

EVACUATION OF FOREIGNERS FROM UKRAINE: LEGAL BASIS, OBSTACLES AND GOVERNMENT AID



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MAIN ISSUE

Due to the full-scale armed invasion of the Russian Federation in Ukraine on February 24, 2022 and, as a result, the lack of air traffic with other countries, millions of Ukrainian and foreign citizens alike were forced to flee Ukraine to safer places (including to and through the EU member states) using vehicular and railroad checkpoints at the western state border. The checkpoints quickly became overcrowded, with queues of people fleeing the country often reaching a length of tens of kilometers.

In the first week of the war, foreign media reported signs of racial discrimination when third-country nationals tried to evacuate from Ukraine or cross the border with the EU countries. The issue quickly gained publicity, and the Ukrainian government was demanded to clarify the situation and take urgent measures to correct it.



Table 1.**Articles in foreign media containing mentions of racial discrimination**

date	source	link
28.02	DW	https://www.dw.com/en/african-students-scramble-to-flee-fighting-in-ukraine/a-60947768
28.02	AfricaNews	https://www.africanews.com/2022/02/28/russia-ukraine-conflict-africans-face-racial-discrimination-in-ukraine/
01.03	The Independent	https://www.independent.co.uk/world/ukraine-racism-refugees-russia-war-un-b2025771.html
02.03	NBC News	https://www.nbcnews.com/news/nbcblk/open-door-die-africans-report-racism-hostility-trying-flee-ukraine-rcna17953
02.03	AfricaNews	https://www.africanews.com/2022/03/02/ukraine-anger-over-discrimination-against-african-nationals/
02.03	CNN	https://edition.cnn.com/2022/03/01/africa/africa-condemns-racism-ukraine-intl/index.html
02.03	Aljazeera	https://www.aljazeera.com/news/2022/3/2/more-racism-at-ukrainian-borders
05.03	The Washington Post	https://www.washingtonpost.com/world/2022/03/05/ukraine-african-refugees-racism/
12.03	Cbsnews	https://www.cbsnews.com/news/black-ukraine-refugees-racism-discrimination-russian-invasion/
01.04	Euronews	https://www.euronews.com/2022/04/01/the-treatment-africans-are-facing-in-ukraine-is-despicable-but-why-are-we-surprised

Table 2.**Twitter posts mentioning racial discrimination**

date	source	link
27.02	Twitter	https://twitter.com/Maobeee/status/1497807030718906372
27.02	Twitter	https://twitter.com/nzekiev/status/1497805019311218689
27.02	Twitter	https://twitter.com/nzekiev/status/1497808708180582402?s=20&t=CMoURF9WDdrbLFv-uUGrCQ
27.02	Twitter	https://twitter.com/stephhegarty/status/1497875533228646403
28.02	Twitter	https://twitter.com/BeyGood/status/1498132281218662401?s=20&t=CKk1B0F4E0DS_81VMYVzng

STATE OF AFFAIRS

Information about the discrimination of the foreigners and their rights, covered in the media, mainly alluded to students from Africa and India as well as their occasionally unsuccessful attempts to quickly reach the Ukrainian-Polish border and cross it during the first days of the war. The publications were based either on individual posts of students in social networks and their reposts or on interviews with such students by foreign media conducted on February 24-27.

On February 28, the African Union, currently chaired by the President of Senegal Macky Sall¹, expressed concern about such reports in a statement, which warned Ukraine against creating obstacles for border crossings for persons of African origin. This issue was also discussed at the meeting of the XI emergency special session of the UN General Assembly from February 28 to March 2, during which representatives of African countries expressed their indignation at the unfair discrimination of people of African origin in the context of the refugee crisis unfolding in Ukraine, and called for equal and fair treatment of nationals of all countries. They also appealed to the EU countries to resolve situations in case citizens of African countries and persons of African origin are refused passage through the border.²

Concerns about discriminatory treatment of persons of African descent, racial and ethnic minorities were also expressed in a joint statement by the UN Working Group of Experts on Persons of African Descent, the Special Rapporteur on Contemporary Forms

of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Special Rapporteur on the rights of migrants, dated March 3.³

At the same time, Filippo Grandi, the UN High Commissioner for Refugees, stated during a press conference on March 1 that cases of unfair treatment of foreigners could have indeed taken place, but were not the result of the state policy of Ukraine or neighboring states, in particular Poland.⁴

On March 1, a number of Ukrainian human rights organizations published a statement regarding the evacuation of foreign students.⁵ They called on the neighboring countries to open their borders for citizens of all countries fleeing the war, and drew attention to the fact that the situation on the Ukrainian-Polish border in the first days of the full-scale war was extremely difficult for everyone crossing it, regardless of their citizenship. These organizations also emphasized the fact that isolated cases of third-country nationals not being able to board evacuation trains or join the queues at the border could have occurred due to the state of military evacuation and general panic, but had nothing to do with official rules or policies of the Ukrainian authorities.

Zhan Beleniuk, a world-famous Olympic champion in Greco-Roman wrestling and a member of the Verkhovna Rada of Ukraine, who is of African origin, addressed the governments of African countries on March 2, and stated that Ukraine is a tolerant state in



1_ <https://au.int/en/pressreleases/20220228/statement-ill-treatment-africans-trying-leave-ukraine>

2_ <https://www.un.org/press/en/2022/ga12406.doc.htm>

3_ <https://reliefweb.int/report/ukraine/ukraine-un-experts-concerned-reports-discrimination-against-people-african-descent>

4_ <https://media.un.org/en/asset/k14/k14dezco4m>

5_ <https://zmina.ua/statements/pravozahysnyky-zaklykayut-susidni-z-ukrayinoyu-krayiny-vidkryty-kordony-dlya-gromadyan-usih-krayin-yaki-zmusheni-ryatuvatysya-vid-vijny/>

6_ <https://www.facebook.com/zhanbeleniuk/videos/2733626883450583/>

Table 3.**Ukrainian mass media refuting the information about racial discrimination**

date	source	link
03.03	ZMINA. Center for Human Rights	https://zmina.info/articles/evakuacziya-inozemcziv-z-ukrayiny-chy-spravdi-ye-rasova-dyskryminacziya/
05.03	Obozrevatel	https://news.obozrevatel.com/ukr/show/people/rasizm-i-vijna-yak-naspravdi-stavlyatsya-ukraintsi-do-bizhentsiv-inozemtsiv-pid-chas-evakuatsii1.htm
10.03	Marie Claire	https://marieclaire.ua/uk/obshhestvo/644816

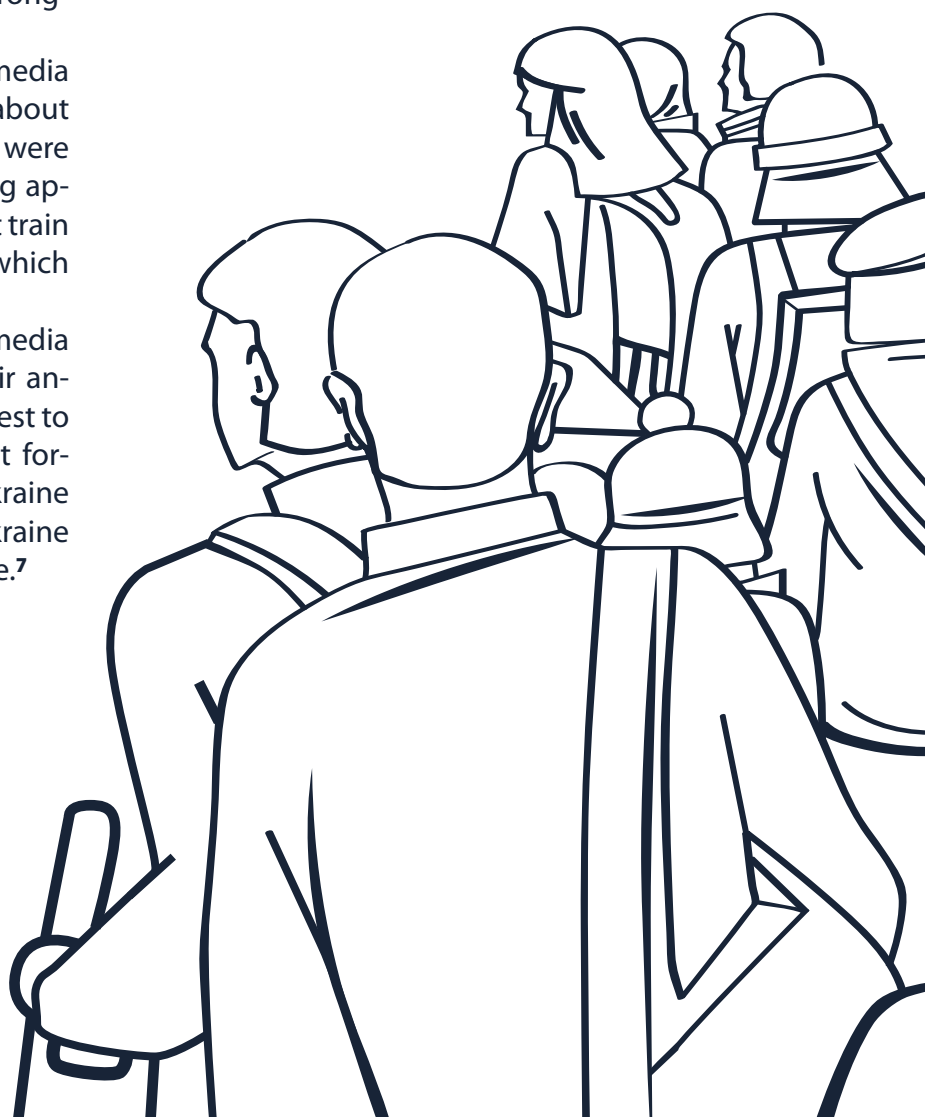
which all manifestations of racism are strongly condemned.⁶

Within a few days, Ukrainian mass media also started refuting the information about racial discrimination. In particular, there were examples foreign students not behaving appropriately towards Ukrainian citizens at train stations and border crossing points, which was likely also caused by stress.

At the same time, Russian mass media exploited the situation to advance their anti-Ukrainian propaganda and did their best to spread manipulative information about foreign students who could not leave Ukraine due to massive shelling, claiming that Ukraine is keeping over 6,000 foreigners hostage.⁷



⁷ <https://voxukraine.org/nepravda-ukrayina-trymaye-v-zaruchnykah-ponad-6-tysyach-inozemtsiv/>



GOVERNMENT STANCE

The Ukrainian government took seriously the reports of unequal treatment, including during border crossing, and declared safe and speedy evacuation of foreigners from Ukraine a priority.

The Ministry of Foreign Affairs rejected accusations of discrimination against foreign students, referring among others to the fact that they have been choosing Ukraine as study destination for decades in a statement from March 6.⁸ Dmytro Kuleba, the Minister of Foreign Affairs, claimed that any kind of discrimination, including the one based on race, skin color or nationality, has never been permitted in the country. Instead, the Ministry called on the diplomatic missions of other countries to cooperate more actively with Kyiv in order to evacuate their own citizens from the war zone, pointing out that there are no legal obstacles to their departure from the country. With the introduction of martial law on February 24, the government limited the possibility of male Ukrainian citizens aged 18-60 for leaving the country due to mobilization requirements, but no restrictions were set for foreign citizens.

UKRAINIAN RULES OF ENTRY AND EXIT FOR THE FOREIGNERS

Generally, the rules of the entry and exit for the foreigners are regulated by the CMU Resolution #1074 “On the rules for the entry of foreigners and stateless persons into Ukraine, their departure from Ukraine and transit passage through its territory” from December 29, 1995. Additionally, the Resolution of the CMU #1455 “On approval of the Procedure for establishing a special regime of entry and exit, restriction of freedom of movement of citizens, foreigners and stateless persons, as well as the movement of vehicles in Ukraine or in some of its areas where martial law has been introduced” from December 29, 2021 regulates the rules for moving through the territory of Ukraine and traveling outside its borders during the martial law. Yet another series of documents⁹ regulates the procedure for issuing visas to foreigners and stateless persons needed for entry in Ukraine and transit through its territory as well as requirements for the stay of foreigners and stateless persons in Ukraine.

It should be noted that the specified legal acts do not provide any advantages or conditions for the priority evacuation of foreigners from Ukraine. According to the explanation from the Ministry of Foreign Affairs¹⁰, such position corresponds with the norms of international humanitarian law, which gives priority to women and children. All men, both Ukrainian and foreign citizens, must be checked and registered, at the border or otherwise, in order after women, children and the elderly. According to Andriy Demchenko, the spokesman of the State Border Service of Ukraine¹¹, foreigners often did not follow the established rules and demanded special treatment at the beginning of the full-scale war.



8_ <https://www.facebook.com/UkraineMFA/posts/332097742294031>

9_ <https://mfa.gov.ua/podorozhnim/vyizd-ta-perebuvannya-inozemciv-v-ukrayini/pravila-vyizdu-ta-perebuvannya-v-ukrayini>

10_ <https://www.facebook.com/UkraineMFA/posts/329444642559341>

11_ <https://www.hrw.org/ru/news/2022/03/05/381330>



MEASURES TAKEN TO EVACUATE THE FOREIGNERS

According to the Ministry of Education of Ukraine¹², 76,500 foreign students from 155 countries studied in Ukraine as of January 1, 2021. About a quarter of them were students of Indian origin, and another 21% were students from African countries, most of them from the Kingdom of Morocco. Overall, at the beginning of the full-scale war, there were almost 80,000 foreign students in Ukraine.

Additionally, according to the Ministry of Foreign Affairs¹³, Ukrainian government assisted over 130,000 foreigners in leaving the country from February 28 to March 6, including about 14,500 students. Another 50,000 foreigners, according to the UN¹⁴, left the country earlier, between February 22-27. As of March 31, more than 60,000 foreign students left Ukraine.¹⁵

Overall, Ukrainian government, state authorities and public organizations, including international ones, provided the following measures to ensure the rapid evacuation of foreigners and students in particular:

- Ministry of Foreign Affairs emergency hotlines for foreign students trying to leave the country;
- online questionnaire aimed to collect basic information about students and their current place of stay to provide advice on available means for departure;
- enhanced cooperation of the Ministry of Foreign Affairs with diplomatic missions of

other countries;

- 24/7 operating hours for all checkpoints on the western border;
- simplified border crossing procedure – for example, «green corridors» for the foreigners were created at Porubne checkpoint;
- separate evacuation corridors – third-country nationals were organized in separate groups to be transported across the border and separate carriages in long-distance and suburban trains were designated for this purpose;
- involvement of a large number of volunteers with knowledge of various foreign languages at Kyiv central railway station, as well as those with good command of English at Lviv, Uzhhorod and Chop stations;
- special attention to foreigners at railway stations in Zakarpattia and Lviv regions, where they could receive medical assistance and food, including vegetarian options, at volunteer stations.

Such measures demonstrate that even in the most difficult times caused Russian aggression, Ukraine provided comprehensive organized support to foreigners fleeing the war zones. At the same time, it should be recognized that at the beginning of the war there were a number of objective obstacles on the way to a quick and safe evacuation.



12_ <https://studyinukraine.gov.ua/zhittya-v-ukraini/inozemni-studenti-v-ukraini/>

13_ <https://www.facebook.com/UkraineMFA/posts/332097742294031>

14_ <https://www.ukrinform.ua/rubric-ato/3418890-evakuacia-inozemciv-bezpecni-koridori-dopomoga-volonteriv-i-zodnoi-ksenofobii.html>

15_ <https://osvita.ua/vnz/86180/>

OBSTACLES FOR EVACUATING THE FOREIGNERS IN THE FIRST DAYS OF THE FULL-SCALE WAR

During the first days of the full-scale war, the western borders of Ukraine (especially the Polish one) were extremely crowded. Both the infrastructure and the personnel of the checkpoints were not prepared for such a large number of people aiming to cross the border, and people were not prepared for the long waits in queues, especially in freezing temperatures. According to the information, provided by Maksym Kozytskyi, Head of Lviv RSA, over 150,000 people crossed the border with Poland in Lviv region alone on February 24-27, queues at automobile checkpoints reached up to 30 kilometers, and up to 2,000 people were simultaneously at the gates of each crossing.¹⁶

The border guards, together with the law enforcement officers, divided people into different groups¹⁷, such as women with children, women, men, etc., in their effort to streamline the process of border crossing for most vulnerable categories of people. The foreign student coordinator of one of major state universities noted¹⁸ that she, together with her colleagues, explained to their students how the distribution and priority admissions work, so their students knew and understood the rules and were ready to follow the established order. However, in the chaos of the first days of the full-scale war, misunderstanding or neglect for the rules of the border crossing order by other foreigners could have created a feeling of injustice and helplessness. Despite the fact that Ukrainian women and

children, for example, were put in the same conditions as male foreigners.

Panic and desperation, experienced by the foreigners at the border, and the resulting conflicts at checkpoints were also exacerbated by problems in neighboring countries. For a certain period of time, the EU member states were not accepting people who had neither Ukrainian nor European citizenship and did not have visas to the EU countries. There was a lack of closer coordination between Ukraine and the neighboring countries in the sphere of integrated border management for a quick solution to this issue. It was properly regulated from a normative standpoint only 10 days after the start of the war by Clause 13 of the Council Implementing Decision (EU) 2022/382 from March 4, 2022.¹⁹ The decision established the presence of a mass influx of displaced persons from Ukraine within the scope of Article 5 of the Council Directive 2001/55²⁰ and introduced temporary protection (up to three years) for all Ukrainians and those who had a permanent place of residence in the country before the start of the full-scale war. At the same time, for third-country nationals who can safely return to their country of origin, each EU country applies its own rules, which in most cases are granting a residence permit for three months only.²¹

Additionally, there was a recorded low level of activity from diplomatic institutions of foreign countries regarding the evacuation of their citizens at the end of February and



16_ <https://susplne.media/212117-cergi-do-30-km-aka-situacia-na-ukrainsko-polskomu-kordoni/>

17_ <https://www.ukrinform.ua/rubric-society/3423084-u-mvs-sprostovuut-budaku-diskriminaciu-pri-peretini-kordonu.html>

18_ <https://news.sumdu.edu.ua/uk/news/12443-sumdu-pid-chas-vijni-na-storinkakh-zakordonnikh-zmi-chastina-3-sumi-ta-sumdu-vistoyat-i-ti-vistojish.html>

19_ https://ips.ligazakon.net/document/view/MU22006?an=20&ed=2022_03_04

20_ https://court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Direkt_ES_2001_55.pdf

21_ <https://www.aljazeera.com/news/2022/5/13/african-students-who-fled-war-in-ukraine-fight-to-keep-studying>

22_ <https://www.thehindu.com/news/international/watch-indian-students-from-sumy-state-university-ukraine/article65193155.ece>

the beginning of March. For example, as of March 5, there were no instructions from the Indian government for students to evacuate, and Indian students, after numerous fruitless appeals to the Indian authorities, were leaving the country at their own peril and risk.²² A Kenya native, having left Ukraine, also told the mass media that the state authorities in his country had been looking for ways to organize the evacuation for far too long.²³ The problem caused by the weak communication efforts of foreign governments with their citizens was further aggravated by the fact that some states don't have embassies in Ukraine (for example, Kenya and Ghana have only opened respective consulates), whereas it is the embassies that are entrusted with the function caring for the safety of their citizens abroad and providing legal assistance in urgent cases, such as assistance with returning to one's own country.

The biggest obstacle in the evacuation of foreigners was the fact that, despite the ceasefire agreement, Russian troops continued shelling Ukrainian settlements, thereby making it impossible to create long-term safe corridors for all people, including foreign citizens. For example, the first evacuation of Indian students of Sumy state universi-

ty took place no sooner than March 8-9 as a result of the joint efforts of the Government of Ukraine, the Embassy of India and the Red Cross Society. Days before, this humanitarian corridor came under fire.²⁴



23_ <https://www.the-star.co.ke/news/2022-03-15-student-rescued-from-ukraine-narrates-ordeal-claims-state-neglect/>

24_ <https://indianexpress.com/article/world/evacuation-of-indian-students-sumy-ukraine-put-on-hold-7805310/>

CONCLUSION

The problem with the discrimination against the foreigners covered by the foreign media was mainly related to the evacuation of foreign students in the first days of the full-scale war in Ukraine. The resonance was caused by their negative comments on social networks and in interviews with foreign media, mainly regarding attempts to use evacuation transport or cross the border.

Foreign youth were frightened by the general state of panic and chaos at train stations and checkpoints, because a large number of both Ukrainian citizens and third-country nationals were trying to escape the war at the same time. Students were sharing their fears in social media posts. At the same time, there were no official complaints filed, particularly to the State Border Service Administration, regarding discrimination against the foreigners during border crossing.

The Ukrainian government, state authorities and NGOs, for their part, provided comprehensive organizational support

to foreigners to ensure their quick and safe evacuation. But the elimination of the main obstacles, such as the lack of the aggressor's will to provide "green corridors", the temporary lack of grounds for the entry of foreigners without Ukrainian or EU citizenship to the EU countries, depended, unfortunately, not only on Ukraine, but also on other parties.

Another reason for the highly emotional publications in foreign media was the fact the governments of many foreign countries demonstrated low levels activity when finding ways to evacuate their own citizens and did not provide them with official information in a timely manner. Therefore, the mass media of the respective countries tried to draw the attention of their authorities to the problems of students and, thereby, unwittingly contributed to spreading the discrimination narrative.

However, Ukraine should also draw the conclusions and create additional steps in the nearest future to strengthen the mechanism through which foreign citizens can file an official complaint in case of racial discrimination. After all, Ukrainian government, state authorities, human rights watchdogs and other civic organizations have expressed and are continuing to express a clear position that of any manifestations of discrimination in the country, including discrimination based on race, skin color or nationality, is absolutely unacceptable. Over 30 years thousands of students from African and Asian countries came to study in Ukraine, and a large number of them remained in Ukraine even after completing their studies. This is the best confirmation of the positive attitude of the Ukrainian government and Ukrainians themselves towards foreign nationals.

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