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## THE RIGHT TO WORK FOR UKRAINIAN REFUGEES AND ITS REALIZATION IN EUROPE

### *Abstract*

*The protection of the rights of refugees has been one of the important branches of human rights protection, since such persons require additional protection measures due to the difficulties they have faced and which have forced them to find asylum in another country. This issue has become especially relevant for the citizens of Ukraine, who were forced to leave their country and move to European countries to save their lives due to the armed aggression of the Russian Federation. In this article the protection of the right to work of Ukrainian refugees in European countries is analysed from a comprehensive theoretical and practical aspects and the practical implementation of this right in the EU member states are discussed. Particularly, article focuses on shortcomings in the legal acts of the EU and analyses the legislation of three EU member states, namely Poland, Germany and Latvia. Finally, some suggestions with regard to amendments to current legal norms and promoting their integration into society are made to ensure protection of the rights of Ukrainian refugees.*

### *Annotasiya*

*Qaçqınların hüquqlarının qorunması insan hüquqlarının müdafiəsinin ən mühüm məsələlərindən biri olmuşdur. Belə ki, bu şəxslər üzləşdikləri çətinliklərə görə əlavə müdafiə tədbirlərinə ehtiyac duyurlar və bu da onları başqa ölkədə sığınacaq tapmağa məcbur edir. Həmin məsələ son dövrlərdə Rusiya Federasiyasının silahlı təcavüzü nəticəsində öz ölkəsini tərk edib Avropa ölkələrinə getmək məcburiyyətində qalmış Ukrayna vətəndaşları üçün əhəmiyyət daşıyır. Məqalədə ukraynalı qaçqınların Avropa ölkələrində əmək hüquqlarının müdafiəsi müzakirə olunur və AI-yə üzv dövlətlərdə sözügedən hüquqların həyata keçirilməsi nəzəri və təcrübi cəhətdən hərtərəfli təhlil edilir. Xüsusilə, məqalə AI-nin qəbul etdiyi hüquqi aktlardakı çatışmazlıqlara diqqət yetirir və İttifaqa üzv olan üç ölkənin: Polşa, Almaniya və Latviyanın müvafiq sahədəki qanunvericiliyini təhlil edir. Sonda isə ukraynalı qaçqınların hüquqlarının müdafiəsini təmin etmək üçün mövcud qanunlara əlavələrin edilməsi və qaçqınların cəmiyyətə inteqrasiyasını dəstəkləməklə əlaqədar təkliflər verilir.*

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## Introduction

In the process of establishing the UN, all states came to the conclusion that the individual is at the centre of all interests and that the protection of his/her rights should be a key element in all activities of states.<sup>1</sup> This is particularly relevant to refugees, who are considered a vulnerable category. The problem of refugees concerns both states, international organizations, and the world community which is explained by the fact that this issue is not just about human life, but about the fate of hundreds of millions of residents. For this reason, a large number of international norms protecting human rights in general and refugees rights in particular have been adopted at the international level.

Recently, the practical importance of developing a scientific basis for solving the problems of ensuring and protecting the rights and freedoms of persons recognized as refugees has increased.<sup>2</sup> At the same time, ensuring proper protection of the legitimate interests of persons recognized as refugees is associated with overcoming a number of legal problems and gaps. They are caused by migration flows of refugees in Europe and have become urgent due to the lack of attention of legal scholars and the imperfection of modern institutional means of protecting the legitimate interests of recognized refugees. Therefore, these problems require finding effective ways to overcome them resorting to public legal and socio-economic transformations.<sup>3</sup>

The issue of the protection of the rights of refugees has become actual for the citizens of Ukraine after the Russian Federation invaded the territory of Ukraine without a declaration of war on 24 February 2022 and attempted to violate its state sovereignty.<sup>4</sup> Due to the fact that a number of people suffered from Russia's illegal actions, which are contrary to international law, numerous Ukrainian citizens were forced to go abroad to save their lives and

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<sup>1</sup> United Nations, Charter, Preamble (1945).

<sup>2</sup> A. Stashchuk, Problems of Refugee Rights and Modern Challenges, 10 (2018).

<sup>3</sup> R. Kaliuzhnyi, H. Tymchyk, *Administrative and Legal Status of Persons Recognized as Refugees in Ukraine*, 22 (2015).

<sup>4</sup> Diana Roy, How Bad Is Ukraine's Humanitarian Crisis a Year Later? Council on Foreign Relations (2023), <https://www.cfr.org/in-brief/ukraine-humanitarian-crisis-refugees-aid> (last visited Jan. 25, 2023).

protect basic human rights.<sup>5</sup> Because of this, European states, which have received large numbers of Ukrainian refugees, have developed legal acts and instructions aimed at protecting refugees and integrating them into normal life.<sup>6</sup>

In spite of the fact that there are several documents at the European Union (hereinafter the EU) level, (for example: Charter of Fundamental Rights of the European Union,<sup>7</sup> Council Directive on the Status of Third-country Nationals Who are Long-Term Residents,<sup>8</sup> Directive of the European Parliament and of the Council of Establishing Standards for the Reception of Applicants for International Protection,<sup>9</sup> Council Directive 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 to bear the consequences,<sup>10</sup> which establishes standards for the reception of persons requesting international protection) that are binding on all member states with regard to the rights of refugees, certain aspects related to procedural issues differ from one country to another. Because of this, it is worth paying attention to the peculiarities of the legal system of the country and the legal regulation of refugee protection in the European countries in order to most effectively protect Ukrainian citizens.

Moreover, special attention should be paid to the issue of refugees' enjoyment of basic rights, including the right to work. This right is essential for ensuring the normal functioning of each person and his/her personal growth. The right to work predetermines the possibility of realization of a number of other social and labour rights: the right to rest, to fair wages, to safe working conditions, etc.<sup>11</sup> Since refugee status has its own characteristics, it is worth considering the question of employment of Ukrainian refugees abroad, in order to determine the most loyal jurisdictions.

It is worth noting that currently, many problems affect the integration of refugees in the labour market of member states. The main problem in the context of the realization by Ukrainian citizens of their right to work is the unequal approach of the EU member states to the regulation of the specifics of the employment of refugees. In addition, states regulate the procedure for

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<sup>5</sup> *Ibid.*

<sup>6</sup> UNHCR, *Refugee Protection: A Guide to International Refugee Law*, 6 (2001).

<sup>7</sup> See Charter of Fundamental Rights of the European Union (2000). Available at: [https://www.citizensinformation.ie/en/government\\_in\\_ireland/european\\_government/eu\\_law/charter\\_of\\_fundamental\\_rights.html](https://www.citizensinformation.ie/en/government_in_ireland/european_government/eu_law/charter_of_fundamental_rights.html) (last visited Dec. 1, 2022).

<sup>8</sup> See Council Directive Concerning the Status of Third-country Nationals who are Long-term Residents, 2003/109/EC (2003).

<sup>9</sup> See Directive of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection (recast), 2013/33/EU (2013).

<sup>10</sup> See Council Directive 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 2001/55/EC (2001).

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (1966).

obtaining temporary protection and the document that a person receives after its confirmation in different ways. The second problem that prevents obtaining temporary asylum is the long period of obtaining such a permit. The next problem is the advisory nature of many acts that some countries simply ignore. It also creates obstacles in the further realization of the rights of Ukrainian refugees. The fourth problem is the unavailability of integration courses and language learning for many Ukrainians.

Hence, this article analyses EU legislation on the protection of the rights of refugees, its practical aspects and propose solutions where these rights are not sufficient for adequate legal protection.

## **I. Protection of fundamental rights of refugees in international law**

The importance of human rights is always high and occupies a leading place in national and international law-making, but special attention is still given to the rights of vulnerable categories of people, especially those who have suffered and are in need of special protection.<sup>12</sup> Refugees are one of such category of persons. Most refugees appear as a result of international or domestic military conflicts. The phenomenon of refugees is determined primarily by a forced and undesirable change of place of residence for a citizen.<sup>13</sup>

The term *refugee* should be understood to mean a foreigner (including a stateless person) who as a result of a well-founded fear of persecution or a threat to his life is forced to leave the territory of the state of which that person is a citizen (or in whose territory he/she permanently resides) and is unable or unwilling to enjoy the protection of that state as a result of these fears.<sup>14</sup> The definition of the refugees consists of the provisions of the Convention Relating to the Status of Refugees. This document has become a universal and basic international instrument, which enshrines the definition of a refugee in international law. The main achievement of this Convention is that for the first time it focuses not on a group of people at risk of persecution on ethnic grounds, but on a specific person - a refugee.<sup>15</sup>

After all, before the adoption of the Convention, international law focused on a group of persons facing the threat of persecution on the basis of ethnicity, and the adoption of the Convention initiated concentrate on a specific person - a refugee. In the rules of the Convention, the concept of "refugee" is indicated in the singular, therefore, in order to receive legal protection, a person does not need to be a part of a certain group of persons (for example,

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<sup>12</sup> Alexander H. E. Morawa, *Vulnerability as a Concept of International Human Rights Law*, Centre of International Relations 139, 139 (2003).

<sup>13</sup> Stashchuk, *supra* note 2, 3.

<sup>14</sup> United Nations, Convention Relating to the Status of Refugees, art. 1 A (2) (1951).

<sup>15</sup> *Ibid.*

an ethnic group), it is enough to simply apply for protection on his own on the basis of the relevant grounds specified by the Convention.<sup>16</sup>

In our opinion, the above definitions of this term are not complete. Accordingly, we would like to offer our own version to this concept. Therefore, refugees are persons who have left their country of permanent residence and are outside its borders due to extraordinary circumstances (armed conflicts, violence, climate change, etc.) and are forced to flee their countries due to well-founded fears of becoming victims of persecution or fear of a threat to their own life and health or other reasons and who cannot use the protection of their country or do not want to use this protection owing to fears.

However, in 1966 the Protocol relating to the Status of Refugees was adopted, which detailed the concept of a *refugee* on a temporary basis.<sup>17</sup> This document was necessary due to the fact that in the Convention relating to the Status of Refugees of 1951, there were two limitations for the definition of a refugee<sup>18</sup> which created significant obstacles to solve the problems of refugees, to ensure their rights and freedoms at an adequate level. In other words, they could not be regarded as refugees because they occurred in the EU.

The essence of the temporal limitation is that the right to be considered a refugee did not extend to persons who became such as a result of events that occurred after January 1, 1951. The geographical limitation is that the specified events mean either events that took place in Europe before the date or events that occurred in Europe or elsewhere before the date.<sup>19</sup>

Other legal acts regulating general aspects of refugee protection include the Convention relating to the Status of Refugees of 1951,<sup>20</sup> IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War,<sup>21</sup> European Agreement on the Abolition of Visas for Refugees,<sup>22</sup> the Convention relating to the Status of Stateless Persons,<sup>23</sup> the UN Declaration on Territorial Asylum,<sup>24</sup> the Protocol relating to the Status of Refugees.<sup>25</sup> According to these international legal documents, legal status is commonly understood as a set of rights and obligations of natural and legal persons. Therefore, international legal status of a refugee can be defined as a system of recognized and enshrined rights and obligations in international law.<sup>26</sup>

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<sup>16</sup> *Ibid.*

<sup>17</sup> United Nations, Protocol relating to the Status of Refugees, art. 1 (1966).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 14, art. 1 B (1).

<sup>20</sup> *Ibid.*

<sup>21</sup> *See* United Nations, IV Geneva Convention relative to the protection of civilian persons in time of war (1949).

<sup>22</sup> Council of Europe, European Agreement on the Abolition of Visas for Refugees (1959).

<sup>23</sup> UN Refugee Agency, Convention relating to the status of stateless persons (1954).

<sup>24</sup> United Nations, United Declaration on Territorial Asylum (1967).

<sup>25</sup> *Supra* note 17.

<sup>26</sup> *Supra* note 2.

As stated above, the fundamental rights of refugees and their protection are reflected in international law.<sup>27</sup> Formed under the influence of various events over decades, the norms are legal mechanisms that, taken together, not only formalized the legal protection of refugees, but also became the basis for the development of these norms in the legislation of countries. The presence of such a huge number of international and regional documents that differ from each other on many issues (for example, in the definition of the concept of a refugee) complicates the provision of effective legal assistance to refugees and rightfully puts on the agenda the question of the need to adopt and apply the same universal international agreement on the problems of refugees.<sup>28</sup>

Undoubtedly, the guarantees of the rights and freedoms of a person and a citizen are the main conditions, ways and means by which every person has the opportunity to realize his rights. Today one of the irreplaceable signs of a legal state is a developed democracy which is a real guarantee with regard to human rights, especially the right to work.

It is worth noting that, in addition to the necessary general issues raised in international legal documents, the issue of protection and realization of individual human rights of refugees remains unresolved. One of them is the right to work, which is the most essential human right.<sup>29</sup> Refugees, such as any other person, are endowed with a full range of inalienable fundamental rights and the fact that they have a certain status should in no way discriminate against them in the field of work. However, by virtue of the fact that a refugee enters another country and is under its protection, she or he is, accordingly, subject to the labour laws and requirements of that country.<sup>30</sup>

Thus, we can state that in one way or another, all refugees have the right to work, but the provision of this right must come from the host state. Freedom of work is an absolute right, it concerns an indefinite circle of persons, as well as the right to property, the right to life and other constitutional rights of a person and a citizen. Being an absolute right, it has priority over other rights that make up the comprehensive right to work.

Freedom of work is one of the basic human rights that are inalienable by nature, like freedom of speech, freedom of thought, freedom of movement, etc. A person deprived of freedom of labour turns into a slave, effectively losing human dignity. In other words, the essence of a person from the point of view of his material existence lies in his ability to work. From the social development aspect, the right to work is his freedom. It can be stated that international legal norms regarding the protection of human rights grant refugees the right to work and impose obligations on states to implement this

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<sup>27</sup> *Id.*, 8.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Supra* note 14.

<sup>30</sup> See J. Milner, *Refugees, The State and the Politics of Asylum in Africa* (2009).

right. Furthermore, it determines the legislative and procedural issues of the practical implementation of these rights.<sup>31</sup>

## II. European Union legislation on refugees and current issues of Ukrainian refugees' right to work in the EU

There are two main international legal approaches to the definition of a refugee: general and regional, since a well-founded fear of persecution on a limited list of grounds is an insufficient criterion to take into account all refugee situations.<sup>32</sup> An analysis of the provisions of most regional agreements demonstrates a more humane treatment of refugees than the 1951 Convention.<sup>33</sup> However, the EU law does not broaden the definition of *refugee*, but in order to protect those who do not fall under the conventional definition of refugee, introduces another type of protection: additional.<sup>34</sup>

Currently, these two concepts are regulated by two sources of law - universal and regional agreements. There are differences between these sources of interpretation of the concept of "refugee", which taking into account the growing flow of refugees are interpreted in favor of a regional approach.

As a result of the need to improve the definition of refugees, some countries, especially in Africa and Latin America have expanded it, believing that a well-founded fear of being persecuted on a limited list of grounds is insufficient to take into account all refugee situations. Thus, in clause 2 of Article 1 of the Organization of African Unity Convention on Specific Aspects of the Refugee Problem in Africa of 1969 states that the term "refugee" applies to any person who in view of external aggression, occupation, foreign domination or events that have seriously disturbed civil order in part or in the entire territory of the country of her origin or citizenship, is forced to leave her usual place of residence in order to seek refuge in another place outside the country of her origin or citizenship.<sup>35</sup>

An expanded definition of refugees is also contained in the Cartagena Declaration of 1984, which was adopted by the countries of Latin America and refers to refugees as "persons who have left their countries because their life, safety or freedom are threatened by general violence, foreign aggression, internal conflicts, mass violations of human rights or other circumstances that seriously violate public order".<sup>36</sup>

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<sup>31</sup> L. Chimanda, S. Morris, Tanzania's National Legal Framework for Refugees, Law, Policy & Practice, Local Engagement Refugee Research Network Paper No. 5, 4-8 (2020).

<sup>32</sup> E. Herasymenko, *Regional Standards for Defining Refugees and Distinguishing Them from Related Categories of Migrants*, 6 (2) Law and Society, 100 (2020).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> African Union, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1 (2) (1969).

<sup>36</sup> Cartagena Declaration on Refugees, The UN Refugee Agency, section III (3) (1984).

A peculiar regional approach to determining the status of refugees and the typology and systematization of forced migrants has developed in the EU. It has made significant efforts to ensure cooperation in law enforcement, taxation and justice, as well as the development and implementation of coordinated policies on asylum, migration and protection of external borders. The main document in this area was the “Hague Program: strengthening freedom, security and justice in the European Union”.<sup>37</sup>

The EU has adopted a number of legal acts that regulate the specifics of the status and rights of refugees. It can be noted that the EU regional migration policy is differentiated by the countries of the migration pair and consists in the implementation of a number of directives, as well as bilateral and multilateral regulations to ensure free or preferential movement of individuals across state borders and their employment and the EU territory, as well as the settlement of refugee issues. According to the results of the study, they are structured into three groups:

1. Conceptual documents defining the rights and freedoms of the EU citizens for the institutional basis of integration processes in the EU;<sup>38</sup>
2. Regulatory documents that determine the status of refugees and asylum seekers, their rights and guarantees;<sup>39</sup>
3. Regulatory documents defining the institutional mechanisms for granting refugee or asylum-seeker status, exercising their rights and guarantees.<sup>40</sup>

In general, it can be argued that the European legal regulation is similar to the universal one, in addition to the general human rights that belong to all persons, it regulates the rights of refugees, which they possess by virtue of their legal status, as well as specific procedures and mechanisms regulating the obtaining of such status. In the context of the study, it is worth paying attention to a number of legal acts, which belong to the third category and regulate the mechanisms and procedures for obtaining protection for refugees.

The first is Council Directive 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.<sup>41</sup> The norms provided for in this Directive describe the standards that are laid down at a minimum level and must be applied to refugees from third countries in cases where they cannot return to their country of origin. Moreover, the Directive prescribes standards for maintaining the balance of measures taken by Member States to

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<sup>37</sup> The Hague Programme: strengthening freedom, security and justice in the European Union (2004).

<sup>38</sup> See generally European Parliament, Charter of Fundamental Rights of the European Union (2000).

<sup>39</sup> *Supra* note 9.

<sup>40</sup> *Supra* note 10, art. 2-3.

<sup>41</sup> *Ibid.*



receive refugees and deal with the consequences. Such standards are, for example: a description of specific groups of persons who will be granted temporary protection; the date of commencement of the provision of temporary protection; an assessment of the scale of movement of displaced persons, etc.

Another important document within the EU is the Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection. The provisions of the Directive chosen by the author apply to persons arriving from third countries if such nationals make the appropriate application in which they apply for international protection.<sup>42</sup>

The military aggression on the territory of the sovereign state of Ukraine provoked the arrival of a large number of citizens of that country in the EU, who began to seek asylum there. Therefore, the integration of refugees into the labour market is significantly different from a similar integration of migrant workers due to the circumstances that caused them to arrive, which means that they have to receive more support from the Union in order to fully realize their rights.<sup>43</sup> Thus, the integration of refugees into social and economic society in order to realize fundamental rights, among them the right to work is a crucial issue that should receive sufficient attention in the legislation of member states.

### **III. Practical implementation of the protection of the right to work of refugees in EU member states**

Despite common European principles and values, the legal framework of the EU member states has significant differences in the protection of refugee rights, as well as in the exercise of specific rights, including the right to work. The EU sectoral approach to labour migration institutionalizes differential treatment of categories of migrants, as well as third-country nationals and citizens of other countries.<sup>44</sup> First and foremost, this distinction is related to the state's need to protect the rights and jobs of its citizens in order to avoid a crisis within the country. Nevertheless, the EU member states provide ample opportunities for the employment of Ukrainian refugees, especially those countries that have previously actively attracted migrant workers from Ukraine.<sup>45</sup> To date, due to the events in Ukraine, many of the EU states have not only opened new opportunities for refugees, but have even made significant changes in their legislation. For this reason, it is proposed to

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<sup>42</sup> *Supra* note 9.

<sup>43</sup> C. Brell et al., *The LaborMarket Integration of Refugee Migrants in High-Income Countries*, 34 *Journal of Economic Perspective* 94, 97 (2020).

<sup>44</sup> *Supra* note 4, 97.

<sup>45</sup> *Id.*, 92.

consider some specific examples of legal regulations and procedures for securing the labour rights of refugees from Ukraine in certain member states.

### **A. Employment of Ukrainians in Poland**

Poland became one of the countries that accepted the largest number of refugees from Ukraine and provided a huge amount of aid to people affected by the war. This is caused by several factors. Firstly, Poland borders Ukraine, so it was easier to get to it rather than to other EU states. Secondly, Ukraine and Poland are closely related historically and culturally. So, the example of Poland is worth analysing. It should be noted that, in general, Polish legislation on refugees consists of a set of national legal acts. First of all, it is worth noting the Constitution of the Republic of Poland from 1997, where the provisions of Article 56 state: "Foreigners in the Republic of Poland may enjoy the right of asylum in accordance with the principles defined by law. A foreigner who seeks protection from persecution in the Republic of Poland may be granted refugee status in accordance with international treaties binding the Republic of Poland".<sup>46</sup>

The Act on granting protection to aliens within the territory contains provisions which list the procedure for granting protection to a refugee from third countries, as well as the conditions and principles under which protection is guaranteed in the territory of Poland.<sup>47</sup> According to Article 3 of the Act, Poland may grant such a person protection in one of four forms: a) refugee status; b) asylum; c) tolerated stay permits; d) temporary protection.<sup>48</sup>

In addition, as the Polish researchers M. Pachocka and K. S. Szalc refer to the Office for Foreigners, Poland is legally bound by the multiple international legal acts related to migration and asylum.<sup>49</sup>

It should be noted that with the beginning of military aggression on the territory of Ukraine and the large number of Ukrainian refugees who began to arrive on the territory of Poland, the legislators of this country have made appropriate changes in their legislation to ensure full-scale assistance to Ukraine. Thus, on 12 March, 2022, the Law of Poland "Assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state"

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<sup>46</sup> The Constitution of Poland, art. 56 (1997).

<sup>47</sup> Act on Granting Protection to Aliens within the territory of the Republic of Poland, art. 1 (2003).

<sup>48</sup> *Id.*, art. 3.

<sup>49</sup> M. Pachocka, K. Szalc, Refugee Protection Poland Country Report, Global Migration: Consequences and Responses, 25 (2020). Abovementioned international legal acts are as follows: Convention for the Protection of Human Rights and Fundamental Freedoms (1950); Convention Relating to the Status of Refugees (1951); European Agreement on the Abolition of Visas for Refugees (1959); Protocol Relating to the Status of Refugees (1967); European Agreement on the Transfer of Responsibility for Refugees (1980); Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1984); Convention on the Rights of the Child (1989); Agreement between the Swiss Confederation and the Republic of Austria on the establishment and operation of the International Center for Migration Policy Development (1993).

was adopted.<sup>50</sup> Foreigners who are not covered by this law and who belong to the category of migrants specified in the decision of the EU Executive Council approving the existence of a mass influx of migrants from Ukraine may benefit from temporary protection in accordance with the previously mentioned Act of on granting protection to aliens within the territory of the Republic of Poland.<sup>51</sup>

The respective Act defines, in particular, detailed grounds for legalizing the stay of Ukrainian citizens as well as their husbands/wives without Ukrainian citizenship who arrived in Poland in connection with military actions on the territory of that state. It also refers to persons holding the Pole Card, who together with their immediate family members, arrived in Poland because of those actions. The provisions of this law do not apply to Ukrainian citizens who have previously received: a permanent residence permit; a long-term resident's the EU residence permit; a temporary residence permit; refugee status; subsidiary protection; consent for tolerated stay, as well as those who have applied for international protection in Poland (or those on whose behalf such applications have been submitted) or have indicated their intention to apply for international protection.<sup>52</sup>

It should be pointed out that the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state guarantees access to the labour market for citizens of Ukraine provides for a clear procedure for the employment of Ukrainian citizens.<sup>53</sup> Thus, an employer intending to hire a Ukrainian must, within 14 days, enter the official state portal, find the appropriate Employment Center there, and inform him that he has hired a foreigner. Citizens of Ukraine will have the opportunity to use the services provided on the Polish labour market. In particular, they can apply to Employment Centers, professional counseling centers, and also take advantage of courses - on equal terms with Polish citizens. In addition, citizens of Ukraine can start and engage in business activities on the same principles as citizens of Poland - the condition is to obtain a personal PESEL number.<sup>54</sup>

In our opinion, this will positively impact the economy of Poland, because many Ukrainian businesses and startups are starting their activities there, increasing tax revenues to the treasury and increasing jobs.

Furthermore, on June 30, 2022, President A. Duda signed amendments to the above-mentioned law, which regulate the conditions of temporary

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<sup>50</sup> Act on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of this State (2022). Available at: <https://www.gov.pl/web/mswia-en/the-act-on-assistance-to-citizens-of-ukraine-in-connection-with-armed-conflict-on-the-territory-of-that-country-signed-by-the-president> (last visited Dec. 1, 2022).

<sup>51</sup> *Supra* note 47.

<sup>52</sup> *Id.*, art. 103.

<sup>53</sup> *Supra* note 50.

<sup>54</sup> PESEL is a numerical mark of eleven digits that identifies an individual.

protection on the territory of the country, entry, stay, employment and residence of Ukrainians.<sup>55</sup> We reckon that the changes were made with the aim of creating more flexible and convenient protection conditions for Ukrainians, increasing opportunities for their stay in another country.

In particular, the provision on the need to enter Poland directly from the territory of Ukraine in order to obtain the right to temporary protection in the country has been changed. From July 1, 2022, Ukrainians in need of temporary protection may also enter Poland through the internal borders of the EU.<sup>56</sup> In this way, Ukrainians who will enter Poland from the territory of the EU countries will also be able to claim the rights of war refugees.

Additionally, new provisions on the PESEL UKR register have been added. Previously, this status was automatically lost after a person left Poland for more than 30 days. According to the new rules, if this status is automatically lost after a military migrant has left the country for more than 30 days, but within the Schengen area, it can be restored. UKR status can also be restored if a person returns to Poland after leaving Ukraine for more than 30 days. The reason for the return must be justified - it is active hostilities at the place of residence.<sup>57</sup>

Thus, it can be stated that Poland has taken many steps to meet the needs of Ukrainian refugees and protect their rights, in particular the right to work, which is one of the fundamental human rights.

## **B. German legislation on the right to work of Ukrainian refugees**

Germany, as well as other European countries, has been confronted with the issue of refugee protection for quite some time, as it has always been an attractive jurisdiction for them. It should be noted that the general regulation of refugee protection is contained in the German Constitution. According to Article 16 (a), "politically persecuted people enjoy the right to asylum".<sup>58</sup> However, this article refers to only one category of persons who may be granted refugee status. Those entitled to asylum are granted a residence permit for three years. If the situation does not change in the country of origin, at the end of this period the residence permit is extended for another three years. At the earliest after three years, under certain conditions, a person can also be granted a permanent residence permit.

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<sup>55</sup> See Amendment to the Act on assistance to Ukrainian citizens signed by the President (2022), <https://www.gov.pl/web/mswia-en/amendment-to-the-act-on-assistance-to-ukrainian-citizens-signed-by-the-president> (last visited Dec. 1, 2022).

<sup>56</sup> Act of June 8, 2022 amending the Act on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state and certain other acts (2022). Available at: <https://dziennikustaw.gov.pl/D2022000138301.pdf?fbclid=IwAR0Hk-psEDYZJXpy6FXXZgIbSy2cHDaeOIDfNnZr6ArK45zPdZyWfUIxbPE> (last visited Dec. 1, 2022).

<sup>57</sup> *Ibid.*

<sup>58</sup> The Constitution of Federal Republic of Germany, art. 16 (1949). Available at: <https://www.bundestag.de/gg> (last visited Dec. 1, 2022).

The specifics of the status and protection of refugees are regulated by the Asylum Act.<sup>59</sup> According to its provisions, a person who has been granted refugee status in Germany is subject to all the rights provided for in the Convention relating to the Status of Refugees.<sup>60</sup> Article 3 of this law explains who may qualify for refugee status.<sup>61</sup> These are quite similar to the definition given in the abovementioned Convention. The law also provides a work permit for refugees.

In addition, refugees are immediately entitled to work in Germany. They are required to obtain registration with the local foreigners' office and a document that confirms their permission to stay in Germany with a note for permission to work. A provisional residence permit is sufficient. It is only possible to find immediate employment in professions that do not require a government permit: salesperson, automobile mechanic, office manager, accountant, programmer, hairdresser, economist, mathematician, biologist and many others. Refugees applying for such jobs do not require formal recognition of educational documents. Germany supports Ukrainian refugees in the issue of employment, creates special centers to help them in finding a job, language learning and social integration. There is no specific pro-Ukrainian legislation on Ukrainian refugees in Germany, but there are certain procedural aspects that help with labour integration.<sup>62</sup>

### **C. Labour rights of Ukrainian refugees in Latvia**

Latvia, like other Baltic states, has also received a large number of Ukrainian refugees. First of all, the issue of granting asylum in Latvia is regulated by a number of normative legal acts. The basis of the legislation on refugees is Immigration Law.<sup>63</sup> It determines the procedure for the entry, stay, transit, departure and detention of foreigners. According to Regulations on the state fee for issuing identity documents, a refugee is issued a permanent residence permit. Apart from that, a refugee should renovate his/her residence permit every five years. In order to do this, a person must annually apply to the Office of Citizenship and Migration Affairs one month before the expiry of the residence permit with an application for extension of the stay. Refugees and persons who have been granted alternative status are exempt from payment of state duty if the travel document or the residence permit is issued for the first time.<sup>64</sup>

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<sup>59</sup> See Asylum Act, Federal Law Gazette (2008). Available at: [https://www.gesetze-im-internet.de/englisch\\_asylvfg/englisch\\_asylvfg.pdf](https://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf) (last visited Dec. 1, 2022).

<sup>60</sup> *Supra* note 14.

<sup>61</sup> *Id.*, art. 3.

<sup>62</sup> A.V. Rusnak et al., *Innovative Priorities of Ukraine in the Context of Global Economic Trends*, 11 *Journal of Advanced Research in Law and Economics* 1376, 1380 (2020).

<sup>63</sup> Immigration Law of the Republic of Latvia (2002). Available at: <https://likumi.lv/ta/en/en/id/68522-immigration-law> (last visited Dec. 1, 2022).

<sup>64</sup> Regulations on the State Fee for Issuing Identity Documents, § 16.5 (2012).

Another important law on ensuring the rights of refugees is Asylum Law.<sup>65</sup> This Act guarantees the granting of refugee status or temporary protection to persons in need, in accordance with the rules of international law. For example, Article 37<sup>66</sup> stipulates the conditions under which a person may apply for this status which are similar to the Convention on the Status of Refugees.<sup>67</sup> It is important to note that in support of Ukrainian citizens, who were forced to leave their state as a result of Russian armed aggression and come to Latvia, the government of this state adopted a special Law on Assistance to Ukrainian Civilians by the Parliament of the Republic of Latvia on 3 March, 2022.<sup>68</sup>

The mentioned law provides the following support for Ukrainian refugees: civilian residents of Ukraine may be granted long-term visas with the right to employment without restriction for up to one year. These visas are issued by the Office of Citizenship and Migration Affairs, the State Border Guard or diplomatic and consular missions of the Republic of Latvia abroad. Later amendments were made to the Law on 26 May, 2022 according to which Ukrainian refugees have the right to enter into labour relations without obtaining a long term visa with the right to work. In this case, an employment contract is concluded for not more than 30 days. Not later than 10 days from the date of commencement of labour relations the person must apply to the Office of Citizenship and Migration Affairs to obtain a long-term visa with the right to employment.<sup>69</sup>

That is, such changes greatly simplified the access of Ukrainians to the Latvian labour market, which once again confirms that the government of this country understands the importance of the implementation of labour rights of a person, as well as the harsh realities faced by refugees from Ukraine.

#### **IV. Problems of the realization of the right to work for refugees**

EU norms governing refugee policy and other topics are mandatory for all member states. But how countries interpret and integrate these norms into national legislation depends on them. Therefore, there are considerable differences between the EU members on some points. For example, refugees who want to apply for asylum in Europe cannot do so in any country they like. Since 2003, they must comply with the Dublin Agreement and according to it, a refugee must ask for asylum in the EU country whose border he crossed first.<sup>70</sup>

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<sup>65</sup> Asylum Act of the Republic of Latvia (2017).

<sup>66</sup> *Id.*, art. 37.

<sup>67</sup> *Supra* note 14.

<sup>68</sup> See Law on Assistance to Ukrainian Civilians (2022).

<sup>69</sup> *Id.*, Right of Ukrainian Civilians to Employment, section 13 (1).

<sup>70</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, art. 2 (6) (2003).

However, the EU member states do not always strictly adhere to these norms. According to the so-called intermediary right (“Selbsteintritt”), they can decide whether to take on the asylum application of a particular refugee, even if he first entered another EU country. For example, Germany has repeatedly refrained from sending refugees to the countries through which they arrived in Germany. One of the latest examples is the summer of 2017, when refugees were not sent to Hungary. The reason is because of legal security. The European Commission accused Hungary of making it difficult for refugees to apply for asylum, which they are entitled to under the EU law.

Among other reasons for violating the Dublin Agreement, there may be doubts about social standards in another EU country. For instance, Germany did not return refugees to Italy for a certain period of time, because they were not provided with adequate living conditions. Despite the exceptions, the Dublin Agreement means that member states whose borders are the EU's external borders have to deal with large numbers of refugees. For a long time, the EU has been trying to agree on refugee quotas among its member states in order to relieve countries such as Italy and Greece. Depending on the number of inhabitants of the country, each the EU member must accept a certain number of refugees in the event of a crisis.

This norm has so far failed due to the opposition of some countries. Poland, Hungary, Slovakia and the Czech Republic are resisting being forced to accept the refugees they will be allocated. In 2017, the EU tried to use the relocation program, according to which it was planned to relocate 160 thousand refugees from Greece and Italy to other countries. However, other the EU countries accepted only 26,000 refugees.<sup>71</sup>

Despite a large number of scientific works and various studies on the issue of granting refugee status, as well as the protection of labour rights of refugees, the question of equal treatment of Ukrainian refugees remains open. This is due to the high relevance of this issue after the Russian aggression on the territory of Ukraine, which led to the fact that a large number of people were forced to leave their homes and leave for Europe. For this reason, the study of the peculiarities of the employment of Ukrainian refugees in different countries is relevant and requires its own detailed analysis and study.

The main problem in the context of the realization of the right to work by Ukrainian citizens is the unequal approach of the EU member states to the regulation of the specifics of the employment of refugees. We believe that in order to facilitate the access of Ukrainian citizens to the EU labour market, it is advisable to take a number of steps at the EU level.

First of all, it is necessary to harmonize and streamline the process of providing Ukrainians with documents confirming the provision of temporary

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<sup>71</sup> European Union Agency for Fundamental Rights, Handbook on European legislation on asylum, borders and immigration, 80 (2014).

protection. This is important for several reasons. First, without a properly issued residence permit, Ukrainians cannot move freely within the Union. In addition, they have problems returning to the EU if they temporarily leave the territory of Ukraine. In most of them, the 90-day period of stay in the EU under the visa-free regime has expired. However, when crossing the border, Ukrainians often do not have properly formalized temporary protection. Moreover, many of them have not yet received such a certificate. This raises questions when crossing the border, and often when moving within the Union.

In addition, the state regulates differently the procedure for obtaining temporary protection and the document confirming the receipt of temporary protection, which a person receives after its confirmation. Here is a common example: according to the law "On assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state",<sup>72</sup> Ukrainians in Poland receive a PESEL, which is an analogue of a Ukrainian identification number. At the same time, they are not provided with any certificates confirming the status of temporary protection. However, in Germany, the document is issued properly, but the terms of obtaining it often exceed the permitted period of stay for citizens of Ukraine. There seem to be a lot of such problems.

Taking this into account, we believe that in order to fully ensure the possibility of Ukrainian refugees to exercise their rights, it is advisable to adopt a single standard for a temporary residence permit at the EU level. For example, in 2019, the EU adopted the European ID card. It aims to replace and standardize the different styles of identity cards currently used in the EU and European Economic Area countries. It was introduced on the basis of Regulation (EU) of the European Parliament and of the Council on strengthening the security of EU citizens' identity cards and residence documents issued to citizens and their family members exercising their right to free movement.<sup>73</sup> In a similar way, the issue of temporary protection can be settled. It is clear that the procedure for providing such protection in the EU is unprecedented and has not been applied before. Accordingly, there are currently inconsistencies in its regulation. That is why the adoption of a single unified document, which will regulate the relevant process, will be an important step towards improving the situation of Ukrainian refugees and ensuring their access to the labour market.

The accepted document should specify the form, content and language of the document (we assume that such certificates should be issued in the language of the country of issue and in English for a better understanding of

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<sup>72</sup> *Supra* note 50.

<sup>73</sup> See Regulation (EU) of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, 2019/1157 (2019).



its content in all member states). We reckon that such a document should contain a photo of the person to whom it is issued, the date of obtaining the permit and personal data.

In our opinion, this will have a positive effect and simplify the procedure of temporary protection of Ukrainians in the EU. This will also save a lot of time for both Ukrainians and the authorities of European countries, because in this way, the refugee will have to issue documents only once, and not constantly when changing the country of residence.

The second problem that prevents obtaining temporary asylum is the long period of obtaining such a permit. Without this permit, people in most countries cannot be employed. Thus, it is necessary to overcome the high level of bureaucracy in the EU. In particular, this can be done by providing for deadlines in a single legal act that will be binding on all member states.

The third problem is the advisory nature of many acts (such as the Convention Relating to the Status of Refugees of 1951,<sup>74</sup> IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War,<sup>75</sup> the European Agreement on the Abolition of Visas for Refugees,<sup>76</sup> the Convention Relating to the Status of Stateless Persons,<sup>77</sup> the UN Declaration on Territorial Asylum,<sup>78</sup> the Protocol relating to the Status of Refugees<sup>79</sup>) which some countries simply ignore. It also creates obstacles to the further realization of the rights of Ukrainian refugees. Therefore, legal acts adopted in the context of regulating certain aspects of refugees and asylum seekers should be considered by the member states and, if this does not conflict with their legislation, should be implemented in order to avoid discrepancies in the implementation of measures to ensure rights of refugees.

Finally, the fourth problem is the inaccessibility of integration courses and learning languages for many Ukrainians. In most member states, knowledge of the state language is required for employment in decent, highly skilled jobs. However, Ukrainians often have limited opportunities to learn it. This is especially true for those living in small towns and villages. They often cannot get access to language courses. This creates impediments for both Ukrainians and the EU states.

States are losing really qualified personnel who could raise the level of the state's economy and fill the gaps that exist in the EU labour market due to a lack of specialists. Furthermore, Ukrainians cannot get access to a decent job, for which they often have the skills and appropriate education. In addition, the unavailability of integration courses creates obstacles for the socialization

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<sup>74</sup> *Supra* note 14.

<sup>75</sup> *Supra* note 21.

<sup>76</sup> *Supra* note 22.

<sup>77</sup> *Supra* note 23.

<sup>78</sup> *Supra* note 24.

<sup>79</sup> *Supra* note 17.

of Ukrainian refugees. Many of them experienced severe stress due to the war, lost their homes and everything they had in their lives. They need an understanding of the local population and support. However, they cannot get it due to obstacles in accessing language learning and integration courses.

Moreover, employment can also become an important way for Ukrainian refugees to join the public life of the state, maintain a decent standard of living and distract from the horrors of war. Therefore, it is advisable to increase the number of places in the state language learning groups and provide opportunities for Ukrainian citizens to work with teachers and psychologists to improve integration into society and eliminate post-traumatic syndrome.

With this in mind, we believe that the proposed measures cannot only significantly help Ukrainians but also bring benefits to the EU member states themselves. They will be able to fill jobs with highly qualified personnel and will not need to pay assistance to refugees, because after integration and socialization, Ukrainian citizens will be able to provide a decent standard of living.

## Conclusion

As it is seen from the discussion above, all refugees have the right to work, but its implementation and protection depend on the specific state that provides protection to such persons and undertakes obligations under international law to protect the rights of such persons and ensure normal life conditions for them. Exercise of this right supports to preserve and secure a number of other interrelated rights is the reason the right to work, among other rights, is so crucial for refugees.

Despite these facts, there are noteworthy differences in the legislation of EU Member States that hinder the development in the context of refugees rights. For the purpose of guaranteeing respect and ensuring the protection of these human rights, governments can provide both of the ways – solving the refugee problem and preventing it. In the first case, it is a need to ensure adequate protection of human rights in the country of origin of refugees before expecting refugees to wish to return to their country of citizenship or permanent residence. In the second case, it is about preventing citizens of certain states from having a well-founded fear of persecution on certain grounds.

When discussing the legislation of the EU, it can be argued that it was somehow formed under the influence of international law regarding refugees, as well as practical problems that arose during the development of the EU due to a large number of such persons. Therefore, we divided the EU legal acts into the following categories: conceptual documents defining the rights and freedoms of the EU citizens for the institutional basis of integration processes in the EU; regulatory documents defining the status of refugees and asylum seekers, their rights and guarantees; regulatory documents defining the

institutional mechanisms for granting the status of a refugee or asylum seeker, the realization of their rights and guarantees. All of them in one way or another regulate various issues of refugee rights and the provision of proper status and protection.

Meanwhile, some difficulties that affect the integration of refugees still remain unresolved in the labour market of the member states. Such issues are regulated by the legislation of individual member states. Despite the differences in legal and procedural aspects, the studied countries in this article are glaring examples of ensuring adequate life standards for Ukrainian refugees.

Thus, we propose considering additional measures to improve the situation with employment of Ukrainian citizens.

Firstly, as a new law, adopting a legal act – the Common Standard for Temporary Residence Permit at the EU level will regulate the same standard for issuing temporary protection permits for all. Then, the next suggestion can be harmonizing the timeframes for issuing duly residence permits for Ukrainians in all Member States. In this context, this could also be stipulated in the Common Residence Permit Standard.

Furthermore, increasing the number of integration courses for Ukrainian citizens, as well as organizing events for the unification and faster socialization of refugees will be a more effective solution to the integration issue. The fourth and last one is to make binding the nature of legal norms adopted in the framework of regulating certain aspects of refugees and asylum seekers. Thereby, it can eliminate hindrances to the continued implementation of the entitlements of refugees from Ukraine.