

Does Ukraine Have a Policy on Emigration? Transcending the State-Centered Approach

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This article examines the current state of Ukraine's policy towards emigration. The authors seek to transcend the state-oriented approach, highlighting the role that diaspora and non-governmental organisations played in accelerating the process of policy formulation in this area. Explanations are provided for the Ukrainian state's failure to actively implement a consistent policy on emigration. A historical overview of the legal and institutional developments shows that the issue did not have much priority during the first two decades of the country's independence. It emerges that external pressure from the EU and non-state actors was needed to elaborate a set of guarantees for Ukrainian emigrants. Since 2011 a series of legislative initiatives have been launched, whose effectiveness is in doubt as long as the country does not overcome the larger challenges of territorial integrity and financial stability. The authors argue that for the Ukrainian policy towards emigration to be effective, opportunities need to be created for the permanent consultation and involvement of diaspora and non-governmental organisations.

Keywords: Ukraine, diaspora, emigration policy, Europeanisation

Introduction

The continuing emigration of Ukrainians is an issue that needs to be dealt with by the Ukrainian government. Fuelled by several waves of emigration over the past 150 years, a large Ukrainian diaspora can be found in the United States, Canada, Western Europe, Russia, and other post-Soviet states. The emigration has accelerated since the dissolution of the Soviet Union. According to official statistics, around 2.5 million Ukrainian citizens left the country in the years 1991-2004, mostly permanently (National Statistical Service of Ukraine). According to the most conservative estimates, the current stock of Ukrainian labour migrants abroad totals around 2 million people (Jaroszewicz, Strielkowski, Duchac 2014).

Numerous academic studies and empirical data show that the sending countries have very limited instruments to influence the position of their citizens abroad. However, some opportunities for elaborating an effective emigration policy appear if the neopluralist approach is adopted, which considers not only the activities of the government but also investigates the influence of different non-governmental interest groups including diaspora communities. Besides instruments aiming to stimulate the inflow of remittances or return

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migration, other innovative approaches to emigration include: the institutionalisation of the relationship between the state and diaspora communities and extending some economic and political rights to the emigrants.

This article examines the emigration policy of Ukraine, broadly understood. This includes the policies as pursued by the state government as well as by different interest groups, including diaspora, non-governmental and religious organisations. The article states that while Ukraine has not yet fully formulated its policy on emigration, it has developed some instruments (e.g. the status of ‘foreign Ukrainians,’ a national programme to safeguard the rights of Ukrainian citizens abroad, and consultative centres where migrants may receive advice). The current absence of a comprehensive emigration policy can be attributed to: the early stage of developing migration policy as such, a long-standing institutional crisis in the country, a lack of interest for migration issues among the political elites, the ideological and political differences between the ruling elite on the one hand and representatives of Ukrainian diaspora and new emigration on the other, as well as financial constraints. However, civil society may manage to persuade the national authorities to speed up the process of formulating a state policy on emigration. A recent discussion in Ukraine on a draft law regarding external labour migration was in fact initiated by non-state actors.

The paper reviews the Ukrainian emigration policy from several angles. Firstly, it considers the theoretical foundations of policies with regard to own nationals abroad and examines two case studies (Poland, Mexico) of countries with high emigration dynamics and different emigration policies, which Ukraine could draw on. Secondly, the evolution of Ukraine’s emigration is examined against the background of the country’s overall migration policy, with a particular focus on the Europeanisation and modernisation of laws and institutions. Then, the article reviews relevant policy documents and presents the main actors and their positions and interests. Finally, conclusions are drawn as to the further development of Ukrainian emigration policy.

It is too early to tell how the recent political crisis in Ukraine, which ushered in a change of government in the wake of mass social protests and saw the Russian military intervention in Crimea, will affect the country’s migration policy and the policy on emigration in particular. However, we may safely assume that these events will further compound the ethnic and political challenges facing the Ukrainian state (i.e., the rise of inter-ethnic alienation, new attitudes towards the diaspora and emigrants, the relationship with Russia and the impact of Russia’s policy towards Ukrainian citizens on Ukrainian territorial integrity and its emigration policy). If the current political crisis continues and the new government fails to overcome the economic problems, then the Ukrainian policy-makers may find themselves facing a new surge in emigration, alongside the complex issues of maintaining working relations with the Russian Federation, seeking to protect the Ukrainian citizens in Russia and Russian citizens in Ukraine, and preserving national unity inside the country. This research also attempts to analyse possible consequences of the ongoing political crisis in Ukraine for the country’s migration policy.

Review of emigration policies

Definitions and theoretical background

An emigration policy is a set of principles and actions that a sending country applies to its citizens who emigrate to another country. Unlike immigration policy, in case of emigration policy the migrants are out of reach of the sending state’s jurisdiction, which significantly reduces the state’s ability to influence the emigrants’ behaviour. In theory, for a state the most efficient method to conduct emigration policy is to apply exit controls of its own citizens and to decide which categories of citizens may leave the country and which may not. Obviously such an emigration policy would violate the internationally accepted human right to

leave one's own country. Most Western European states abolished restrictions on emigration in the nineteenth century, hand in hand with the development of capitalism and liberalism (Zolberg 1999). However, a ban on emigration served as one of the means to prop up the Soviet regime in the twentieth century (Light 2012), and some authoritarian states like Turkmenistan and Belarus still applied the practice of limiting emigration as recently as several years ago. In fact, some restrictions on leaving the country (for instance for debtors) are still used to control political dissidents there (Jaroszewicz, Szerepka 2007).

Nowadays states rely on much more sophisticated instruments of emigration policy. They include, *inter alia*: maintaining contacts with emigrants abroad through consulates and cultural and educational institutions; devising a system of social benefits for emigrants; enabling emigrants to actively influence the social and political situation in a sending country; implementing a policy aimed at stimulating return migration and supporting the reintegration of returned citizens. The traditional, but particularly important role for developing states, is the sending state's role in protecting its citizens' rights abroad, including fundamental human rights but also rights related to labour market and social policy. This aim can be achieved through comprehensive consular and diplomatic protection, but also by entering into bilateral agreements on labour migration and social protection between sending and receiving states. However, a sending state must be very careful in defining how it understands the protection of its citizens' rights abroad, so as not to interfere with the right of the receiving country to protect and maintain the equality of all the population groups within its borders.

There is currently much attention for the development and migration nexus, e.g., how the state may influence that remittances sent by emigrants are spent in the most effective way with a view to sustaining the development of local communities; how to promote an effective utilisation of skills and new ideas brought by migrant returnees; and how to link emigrants' economic activities abroad with the development of the sending state (Cariño 1987; de Haas 2007). Moreover, one should also mention the state's policy on diaspora, by which we mean a sending state's policy regarding a group originating from that state and/or in the long run oriented towards the 'homeland' in different ways (Gamlen 2008; Vertovec 2005). In general, researchers agree that essential features of diaspora are: dispersion to two or more locations, an unceasing orientation on the 'homeland', and maintaining a group identity over the course of time (Brubaker 2005; Butler 2001). A diaspora may also be at different stages of formation. It can include temporary immigrants who retain the citizenship of a country of origin and plan to return there, as well as distant descendants of immigrants who may actually have never visited their 'homeland'.

High emigration dynamics in a particular state does not automatically entail the need to pursue an active emigration policy. Particularly at the beginning of an emigration wave, sending countries may perceive population departures as beneficial and decide not to react since emigration means getting rid of demographic surplus, easing unemployment and social tensions in the labour market, and it creates an inflow of remittances to boost the national economy (Lesińska 2010; de Haas 2007). However, at some point of continuous emigration, it becomes necessary to establish efficient channels enabling migrants to transfer remittances and to put in place conditions for labour migrants' regularisation in the destination states. It is either the government itself, an interest group (employees, NGOs, etc.), migrant communities or the public opinion that pushes the state authorities to formulate a policy response to those challenges. Finally, when labour emigration becomes unprofitable from a demographic point of view and becomes an important topic in political debate, a state usually starts to pursue an active policy towards returning migrants.

In our research we aim to omit a realistic state-oriented approach towards emigration policy. The state-oriented perspective presumes that a state is the main actor in international relations and that it competes with other states for power and influence to achieve its *national interests*, also in relation to human capital including migrants (Fitzgerald 2005). Applying only the realist approach would not be appropriate to inves-

tigating contemporary emigration policies in which the sending state has very limited possibilities to actually influence emigration. To be able to study emigration policy more broadly requires a neo-liberal, pluralist approach. A pluralist approach assumes that non-state actors, including local authorities, emigrant organisations, churches, international organisations and even local communities may influence and develop emigration policy. They can do so both by affecting state policy and at times also directly, as when local authorities seek to create efficient incentives for returnees (de Haas 2010). Moreover, a sending country's emigration policy may actually be significantly influenced by the immigration policy of a destination state as it either seeks to stimulate or prevent immigration. It is also important whether a destination state tolerates irregular migration or attempts to receive only documented migrants, as well as whether it opts for temporary or settlement migration. The decision-making process in emigration policy that comprises so many actors may be complicated and contradictory, so that in the final stage it may result in policy outcomes that are different from those that were planned at the beginning.

This study is furthermore based on the findings of the so-called transnationalism, which investigates the movement of people across different state borders through the prism of groups of immigrants (Vertovec 2005). Transnationalism has been defined as the *process by which immigrants build social fields that link together their country of origin and country of settlement* (Basch, Glick Schiller, Szanton Blanc 1994). These social ties may concern not only people but also institutions that can influence the policy of both the sending and receiving states. In the current era of globalism and transnationalism there are large groups of people whose everyday life depends on international connections and the policies of different states. An inevitable aspect of transnationalism, and a consequence of emigration policy, is the issue of multiple citizenship. In the past, a plural nationality was perceived as an irritant in international relations which complicated the issue of citizens' loyalty and diplomatic protection (Aleinikoff 2002). However, in the last twenty years states have shown a greater willingness to tolerate multiple nationalities, recognising that a person may maintain links to more than one state and can benefit the development of those states.

Examples of emigration policy

In the following sub-section we discuss two examples of emigration policy of states representing different geographical locations but with a high relevance for Ukraine as a state which faces the dilemma of whether to build a genuine emigration policy. Firstly, we discuss the emigration policy of Poland, as a country that not only neighbours Ukraine but is similar to Ukraine in that it has been characterised by a high level of emigration throughout most of its history. Secondly, the geographically distant case of Mexico is presented. Ukraine is surrounded by two poles of attraction to migrants (the EU and Russia), and lacking adequate capacity to effectively stimulate return migration it might be able to build on the experience of Mexico, which for centuries has lived in an asymmetric relation with the United States and at the same time is the main 'supplier' of work force to the US.

Poland, a country with a long emigration tradition and now facing a depopulation challenge, has focused its emigration policy on two aspects: repatriation based on an ethnic criterion and policy towards return migration. Poland's repatriation schemes directed towards persons of Polish origin (mostly in non-European parts of post-Soviet area) have been state-organised and state-financed, but due to financial constraints have never achieved significant volumes. The Polish policy towards return migration has become an issue of particular concern taking into consideration the massive outflow of Poles that took place after 2004 when Poland entered the European Union (EU) (Fihel 2011). However, it is also more difficult to assess the efficiency of Polish emigration policy since the government in Warsaw has decided to apply a reactive rather than an active policy on return, i.e. not stimulating return migration but creating a general framework for

migrants' return and integration, if it happens (Szczepański 2012 Lesińska 2013). We may assume that the rationale behind that decision was that the income gap between Poland and the main destination countries for Polish emigrants was so significant that even the best tailored emigration policy would not induce migrants to return. Therefore Poland has addressed return migration in several ways: by providing migrants with an easier access to Polish consulates; by introducing special tax regulations to avoid double taxation conflicts for returning migrants; by arranging special services for those who wish to return; by conducting information campaigns on job opportunities in Poland; by recognising diplomas and qualifications acquired abroad; and by facilitating the school integration of returned pupils and others. At the regional and local levels, a few local governments have launched information campaigns encouraging return migration (Szczepański 2012).

Mexico may be considered the country with the longest emigration policy in modern history. Over the last century the overwhelming majority of Mexican emigrants have headed towards the United States, creating a so-called asymmetric interdependence in the relationship between the two countries (Keohane, Nye 1977) that favours the United States. Under these unfavourable conditions, Mexico had been pursuing an active, even if ineffective, policy on emigration, stimulating some social groups to leave and attempting to keep other groups inside (Fitzgerald 2005). Over time, the emigration policy of Mexico became more liberal with the central government staying 'neutral' towards emigration and focusing on the inflow of remittances, while local governments became actively involved in the organisation of emigration schemes to the United States. However, in the last two decades the Mexican authorities have attempted to implement a more sophisticated and multidimensional emigration policy. This change has included: attempting to actively influence US immigration policy by encouraging Washington to put an end to the undocumented labour of Mexican workers; the creation of a special police force to improve human rights conditions along the US border; the expansion of a consular presence in the US; and attempts to shape the American public opinion (Gonzalez 2001; Rosenblum 2004). These changes were to a great extent stimulated by both Mexican civil society and its diaspora in the United States (Delano 2012).

Ukrainian state policy on emigration

Despite high emigration dynamics in the last twenty years, Ukraine has neither formulated nor implemented an active policy on emigration. Several reasons may explain this. First of all, in the first years of independence Ukrainian state institutions as well as non-state actors were too feeble to propose any policy solutions in response to spontaneous mass migration, particularly at such a sophisticated level as a policy directed towards non-present co-citizens. Secondly, at that time Ukrainian society had only just regained the right to move freely outside the country and had eagerly begun to make use of that privilege (Jaroszewicz, Szerepka 2007). Thus, any attempt to enforce emigration policy could have triggered adverse effects.

However, even after the political and economic situation in the country stabilised, and unlike neighbouring Moldova, Ukraine failed to design a long-term migration policy. Due to an institutional weakness, internal conflicts within the political class and the little interest that had been paid to migration issues, Ukrainian migration policy has remained in a stalemate for the last seven to ten years (with short interruptions when political conditions enabled some developments). Thus, the Ukrainian state's migration policy has remained limited to some basic priorities, among others: the protection of asylum seekers and other persons in need of international protection to meet Ukraine's international obligations, and the fight against irregular migration as a result of the EU pressure and Ukrainian security concerns (Malynovska 2010).

National instruments

The following section illustrates the long and uneven impact of civil society organisations and international pressure that resulted in the creation of a basic but rudimentary framework to regulate emigration. Among the achievements, we may note the evolving scope for state involvement in establishing safe conditions for migrants' labour and social security and the increasing awareness among the decision-makers that the state needs to adequately respond to the emigration phenomenon. Among the most significant failures are the disbanding of the State Migration Service and the failure to adopt the Act on External Labour Migration. Unfortunately, the most serious crisis to face the Ukrainian state since independence, which has been ongoing since May 2014, does not offer grounds for hope that these issues are going to be addressed any time soon.

Even prior to the official declaration of independence, Ukraine affirmed the right of its nationals to take up employment while staying abroad, which represented a break with the Soviet Union's tight exit controls. Article 10 of the Act on Employment of 1 March 1991 provided for *the right to pursue occupational activities when temporarily staying abroad* as long as the employment did not contravene the laws of Ukraine or of the destination country. Article 11 stipulated that the *interests of citizens of Ukraine temporarily employed abroad shall be protected* by bilateral agreements with the destination countries (Act on Employment 1991).

However, over the next few years the Ukrainian state did not attempt to address any problem facing its citizens residing abroad. Rudimentary objectives of Ukrainian emigration policy were elaborated only in the presidential decree, *On Main Directions of the Social Policy for 1997-2000*, of 18 October 1997 (Decree of the President of Ukraine 1997). This document addressed two aspects of emigration policy: the return of nationals deported during the Soviet period and the repatriation of ethnic Ukrainians. However, the issue of labour emigration was not considered.

The first decade of the 21st century brought about a flurry of legislative acts in the area of immigration and asylum; a process that was brought about by Ukraine's protracted and complicated process of aligning its legislation with European and international standards. This also reflected the change in the character of migratory flows: while in the 1990s emigration was the dominant phenomenon, the following decade witnessed an increasing popularity of Ukraine as a transit destination for migrants from post-Soviet area, Asia and Africa bound for the EU. At the same time, the continued emigration of Ukrainians and the emergence of sizeable diaspora groups in several European states started to become an issue in the public debate. The need to regulate labour emigration received more attention in the subsequent strategic document, the presidential decree *Main Directions of Social Policy until 2004*, issued on 24 May 2000. This document reiterated the state's obligation to protect the *social and economic interests* of Ukrainian workers while acknowledging the need to counter the brain drain and *preserve the labour and intellectual potential* of the country. For the first time, an official document recognised the urgency of establishing *legal and socioeconomic grounds* for regulating labour emigration (International Labour Organisation 2012: 12).

The objectives outlined in the 2000 presidential decree remained unfulfilled for the first few years as the issue of Ukrainian external migration continued to have a relatively low priority. The impetus for legislative action was the 2003 publication of a comprehensive report on the observance of rights of Ukrainian citizens abroad by the Parliamentary Commissioner for Human Rights (Ombudsman), Nina Karpachova. The report was followed by parliamentary hearings on the position of Ukrainian migrants, held in October 2004. Members of Parliament acknowledged the need to facilitate return migration and to create more favourable conditions for the investment of remittances in Ukraine. In effect, the Parliament turned to the government with a request to undertake a number of steps to improve the level of protection of Ukrainian migrants' rights. In November 2004, the Cabinet of Ministers adopted the Programme on the Provision of Rights and Interests of

Citizens Going Abroad for Employment and Children Adopted by Foreigners. The document addressed several of the Ombudsman's recommendations, declaring as priorities, *inter alia*, the conclusion of bilateral and multilateral agreements on labour migration, introducing legal provisions to control intermediary agencies, and taking measures in the fight against human trafficking.

Some of the declared actions were made more specific in a sectoral strategy, responding to the looming problem of population decline. In 2006, the Ukrainian government adopted the *Strategy of Demographic Development until 2015*, implemented by Resolution N 382-p of 6 June 2007. With regard to external migration, the Strategy concluded that the scope of irregular migration could be reduced if incentives were created for legal employment both at home and abroad. The proposed measures included a stepping up of cooperation with the destination countries through the ratification of bilateral agreements on social security and labour migration as well as on work placement, arrangements for the recognition of certificates and qualifications, and seeking opportunities for larger national quotas for qualified Ukrainian workers. In parallel, the Strategy encouraged return migration through a combination of indirect and direct measures. Indirectly, return migrants would be drawn to Ukraine by the improved opportunities for setting up small businesses, the availability of new jobs, and incentives for internal migration. Direct assistance would consist of establishing a national database of job vacancies and a lowering of fees for the transfer of migrants' remittances. Moreover, the government envisioned designing and implementing programmes for the reintegration of returning labour migrants into the Ukrainian labour market and society, jointly with international organisations (International Labour Organisation 2012: 13). However, these measures did not come into effect as no budget funds were allocated (Bogdan 2010: 22).

Already for many years, experts had signalled the problem of the absence of an overall migration policy concept that could define objectives of state activities, allocate responsibilities for dealing with the issue, and provide the basis for mid- and long-term planning (Chumak, Kazmierkiewicz 2009; Malynovska 2010). This position was affirmed by the decision of the National Security and Defence Council of 15 June 2007, which concluded that the national migration policy lacked a conceptual foundation and that its objectives, tasks and principles needed to be made explicit. As a consequence of this decision, a comprehensive Concept of State Migration Policy was to be worked out by the government. The first attempt was undertaken only in 2009 by a group of members of the Ukrainian Parliament. The document was kept at a general level and merely reiterated some of the declarations made earlier. With regard to external migration, it called on the government to develop programmes to facilitate the return of Ukrainian migrants and to create conditions conducive for the reduction of emigration and return of migrants. The proposal was deemed insufficiently elaborated, and was not considered by the Parliament (Malynovska 2010; Bogdan 2010).

The incentive to work out a document that would define the strategic objectives and allocate resources and responsibilities among competent government agencies was the dialogue with the European Union. In fulfilment of the obligations related to the dialogue on visa liberalisation, the President signed the Concept of State Migration Policy of Ukraine on 30 May 2011. Responding to the EU's preoccupation with controlling irregular movement through Ukraine, the document focused on the area of immigration, border control and asylum, giving relatively little consideration to the reintegration and return of Ukrainian migrants. Among the Concept's objectives in the area of emigration were *the creation of conditions for the reduction of emigration, return and reintegration of labour migrants, repatriation of Ukrainians and other people born in Ukraine* as well as *the strengthening of social and legal protection of Ukrainian citizens who stay and work abroad* (Coupe Vakhitova 2013: 63).

To fulfil the commitments laid down in the migration policy concept and to meet the terms of the first phase of visa liberalisation, in 2011-2013 work proceeded on a number of legislative acts in the field of migration management. The legislative and institutional changes to be adopted were enumerated in the *Opera-*

tional Plan of Action for the Regulation of Migration Processes in Ukraine in 2011-2012 Years, issued as a government decree on 11 March 2011. With regard to the regulation of emigration of Ukrainians, the Plan mandated the following steps: amendment of the Act on Elections to make voting in Ukrainian elections possible abroad, simplification of consular registration, developing the strategy for the reintegration of returning Ukrainian migrants until 2015. In terms of institutional changes, the capacity of Ukrainian diplomatic establishments in key destinations of Ukrainian labour migrants was to be increased with dedicated labour and social security personnel.

Parallel with legislative reforms, institutional changes were introduced in 2010. They achieved varying degrees of success. The State Migration Service, established as a coordinating body for migration policy in 2009, initially remained ineffective due to unallocated budget and staff and was disbanded in 2010 with its responsibilities transferred to the Ministry of Social Policy, only to be re-established again in 2011. The renewed Service has been functioning successfully to date, performing all key functions in the area of migration policy implementation with the exception of regulating labour migration, which was the mandate of the Ministry of Social Policy. This function was in turn allocated to the State Employment Service in 2013 in accordance with the amended Act on Employment of Population.

On the other hand, the establishment of an advisory body with the power to initiate and implement state policy on the social protection of migrant workers has not met expectations. The Council for Labour Migration was established by a government decision of 12 October 2011 and its meetings were to bring together the key actors in migration management: the central government ministries, the Parliament, the Ombudsman, organisations of employers and migrant workers as well as trade unions. In line with the commitments undertaken as part of the visa liberalisation process, the Council was to be enlarged by including representatives of associations of Ukrainians abroad. However, its importance should not be overestimated as it has convened just three times so far.

The need for concerted efforts by the state and non-state actors to elaborate a framework for assistance to Ukrainians residing abroad was recognised during parliamentary hearings, conducted in November 2013. The Ministries of Social Policy and of Revenue and Duties were joined by representatives of diaspora organisations, deputies and experts at the event titled *Ukrainian Labour Migration: Its State, Problems and Way to Solve Them*. The occasion for the hearings was the submission of the draft Act on External Labour Migration, which in Article 5 defines the primary mechanisms of Ukrainian policy towards citizens undertaking temporary employment and their family members. Some declarations reaffirm earlier commitments, such as the creation of favourable conditions for voluntary return, social reintegration and the transfer of remittances, as well as for creating job opportunities on the domestic labour market. Attention is also paid to the necessity to improve the system of collecting and processing statistical information on migratory flows and to step up efforts devoted to researching the phenomenon. Another set of instruments (Article 7) covers international cooperation, involving foreign state and non-state actors in regulating migration and providing social protection to migrants, in particular envisaging the conclusion of agreements on the transferability of pension rights, avoidance of double taxation, and realisation of other migrants' rights (e.g. education).

A novelty of the draft law is that it represents the first comprehensive attempt at enumerating and defining Ukrainian labour migrants' rights, proposing that the Ukrainian state guarantee them. This way the Ukrainian authorities would undertake legally enforceable obligations with respect to their citizens abroad. An entire chapter, titled *Rights and Social Guarantees*, is devoted to state guarantees with respect to social security, family reunification, education and recognition of qualifications and protection of property. While the law does not offer additional protection, referring merely to the current constitutional and statutory norms, the explicit assertion that such legal guarantees extend to Ukrainian citizens residing abroad would be an im-

portant cornerstone of a state policy towards its external migrants. However, for these guarantees to be truly effective will require enforcement mechanisms as well as stable funding for the responsible institutions.

Of even greater importance are several substantial commitments, which would meet some long-standing pleas of diaspora organisations as well as Ukrainian civil society organisations (notably, the charity organisation Caritas which is actively involved in migrants' assistance). Firstly, Ukrainians abroad would be entitled to take part in national elections and referendums on equal terms with citizens residing in Ukraine (Article 11). Secondly, associations of labour migrants, established abroad, could operate in Ukraine and cooperate with state institutions and non-governmental and international organisations (Article 17). Thirdly, responsible state organs would be obliged by law to provide information to returning migrants on exercising their rights under national legislation and international agreements, as well as to recognise and certify their educational qualifications and professional experience (Article 20). Apart from these procedural guarantees, the Ukrainian state would offer certain financial benefits. Under Article 22, migrants' personal property as well as certain items brought back from abroad would be exempt from customs duties. Ukrainian consulates would guarantee labour migrants and their families emergency support, while returning migrants who find themselves in *difficult life circumstances* would be entitled to social assistance, either from the state or from non-governmental organisations (Articles 16 and 15).

The draft law is certainly the most comprehensive and ambitious attempt to regulate the issue of state assistance to Ukrainian migrants abroad. However, as with earlier initiatives, it has not been effective and in fact the work on the law has ceased. The primary reasons for this are a disastrous public finance situation, which does not permit any additional state obligations, and the internal instability of the state, as well as uncertain prospects for international relations of the country.

International instruments

In light of the fact that the sending state has limited means of ensuring adequate protection of its citizens abroad, the application of international instruments, whether multilateral (conventions) or bilateral (agreements with host countries), takes on particular importance. This section provides an overview of agreements that Ukraine has concluded since independence to protect its migrants abroad.

In the 1990s a series of bilateral and multilateral agreements were concluded to deal with the breakup of the Soviet Union. The Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers, concluded by the member states of the Commonwealth of Independent States (CIS, which includes Ukraine) on 15 April 1994, bound the parties to recognise the educational and professional qualifications of CIS migrants, to enable the transfer of remittances and avoid double taxation. Moreover, it introduced the general principle under which migrant workers would receive social security (including accident and sickness insurance) in line with the legislation of the host country. This principle was reiterated in the bilateral social security agreements that Ukraine inherited from the Soviet period (with Hungary, Mongolia and Romania) and those it signed in the first years since independence (with Azerbaijan, Belarus, Georgia, Kazakhstan and Moldova). Simultaneously, Ukraine signed bilateral labour migration agreements with the main host and home countries of migrants within the CIS area: Armenia, Belarus, Moldova and the Russian Federation. The agreements adopted the principle of the responsibility of the country of migrant's residence with regard to the coverage of accidents and occupational sickness and provided for the automatic recognition of educational and professional certificates (International Labour Organisation 2012: 24).

As Ukrainian migrants increasingly explored new destinations – Central and Southern Europe – the need arose to regulate Ukrainian migrant workers' labour and social security rights there. The first bilateral agreements to be concluded with the Czech Republic, Latvia, Lithuania, Poland and Slovakia were quite

general and complex in application, but they did facilitate employment arrangements (quotas in the Czech Republic and seasonal employment in Poland). A case in point is the 1994 Polish-Ukrainian agreement on employment, which was never actually implemented in practice (Frelak, Kaźmierkiewicz 2005).

The second generation of bilateral agreements on labour migration and social security became a more effective labour migration regulation instrument. The primary incentives for their conclusion derived from Ukraine's international commitments. The initial framework was laid down in the Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States, concluded in November 1994, which created a legal basis for the conclusion of social security agreements covering Ukrainian nationals legally employed in the EU. Furthermore, upon ratification on 16 March 2007 of the European Convention on the Legal Status of Migrant Workers of 1977, Ukraine undertook the obligation of providing social security on equal terms for migrants and their family members and for local workers at home (International Labour Organisation 2012: 25). According to the Operational Plan of Action for the regulation of migration processes in Ukraine in 2011-2012, the conclusion of bilateral agreements on seasonal employment, social protection and pension security is a top priority for fulfilling the obligations under visa liberalisation processes with the EU.

According to an ILO study, while labour migration agreements concluded with Portugal (2003) and Spain (2009) *do not effectively regulate labour migration or guarantee the rights of migrant workers* as they merely represent a declaration of the partners' intention to develop cooperation in the field of employment, social security agreements prove much more effective (*ibidem*). Such agreements were concluded first and foremost with the new EU Member States: Bulgaria, Estonia, Latvia, Lithuania, Poland, Slovakia and the Czech Republic, but also significant are the respective agreements concluded with destinations in Southern Europe: Spain and Portugal and of negotiations with Germany.

Social security agreements provide for reciprocity of benefits, ensuring that the parties to the agreements make them equally accessible to migrants. Under the agreements, labour migrants are to be accorded the same rights and obligations as the host country's nationals, and benefits acquired in one country may be transferred to another. The most tangible benefit to migrants is the working mechanism of transfer of pensions: in 2011, the volume of pensions transferred to Ukraine from abroad stood at USD 2.3 million and EUR 342,000 while Ukrainian pensioners residing abroad received USD 1.3 million and EUR 971,800 (International Organisation for Migration 2012: 26). This mechanism is of particular significance given the ineffectiveness of the Ukrainian pension system in which delays in payment are not uncommon, and the provision in the Ukrainian pension legislation (acknowledged as unconstitutional but long in force) that terminates the payment of pension to Ukrainians permanently departing from the country. Bilateral agreements with the countries of residence have been important instruments in addressing these domestic problems, and in the assessment of Ukrainian experts they *encourage legal employment and provide incentives for migrant workers to return to Ukraine* (International Labour Organisation 2012: 27).

On balance, the conclusion of these agreements can be termed a success on the part of Ukraine's emigration policy, considering the unwillingness of many destination states for Ukrainian labour migrants to conclude such accords. As a rule, the transfer of social benefits is more costly for them than for Ukraine as social allowances in Ukraine remain at a rather low level. Thus, the transfer of social benefits from Ukraine to an EU member state has more symbolic than financial significance, enabling migrants to feel that their long-term working experience has been respected.

Policy on diaspora

The desperate economic situation in which Ukraine finds itself in early 2014 underscores the vital role that the diaspora could play in the reconstruction of the country. According to World Bank estimates, Ukrainians abroad transferred home USD 9.3 billion in 2013 alone, second to none in Europe (World Bank 2013). Remittances aside, the potential of the diaspora for closer engagement with the Ukrainian authorities was largely wasted as Victor Yanukovich's government was at odds with the most powerful Ukrainian communities of North America and Western Europe, which strongly sided with the Orange Revolution (Schreiber 2010). Although opportunities to engage diaspora representatives in elaborating the country's migration policy were gradually extended during the last years of the Yanukovich term, fundamental differences on strategic issues hampered progress in this area. The political upheaval of January 2014 could mark a new phase in the relations between the diaspora and the Ukrainian authorities, but it is too early to draw any firm conclusions yet.

The basic act regulating the relations between Ukraine and its diaspora is the Act on Legal Status of Ukrainians Abroad, adopted on 4 March 2004. The Law introduces in Article 1 the status of a 'Ukrainian abroad', granted to citizens of other states or stateless persons who are of Ukrainian ethnic origin, come from Ukraine or identify themselves as Ukrainians. Written certificates confirming the status are issued, authorising the holders to receive a multiple-entry visa to enter Ukraine, valid for five years and free of charge. Upon entry, they enjoy equal rights and responsibilities as Ukrainian citizens *unless otherwise provided in the Constitutions, laws of Ukraine, or international treaties of Ukraine* (Article 9 of the Law). Significantly, holders of the certificate may immigrate to Ukraine as a priority group without regard for immigration quotas, established every year by the government. The validity of the certificate, set in the Law at ten years, was extended, making it permanent, by the decision of the President of Ukraine of 3 March 2012. The amended law establishes annual quotas for the admission of Ukrainians abroad to state-funded schools of higher learning, and affirms the right to employment on equal terms with the citizens of Ukraine. Notwithstanding the benefits of the scheme, its appeal has been very limited. By 2012 only a little over 4 000 persons had received the status (Tolstokarova 2012: 9).

In October 2009 the Parliament of Ukraine organised for the first time in its modern history a series of hearings, dedicated to the issue of the Ukrainians living abroad, under the title *Foreign Ukrainians: Current Situations and Perspectives for Cooperation*. This event provided an opportunity to discuss the current situation of the Ukrainian diaspora, including the problems encountered as well as how Ukrainians abroad could be involved more in Ukrainian matters. A representative of the Ukrainian Canadian Congress remarked on this occasion that the hearing represented *the first step on the way to providing a legislative guarantee of relations between Ukraine and the Diaspora* (Ukrainian Canadian Congress 2009). Consequently, this major diaspora organisation submitted to the Parliament several recommendations aimed at developing the cooperation between Ukrainians abroad and their homeland, including: 1) to set up a permanent system of cooperation with diaspora leaders through regional offices of the Ukrainian World Congress (UWC) abroad and through a delegation of UWC representatives to the Ukrainian Parliament, government and other relevant state institutions; 2) to adopt *effective legislation concerning Ukrainians abroad and broadening of their economic, social and political rights in Ukraine* as well as the passing of an Act on the Legal Status of Migrant Workers and Members of their Families and Ways to Protect their Rights and Freedoms; 3) to launch state-funded programmes for the *development and support of Ukrainian studies, schools in the diaspora, scientific and research centres* and to develop *programmes popularising world-wide Ukrainian cultural, historical and spiritual heritage, contemporary achievements (...)* with the purpose of improving the image of Ukraine in the world (*ibidem*).

The postulates of the Ukrainian World Congress were yet not taken into account by Ukrainian governments as of March 2014. However, some were incorporated in the already mentioned draft Act on External Labour Migration. Moreover, Ukrainian authorities created councils of organisations of Ukrainians abroad in around 30 Ukrainian foreign diplomatic missions (Tolstokarova 2012). A few reasons can be given for the state's failure to involve the diaspora in Ukraine's political, economic and social life. First of all, as said, the Ukrainian diaspora (or at least its most active part) has consistently advanced the issue of the national recovery of Ukraine, promoting the use of the Ukrainian language and opposing closer political and cultural ties with Russia (Konik 2010). Secondly, the Ukrainian government lacks sufficient financial resources to pursue an active long-term policy towards the diaspora. Thirdly, the weak Ukrainian state is not yet institutionally capable of proposing practical measures towards actively involving members of the diaspora in the political and social life of the country. This applies all the more so, given the risk that such an engagement may fuel opposition to the main directions of its foreign policy. The most recent case of Russia's *de facto* annexation of the Ukrainian region of Crimea, ostensibly to protect the rights of the Russian-speaking population, serves as a warning here.

Finally, it should be remembered that the Ukrainian diaspora resides not only in Central and Western European states and North America, but also in the post-Soviet space, mainly in Russia where the last Soviet census of 1989 counted 4.3 million inhabitants of Ukrainian origin. According to most conservative estimates, around 2 million of Ukraine's citizens left permanently for Russia after the Soviet Union's collapse. However, the Union of Ukrainians in Russia that was established in 1993 was practically terminated by the Russian authorities in 2012 with very weak opposition from the Ukrainian state (Kluczkowska 2012). There are no Ukrainian schools financed by the Ukrainian government in Russia. In such conditions Ukrainians residing there tend to assimilate quickly.

Another missed opportunity is the regulation of dual citizenship. Multiple citizenship has been allowed by many states that are characterised by high emigration, as an incentive for the emigrants residing abroad to contribute to the homeland's economic and social development. Such a legal institution was introduced by neighbouring Moldova in 2007. However, there had been lively debates within the Ukrainian political class and expert circles on the rationality of providing such an opportunity to Ukrainian emigrants, and it was never approved. At the same time, Ukraine in practice tolerated dual citizenship. This is likely to change with the exacerbation of the political crisis due to the Russian intervention in Crimea as a draft law prohibiting and penalising dual citizenship was registered in the Ukrainian Parliament in February 2014.

Ukraine's emigration policy and non-state actors

Ukrainian emigration policy in practical terms fits well with the pluralist neo-liberal perspective as presented in the first section of this article. Apart from international obligations and a certain Europeanisation that gave an impetus to the development of Ukrainian emigration policy, the other indispensable factor favouring reform was the activity of civil society organisations, the Greek Catholic Church and migrants' communities, which have all been calling for a more proactive emigration policy.

Over the past twenty years of Ukraine's existence as an independent state, Kiev has failed to overcome the immobility of its state apparatus and the weakness of public institutions. Several reasons can be advanced, such as the post-Soviet legacy with its focus on informal politics, patronage and corruption; the permanent political conflict within the Ukrainian state; the poor quality of the ruling elites (Kuzio 2012; Ryabchuk 2012). Weak elites and the absence of national unity have made the adoption of any ambitious law (like an Act on Labour Migrants) that would comprehensively alter a state system almost impossible. In 2005-2010, the political deadlock after the Orange Revolution caused by the unprecedented conflict between

President Victor Yushchenko and Prime Minister Yulia Tymoshenko resulted in a freeze on any migration policy development, even though emigration was a high level priority for both Yushchenko and Tymoshenko voters. In 2010, after Victor Yanukovich regained power, an active emigration policy started to be perceived by the governing elite as a necessary but risky instrument, given the prevailing anti-Yanukovich sentiments in the Ukrainian diaspora abroad as well as among Ukrainian labour migrants as such (Tolstokarova 2012).

Moreover, one should take into account the deep regional divisions between Western and Eastern Ukraine, with the more developed national identity and pro-European orientation and high propensity to emigrate among inhabitants of Western Ukraine, *versus* the more post-Soviet Russia-oriented population in the eastern part with a lower propensity for migration (Ryabczuk 2012; Olszański 2014). As a rule, EU-bound Ukrainian labour migrants originate from Western or Central Ukraine. These people, together with their national identity, visions of state and modern world, form either migrants' organisations or more loosely organised networks that attempt to influence state policy on emigration.

In modern Ukraine there are two main non-state actors that influence the Ukrainian state's emigration policy. These are: the Ukrainian Greek Catholic Church (UGCC) and Caritas, the charity organisation that is closely linked with UGCC and the Ukrainian World Congress whose role has been analysed in the previous sub-chapter. These organisations' influence stems from the fact that they represent the Ukrainian national identity and as a rule are not well received in migrant communities that associate themselves more closely with Russian and post-Soviet identity. Therefore, UGCC and Caritas are mainly present, apart from in the Ukraine, in the EU member states as well as in the United States and Canada. In countries like Poland or Italy with significant 'new' Ukrainian immigration, the Ukrainian Greek Catholic Church has been viewed by the migrants as not so much a Christian or Catholic denomination but primarily as a centre of Ukrainian identity (Ivankova-Steciuk 2012). UGCC churches in those states are treated by Ukrainian migrants as the principal location to hold meetings and address problems, including job searching. UGCC is particularly active in Italy, providing migrants with advice on their legal and job opportunities as well as offering shelter and financial assistance (Ivankova-Steciuk 2012).

The church plays an extensive role in building a network linking migrant communities and organisations. Thus, it serves as a voice for the diaspora community. This extensive experience that the UGCC has gained through its close links with migrants has enabled it to become one of the main actors to attempt to influence state's policy on labour migration. UGCC and Caritas are the leading institutions that initiated work on a draft Act on External Labour Migration. Their position in the policy-making process is reflected in the fact that the head of the UGCC Commission for Migrants simultaneously holds the position of a Deputy Head of State Commission on Labour Migration (interview with a Deputy Head of State Commission on Labour Migration Hryhoriy Seleshchuk 2013).

Conclusions

Although the outflow of a substantial proportion of the population has been recognised by experts and governmental officials to be a matter of concern for Ukraine's long-term development prospects, the Ukrainian policy-makers have been slow to acknowledge the need for a state response. The lack of a state agency that could lead the policy process (the State Migration Service was short-lived) and insufficient political interest (evident in the failure of the original migration policy concept to be considered in Parliament) has delayed the work on planning a comprehensive government programme for regulating external migration and assisting returning migrants.

Over the past decade, however, legislative foundations have been laid in several areas relevant to Ukrainian migrants' needs. Ukraine has signed bilateral agreements on labour migration, social and pension securi-

ty and has ratified appropriate conventions, enabling migrants to avoid double taxation as well as to have their qualifications recognised and remittances transferred. The effectiveness of these agreements is however limited by the extent of irregular employment and the unwillingness of migrants to formally register their change of country of residence. Although legal and procedural conditions are in place, the bilateral schemes that could promote circular migration remain seriously underutilised.

A positive recent phenomenon is that the Ukrainian policy-makers have begun to acknowledge that an effective policy towards its own citizens abroad is impossible without involving diaspora associations, Ukrainian non-governmental organisations and research institutes. These stakeholders have been behind the latest and most ambitious effort to institutionalise migrants' rights in a way that would be legally enforceable, thereby entitling Ukrainians abroad to a wide array of services provided by Ukrainian state institutions. Unfortunately, the ongoing crisis is putting enormous pressure on the Ukrainian state, relegating the issue of proper assistance to the diaspora and effective incentives to return to Ukraine to an indefinite future. At the same time, the looming danger of continued instability if not open internal conflict in the country has made the issue ever more pressing.

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