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FEATURES OF THE LEGAL STATUS OF FOREIGN VOLUNTEERS IN UKRAINE

On February 27, 2023, Volodymyr Zelenskyy called on foreigners to join the ranks of the Armed Forces and help Ukrainians in the war against Russia. For this purpose, the country's top military-political leadership formed the International Legion of Territorial Defense of Ukraine.

Foreigners have the right to join the Armed Forces for military service under a contract. For this purpose, Ukraine introduced a visa-free regime for those wishing to join the International Legion. At the beginning of August, the president made changes to the provision: foreigners can extend the contract for up to 10 years.

From the point of view of international legislation, the participation of foreigners who have not lived in the territory of the country for a long time and are not its citizens, are not part of the armed forces of one of the parties, and also have a personal material benefit, is qualified as mercenary. However, a distinction should be made between foreign volunteers and mercenaries [1].

The first go to war, guided by their views, moral feelings or religious beliefs, others - for the sake of material gain.

In addition, there is the concept of "combatant" - a person who belongs to the armed forces of states that are at war.

Such people, according to the 1977 protocol to the Geneva Conventions, fight legally - provided that they are under "responsible command" (subordinate to the state and are responsible to it), have known emblems of the military branches and services of the armed forces, openly carry weapons and observe laws and customs

of war. If a combatant is captured, international law gives him the status of a prisoner of war. At the same time, he retains immunity from punishment for participating in the war [2].

Since 2015, foreigners have been recognized by the state. Then the Law "On Amendments to Some Legislative Acts of Ukraine Regarding Military Service in the Armed Forces of Ukraine by Foreigners and Stateless Persons" was adopted, according to which they had the right to serve under a contract. Individual deputies and public activists proposed to simplify the procedure for granting Ukrainian citizenship to foreign volunteers and created petitions.

In addition, the Verkhovna Rada considered draft laws "On Amendments to Certain Legislative Acts Regarding the Legal Status of Foreigners and Stateless Persons Who Participated in the Protection of the Territorial Integrity and Inviolability of Ukraine," which was supposed to protect volunteer foreigners from persecution, as well as guarantee them residence in Ukraine. However, the then ombudsman Valery Lutkovska noted that the draft laws do not protect, as foreigners receive a temporary residence permit, which does not provide social guarantees.

The then President Petro Poroshenko instructed the Ministry of Internal Affairs and the State Migration Service to provide immediate consultation assistance to foreigners who wish to acquire Ukrainian citizenship. However, as of 2017, only four foreigners were able to obtain a passport. Although the "Left Bank" publication, referring to the human rights activist Boris Zakharov, reported that there are about 400 such people.

This was explained by the fact that the developed questionnaires and forms that are filled out for obtaining citizenship did not provide for the provision of information about participation in hostilities. In 2019, in the first months of his term, Volodymyr Zelenskyy signed several decrees on granting citizenship to foreign volunteers: in June, 14 military personnel received Ukrainian passports, in July — 7, in August — 11.

On January 12, 2023, the Verkhovna Rada adopted a law that allows foreigners and stateless persons serving in the National Guard to be in Ukraine legally, as well as to obtain Ukrainian citizenship in a simplified manner.

She noted that this law equates their rights with foreigners who fight in the Armed Forces.

The explanatory note to the law states that since the beginning of the Russian-Ukrainian war, many foreigners have expressed a desire to serve in the Armed Forces of Ukraine, therefore, during 2016-2021, amendments were made to the Law on Immigration, the Law "On the Legal Status of Foreigners and Stateless Persons" and the law "On military duty and military service" [3].

Thanks to this, foreign volunteers could sign contracts in the Armed Forces and the National Guard, however, during the introduction of these changes, only those units subordinated to the Armed Forces were indicated. Units formed under the National Guard were not taken into account.

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MODEL KASACYJNY I MODEL MERYTORYCZNY ORZEKANIA PRZEZ SĄDY ADMINISTRACYJNE NA PRZYKŁADZIE POLSKICH SĄDÓW ADMINISTRACYJNYCH

W ramach jurysdykcji sprawowanej przez sądy w sprawach administracyjnych można wyróżnić dwa zasadniczo odmienne modele: model jurysdykcji merytorycznej („pełnego orzekania”) oraz model jurysdykcji weryfikacyjnej (orzekania typu kasacyjnego). W modelu jurysdykcji weryfikacyjnej w czystej postaci zadaniem sądownictwa administracyjnego jest wyłącznie kontrola (weryfikacja) aktów administracyjnych, której rezultatem może być wydanie orzeczenia kasacyjnego, eliminującego z porządku prawnego efekt działalności administracji publicznej niezgodny z prawem. W powyższym modelu możliwe jest osiągnięcie przez skarżącego jedynie bezpośredniego celu zaskarżenia, polegającego na wyeliminowaniu z obrotu prawnego zaskarżonego aktu (działania) organu administracji, brak natomiast możliwości realizacji pośredniego celu zaskarżenia - który dla skarżącego jest jednak celem zasadniczym - w postaci uzyskania zgodnego z prawem rozstrzygnięcia sprawy administracyjnej.

Model jurysdykcji merytorycznej zakłada natomiast dopuszczalność badania przez sąd nie tylko kwestii legalności zaskarżonego działania organu administracji, lecz także stanu faktycznego sprawy, czego konsekwencją może być wzruszenie zaskarżonego aktu i zastąpienie go orzeczeniem wydanym przez sąd [1].

Powyższe modele w zasadzie nie występują w czystej postaci. Charakterystyczną cechą wielu systemów prawnych jest „dualizm jurysdykcji sprawowanej przez sądy w sprawach administracyjnych” [2], można zatem mówić o modelu dualnej jurysdykcji sądownoadministracyjnej, w którym przeważają elementy modelu „pełnego orzekania” oraz modelu jurysdykcji weryfikacyjnej, w którym przeważają elementy modelu orzekania kasacyjnego. Nie sposób wskazać systemu prawnego, w którym model sądownoadministracyjnej jurysdykcji