State Migration Service of Ukraine (hereinafter - LCA Ukraine), consider its main activities, finding new methods of management in the implementation of migration policy, determine ways to improve organizational and legal support of LCA Ukraine.

**Analysis of recent research and publications.** The organizational and legal issues for migration policy dedicated to domestic labor as (O.M. Dzhuzha, Ivan Berezovsky, V. Ivaschenko, V. Kovalenko, V.I. Kryvenko, O.V. Kuzmenko, V.M. Kuts, A. Malinowska, A.P. Mozol, A.V. Nadon, V.O. Novik, K.M. Rudoi, A. Cherniak, S.B. Czechowicz, V.I. Shakun, M.O. Shulga et al.) and foreign scientists (M. Viyyers, R. Wohlwend, V.V. Lunyeyev, M. Puhli, John. Salt, R. Havsman, P. Holmes, A. Shloenhard).

**Presenting main material.** It should be noted that the creation of VMI started in Ukraine in 2002, when the Action Plan "Ukraine - EU" in the field of justice and home affairs in the "Migration and Asylum" was recorded task Ukraine a migration service, which would be taken over the development of the entire complex problems facing the Ukrainian migration policy. In 2009, an attempt was made creation of the State Migration Service under the Cabinet of Ministers Resolution № 643 "On establishment of the State Migration

Service of Ukraine "dated 24 June 2009 [1], which repealed 16 July 2010 in accordance with Resolution Cabinet of Ministers № 559" Some issues of governance in migration "from July 7, 2010 [2], according to which a newly formed Service was eliminated. Already 6 April 2011 the President of Ukraine issued a decree № 405 "Issues of the State Migration Service of Ukraine" [3], which approved the Regulations on the State Migration Service of Ukraine (hereinafter - Regulation). In turn, June 15, 2011 the Cabinet of Ministers of Ukraine adopted Resolution № 658 "On establishment of the territorial bodies of the State Migration Service" [4].

DMS Ukraine is guided by the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, Ministry of Internal Affairs of Ukraine, other legislative acts of Ukraine, orders of the President of Ukraine and the Minister of others. The legal base of Ukraine LCA can be divided into groups: international instruments and national regulations.

The international documents include: the European Convention on Nationality, ratified by Ukraine 20 September 2006 [5]; Convention on the Status of Refugees of 28 July 1951, ratified by Ukraine 10 January 2002 [6]; Agreement between Ukraine and other states on a simplified procedure for changing citizenship [7; 8; 9] and others.

National legal basis of LCA Ukraine can be divided into two groups: external (not taken by LCA Ukraine) and internal (taken by LCA Ukraine) regulations. In turn, external regulations governing its activities DMS Ukraine can be divided into certain subgroups depending on the scope of the LCA Ukraine, in particular: 1) those that govern the terms of LCA Ukraine (the Law of Ukraine "On Central executive power ", Decrees of the President of Ukraine" On optimization of central executive power ", " Issues of the State Migration Service of Ukraine ", " On State Migration Policy ", Cabinet of Ministers of Ukraine" On establishment of the territorial bodies of the State Migration Service, "Order of the Cabinet Ministers of Ukraine "On Approval of plan of measures on realization of the Concept of the state migration policy" et al.); 2) those rules which governed the registration of residence and stay (Law of Ukraine "On freedom of movement and choice of residence in Ukraine", Cabinet of Ministers of Ukraine "On Approval of samples of documents required for registration of residence in Ukraine" and others. ) 3) those rules which regulated migration (Laws of Ukraine "On refugees and persons in need of additional or temporary protection", "On Legal Status of Foreigners and Stateless Persons", "On Immigration", the Cabinet of Ministers of Ukraine "On Regulation in 'ride Foreigners and Stateless Persons in Ukraine, their exit from Ukraine and transit through its territory, "" On approval of regulations on temporary residence for foreigners and stateless persons who illegally stay in Ukraine "and others.); 4) those rules which settled the question of nationality (Constitution of Ukraine, Laws of Ukraine "On Citizenship of Ukraine", "On the

United State population register and documents certifying the citizenship of Ukraine, of identity or her special status", Resolution of the Verkhovna Rada of Ukraine "On Approval provisions on Ukraine passport, birth certificate and passport of citizen of Ukraine for travel abroad "); 5) those norms which regulates the liability for violation of passport and registration system on illegal immigration (Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine, etc.); 6) those rules which regulated other issues of LCA Ukraine (Cabinet of Ministers of Ukraine of 26 October 2011 r. № 1098 "Some Issues of departments of the Ministry of Interior and the State Migration Service toll service", "On approval of rules of crossing the border by citizens Ukraine "etc.).

The internal regulations include: Order LCA of 5 November 2012 № 263 "On Approval of recommendations on appearance (dress code) of employees of the State Migration Service of Ukraine" Order of the LCA of 6 April 2011 № 28 "On Approval of the Regulations on the main control (management) of the State Migration Service ", etc.).

Of particular note is the Law of Ukraine "On the Unified State Register of demographic and documents that prove citizenship of Ukraine, of identity or her special status" (hereinafter - the Law), which came into force on 6 December 2012 [12]. According to this law in Ukraine began the process of gradual introduction of documents that contain contactless electronic media with biometric data document holder. It should be noted that since April 1, 2011 in 188 countries began the transition to biometric passports.

Preceded the adoption of the abovementioned law veto by the President of Ukraine, and even after the remarks of the President of Ukraine were considered by legislators, the law has been criticized by citizens, public officials and government representatives. Mostly discontent caused by the recent next. First, there is the Law terminological confusion: instead of internal passport paper introduced a plastic card, but it retains the old name - "Passport of Ukraine." Based on international practice, called passport document, issued as a book designed to travel abroad, and the inner plastic ID called "identity card» (ID-card). In many countries there is a single

document - ID-card chip, which included certain biometric data. Ukrainian same as before, will receive two documents: for domestic travel abroad. Secondly, the lack of new passport of citizen of Ukraine data on residence. Since many administrative and social services tied to residence, citizens will have to regularly turn to officials for help residence as a passport, this information is not provided, and administrative services (including obtaining certificates) must pay. Although part of the 9th century. And 21 of the Law provides for the introduction of the passport of citizen of Ukraine an additional variable information stipulated by law, does not reveal the content of such additional information which may lead to bureaucratic hurdles. In our view, it is necessary legislatively to determine what information may be of additional variable information. Thirdly, it is unclear what types of temporary and permanent residence are valid for only one year. This would be justified for a temporary residence permit while a residence permit could have a longer duration. Another highly controversial innovation is laying on the duty of every citizen of Ukraine, regardless of age, get a passport Ukraine. Ukraine passport oformlyuvatymetsya all persons from birth, regardless of age and every 10 years. Firstly, this innovation complicates the registration parents of a newborn child. Secondly, legislators did not understand the argument for the establishment of a 10-year validity passport of citizen of Ukraine. According Zagorodny AF, this innovation would lead to excessive burden on public authorities and unnecessary costs to the citizens of Ukraine, because Ukraine free passport issued only for the first time [13].

It should be noted that the whole world practice proved the expediency of biometric passports, which simplify the system of supervision over observance of rules of passport and registration system contribute to combating illegal migration, but their introduction mechanism should be worked out and to ensure full security of data that it contains.

In accordance with the provisions of the basic tasks LCA Ukraine: 1) making proposals on public policy in the areas of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other certain laws categories of migrants; 2) implementation of

state policy in the areas of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other categories of migrants by the legislation.

In our opinion, Ukraine to LCA tasks should also include the supervision of compliance with legislation in the areas of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other categories of migrants by the legislation. Indeed, among the powers LCA Ukraine has a number of supervisory it. Thus, LCA exercise state control over observance of legislation on migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other certain laws categories of migrants, in cases stipulated by law, is attracting offenders administrative proceedings [10].

Or you can take into account the experience of most European countries in which the supervisory and control functions do not rely on migration services that focus on humanitarian issues and to law enforcement. Thus, in Europe 14 Migration Services is part of the ministries of interior, 6 - to the Ministry of Justice, some - of the ministries responsible for social policy [13]. It should be noted that the DCC Ukraine exercises its authority directly and through migration control police units MIA of Ukraine, which at present do not work properly, because they do not have proper legal regulation. Thus, according to the Decree of the President of Ukraine of 6 April 2011 r. № 405 "Issues of the State Migration Service of Ukraine" in the Ministry of Internal Affairs of Ukraine was established migration control police unit, which is functionally subordinated to the State Migration Service of Ukraine.

It should be noted that the activities of workers LCA Ukraine who perform tasks of state policy in the field of combating illegal (illegal) migration, as well as bringing to administrative responsibility for violation of legislation on registration of persons, issuing identity and Confirming Citizenship requires detailed legal regulation to prevent violations of human rights and freedoms. [16]

In addition, passport and registration system - a collection of unsettled towards the rule of law relations concerning registration and issuance of passports, issues of

citizenship of Ukraine, registration of individuals at their place of residence (stay), organization of migration work, providing conditions for realization individuals sub 'of objective rights, freedoms and interests and supervising the execution of their duties.

The essence of the passport and registration system as an object of supervisory activities is that: first, the duty of supervising the observance of citizens and officials the legislation rules passport and registration system, entry, exit, stay in Ukraine transit through its territory of foreigners and stateless persons assigned to the specified range of subjects of the government; Secondly, in the operation of the system is ensured preservation of passports that can be used to commit offenses be objects or instruments of unlawful acts; thirdly, through passport and registration system is: a) oversee the registration and accounting of individuals in a residence (stay); b) the fight against illegal migration; c) oversee the acquisition (suspension) citizenship of Ukraine; d) supervising compliance foreigners and persons without citizenship of rules of stay in Ukraine, transit through its territory; d) wanted persons who do not pay child support, the defendants and public debtors; Fourth, through passport and registration system provided by the Constitution of Ukraine and other laws and regulations the right of citizens to free movement, the right to be a party to civil and other relations, to engage in the electoral process, etc; Fifthly, the supervision exercised compliance with the rules of passport and registration system is important in the prevention of other, related rules passport and registration system, offenses [15].

**Conclusions.** State Migration Service has a special place among the subjects of supervisory activities in the passport and registration system in Ukraine. Given the fact that Ukraine LCA was established relatively recently, it effectively prevent a number of organizational and legal issues. It is therefore necessary to develop and adopt a law of Ukraine "On the State Migration Service of Ukraine", which define the administrative and legal status LCA Ukraine, its objectives, functions and powers, legal framework, a system of LCA Ukraine, especially their interaction with other bodies authorities, especially the service in the bodies of LCA Ukraine, ensuring the activities, especially the control and supervision of the past and so on.

1. Про утворення Державної міграційної служби України [Електронний ресурс] : Постанова КМУ від 24 червня 2009 р. № 643. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/643-2009-%D0%BF>
2. Деякі питання державного управління у сфері міграції [Електронний ресурс] : Постанова КМУ від 7 липня 2010 р. № 559. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/559-2010-%D0%BF>
3. Питання Державної міграційної служби України [Електронний ресурс] : Указ Президента України від 6 квітня 2011 р. № 405. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/405/2011>
4. Про утворення територіальних органів Державної міграційної служби [Електронний ресурс] : Постанова КМУ від 15 червня 2011 р. № 658. – Режим доступу : <http://zakon1.rada.gov.ua/laws/show/658-2011-%D0%BF>
5. Європейська Конвенція про громадянство від 6 листопада 1997 р. № ETS 166, ратифікована Україною із застереженням та заявою Законом від 20 вересня 2006 р. № 163-V (163-16) [Електронний ресурс]. – Режим доступу: [http://zakon1.rada.gov.ua/laws/show/994\\_004](http://zakon1.rada.gov.ua/laws/show/994_004)
6. Конвенція про статус біженців від 28 липня 1951 р., ратифікована Україною 10 січня 2002 р. [Електронний ресурс]. – Режим доступу: [http://zakon2.rada.gov.ua/laws/show/995\\_011](http://zakon2.rada.gov.ua/laws/show/995_011)
7. Про спрощений порядок зміни громадянства громадянами України, які постійно проживають в Республіці Білорусь, і громадянами Республіки Білорусь, які постійно проживають в Україні [Електронний ресурс] : Угода між Україною та Республікою Білорусь від 12 березня 1999 р., ратифікована 21 жовтня 1999 р.. – Режим доступу: [http://zakon1.rada.gov.ua/laws/show/112\\_510](http://zakon1.rada.gov.ua/laws/show/112_510)
8. Про спрощений порядок зміни громадянства громадянами України, які постійно проживають в Республіці Таджикистан, і громадянами Республіки Таджикистан, які постійно проживають в Україні [Електронний ресурс] : Угода між Україною та Республікою Таджикистан від 6 липня 2001 р., ратифікована 11 липня 2002 р.. – Режим доступу: [http://zakon1.rada.gov.ua/laws/show/762\\_004](http://zakon1.rada.gov.ua/laws/show/762_004)



9. Про спрощений порядок зміни громадянства громадянами України, які постійно проживають у Киргизькій Республіці, та громадянами Киргизької Республіки, які постійно проживають в Україні, і запобігання випадкам без громадянства та подвійного громадянства [Електронний ресурс] : Угода між Україною і Киргизькою Республікою від 28 січня 2003 р., ратифікована 20 листопада 2003 р.. – Режим доступу: [http://zakon1.rada.gov.ua/laws/show/417\\_025](http://zakon1.rada.gov.ua/laws/show/417_025)
10. Питання Державної міграційної служби України [Електронний ресурс] : Указ Президента України від 06 квітня 2011 р. № 405. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/405/2011>
11. Про затвердження рекомендацій щодо зовнішнього вигляду (дрес-коду) працівників Державної міграційної служби України [Електронний ресурс] : наказ ДМС України від 5 листопада 2012 р. № 263. – Режим доступу: <http://dmsu.gov.ua/normatyvna-baza/nakazy-dms-ukrainy/891-nakaz-vid-05-11-2012-n-263-pro-zatverdzhennya-rekomendatsij-shchodo-zovnishnogo-viglyadu-dres-kodu-pratsivnikiv-derzhavnoji-migratsijnoji-sluzhbi-ukrajini>
12. Про Єдиний державний демографічний реєстр та документи, що підтверджують громадянство України, посвідчують особу чи її спеціальний статус [Електронний ресурс] : Закон України від 20 листопада 2012 р. № 5492-VI. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/5492-17/print1333571674562819>
13. Загородній А. Ф. Державна міграційна служба України як суб'єкт наглядової діяльності у сфері адміністративно-реєстраційної системи [Електронний ресурс] / А. Ф. Загородній // Адміністративне право і процес. – 2013. – № 2(4). – Режим доступу: <http://applaw.knu.ua/index.php/arkhiv-nomeriv/2-4-2013>
14. Максименко А. В. Основні напрямки діяльності Державної міграційної служби України / А. В. Максименко // Правова держава. – 2014. – № 18. – С. 41-46.
15. Максименко А. В. Протидія організованим злочинним угрупованням, що спеціалізується на нелегальній міграції / А. В. Максименко, К. М. Рудой //

Оперативно-розшукова діяльність та кримінальний процес: теоретико-практиологічний дискурс щодо їх співвідношення в умовах реформування органів внутрішніх справ України : матеріали міжнар. наук.-практ. конф. – О. : ОДУВС, 2015. – С. 84-85.

16. Рудой К. М. Актуальні проблеми протидії органів внутрішніх справ України нелегальній міграції / К. М. Рудой // Правова держава. – 2014. – № 18. – С. 47-51.