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## ПРАВОВІ РЕЖИМИ ПЕРЕБУВАННЯ В ЄС ГРОМАДЯН УКРАЇНИ

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### **Homonai V.V. Legal regime of stay in the EU of citizens of Ukraine.**

The article focuses attention on the factors that became catalysts for the adoption of Council Implementing Decision (EU) 2022/382, which establishes the presence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and introduces temporary protection. The above-mentioned decision became the basis for the appearance of a legal regime for the stay of Ukrainian citizens in the EU, which did not exist before – this is the regime of temporary protection.

Focuses on the Council conclusions of 27 May 1999 on displaced persons from Kosovo, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

The article highlights all existing legal regimes of a Ukrainian citizen's stay in the EU (temporary protection; tourist; refugee) and characterizes them. It is emphasized that the regime of temporary protection is limited in time, it is not the same as permanent protection and that it provides that EU member states take measures necessary for the voluntary return of persons who enjoy temporary protection or whose temporary protection has expired – to Ukraine. If the legal regime of a tourist – a citizen of Ukraine independently ensures his stay in an EU member state, he does not have the right to work in the EU. Refugee status can be acquired by a citizen of Ukraine who proves that he has a justified danger of being persecuted because of race, religion, nationality, belonging to a certain social group or political beliefs. Under the legal status of a refugee, a person gains access to the labor market if the application for granting refugee status has not received a final review within 9 months.

It is emphasized that EU law establishes only minimum standards of protection that each EU member state must ensure. National protection standards (EU member countries) are higher compared to EU standards.

**Key words:** displaced person; citizen of Ukraine; legal regime of temporary protection; legal regime of the tourist; legal regime of the refugee; legal status of a citizen of Ukraine; legal status of a citizen of a third country in the EU; martial law; protection of human and citizen rights; solidarity.

### **Гомонай В.В. Правовий режим перебування в ЄС громадян України.**

В статті акцентується увага на чинниках, які стали каталізаторами прийняття Імплементативного рішення Ради (ЄС) 2022/382, що встановлює наявність масового напливу переміщених осіб з України у розумінні статті 5 Директиви 2001/55/ЄС та запроваджує тимчасовий захист. Вище зазначене рішення стало підґрунтям для появи правового режиму перебування громадян України в ЄС, якого раніше не існувало – це режим тимчасового захисту.

Фокусується увага на ухвалених 27 травня 1999 року Радою висновках щодо переміщених осіб із Косово, Директиві Ради 2001/55/ЄС від 20 липня 2001 року про мінімальні стандарти для надання тимчасового захисту у разі масового напливу переміщених осіб та про заходи, що сприяють збалансованості зусиль між державами-членами щодо прийому таких осіб та відповідальності за наслідки такого прийому.

В статті виокремлено всі існуючі на сьогодні правові режими перебування громадянина України в ЄС (тимчасовий захист; турист; біженець) та охарактеризовано їх. Підкреслюється, що режим тимчасового захисту є обмеженим у часі, він не тотожний постійному захисту та що він передбачає, що держави-члени ЄС вживають заходів, необхідних для добровільного повернення осіб, які користуються тимчасовим захистом або тимчасовий захист яких закінчився.- до України. Якщо правовий режим туриста – громадянин України самостійно забезпечує своє перебування в державі-члені ЄС, не має права на працю в ЄС. Статус біженця може бути громадянин України, який доведе, що у нього є обґрунтована небезпека бути переслідуваним через расу, релігію, національність, належність до певної соціальної групи чи політичні переконання. При правовому режимі біженця особа отримує доступ до ринку праці,

якщо заява про надання статусу біженця протягом 9 місяців не отримала остаточного розгляду.

Підкреслюється, що правом ЄС встановлено лише мінімальні стандарти захисту, які має забезпечити кожна країна-учасниця ЄС. Національні стандарти захисту (країни-учасниці ЄС) є вищими, порівняно зі стандартами ЄС.

**Ключові слова:** переміщена особа; громадянин України; правовий режим тимчасового захисту; правовий режим туриста; правовий режим біженця; правовий статус громадянина України; правовий статус громадянина третьої країни в ЄС; воєнний стан; захист прав людини і громадянина; солідарність.

**Statement of the problem.** The situation in which the citizens of Ukraine found themselves is unusual, because after the Second World War, the actions of the aggressor country – Russia – are unprecedented on the territory of Europe. It is common knowledge that Ukraine has been in a state of undeclared war since 2014 [1]. On February 24, 2022, a full-scale Russian invasion of the territory of Ukraine began. Millions of Ukrainian citizens were forced to cross the border with the EU and stay there, escaping from Russian aggression. This factor became a catalyst for changes in the issue of the legal status of Ukrainian citizens in the EU, because the previously existing general rules for the stay of Ukrainian citizens in the EU as citizens of third countries needed to be improved in view of the state of war in Ukraine and, as a result, the fact that Ukrainian citizens crossed the EU border to save themselves from the war

The legal status in the EU of citizens of Ukraine who leave the country due to the military occupation of the Russian Federation is, in fact, a set of subjective rights, legal obligations and legitimate interests of citizens of Ukraine as legal subjects [2]. This is the position of citizens of Ukraine in the legal reality of the EU.

On 27 May 1999, the Council adopted conclusions on displaced persons from Kosovo. They called on the Commission and Member States to take into account the experience of responding to the crisis situation in Kosovo in order to introduce measures. In 2001, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [3].

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

The purpose of this article is to determine the legal regimes of a Ukrainian citizen's stay in the EU and to characterize it.

In the legal literature, the work of Y. Bysaga is devoted to the issue of the legal status of citizens of third countries in the EU [5; 6]. Scientific works of V. Volkov [7; 8], L. Deshko [9; 10; 11; 12], R. Petrova [13], T. Eiser [14] and other domestic scientists lay the groundwork for studying the legal regime of stay of Ukrainian citizens in the EU. At the same time, it undergoes evolution in view of such a factor as a full-scale war of Russia against Ukraine.

#### **Presentation of the main research material.**

The above testifies to the relevance of studying the issue of the legal status in the EU of citizens of Ukraine who leave the country due to the military occupation of the Russian Federation, both from a theoretical and a practical point of view.

The purpose of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof is establishing minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their country of origin, as well as contributing to the balancing of efforts between member states regarding reception and responsibility for the consequences of reception of such persons [3]. In this Directive, temporary protection means a procedure of an exceptional nature to ensure, in the event of a mass or imminent mass influx of displaced persons from third countries who cannot return to their country of origin, immediate temporary protection of such persons, in particular where there is a risk that the asylum system will not be able to cope with such an influx without negative consequences for its effective functioning, the interests of the relevant persons, as well as other persons requesting protection. According to the Directive, displaced persons are third-country nationals or stateless persons who have been forced to leave their country or region of origin, or evacuated, in particular in response to appeals by international organizations, and cannot return in safe and stable conditions due to the situation in that country, and which are subject to Article 1A of the Geneva Convention or other international or national instruments that provide international protection, including:

- persons who escaped by fleeing from areas of armed conflict or an outbreak of violence;
- persons who are at serious risk or who have become victims of systematic or general violations of human rights.

At the same time, in accordance with Art. 3 of the Directive, temporary protection does not prevent

the recognition of refugee status in accordance with the Geneva Convention.

The Council of the EU, taking into account the Treaty on the Functioning of the European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons and on measures to promote the balance of efforts between Member States to receive such persons and responsibility for the consequences of such reception ( 1 ), in particular Article 5, on March 4, the Council of the EU unanimously adopted an executive decision on the introduction of temporary protection in connection with the mass entry of people fleeing from Ukraine due to the war.

Temporary protection is an extraordinary mechanism. It can be used when there is a mass influx of people. This mechanism aims to provide immediate and collective (ie, without the need to consider individual applications) protection of displaced persons who are unable to return to their country of origin. The aim is to relieve pressure on national asylum systems and allow displaced persons to enjoy harmonized rights across the EU. These are rights to residence, access to the labor market and housing, medical care and access to education for children [3].

This decision activated temporary protection for an initial period of one year, but it can be automatically extended for six months (up to one year maximum). Citizens of Ukraine, citizens of third countries or stateless persons who had international protection in Ukraine and their family members received temporary protection if they lived in Ukraine until February 24, 2022 inclusive. In accordance with the aforementioned Decision, EU member states applied one of the following protections to citizens of third countries who lived in Ukraine until February 24 inclusive, had a permanent residence permit and could not safely return to their countries:

- 1) temporary protection;
- 2) appropriate protection according to their national legislation.

According to the executive decision on the introduction of temporary protection in connection with the mass entry of people fleeing Ukraine due to the war, member states can also apply this decision to other people, including third-country nationals who legally reside in Ukraine and do not can safely return to their home country. In addition, the Decision of the Council of the EU also applies to Ukrainians who fled shortly before February 24 or ended up in the territory of the European Union immediately before this date, for example, because of work or vacation [3; 4].

In accordance with the decision of the EU Council of March 4, 2022 – the Directive on temporary protection – immediate protection of displaced persons is ensured. The national authorities of the

EU member state, where the person is, inform him about the right to temporary protection. If a person wishes to exercise this right, he must apply to such national authorities for a residence permit for temporary protection.

According to the Temporary Protection Directive, a person has the right to reside, work in the EU, social assistance, medical assistance, care for unaccompanied children, access to housing, access to education (for children). Temporary protection is granted until March 4, 2023. If the reasons for granting it do not disappear, it will be automatically extended twice by 6 months (until March 4, 2024). In the event that the reasons for temporary protection remain in the future, the European Commission may propose to the Council of the EU to extend it for another year (until March 4, 2025).

In addition to temporary protection due to the fact that since 2017, visa-free entry to the Schengen zone has been in effect for citizens of Ukraine. Ukrainians who went abroad because of the war can choose another legal regime for their stay: stay in the status of a tourist (for 90 calendar days, without the right to work, without any social or financial support); submit documents for obtaining refugee status (this must be done immediately in the first country in which the person stayed after leaving the territory of Ukraine, the procedure for waiting for a corresponding decision can last more than six months, the applicant's passport is confiscated, he is forced to stay in this country until obtaining the status, the national law may provide for residence only in a certain place) [15].

The basic rights of Ukrainian citizens residing in the EU are guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms [16]. The EU also adopted the Charter of the European Union on Fundamental Rights – a document, a legal act that has a public legal, «constitutional» character [17]. The draft of the document was prepared in 2000, it acquired full legal force only with the entry into force of the Lisbon Treaty on December 1, 2009. The Charter is the primary source of EU law on a par with the Treaty establishing the European Communities and the European Union and its annexes. The signatory states of the Charter are bound by the precedent practice of the Court of Justice of the European Union, which is another mechanism for the protection of human rights.

According to Art. 53 of the Charter, nothing in this Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms, as recognized in the relevant areas of their application by Union legislation and international law, as well as international agreements to which the Union or all states are parties -members, including the European Convention on the Protection of

Human Rights and Fundamental Freedoms and the constitutions of member states.

According to Art. 54 of the Charter, nothing in this Charter shall be interpreted as implying any right to engage in any activity or to carry out any action aimed at the destruction of any rights and freedoms recognized in this Charter, or at their limitation in to a greater extent than provided for in this Agreement.

EU law establishes only minimum standards of protection that each EU member state must ensure. National protection standards (EU member states) are higher compared to EU standards [18; 19].

**Conclusions.** The legal status of a citizen of Ukraine in the EU is the position of a citizen of Ukraine in legal reality, which reflects his (a person's) actual state in relations with the EU, the society of an EU member state, and the EU country. Three legal regimes of a Ukrainian citizen's stay in the EU are highlighted and characterized: temporary protection; tourist; refugee.

Temporary protection is granted to citizens of Ukraine who lived in Ukraine on a permanent basis and left Ukraine in connection with the military aggression of the Russian Federation on February 24, 2022. If a person chooses the status of a tourist, he has the right to stay on the territory of the EU for 90 calendar days from the date of entry, independently ensures his stay in the EU member state, does not have the right to work in the EU. In the case of choosing refugee status, a person must go through a long special procedure to determine whether he has a reasonable risk of being persecuted because of race, religion, nationality, belonging to a certain social group or political beliefs. If the application for refugee status has not received a final review within 9 months, the person may gain access to the labor market.

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