The administrative law of the Czech Republic and the public law of Ukraine: a study in international administrative law

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Abstract

The military actions taking place in Ukraine brought a major influx of refugees to the Czech Republic. A majority of them, being either citizens or residents of Ukraine, were carrying various official documents (such as residence permits, driving licences, university diplomas etc), issued by the competent authorities of their state of origin. The massive circulation of these persons in the Czech Republic automatically implied a necessity to deal with the implications of such documents, or with their absence (such as in the case of students, not carrying any educational certifications). This article deals with how the administrative law of the Czech Republic addressed the fact that various documents, issued by the authorities of Ukraine are being used for various purposes in the Czech Republic. Taking into consideration that one may expect further influx of Ukrainian citizens to our territory and their residence in the Czech Republic, this article also aims to outline a way forward.

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"Our law here, their law there… Our accepted view
Of the legal world is two-dimensional." Jean-Bernard Auby[4]

1. Introduction[5]

There are several ways to study mutual relations between two different regimes of public law. First, a comparative approach traditionally triggers the

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[4] Jean-Bernard Auby, *La globalisation, le droit et l'État* (Paris: LGDJ, 2nd ed., 2010): 13.

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attention of legal scholars.[6] In this perspective, the regimes of public law, as those existing in the Czech Republic and Ukraine, would be an ideal subject for a comparative endeavour in administrative law. As John S. Bell argues in his chapter published in *The Oxford Handbook of Comparative Law,* "*the usefulness of comparing the rules of law within different institutional and value systems is limited. If one wishes to have a contextualized understanding of the rules and how they work, then it is necessary to limit research*".[7] In this respect, the legal frameworks of the Czech Republic and Ukraine would naturally fit into a comparative analysis. On one hand, both countries belong to the same region and share (to some extent) a common history.[8] At the same time, while the Czech Republic became member of the European Union in 2004, Ukraine aims to enter the Union in the future. Thus, there are certainly topics which deserve to be researched from a comparative perspective, such as the transformation of public administrations, legal measures against corruption and the challenges arising from the implementation of EU law in both countries. The fact is, several of these issues have already been discussed in various legal publications.[9]

Another approach to deal with the public law of the Czech Republic and of the Ukraine would be possible. Such endeavour would be possible from the perspective of administrative law as an *ius commune,* i.e. law existing as based on common legal traditions.[10] This approach would not concentrate on differences in existing legal frameworks, but would focus on similarities in the basic institutes of public law. Such approaches, as described above, would require a knowledge of both Czech and Ukrainian public law in order to provide a comprehensive analysis.

This article, however, will analyse the relation between the administrative law of the Czech Republic and the public law of Ukraine from a different perspective. The authors aim to reflect the current situation, as the invasion of the Russian Federation into Ukraine continues to cause a major influx of refugees into the Czech Republic. A majority of them, being either citizens or residents of Ukraine,

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[6] See John S. Bell, "Comparative Administrative Law" in *The Oxford Handbook of Comparative Law,* ed. Mathias Reiman and Reinhard Zimmermann (Oxford: Oxford University Press, 2006) 1260-1265.

[7] Ibid, at p. 1265.

[8] A part of today's Ukraine was part of Czechoslovakia between 1918 and 1938 as its distinctive province, called Subcarpatian Rus (Podkarpatská Rus). On 29 June 1945, Czechoslovakia signed a treaty with the Soviet Union, officially ceding the region, which subsequently became part of the Ukrainian Soviet Socialist Republic. Fort further details, see eg. Paul R. Magosci, "The heritage of autonomy of Carpatian Rus' and Ukraine's Transcarpatian region", *Nationalities Papers* 43, issue 4 (November 2018): 577-594.

[9] See eg. Ruslan Budka, "Intellectual property law and antitrust law in the Czech Republic and in Ukraine: a comparative legal analysis", *Visegrad Journal of Human Rights* 1, issue 5 (December 2020): 65-71; Vladimir L. Zinych, "Legal regulation of the usage of inventions in the legislations of Ukraine and the Czech Republic: comparative aspects", *Law & Society* 10, issue 2 (September 2017): 67-74; Ruslan Budka, "Legal Protection of Copyright and Related Rights in the Czech Republic and the Experience of Ukraine", *Law Review of the Kyjev University of Law* 12, issue 1 (January 2020): 247-258 etc.

[10] See René Seerden and Frits Stroink, "Comparative Remarks" in *Administrative Law of the European Union, its Member States and the United States,* ed. Mathias Reiman and Reinhard Zimmermann (Oxford: Oxford University Press, 2006) 1260-1265.

carry various official documents[11] (such as residence permits, driving licences, university diplomas etc), issued by the competent authorities of Ukraine. The massive circulation of these persons across the Czech Republic automatically implies a necessity to deal with the implications of such documents, or with their absence (as in the case of students not carrying any educational certifications). As this unfolds, the public law of the Czech Republic must address the challenge of qualifying the legal status of those persons arriving from Ukraine.

Having said this, we must bear in mind that the administrative law of the Czech Republic and the public law of Ukraine represent two separate and autonomous legal regimes. Ukraine law is *per se* not able to produce any effects *vis-á-vis* the authorities of the Czech Republic. That means, in principle, that any official document, issued pursuant to the public law of Ukraine may gain legal effects before the authorities of the Czech Republic only if the administrative law of the Czech Republic so provides.

Consequently, the problem of relation between the public law of the Czech Republic and the public law of Ukraine will be analysed from the viewpoint of the valid legal framework in the Czech Republic. Hereby, the authors reflect the existing scholarship[12], which differs by two models of the relation between foreign administrative law and the domestic legal framework:

Firstly, the administrative law of the Czech Republic may provide for legal consequences to official documents, which are the product of the application of Ukraine public law. In these cases, the norm of the law of the Czech Republic requires that the administrative authorities of the Czech Republic recognise those facts that have already been certified by the authorities of Ukraine. The fact is that, in these cases, official documents issued by the authorities of Ukraine[13] cause no legal conflicts with the legal framework of the Czech Republic *per se*. Such legal effects are only based on the applicable norm, as provided by the public law of the Czech Republic. In these cases, we refer to the model of *indirect application of foreign public law.*[14]

Secondly, the administrative law of the Czech Republic may also provide that the domestic administrative authorities are required to apply the public law of Ukraine as their own. In contrast to the above-mentioned cases, these situations will be referred to as the model of *direct application of foreign public law.*[15]

This article aims to analyse how these two models were applied in the administrative law of the Czech Republic with respect to the current influx of refugees from Ukraine. Due to the fact that these models are provided by several

[11] This article will use the term "official document" as an umbrella term for any document, issued by the competent authority and certifying any fact (such as citizenship, education, or vaccination against COVID-19) by the means of public law.

[12] See Jakub Handrlica, "A treatise for international administrative law", *Lawyer Quarterly* 10, issue 4 (December 2020): 462-475.

[13] Travel passports, driving licences, university diplomas, vaccination certificates etc.

[14] See Jakub Handrlica, "Application of foreign public law by administrative authorities", *Časopis pro právní vědu a praxi* 28, issue 4 (December 2020): 565-585.

[15] Ibid, at p. 566.

separate pieces of existing legislation, the article will address the main research question as follows:

Firstly, attention will be paid to three pieces of legislation[16] which were approved by the Parliament of the Czech Republic in March, 2022 to address the Russian invasion into Ukraine (Part 1). These acts ("Leges Ukrainae") provided for special provisions for temporary protection for the citizens, or residents of Ukraine in the territory of the Czech Republic and for special rules regarding these persons in the field of education, health and social insurance.

The fact is, however, that the "Leges Ukrainae" failed to address all cases where official documents issued by competent authorities of Ukraine are circulated in the Czech Republic. Consequently, Part 2 will address those situations which haven't been addressed by the tailor-made legislation. In this respect, attention will be paid to the problem of the recognition of Ukrainian driving licences in the Czech Republic and to the problem of the recognition of university qualifications.

Further, the fact is that the official documents issued by the authorities of Ukraine are written in the Ukrainian language. Consequently, Part 3 will deal with the problems arising by translation from Ukrainian to Czech language in the existing legal framework.

Finally, Part 4 will provide for a theoretical reflection upon current developments from the viewpoint of administrative law. In this respect, this article argues that the increasing numbers of situations where official documents issued by Ukrainian authorities circulate abroad, imply a strengthening of the importance of legal norms, addressing foreign elements in the relations of administrative law. Thus, Part 4 argues for the increasing importance of international administrative law as a special branch of administrative law[17], in order to address those relations where foreign elements appear.

2. Leges Ukrainae

As mentioned above, the unprecedented and principally unexpected situation around the refugee tide experienced by the Czech Republic posed a significant challenge to its rather rigid administrative regulations. In the very spirit

[16] See (i) zákon č. 65/2022 Sb., o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 65/2022 Coll., on certain measures taken with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation], (ii) zákon č. 66/2022 Sb., o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 66/2022 Coll., on certain measures taken in the field of employment and social security with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation], (iii) zákon č. 67/2022 Sb., o opatřeních v oblasti školství v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 67/2022 Coll., on certain measures taken in the field of education with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation].

[17] See Jakub Handrlica, "Burnt by the sun of international administrative law", *P. A. Persona e Amministrazione* 9, issue 2 (December 2021): 562-584.

of the recently and broadly exploited "*extremis malis, extrema remedia*"[18] principle, the government, alongside the legislature, made a crisis decision to adopt special legislation that can be jointly referred to as "Leges Ukrainae"[19]. These laws were designed as single-purpose crisis measures to help overcome the barriers for agile management in those areas considered by the legislators as most critical.[20]

The aforementioned laws carry two curious properties that are worth brief notice. Firstly, from the legislative and theoretical points of view, it cannot remain unnoticed that Leges Ukrainae are not, (and given their very nature also *cannot*) be entirely general in their nature. These laws, all having been prepared, read and adopted during a very short period of time and in direct connection with a specific event, were not designed to address a model situation, but a particular one. While it is typical of laws to either retrospectively or forehandedly react to various occurrences and situations which are considered material sources of law[21], and it can even be argued that at least some material sources of law be binding for the legislator (meaning that some events cannot be blindly ignored)[22], it is the limited purpose (and hence application) of Leges Ukrainae that makes them stand alone.

The continental legal doctrine has traditionally considered *generality* to be one of the basic and vital attributes of laws, dating as early as Roman legal philosophy[23]. Laws that lack the feature of generality and are designed and "tailored" for a certain person or situation are referred to as tailor-made, bespoke or ad hoc laws[24]. Such laws may vary, based on the level of their generality (or rather

[18] Literally "*extreme remedy for an extreme illness*" (see also Hugh Moore "A dictionary of quotations from various authors in ancient and modern languages" (London: Whittaker, Treacher, & Company: 1831), p. 106, alinea 1149). The maxim is commonly transposed into English as „*desperate times call for desperate measures*" (see e.g. Jennifer Speake "Oxford Dictionary of Proverbs" (Oxford: Oxford University Press, 2015), p. 71).

[19] Unlike the traditional Roman usage of the word „lex" which demanded it is assigned to the name of the emperor or other statesman standing behind the law (e.g. Leges Antoniae issued by Mark Anthony, Leges Iuliae issued by Julius Caesar etc.), modern laws (and above all those tailor-made) are often informally named after their subject, in particular the person ought to be directly impacted by such law.

[20] Tailor-made laws, addressing the problem of Ukrainian refugees, were issued also in several other countries of Central Europe. Slovakia reacted already on 26. February 2022 by issuing of the Act on certain measures related to the situation in Ukraine (Act No. 55/2022 Coll.). However, this piece of legislation did not provide for a comprehensive solution, but was rather amending a myriad of special existing law. Emergency legislation was issued in Poland as of March 2022, with retroactive validity from 24. February 2022. Similar legislative developments occurred also in Lithuania, where a new tailored-made legislation exempted refugeed from language requirements to access certain jobs.

[21] See e.g. John Bell „Sources of Law", *The Cambridge Law Journal*, 77, issue 1 (March 2018), pp. 40-71. See also Fábio Perin Shecaira "Sources of Law Are not Legal Norms", 28 *Ratio Juris* (June 2015), pp. 15-30.

[22] See Jana Kokešová "Is the Lawmaker Bound by Natural Sources of Law? The Case of Lawmaker's Inactivity", *Časopis pro právní vědu a praxi*, 25, issue 2 (April 2017), pp. 311–324.

[23] See Digest of Justinian, Liber Primus, 1.3.8 Ulpianus III ad Sabinum: "*Iura non in singulas personas, sed generaliter constituuntur*" [The law is not created for individuals, but generally for all].

[24] The phenomenon of tailor-made laws *per se* has already been introduced and described by J. Handrlica and V. Sharp in the past (see e.g. Jakub Handrlica "Two faces of "tailor-made laws" in administrative law", *The Lawyer Quarterly*, 10, issue 1 (March 2020), pp. 34-47, or Vladimír Sharp (Sharapaev) "When "Tailor-Made Laws" are not Laws Indeed", *The Lawyer Quarterly*, 10, issue 1

specificity), as well as on the element being tailored. Meanwhile the majority of those most renowned (and infamous) laws owe their most controversial fame to being tailored for a specific person[25]. Leges Ukrainae's membership in the family of tailor-made laws is ensured by the lack of generality in its subject and the circumstances of its creation. This manifests itself in the fact that even though these laws were adopted to flexibly address a specifically defined crisis, individual provisions of the laws are *per se* relatively generalized. Another tailor-made feature of these laws are the so-called *sunset clauses* incorporated into them that provide for these laws to automatically forfeit their effect come the due date[26].

Secondly, the content of Leges Ukrainae as such and the areas of regulation chosen by the lawmakers are worth our attention, as these areas at least partially[27] indicate priorities of the state in crisis management. The first Lex Ukrainae ("Lex Ukrainae I")[28] sets out conditions for the granting of temporary protection to foreigners who are compulsorily subject to the Council Decision[29], or who prove that they had a valid permanent residence permit in Ukraine as of 24 February, 2022 and that their travel to the state of nationality or permanent residence[30] is not possible due to the threat of real danger[31]. Interestingly enough, the possibility to acquire such temporary protection is linked to the permanent residence status, which was apparently motivated by the fact that persons with temporary residence can easily return to their home country on one hand, and by the need to prevent persons with permanent residence in EU member states and mainly Czech Republic from

(March 2020) pp. 57-60). Thus, the authors find it redundant to burden this paper with further breakdown and refer the reader to the existing definition.

[25] In Czech legal environment such laws typically promoted merits of prominent statesmen. In this regard, laws like Lex Masaryk (Zákon č. 22/1930 Sb., o zásluhách T. G. Masaryka [Act No. 22/1930 Coll., on the merits of Tomáš Garrigue Masaryk]), or more contemporary Lex Beneš (Zákon č. 292/2004 Sb., o zásluhách Edvarda Beneše [Act No. 292/2004 Coll. on the merits of Edvard Beneš]) could serve as examples.

[26] See the transitional and final provisions of the acts.

[27] It must be noted that the cited laws were not adopted based solely on the initiative of the Czech authorities. All three acts implement EU documents (see esp. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection) and are henceforth at least partially derivative.

[28] Zákon č. 65/2022 Sb., o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 65/2022 Coll., on certain measures taken with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation].

[29] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

[30] The state of citizenship, or part of its territory, or, in the case of a stateless person, the state or part of its territory of the last permanent residence before entering the territory of Ukraine. See § 3, paragraph 2, point b) of the Act.

[31] As stipulated by § 179 paragraph 2 of the Act on the Residence of Foreigners in the Czech Republic (zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů [Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic and on the Amendment of Certain Acts]).

misusing the legislation and drawing unjustified benefits on the other[32]. The law also stipulates special rules for the provision of healthcare services.

With respect to the subject of this article, the reference[33] to the permanent residence status provided by Lex Ukraine I is of major interest. The Act provides that temporary protection is to be awarded to those foreigners who *"substantiate that they were holder of permanent residence status in the territory of Ukraine as of 24. February 2022."*

This provision allows at least three different interpretations, which concern the substance of "permanent residence status". Thus, the term might be interpreted either (i) according to applicable Czech law, or (ii) according to the definition of "permanent residence" in the public law of Ukraine. Alternatively, a third interpretation is theoretically possible, which understands "permanent residence status" as a term open to free interpretation by the administrative authority.[34] Despite this fact that the Explanatory Memorandum does not refer to this problem, one may argue that the provision refers to "permanent residence status" as understood by the law of Ukraine. Consequently, the provision represents a salient example of a norm, requiring direct application of a foreign substantive law by the domestic administrative authority.[35]

The law further outlines both procedural and material particularities applied to cases falling under its scope. For instance, Lex Ukrainae I provides for conditions of the (un)acceptability of an application and even excludes judicial review of this unacceptance to prevent the certain collapse of an overloaded administrative judiciary[36]. Once again, it is fitting to remind the reader that tough times call for tough measures, even when it comes to administrative proceedings. Following this maxim, the Explanatory Memorandum to Lex Ukrainae I explicitly provides that "*[t]his is an extraordinary measure, which is however justified by the extraordinary refugee wave that the Czech Republic is now facing*"[37].

In this respect, one may argue that the tailor-made Lex Ukrainae I represents a legislative response to a "black swan", that occurred in the sphere of law.[38]

The law also sets out the cases in which the applicant is obliged to present the travel document (travel passport)[39]. Lex Ukrainae I seems to actively take into account the possibility that at least part of the refugees might not possess a valid

[32] Cf. the Explanatory Memorandum to Lex Ukrainae I.
[33] See § 3 paragraph 2 of the Act.
[34] One may observe, that the legislation of the Slovak Republic (Act No. 55/2022 Coll.), which is providing for a similar scheme, is much easier for practical application, when the whole concept is based on a mere proclamation of the applicant, rather than on examining of the factual situation.
[35] See Jakub Handrlica, "Mezinárodní právo správní. Skica právní disciplíny", *Právník*, 161, issue 5 (May 2022), at p. 465.
[36] See § 5 paragraphs 1 and 2 of the Act.
[37] See the commentary on § 5 of the Explanatory Memorandum to Lex Ukrainae I.
[38] See observations made in Jakub Handrlica, Vladimír Sharp (Sharapaev) and Gabriela Blahoudková, "Black swans in administrative law" *Lawyer Quarterly,* 11, issue 3 (October 2021), at pp. 490-492.
[39] The term „travel document" is commonly used across foreigner regulation in the Czech Republic as some states still operate with the system of two passports (domestic or national passport for the internal use, and travel or foreign passport for the external use).

travel document due to the circumstanced of their departure from the country. In such cases, the Ministry of the Interior or the Police of the Czech Republic may *ex officio* issue a special travel document[40].

The second Lex Ukrainae ("Lex Ukrainae II")[41] outlines measures in the field of employment and social security, which apply to foreigners who have been granted temporary protection under Lex Ukrainae I. Pursuant to this law, a foreigner under temporary protection is considered to have a permanent residence status[42] for the purposes of the Employment Act[43]. Despite the fact that the legislator managed to elegantly incorporate this provision into the law while making it almost unnoticeable, granting refugees the benefits of the permanent residents is in fact one of the most significant and generous rights stipulated by the ad hoc legislation meaning that the refugees can *de facto* freely enter the (normally strictly protected) employment market.

The third Lex Ukrainae ("Lex Ukrainae III")[44] outlines the measures in the field of education, which apply to foreigners who have been granted temporary protection under Lex Ukrainae I. In this regard, the law explicitly stipulates that its provisions shall apply prior to the provisions of other laws, thus establishing a so-called applicational priority or applicational advantage[45]. The law further quite specifically sets out the process of admission and on-boarding of students of kindergartens, primary and secondary schools including higher vocational schools and conservatories. For reasons fully familiar only to the legislator, the act does not stipulate higher education, which might have to do with the fact that the refugee wave was said to be primarily associated with mothers and minors under 18 years old.

Special attention ought to be paid to the way the law treats official documents certifying the previous education acquired by the refugees. While the administrative laws in the field of education are normally rather strict when it comes

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[40] Although the law does not provide for any possibility of administrative discretion, the said authorities must issue the document only if they objectively have sufficient conditions for such operation. See § 1 paragraphs 1 and 2 of the Act.

[41] Zákon č. 66/2022 Sb., o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 66/2022 Coll., on certain measures taken in the field of employment and social security with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation].

[42] As stipulated by Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic and on the Amendment of Certain Acts.

[43] Zákon č. 435/2004 Sb., o zaměstnanosti [Act No. 435/2004 Coll., the Employment Act] is the law regulating *inter alia* the conditions under which foreigners can seek jobs and enter employment relationships in the Czech Republic. The law relatively restrictively limits the job market entry for many foreigners. It is also not to be confused with the general Labour Code (zákon č. 262/2006 Sb., zákoník práce [Act No. 262/2006 Coll., the Labour Code]).

[44] Zákon č. 67/2022 Sb., o opatřeních v oblasti školství v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 67/2022 Coll., on certain measures taken in the field of education with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation].

[45] See § 1 paragraph 2 of the Act.

to certificates of education[46], Lex Ukrainae III as an extraordinary measure slackens this standard and provides that in the admission procedure for secondary education and for education in a conservatory, as well as higher vocational education, a foreigner may replace a formal document proving the acquisition of previous education, fulfilment of compulsory school attendance or fulfilment of further admission criteria with a mere *affidavit* (solemn declaration or declaration of honour), in the event that he does not have the document in his possession[47]. This forthcoming approach is apparently based on the discovery that some refugees left their homes without having packed all relevant documents and hence have no means to formally prove the acquired qualification.[48]

3. Mutual recognition

The fact is that the tailor-made "Leges Ukrainae", which were enacted by the Parliament of the Czech Republic in March, 2022, failed to cover all cases of mutual encounter between administrative law of the Czech Republic and the refugees from Ukraine. Thus, in the remaining cases, the general legal framework is to be applied by the competent authorities.

In several cases, this general legal framework provides for mutual recognition of official documents issued by the authorities of Ukraine. Here, we are referring to cases of the indirect application of foreign administrative law, when a product of application of Ukrainian law is being recognised by the applicable norm of the Czech law. This is, in particular, the case of driving licences. Both the Czech Republic and Ukraine are Contracting Parties to the Vienna Convention on Road Traffic of 1968, which provides for mutual recognition of driving licenses, issued by the competent authorities of the Contracting Parties.[49] In the administrative law of the Czech Republic, the requirements for mutual recognition of driving licenses were transposed by the Act No. 361/2000 Coll., on Road Traffic. The Act distinguishes between (i) the right of a person to drive a motorcar on one hand[50] and (ii) certification of such right in a form of an official document.[51] While the right to drive exists between the state and the holder of the right, the official document serves as a mere certification of such rights before any public authorities.

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[46] See e.g. zákon č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách) [Act No. 111/1998 Coll., on Higher Education Institutions and on Amendments to Other Acts (Act on Higher Education Institutions)], which in § 55 paragraph 2 exhaustively stipulates only two documents, the combination of which can be considered a certificate of higher education.

[47] See § 5 paragraphs 3 and 4 of Lex Ukrainae III.

[48] The fact is that the concept of substituting of missing diplomas by an affidavit is not entirely new and the legislation governing the university education has also provided this option before the adoption of the Lex Ukraine I. However, this possibility has been open exclusively for those foreigners who were awarded asylum in the competent authorities of the Czech Republic. See § 90 paragraph 4 of the Act No. 111/1998 Coll.

[49] Vienna Convention on Road Traffic, Art. 41.2.

[50] See § 80 of the Act.

[51] See § 103 of the Act.

With respect to the right to drive, the Act No. 361/2000 Coll., on Road Traffic provides[52] that its existence can be certified either by a driving licence issued by the authority of the Czech Republic, or by a driving licence issued by the authorities of other Contracting Parties to the Vienna Convention on Road Traffic. This provision serves as a mediator between the administrative law of the Czech Republic and the products (official documents) of application of foreign law, certifying the existence of a right to drive a motorcar. The legal impacts of a foreign driving license before the authorities of the Czech Republic stem not from these foreign official documents itself, but from the applicable provision of the Act No. 361/2000 Coll., on Road Traffic. Due to this fact, Ukraine also belongs to the Contracting Parties to the Vienna Convention on Road Traffic, the driving licences duly issued by the authorities of Ukraine certificate the right to drive a motorcar in the territory of the Czech Republic.

Facing the rapidly increasing number of Ukrainian drivers in the Czech Republic in the aftermath of the Russian military aggression, several practical questions have appeared, which will be briefly summarised in the following paragraph:

Firstly, in several situations, the persons possessing the right to drive a motorcar in Ukraine failed to carry their driving licence with them. In these situations, the drivers were not able to provide any official document certifying the existence of the right, which exists in the sphere of public law. In contrast to the above-mentioned cases of education, where the Lex Ukraine III provided explicitly for a possibility to substitute a missing official document by an affidavit[53], the law governing the field of road traffic does not provide for such a possibility. Consequently, the legal situation of a driver not possessing a driving licence will be the same as the legal situation of a person not possessing right to drive a motorcar at all. In such a case, the only practical solution for a Ukrainian driver would be to proceed according to the applicable law and to obtain a driver licence of the Czech Republic pursuant to a standard procedure.

Secondly, cases have occurred when the drivers from Ukraine possessed the driving licence issued by the authorities of Ukraine, but the validity of such licence has lapsed. In this respect, the Ministry of Transport of the Czech Republic issued an official statement, providing for a solution of these cases.[54] In general, a fact that the validity of the driving licence has lapsed, is to be considered an obstacle for using such licence in the territory of the Czech Republic. Thus, a driving licence which is not valid is to be considered in the same manner as a non-existing one. In this respect, however, the statement of the Ministry of Transport provides for a kind of leniency, when declaring that if the validity lapsed after 1. January 2022, the driving licences will be considered as valid. In this manner, the administration aimed to reflect the

[52] See § 104 of the Act.
[53] See § 5 paragraphs 3 and 4 of Lex Ukrainae III.
[54] See https://www.mdcr.cz/Zivotni-situace/Ridicske-prukazy/Informace-pro-drzitele-ukrajinskych-ridicskych-pru.

virtual impossibility of obtaining a renewed driving licence in Ukraine after the commencements of the military conflict.

Lastly, the question appeared whether the citizens of Ukraine are entitled to enter into professional service as drivers in the territory of the Czech Republic. Here, a special qualification is needed according to the administrative law of the Czech Republic, which – at the same time – fails to provide for any mutual recognition of these qualifications with Ukraine. Consequently, a citizen of Ukraine may use his driving licence, however, they must obtain a qualification pursuant to the applicable Czech legislation.

In contrast to the field of road traffic, the field of university education has already been partly addressed by one of the tailor-made "Leges Ukrainae". The fact is, however, that the provisions of this tailor-made act only addressed[55] partial questions, related to the prospective admission procedure of students from Ukraine to universities in the Czech Republic. In this respect, the universities were granted competence to establish rules for a special admission procedures, admission fee waivers and the law also provided for a possibility of the substitution of missing documents by an affidavit. Apart from these special situations, the general provisions governing university education are to be applied also *vis-á-vis* students and academicians from Ukraine. With respect to the massive influx of Ukrainian citizens to the territory of the Czech Republic, several practical problems appeared, which will be briefly analysed in the following section.

Firstly, many of the refugees arriving from Ukraine to the territory of the Czech Republic in the aftermath of the aggression of the Russian Federation in February 2022, were studying at universities in Ukraine. In this respect, the question arose whether they would be able to continue their studies at any of the universities in the Czech Republic. The fact is that a very similar situation also appeared in the past, in the aftermath of WW I. Following the October Revolution in Russia, a number of Russian, Belarussian and Ukrainian students and academicians emigrated to the newly established Czechoslovakia. In order to allow students from the countries of the former Russian Empire to finish their already initiated studies, several private universities were established. The *Russian Law Faculty* existed in Prague between 1922 and 1933 and taught the laws of the Russian Empire according to the curricula which existed in the pre-Revolutionary era.[56] In the same period, the *Free Ukrainian University* was established in 1921 in Vienna; but was afterwards transferred to Prague and soon became a centre for Ukrainian intellectuals. After the WW II, the *Free Ukrainian University* again changed it seat to Munich, where it has been providing education since then as a private university.[57]

The situation appears to be much different one hundred years later. No private institutions, which would be capable to guarantee finalising of already

[55] See § 8 of the Act.

[56] See Konstantin P. Krakovsky, "Russian Law Faculty in Prague (1922-1932)", *Journal on European History of Law* 9, issue 2 (April 2018): 67-78.

[57] For a comprehensive study on the history of the Ukrainian Free University, see Roman S. Holiat, *Short History of the Ukrainian Free University.* New York: Shevchenko Scientific Society, 1964.

initiated university education in Ukraine, exist in the territory of the Czech Republic. Neither do any international agreements exist that would provide the possibility to initiate university education in Ukraine and subsequently continue it at the universities of the Czech Republic. The applicable legislation of the Czech Republic, Act No. 111/1998 Coll., on University Education, does not provide for any provision, that would allow continuation of a study which has been initiated at any university in Ukraine.

Consequently, the only possibility for students to continue their studies in the Czech Republic is to participate in an admission procedure and become an ordinary student of any of the Czech universities based on the outcomes of such procedures. Here, the provisions of the tailor-made Act No. 67/2022 Coll. would be applicable, allowing for admission-fee waivers and also for a possibility to replace certain missing documents by affidavit. Also, the universities were allowed to open extraordinary admission procedures for Ukrainian students only.

In order to address the situation of those students from Ukraine who haven't been admitted to study yet, the universities opted to grant a "free-mover" status to these students. Under this status, the person remains to be a student of his, or her home university and will be considered as a visiting student at the Czech university of his, or her choice. The free-mover solution, which has been introduced by several universities in the first months after the aggression against Ukraine, represents a unilateral measure. That means, an existing agreement with the respective Ukrainian university does not represent a requirement for the award of "free-mover" status. The fact is, however, that the "free-mover" status merely represents a temporary measure, which is not capable of substituting the ordinary status of a student.

Further, the question remains concerning recognition of university diplomas, as issued by the universities in the territory of Ukraine. Here, the situation is more complicated, than in the field of recognition of driving licenses. With respect to university diplomas, issued by the universities in Ukraine from 6 June, 1971 until 27 February, 2000, the Protocol on Equality of Documents on Education, Scientific Degrees and Titles, awarded in the Czechoslovak Socialist Republic and in the USSR, would be applicable. This Protocol provided for mutual recognition of all university diplomas, issued by graduation from any university in Czechoslovakia and in the USSR.[58]

Further yet, the Protocol also provided for mutual recognition of scientific degrees, such as those of Doctor of Sciences, Associate Professor and Full Professor, which were awarded by the universities of either of the Contracting Parties.[59] The fact is, that the regime of mutual recognition, as established by the Protocol, covers a much broader number of university diplomas than only those issued by the universities situated in present-day Ukraine. Thus, this regime would also be applicable *vis-á-vis* those Ukrainian holders of university diplomas, issued by universities, situated in other parts of the former USSR, such as in the todays Russian Federation, Belarus etc. The university diplomas, which are covered by this Protocol,

[58] See Art. 4 of the Protocol.
[59] See Art. 5 of the Protocol.

do not require any further recognition pursuant to the administrative law of the Czech Republic. In this respect, the Act No. 111/1998 Coll., on University Education explicitly provides[60] that the Ministry of Education will issue a certificate, attesting to the recognition of the foreign diploma.

The fact is, that the validity of the Protocol was terminated on 28 February, 2000. Pursuant to the Vienna Convention on the Law of Treaties, the termination of a treaty does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.[61] Consequently, the university diplomas of Ukrainian citizens, as issued from 6 June, 1971 until 27 February, 2000, are still recognised by the authorities of the Czech Republic.

On the contrary, those university diplomas issued by Ukrainian universities after 28 February, 2000 are to be formally recognised in an administrative procedure, which is to be conducted by the competent Czech university.[62] Thus, while the university diplomas, issued from 6 June, 1971 until 27 February, 2000 gain their recognition directly based on the applicable legislation of the Czech Republic (*ex lege*). The legal consequences of those diplomas issued after 28 February, 2000 must always derive from the act (*ex actu*) issued by the domestic university.

The same regime is applicable to the recognition of the scientific degrees and is therefore of importance for those Ukrainian academicians who intend to continue their academic career at any of the Czech universities. Also, those scientific degrees awarded by the universities in the USSR between 6 June, 1971 and 27 February, 2000 are to be recognised *ex lege.* However, those scientific degrees awarded after this date are not subject to recognition according to Czech law. Consequently, Ukrainian academicians possessing such degrees may continue their career at Czech universities only after fulfilling the requirements for the award of these degrees according to applicable Czech law.

4. Translation of official documents, issued by the authorities of Ukraine

With respect to the increased frequency of circulation of those official documents[63] which were issued in the Ukrainian language, several practical problems also appeared in the proceedings of the authorities of the Czech Republic.

Firstly, the authorities of the Czech Republic faced challenges arising from translation of these documents. In this respect, the *Code of Administrative Procedure*, which is a general code governing administrative procedures before the administrative authorities of the Czech Republic, lays down a general rule for those parties taking part in the procedure, namely that documents issued in a foreign language must be submitted by the participant in their original form as well as in

[60] See § 89 of the Act.
[61] See Art. 70 of the Vienna Convention.
[62] See § 89 of the Act.
[63] Eg. school-leaving certificates, university diplomas, birth certificates etc.

certified translation into the Czech language.[64] The translation of documents written in other languages is a logical necessity, so as to enable the administrative authority to make sense of the document in the decision-making process and to decide accordingly, as well as to enable the applying party to express themselves.

Nevertheless, at the same time, the *Code of Administrative Procedure* leaves the administrative authority certain room to not require such translation. In this respect, the *Code of administrative Procedure* explicitly provides, that the administrative authority may *"inform the participant, that the translation is not needed".*[65] As a result, the administrative authority can render such information by means of its notice board, acquainting the participants with this fact or even in silence, by considering the submitted document written in a foreign language as the basis for the decision without requiring the submission of the translation.

In this respect, a practical problem may appear. In fact, the *Code of Administrative Procedure* only deals with translation of those official documents, which *are being submitted by the participant of the procedure.* In strict contrast, the Code omits to deal with documents written in other languages and *required* by the administrative authority, as well as the necessity to submit a certified translation of these documents. In this respect, the *Supreme Administrative Court* concluded in its decision[66] that provided that the administrative authority, as well as other participants, which do not submit the document, understand the language in which the document is rendered, and the participants explicitly do not ask for a translation of the document. Therefore, no dispute exists as regards the content of the document and there is no reason to require an official translation.

In summary, evidence provided as a document rendered in a foreign language, without its translation into the Czech language, is acceptable in an administrative procedure unless its content is disputed.[67]

Secondly, along with the massive influx of citizens from Ukraine, an urgent need for interpreting between Czech and Ukrainian languages emerged. The fact is that the Leges Ukrainae failed to address the role of interpreting services in the administrative procedures before the Czech authorities and, in particular, in the process of granting temporary protections, despite the obvious need for interpreters here. In general terms, translation and interpreting services are free professions in the Czech Republic, so providers of these services must only comply with the terms and conditions of general rules of civil law with no necessity for any professional knowledge or professional certification. By contrast, court translation and interpreting are governed by the Act No. 354/2019 Coll., on *Court Translators and Interpreters* to ensure adequate quality and professional knowledge. Provided that a translator and/or interpreter wants to be listed as a court translator and interpreter, they must comply with the conditions defined by the law, such as linguistic

[64] See § 16 paragraph 2 of the Code.
[65] Ibid.
[66] Decision of the Supreme Administrative Court of 14. April 2015, 9 As 12/2014-60.
[67] Nevertheless, special regulations *vis-à-vis* the Administrative Code must be emphasised. Some special regulations specifically address specific conditions under which the submission of an official translation of a document provided in a foreign language can be excused.

knowledge[68], five-year experience, and the knowledge of legal regulations dealing with the profession, as well as procedures where the profession is performed and the actions related to performance. With respect to the proceedings before the administrative authorities, the *Code of Administrative Procedure* explicitly provides[69] that they can only be chosen from the list of court interpreters. At this moment, the list of court interpreters and translators comprises 141 interpreters and translators between the Czech language and the Ukrainian language. At the same time, 490 court interpreters and translators are listed in the Czech and Russian language combination.[70]

Lastly, a practical question arose during the last months as to whether the refugees themselves may be allowed to interpret from Ukrainian to Czech and *a vice versa* in administrative procedures.

Among the refugees who have arrived in the Czech Republic, we could certainly find Ukrainian interpreters, some of whom may even work with the Czech language. However, the fact is that most of them will most probably fail to comply with those conditions as defined in the Act No. 354/2019 Coll.. Therefore, hey shall not be considered court interpreters according to Czech law, and hence they cannot perform as interpreters in administrative procedures.

Nonetheless, lawmakers have also included situations when no court interpreter listed in the official list is available. In such cases, an interpreter who is not on the list shall provide their services during the procedure, and such interpreter will be granted the status of an *ad hoc* interpreter[71], provided that this interpreter swears an oath similar to those listed. Were an administrative authority not to be able to use the services of a court interpreter, it could indeed appoint a Ukrainian refugee as an *ad hoc* interpreter, although only on the condition that the refugee in question had sufficient command of the Czech language.

5. Theoretical considerations

There are several theoretical considerations which may be drawn from the various cases of mutual encounter between the administrative law of the Czech Republic and the public law of Ukraine, which were outlined above:

Firstly, administrative law of the Czech Republic and the public law of Ukraine represent two autonomous and separate legal frameworks. This separate nature was clearly demonstrated by several examples described in this article. For example, in case of a missing driving licence, the Ukrainian driver is not able to use his right to drive a motorcar in the territory of the Czech Republic, while his right still exists under the Ukrainian law and could be executed in the territory of

[68] In the Czech language and in the respective other language.
[69] See § 16 paragraph 3 of the Code.
[70] Although with Act No. 354/2019 Coll. coming into effect, translation and interpreting are considered two different activities, the database of the Ministry of Justice has not yet launched the new register enabling the filtration of the subjects based on the type of their license. As a result, the exact number of court interpreters in the Czech Republic cannot be defined for a certainty.
[71] See § 26 of the Act.

Ukraine.[72] Also, the scientific degrees of Associate and Full Professors, awarded by any of the Ukrainian universities after 28 February, 2000 exist in Ukrainian law, although not recognised by the laws of the Czech Republic.

Secondly, as demonstrated on the examples outlined in this article, the public law of Ukraine may produce effects also *vis-á-vis* the administrative authorities of the Czech Republic, however, only if the respective norm of the administrative law of the Czech Republic so provides. Therefore, both direct and indirect application of Ukrainian law is possible via a *mediator*, provided in the legal framework of the Czech Republic.[73] The Lex Ukraine I may serve as a perfect example for an act, requiring a *direct* application of the public law of Ukraine, when providing[74] that the domestic authority must evaluate whether the foreigner was, or was not holder of a "permanent residence status" in the territory of Ukraine as of 24 February, 2022. In all these cases, the Ukrainian law *itself* is not capable to produce any effects in the legal order of the Czech Republic. It is always the norm of the Czech law, which serves as the mediator.[75]

Thirdly, the problem of the effects of Ukrainian official documents in Czech law is not governed by a codified piece of legislation, but a myriad of norms, provided by various acts. Neither in the realm of international law, are any codified instrument addressing these problems in a complex way missing. In this respect, one must bear in mind that the *Agreement between the Czech Republic and Ukraine on legal assistance*, concluded in 2001, applies only to matters of "*civil law, family law, labour law and commercial law."*[76] Thus, while the Agreement provides for comprehensive rules on how to deal with official documents, issued by the competent authorities of both Contracting Parties,[77] these rules are – in principle - not applicable in the proceedings before the administrative authorities, as those proceedings concern in general matters of public law.

Lastly, the examples outlined in this article clearly demonstrate that a norm of domestic law, providing for either a direct or indirect application of foreign administrative law, may be linked to a corresponding international agreement. This is the case of recognition of driving licences, as based on the *Vienna Convention on Road Traffic*, or the recognition of university diplomas, as based on the *Protocol on*

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[72] Under the precondition, the driving licence will be presented to the competent Ukrainian authority. In this respect, the Ministry of Transport of the Czech Republic has also highlighted the fact that the Ukrainian authorities have also issued driving licences, which do not fulfil all requirements provided by the Vienna Convention on Road Traffic and which cannot be, consequently, recognised under Czech law.

[73] In legal theory, such mediator has been frequently referred as „delimiting norm". See Klaus Vogel, "Administrative law: international aspects" in *Encyclopedia of Public International*. *Law, 9th Volume: International Relations and Legal Co-operation in General*, ed. Rudolf Bernhardt (Amsterdam: North Holland, 1986): 2-6. In more recent literature, the topic was addressed by Jakub Handrlica, "Foreign law as applied by administrative authorities" *Zbornik Pravnog Fakulteta u Zagrebu* 68, issue 2 (June 2018), at p. 194.

[74] See § 3 paragraph 2 of Lex Ukraine I.

[75] See Jakub Handrlica, "Foreign law as applied by administrative authorities", at p. 210-212.

[76] See Art. 1 paragraph 1 of the Agreement.

[77] See Art. 18 of the Agreement.

Equality of Documents on Education, which was concluded between the former Czechoslovakia and USSR. In both cases, reciprocity was given, as based on the international agreements. However, the Leges Ukrainae also demonstrates the fact that reciprocity is not a necessary precondition for recognition of foreign official documents and that such recognition can be accomplished unilaterally in cases of emergency.

The observation made underscores the increasing importance of *international administrative law* as a special branch of public law, addressing foreign elements in the relations of administrative law.[78] Both a right to drive a motorcar, awarded by the competent authority of Ukraine and an education awarded by an Ukrainian university represent examples of such foreign elements, which are to be addressed by the applicable administrative law.[79]

The law may either require the application of ordinary rules in such situations, or provide for accepting of products of the application of foreign law in the domestic legal framework. The examples outlined in this article clearly demonstrate that *international administrative law,* as existing in the legal framework of the Czech Republic, is not a codified legal discipline. Norms, addressing the existence of foreign elements in the relations of administrative law exist in numerous acts and lack both uniform design and harmonised features. As Leges Ukrainae shows, these norms are also the product of tailor-made legislation, which aims for flexible responses to emergency situations.[80]

Here, it is necessary to mention that, apart of the two classical models of the application of foreign administrative law – the direct and the indirect, which are also known in the earlier scientific literature, the applicable provisions also recently provided for hybrid models. A substitution of missing foreign official documents by an *affidavit*, which is foreseen[81] by one of the Leges Ukrainae, represents such a hybrid model, addressing the foreign element in administrative law.

The rationale behind this provision is crystal clear. Similar to a provision providing for the recognition of a foreign university diploma, the provision allowing for an affidavit also reacts to a fact, which was certified by a foreign institution. This fact represents a graduation at a university in Ukraine. However, while under very standard situations, such graduation could be certified by a diploma, the emergency legislation must depend on those cases where there is a high probability that these certificates cannot be provided by their holders. The affidavit itself is a document governed exclusively by the applicable law of the Czech Republic, which means, it will have no legal consequences under the law of Ukraine. At the same time, the rationale of an affidavit is to substitute an official document, certifying a fact that arose under the law of Ukraine. Thus, the hybrid character of such *affidavit* lies in the fact that it *combines* features of unilaterality and reciprocity.

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[78] See Jakub Handrlica, "A treatise for international administrative law. Part II: On overgrown paths", *Lawyer Quarterly* 11, issue 1 (March 2021): 178-191.

[79] Ibid, at pp.179-180.

[80] See Luca R. Perfetti, "Massnahmevorschriften and emergency powers in contemporary public law", *Lawyer Quarterly* 10, issue 1 (March 2020): 23-33.

[81] See § 8 of Lex Ukrainae III.

6. Conclusions

The massive influx of Ukrainians into the territory of the Czech Republic in the aftermath of the military conflict in the territory of Ukraine immediately caused a massive increase of cases where a foreign element appears in the relations of administrative law. The immediate result of this immigration of Ukrainian refugees has been the increased circulation of official documents, which were issued by the competent authorities of Ukraine. Under these extraordinary circumstances, the norms of applicable law in the form of tailor-made crisis measures that address the existence of foreign elements in the relations of administrative law, again became the subject of both practical and theoretical interest. The situation underscores the need to address foreign elements by written laws and, at the same time, express the requirement for further theoretical research in the field of international administrative law.

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II. International agreements

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2. Vienna Convention on Road Traffic of 1968, concluded on 8. November 1968 in Vienna, entered into force on 21. May 1977.
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III. Legislative acts of the Czech Republic

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