

# Legal aspects of temporary protection for Ukrainians in the member states of the European Union

Professor **Oksana KUZMENKO**<sup>1</sup>

Docent **Vira RYNDIUK**<sup>2</sup>

Professor **Liudmila KOZHURA**<sup>3</sup>

Professor **Viktoriiia CHORNA**<sup>4</sup>

Candidate of juridical sciences **Roman TYTYKALO**<sup>5</sup>

## **Abstract**

*In the article two different international protection mechanisms for persons who are forced to leave their homes for the sake of personal safety and the safety of their children (refugee status and temporary protection) which are currently provided for in European law are examined and compared. The main international document that regulates the issue of refugees is the UN Convention on the Status of Refugees of 1951. The issue of temporary protection is regulated by the EU Council Directive № 2001/55/EC of 07/20/2001, which was activated for the first time in history by the EU Council Decision № 2022/382 of 03/04/2022 to protect persons fleeing Ukraine due to a large-scale invasion by Russian armed forces began on 24 February 2022. The grounds for obtaining refugee status are individual and internal in nature (reasonable fears of a person becoming a victim of persecution), and therefore a long and complex administrative procedure for obtaining it. The grounds for obtaining temporary protection have a collective and obvious external nature (a mass influx of forcibly displaced persons in connection with a real threat), and, accordingly, the maximally simplified and fast (immediate) procedure confirming that the person is covered temporary protection.*

**Keywords:** human rights, forcibly displaced persons, international protection, temporary protection, refugees.

**JEL Classification:** K10, K33, K40

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## **1. Introduction**

Due to the unprovoked and unjustified Russian military aggression against Ukraine, every tenth Ukrainian was forced to seek protection in European countries.

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<sup>1</sup> Oksana Kuzmenko - Kyiv National Economic University named after Vadym Hetman, Kyiv, Ukraine, <https://orcid.org/0000-0002-0830-766X>, kov2101@gmail.com.

<sup>2</sup> Vira Ryndiuk - Kyiv National Economic University named after Vadym Hetman, Kyiv, Ukraine, <https://orcid.org/0000-0001-7803-7039>, v\_ushch@ukr.net.

<sup>3</sup> Liudmila Kozhura - Kyiv National Economic University named after Vadym Hetman, Kyiv, Ukraine, <https://orcid.org/0000-0003-4100-9530>, lepel@ukr.net.

<sup>4</sup> Viktoriiia Chorna - Kyiv National Economic University named after Vadym Hetman, Kyiv, Ukraine, <https://orcid.org/0000-0002-6072-0283>, demidenkov@ukr.net.

<sup>5</sup> Roman Tytykalo - National Medical University named after O.O. Bohomoltsia, Kyiv, Ukraine, <https://orcid.org/0000-0002-6406-8800>, roman@tytykalo.com.ua.

Since February 24, 2022, almost 7,5 million people have left Ukraine, which is about 17% of the population of Ukraine. The overwhelming majority of Ukrainians who are hiding from the consequences of Russian aggression abroad are children and women<sup>6</sup>. According to the statistics of the UN Refugee Agency (UNHCR) as of December 2022, there are about 7,7 million refugees from Ukraine recorded across Europe, 4,9 million refugees from Ukraine registered for Temporary Protection or similar national protection schemes in Europe<sup>7</sup>. The UN's original estimate that 4 million Ukrainians would become refugees as a result of the invasion has been dwarfed, and warnings from the UN that we were about to witness the largest refugee crisis in a century have been borne out<sup>8</sup>.

Such a number of people in need of temporary protection or refugee status is a significant challenge for European countries and requires an effective legal solution in order to ensure human rights. Temporary protection of forcibly displaced persons and refugee status are different legal mechanisms of international protection for citizens of Ukraine in the countries of the European Union, which cannot be equated. The purpose of this article is to analyze relevant international and national legal documents, analytical publications, scientific articles by domestic and foreign authors, and clarify the legal specifics of temporary protection for forcibly displaced Ukrainians, as well as its main fundamental differences from the legal status of a refugee.

The informational-analytical base of the study consists of international and national official legal documents regarding temporary protection and refugee status as international means of protection for persons who are forced to leave their homes for the sake of personal safety and the safety of their children. In particular, it is 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<sup>9</sup>; Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection<sup>10</sup>;

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<sup>6</sup> Kovalenko O., "In which countries are Ukrainians looking for refuge from the war?", *Voice of America*, June 13, 2022, accessed December 26, 2022, <https://ukrainian.voanews.com/a/de-ukraiinci-shukaiut-prytulok-vid-viiny-za-kodonom/6615534.html>.

<sup>7</sup> "Ukraine Refugee Situation", The Operational Data Portal, UNHCR (the UN Refugee Agency), accessed December 26, 2022, <https://data.unhcr.org/en/situations/ukraine>.

<sup>8</sup> "Planning for the long haul: four months on, the Ukrainian refugee crisis is only just beginning", *The Guardian*, accessed December 26, 2022, <https://www.theguardian.com/global-development/2022/jun/20/planning-for-the-long-haul-four-months-on-the-ukrainian-refugee-crisis-is-only-just-beginning>.

<sup>9</sup> 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, accessed December 26, 2022, <https://eur-lex.europa.eu/eli/dir/2001/55/oj>.

<sup>10</sup> Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having

Convention Relating to the Status of Refugees of 28 July 1951 (Geneva Convention)<sup>11</sup> and others. Also, this study analyzed scientific works, analytical publications regarding the right to temporary protection and its difference from the legal status of a refugee.

## 2. Methodology

The basis of this research is historical, formal legal and comparative legal methods. Using the historical method, the issue of legal regulation of international protection of persons who are forced to leave their homes for the sake of their personal safety and the safety of their children was investigated in chronological order, that is, in the sequence in which it arose, developed, and changed. The use of the historical method made it possible to understand the essence of the issue more deeply, to draw more reasonable conclusions. The formal-legal method involves the study of legal texts and legal facts, consists in their logical processing using legal techniques, using special legal terms, categories, constructions, etc. With the help of the formal-legal method, international and national legal documents regarding the legal status of forcibly displaced persons in need of temporary protection and the legal status of refugees were studied and analyzed. The comparative legal method made it possible to compare the relevant legal norms regarding the legal status of forcibly displaced Ukrainians in need of temporary protection and the legal status of refugees, and to identify their common features and specific significant differences.

## 3. "Refugee" and "forcefully displaced person in need of temporary protection": definition of concepts

International European law provides for two main forms of protection for persons who are forced to leave their homes for their personal safety and the safety of their children: obtaining international protection by submitting a request for asylum and acquiring the status of a refugee and the legal status of a forcibly displaced person in need of temporary protection. Golyan (2022) notes that the term "displaced person" (Article 2 (c) of Council Directive 2001/55/EC of 20 July 2001) essentially corresponds to the term "refugee", which is defined by Convention Relating to the Status of Refugees of 28 July 1951 (Article 1A of Convention Relating to the Status of Refugees of 28 July 1951). Displaced persons are third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, in particular: persons who have

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the effect of introducing temporary protection (the Council Decision), was adopted on March 4, 2022, accessed December 26, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>.

<sup>11</sup> Convention Relating to the Status of Refugees of 28 July 1951 (Geneva Convention), accessed December 26, 2022, [https://zakon.rada.gov.ua/laws/show/995\\_011#Text](https://zakon.rada.gov.ua/laws/show/995_011#Text).

fled areas of armed conflict or endemic violence; persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights. Accordingly, a “refugee” is a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”<sup>12</sup>.

Durieux (2015) writes that temporary protection (TP) emerged as a term of art in the 1990s, as Western Europe was faced with a large-scale influx of forced migrants from the former Yugoslavia. In 2001, TP was the subject of an EU directive, which partly clarified the relationship of TP to mainstream international refugee law (IRL). However, ambiguity has remained the hallmark of the TP concept. Durieux concluded that a continuing doctrine of temporary protection outside established IRL is both legally unsound and politically unconvincing<sup>13</sup>. Ineli-Ciger (2016) substantiates a different opinion based on the premise that a temporary protection regime in line with international law. Temporary protection has long been a state response to mass influx situations offering persons seeking refuge immediate protection from refoulement and basic minimum treatment. Today, temporary protection is still relevant: Since 2011, Syrians in Turkey have been protected under a temporary protection regime. Despite this relevance, there is no structured legal framework regulating temporary protection at an international level. Furthermore, conformity of temporary protection regimes with the Refugee Convention, international law and human rights is largely undefined and unsettled<sup>14</sup>.

The roundtable on temporary protection assembled in 2012 by the United Nations High Commissioner for Refugees (UNHCR) concluded that: “Temporary protection is not a new concept, yet its content, boundaries and legal foundation remain largely undefined or unsettled.” Except the UNHCR Guidelines on Temporary Protection or Stay Arrangements published in 2014 which define temporary protection as, “an emergency response to the large-scale movement of asylum-seekers, providing immediate protection from refoulement and basic minimum treatment”, there are not many international instruments that define temporary protection and reflect a consensus on what it entails as a protection framework. However, it is possible to define the main features of temporary

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<sup>12</sup> Golyan Lana, “Temporary protection or refugee status: recommendations for persons leaving Ukraine”, *Legal House*, March 18, 2022, accessed December 26, 2022, <https://legalhouse.group/timchasovij-zahist-abo-status-bizhentsya-rekomendatsiyi-dlya-osib-yaki-pokidayut-ukrayinu/>.

<sup>13</sup> Durieux JF., “Temporary Protection: Hovering at the Edges of Refugee Law”, in *Netherlands Yearbook of International Law 2014*, eds M. Ambrus, R. Wessel (Netherlands Yearbook of International Law: T.M.C. Asser Press, The Hague, 2015), vol 45, [https://doi.org/10.1007/978-94-6265-060-2\\_9](https://doi.org/10.1007/978-94-6265-060-2_9).

<sup>14</sup> Ineli-Ciger Meltem, “A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?”, *International Community Law Review*, 18, 3-4 (2016): 278-316, <https://doi.org/10.1163/18719732-12341332>.

protection by examining state practice, UNHCR documents, the Executive Committee of the High Commissioner's Programme (ExCom) Conclusions and one of the formalized forms of temporary protection at supranational level, namely the Council Directive providing for minimum standards for giving temporary protection<sup>15</sup>.

#### **4. "Temporary protection" and "international refugee law": historical aspect**

The status of a refugee is regulated by the norms of the UN Convention on the Status of Refugees of July 28, 1951 (Geneva Convention), the Protocol on the Status of Refugees before it of 1967 (New York Protocol) and the Convention on the Right to Asylum and the Treatment of Refugees of 1990 (Dublin Convention). The definition of the concept of "refugee" in the 1951 Convention had limitations. The presence of restrictions made it difficult to solve the problem of refugees, excluding from the scope of the Convention millions of actual refugees<sup>16</sup>. Indeed, Art 1/A (2) of the 1951 Convention initially restricted its applicability to persons who had become refugee due to the events occurring before 1 January 1951. The Convention also introduced an alternative of geographical limitation such as each Contracting State shall make a declaration specifying if it would apply the 1951 Convention for the events occurring only inside Europe or everywhere. A Protocol relating to the status of refugees signed on 31 January 1967 and entered into force on 4 October 1967 (hereinafter 1967 Protocol) broadened the applicability of the 1951 Convention by eliminating temporal and geographical limitations unless a Contracting State might maintain a declaration about geographical limitation made under Art 1/B (1) of the 1951 Convention.<sup>4</sup> As of 25 August 2018, 145 States are party to the 1951 Convention and the 1967 Declaration<sup>17</sup>.

The historical premise of the Geneva Convention of 1951 was the first stage of mass migration of refugees and displaced persons to Western Europe after the end of the Second World War. As it turned out later (1960-1973), refugee flows were not a temporary phenomenon - a consequence of the Second World War, and the new groups of refugees no longer met the definition in the Convention. Thus appeared the Protocol Relating to the Status of Refugees of 1967 (New York Protocol), according to which the term "refugee" was expanded. The 1990s saw the next wave of migration of asylum seekers due to armed conflicts in the former Yugoslavia and the USSR. In 1990, the member states of the Council of Europe adopted the Dublin Convention, according to which the decision to grant asylum must be considered by

<sup>15</sup> Ineli-Ciger Meltem, "Revisiting Temporary Protection as a Protection Option to Respond to Mass Influx Situations". In *Exploring the Boundaries of Refugee Law*, (Leiden, The Netherlands: Brill | Nijhoff, 2015), [https://doi.org/10.1163/9789004265585\\_010](https://doi.org/10.1163/9789004265585_010).

<sup>16</sup> Kotlyar O. I., "The relation of the refugees' international law and the international law of human rights", *Actual problems of international relations* 120, 1 (2014): 200-207.

<sup>17</sup> Zenginkuzucu Dikran M., "A Comparative Analysis on International Refugee Law and Temporary Protection in the Context of Turkey". *The Age of Human Rights Journal* 17 (December) (2021): 385-410, <https://doi.org/10.17561/tahrj.v17.6297>.

the member state of the European Community to which the seeker arrived for the first time, otherwise he will be returned to such a "safe third country". Then, Council Regulation (EC) No 343/2003 of 18 February 2003 appeared, which supplemented this criterion: the issue of granting refugee status can also be considered by the country with which the latter has permanent ties, which he can prove, for example, family. The introduction of the concept of a "safe third country" led to the fact that the distribution of refugees was uneven, the biggest burden fell on the border states, where refugees arrive for the first time<sup>18</sup>.

Fitzpatrick (2000) wrote that as the 1951 Refugee Convention has fallen into disfavor, different forms of temporary protection have been extended to forced migrants, especially from Bosnia-Herzegovina and Kosovo, as a substitute for refugee status<sup>19</sup>. The practice of giving temporary protection to people at risk, in the event of the principle of non-refoulement being applicable, has an important background. It begins after the adoption of the 1951 Geneva Convention relating to the Status of Refugees and it acquires new perspectives in the nineties in the context of asylum due to humanitarian reasons (Arenas, 2006)<sup>20</sup>. And in 2001, the Council of the EU adopted the 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" (Council Directive 2001/55/EC of 20 July 2001). This Directive was adopted in the aftermath of the conflict in the former Yugoslavia, when, for the first time since the Second World War, Europe was confronted with mass displacements of people across Europe, resulting from a conflict in Europe. It was specifically conceived to promote a balance of efforts to jointly manage intra-European displacements, by giving immediate protection to persons fleeing war, thereby avoiding Member States' asylum systems to becoming overwhelmed<sup>21</sup>. The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons (Article 1 of Council Directive 2001/55/EC of 20 July 2001).

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<sup>18</sup> "The concept of "safe third country" in the conditions of the EU migration crisis". LexInform, accessed December 27, 2022, <https://lexinform.com.ua/v-sviti/kontsepsiya-bezpechnoyi-tretoi-krayiny-v-umovah-migratsijnoyi-kryzy-yes/>

<sup>19</sup> Fitzpatrick J., "Temporary Protection of Refugees: Elements of a Formalized Regime", *American Journal of International Law* 94, 2 (2000): 279-306, <https://doi.org/10.2307/2555293>.

<sup>20</sup> Arenas Nuria, "The Concept of 'Mass Influx of Displaced Persons' in the European Directive Establishing the Temporary Protection System", *European Journal of Migration and Law* 7, 4 (2006): 435-450, <https://doi.org/10.1163/157181605776293246>.

<sup>21</sup> Proposal for a Council implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection, March 2, 2022, accessed December 27, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52022PC0091&from=EN&fbclid=IwAR1pKPtLU-y54vzXc7KQRIDMyEWnJIHJzhG2TjwvLdeZxlwzzhmfSwhpuuM>.

The European Union (EU) adopted a Directive for Temporary Protection to provide a regional response to a mass influx. It was considered that Temporary Protection offered a double-win: addressing protection needs of asylum seekers, while enabling states to maintain control based on the understanding that asylum seekers would return home after a short period of stay<sup>22</sup>. It is argued that "temporary protection" emerged as a set of specific responses to the outbreak of war in the former Yugoslavia, involving compromises between states' desires to restrict asylum on the one hand, but meet demand from public opinion and international organizations to offer protection to refugees on the other<sup>23</sup>. However, Gluns and Wessels (2017) first assess the applicability of the Directive with respect to "refugee crisis" in 2015, and then analyze the reasons for its non-application. They conclude that the benefits resulting from an application of the Directive are minimal while transaction costs to reach agreement in the Council are high. Thus, those countries affected by "mass influx" lack the incentives for triggering its mechanisms, and the Directive can be considered a failed instrument<sup>24</sup>. Another point of view is substantiated by Ineli-Ciger (2016). According to UNHCR, more than one million refugees and migrants arrived in Europe by sea in 2015, whereas more than 3700 people lost their lives while trying to reach the European shores. In the light of the increasing number of refugees and migrants arriving in Europe by sea, Temporary Protection Directive should be part of the EU response to the migration crisis as it would provide crucial benefits to both Member States as well as persons seeking refuge in the EU<sup>25</sup>.

On February 24, 2022, Russian armed forces launched a large-scale invasion of Ukraine. As a result, large areas of Ukraine are now zones of armed conflict, from which thousands of people are fleeing<sup>26</sup>. Given that Ukraine shares the external border with the European Union, most people sought protection precisely in the Member States of the European Union<sup>27</sup>. And, On March 4, 2022, the Council of the EU, by its Decision, recognized the existence of circumstances for granting temporary protection to persons affected by Russian military aggression in Ukraine, and thus activated the Directive for the protection of Ukrainians (Council

<sup>22</sup> Koo John, "Mass Influxes and Protection in Europe: A Reflection on a Temporary Episode of an Enduring Problem", *European Journal of Migration and Law* 20, 2 (2018): 157-181, <https://doi.org/10.1163/15718166-12340027>.

<sup>23</sup> Koser Khalid and Richard Black, "Limits to harmonization: The "temporary protection" of refugees in the European Union", *International Migration* 37, no. 3 (1999): 521-543.

<sup>24</sup> Danielle Gluns and Janna Wessels, "Waste of Paper or Useful Tool? The Potential of the Temporary Protection Directive in the Current "Refugee Crisis"", *Refugee Survey Quarterly*, 36, 2, (June 2017): 57-83, <https://doi.org/10.1093/rsq/hdx001>.

<sup>25</sup> Ineli-Ciger Meltem, "Time to Activate the Temporary Protection Directive", *European Journal of Migration and Law* 18, 1 (2016): 1-33, <https://doi.org/10.1163/15718166-12342088>.

<sup>26</sup> "The EU Council unanimously introduced temporary protection for Ukrainians fleeing the war", Press release of the Council of the EU, 4 March 2022, <https://www.consilium.europa.eu/media/54715/ukraine-council-unanimously-introduces-temporary-protection-for-persons-fleeing-the-war.pdf>.

<sup>27</sup> Kortukova T., Kolosovskiy Y., Korolchuk O.L. et al. "Peculiarities of the Legal Regulation of Temporary Protection in the European Union in the Context of the Aggressive War of the Russian Federation Against Ukraine", *Int J Semiot Law* (2022), <https://doi.org/10.1007/s11196-022-09945-y>.

Implementing Decision (EU) 2022/382 of 4 March 2022). The Temporary Protection Directive has never been applied before and is intended to provide immediate assistance and protection to forcibly displaced persons under a simplified procedure. The directive bypasses the traditionally overburdened procedure for obtaining refugee status and offers a fast and simplified way to access protection throughout the EU. The Directive is valid in all EU member states except Denmark. Also, it does not apply in the countries of the Schengen zone that are not members of the EU (in Switzerland, Norway, Liechtenstein, Iceland)<sup>28</sup>. These countries independently decide on the order and number of refugees from Ukraine, which they are ready to accept<sup>29</sup>.

### **5. Legal statuses of a refugee and a person granted temporary protection: different and common**

A significant difference between the two main mechanisms of international protection of persons who are forced to leave their homes for the sake of personal safety and the safety of their children is that the grounds for obtaining refugee status are individual (personal). A person who is not a citizen of a certain country and who is persecuted individually can apply for refugee status. It can be a well-founded fear of being a victim of persecution based on race, religion, nationality, political views or belonging to a certain social group, citizenship or nationality. Accordingly, obtaining refugee status involves a special legal procedure that must establish whether a person has a reasonable risk of being persecuted. This is a rather long administrative procedure that can take about six months. The procedure for obtaining refugee status begins with a person applying for this status to the competent state authorities of one of the EU countries, and its outcome depends on the specific personal situation of the person<sup>30</sup>. During this time, the person faces certain limitations. In different EU member states, the procedure for considering an application has its own peculiarities, such as, for example, before the end of the 6-month period for considering an application, a person's passport may be withdrawn, employment is prohibited, it is prohibited to leave the host country, a requirement for mandatory residence in a place designated by the state (usually a sleeping place in a refugee center) may be established, etc. At the same time, the refugee status guarantees the right of indefinite residence on the territory of the EU member state. A person can be deprived of refugee status immediately when there is evidence indicating that there are grounds for its review. However, the end of the war in Ukraine will not be an automatic reason for its deprivation.

<sup>28</sup> "Temporary protection or refugee status: let's figure out the difference", Network of Legal Development, accessed December 27, 2022, <https://ldn.org.ua/consultations/tymchasovyy-zakhyst-chy-status-bizhentsia-u-chomu-riznytsia-korysni-posylannia/>.

<sup>29</sup> Karlin O., "Temporary protection or refugee status. What Ukrainians need to know in the EU", Legal Gazette, accessed December 27, 2022, <https://yur-gazeta.com/dumka-eksperta/timchasoviy-zahist-abo-status-bizhencya-shcho-potribno-znati-ukrayincyam-v-es.html>.

<sup>30</sup> "Information for people fleeing the war in Ukraine", European Commission, accessed December 27, 2022, [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine_en).

In contrast to the legal status of a refugee, temporary protection has a collective nature and is granted immediately after crossing the border on general grounds to all persons who are en masse forced to seek temporary protection in the EU countries, and who applied for such protection. The grounds for obtaining the status of a person in need of temporary protection are external: external aggression, foreign occupation, civil war, ethnic conflicts, natural or man-made disasters<sup>31</sup>. Temporary protection is an extraordinary mechanism. It can be applied when there is a massive influx of people. This mechanism aims to provide immediate and collective (i.e. without the need to consider individual applications) protection of displaced persons who are unable to return to their country of origin<sup>32</sup>. Article 2 (a) of Council Directive 2001/55/EC of 20 July 2001 defines the concept of "temporary protection" as a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons.

Since the right to temporary protection is immediate and collective, the administrative formalities of the process of obtaining it are minimized due to the urgency of the situation. It is necessary to apply to the national authorities of the EU Member State for a residence permit for temporary protection and follow their instructions as part of the national process, which includes registration of data and confirmation that the person is covered by temporary protection.

Regarding the term of temporary protection for Ukrainians, according to Council Implementing Decision (EU) 2022/382 of 4 March 2022, temporary protection as introduced by the Council Decision lasts one year from the entry into force of the Decision, i.e. from 4 March 2022 until 4 March 2023, in accordance with Article 4(1) of Directive 2001/55/EC. If during this period the Council does not take a Decision, on a proposal from the Commission, to end the temporary protection, it will be extended automatically by six months, i.e. until 4 September 2023, and again by six months, i.e. until 4 March 2024<sup>33</sup>. In October 2022, during a meeting of the ministers of internal affairs of the EU member states, a decision was made to automatically extend temporary protection for Ukrainians in the EU until March 2024. So, temporary protection, activated in March 2022 for an initial one year

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<sup>31</sup> "Clarification on temporary protection and obtaining refugee status", Human Rights Commissioner of the Verkhovna Rada of Ukraine, March 17, 2022, accessed December 27, 2022, [https://ombudsman.gov.ua/news\\_details/rozyasnennya-shchodo-timchasovogo-zahistu-ta-otrimannya-statusu-bizhencya](https://ombudsman.gov.ua/news_details/rozyasnennya-shchodo-timchasovogo-zahistu-ta-otrimannya-statusu-bizhencya).

<sup>32</sup> "The EU Council unanimously introduced temporary protection for Ukrainians fleeing the war", Press release of the Council of the EU, 4 March 2022, <https://www.consilium.europa.eu/media/54715/ukraine-council-unanimously-introduces-temporary-protection-for-persons-fleeing-the-war.pdf>.

<sup>33</sup> Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection (the Council Decision), was adopted on March 4, 2022, accessed December 26, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>.

period, was automatically prolonged by two six month periods until March 2024<sup>34</sup>. After the end of the war in Ukraine, temporary protection for Ukrainians in the EU can end at any time. According to Article 6 of Council Directive 2001/55/EC of 20 July 2001 temporary protection shall come to an end: when the maximum duration has been reached or at any time by Council Decision. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement<sup>35</sup>.

Temporary protection guarantees the granting of a residence right, as well as the rights associated with it. Thus, as part of temporary protection, a person receives: the right to reside in the country in which the person applied for temporary protection; the right to access to housing (immediate accommodation is being provided by the authorities or by charities); access to the labor market (subject to EU countries' labour market policies); the right to social welfare assistance and medical care; access to education and/or vocational training for children and teenagers (children up to 18 years of age have the right to study in educational institutions at the level of citizens of the host country); access to banking services, for instance opening a basic bank account. At the same time, a person who applied for temporary protection receives the right to work immediately from the moment of application. A basic bank account gives access to the most common services needed in everyday life<sup>36</sup>. It should be noted that the range of rights provided by both refugee status and temporary protection are quite similar. The main difference is as follows: temporary protection provides access to the entire range of rights immediately from the moment of application, and when applying for refugee status, access to some rights is possible only after the end of a rather lengthy administrative procedure for considering the relevant application (in particular, the right to work).

It should be noted that the EU Council Directive (Council Directive 2001/55/EC of 20 July 2001) does not have direct effect until it is implemented into the national legislation of each individual EU country. Usually, the Directive defines the direction and recommendations, which are taken into account in national regulatory acts<sup>37</sup>. The Directive only contains minimum standards for providing temporary protection in the event of a mass influx of displaced persons, which are

<sup>34</sup> "Justice and Home Affairs Council, 13-14 October 2022", Council of the EU, accessed December 26, 2022, [https://www.consilium.europa.eu/en/meetings/jha/2022/10/13-14/?fbclid=IwAR2dRe3XKFC52RWUbtBQ43\\_5bhxYEGqWxF-51GOstNqQ7pu\\_W-rFjX7 BTQ](https://www.consilium.europa.eu/en/meetings/jha/2022/10/13-14/?fbclid=IwAR2dRe3XKFC52RWUbtBQ43_5bhxYEGqWxF-51GOstNqQ7pu_W-rFjX7 BTQ).

<sup>35</sup> 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, accessed December 26, 2022, <https://eur-lex.europa.eu/eli/dir/2001/55/oj>.

<sup>36</sup> "Information for people fleeing the war in Ukraine", European Commission, accessed December 27, 2022, [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine_en).

<sup>37</sup> Golyan Lana, "Temporary protection or refugee status: recommendations for persons leaving Ukraine", *Legal House*, March 18, 2022, accessed December 26, 2022, <https://legalhouse.group/timchasovij-zahist-abo-status-bizhentsya-rekomendatsiyi-dlya-osib-yaki-pokidayut-ukrayinu/>.

expanded in national legislation, taking into account the economic and social situation of each country. As today's practice shows, each country has its own peculiarities in providing temporary protection<sup>38</sup>. For example, it is noted that Portugal triggered, as early as 1 March 2022, the national temporary protection regime, thus granting immediate protection to people who were arriving because of the war in Ukraine<sup>39</sup>. Temporary protection has long been formulated and debated in policy circles as a practical interim response for large-scale refugee movements, awaiting durable solutions. Only through a bottom-up understanding of the many dimensions of temporary protection-and its impacts on the refugees-that a truly workable framework will emerge, that focuses on protection rather than temporality<sup>40</sup>.

Also, an essential feature of temporary protection is that citizens of Ukraine who crossed EU state borders after February 24, 2022, can freely choose any EU member state in which they want to use the right to temporary protection, possibly join their family or friends. For Ukrainians, the right to enter the Schengen zone comes from the visa-free regime between the EU and Ukraine<sup>41</sup>. Using the visa-free regime, citizens of Ukraine have the right to move freely within the borders of EU member states for 90 days in any 180-day period after entering the territory of the European Union. Taking advantage of this, Ukrainians can choose any EU state in which they want to use the right to temporary protection. However, temporary protection can only be used in one EU member state at a time<sup>42</sup>. While Ukrainians are in the EU member states on the basis of a visa-free regime, they must provide for their stay completely independently and do not have the right to employment, free education for children, free medical insurance policy, etc.

In contrast to temporary protection, the Dublin Convention of June 15, 1990 establishes a rule that a person can apply for refugee status exclusively in the first safe country whose borders he crossed<sup>43</sup>. Given that the airspace over Ukraine is closed, a person can apply for refugee status only in those states that have a common codon with Ukraine (exception - reunification with family living in another country).

<sup>38</sup> "The Committee on Social Policy and Protection of Veterans' Rights reports on the state of protection of Ukrainians abroad", Verkhovna Rada of Ukraine, 15 June 2022, accessed December 26, 2022, <https://www.rada.gov.ua/news/razom/224033.html>.

<sup>39</sup> de Sousa Constança Urbano. "The Protection of Displaced Persons from Ukraine in Portugal", *European Journal of Migration and Law* 24, 3 (2022): 313-329, <https://doi.org/10.1163/15718166-12340131>.

<sup>40</sup> Irem Sengul, "Syrian Refugees' Homemaking in Gaziantep: Uncertainty, Legality and Temporality", *Refugee Survey Quarterly* 41, 2 (June 2022): 267-297, <https://doi.org/10.1093/rsq/hdac006>.

<sup>41</sup> Kosar D., "Refugee status or temporary protection in Europe: for and against", *Legal Gazette*, March 18, 2022, accessed December 26, 2022, <https://yur-gazeta.com/dumka-eksperta/status-bizhencya-chi-timchasoviy-zahist-u-evropi-za-i-proti.html>.

<sup>42</sup> "Information for people fleeing the war in Ukraine", European Commission, accessed December 27, 2022, [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine_en).

<sup>43</sup> Dublin Convention of June 15, 1990 (Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities), accessed December 26, 2022, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A41997A0819%2801%29>.

If a person crosses the borders of several EU member states and applies for refugee status in a state that does not have a common border with Ukraine, then this person will be deported to the state whose border he crossed first when leaving Ukraine. You can apply for refugee status when you enter the country by notifying a border guard officer.

Based on the above, it can be concluded that the legal status of a refugee and the legal status of a forcibly displaced person in need of temporary protection are two different mechanisms of international protection. Refugee status is an individual right in the EU countries, which is granted after a rather lengthy special administrative process, which determines whether a person has a reasonable risk of being persecuted. Temporary protection is collective and immediate, is a procedure of an exceptional nature in the event of a mass exodus of the population from third countries who cannot return to their country of origin, and which consists in providing immediate temporary protection, providing immediate assistance in connection with a real threat. Obtaining the status of a person in need of temporary protection is due to the need to continue living in a safe place, ensure further education of children, receive medical and social assistance, as well as the possibility of employment<sup>44</sup>.

The view that subsidiary protection status is a lesser form of protection than refugee status is widespread among European Union (EU) Member States' asylum authorities and courts. This view is based on the assumption that the protection needs of beneficiaries of subsidiary protection are of shorter duration than those of refugees. The persistence of the assumption of the temporary nature of subsidiary protection derives from a more profound perception in international legal thought of wartime as exceptional and of short duration<sup>45</sup>. Bastaki (2018) compares the approach of states to three separate refugee influxes-Kuwaiti refugees in the Gulf, Bosnian refugees in Germany, and Syrian refugees in Turkey-and will argue that efforts to harmonize temporary protection measures are desirable, but given that these situations tend to be prolonged, there must be greater responsibility sharing between states, in order to lead to greater integration of refugees in the host states <sup>46</sup>.

At the same time, temporary protection in the EU does not exclude the possibility of the person who received it at any time to apply for refugee status. The right to temporary protection is in addition to the right to apply for refugee status. The purpose of granting temporary protection is to reduce the need to immediately apply for refugee status, as temporary protection provides a residence permit and

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<sup>44</sup> Romanova A., "The status of a person in need of temporary protection", Legal clinic of National University of Law named after Yaroslava Mudroho, April 20, 2022, accessed December 26, 2022, <http://legalclinic.nlu.edu.ua/2022/04/20/status-osoby-yaka-po-trebuye-tymchasovogo-zahystu/>.

<sup>45</sup> Stefan Salomon, "Constructing Equality in EU Asylum Law", *International Journal of Refugee Law* 33, 4 (December 2021): 608–644, <https://doi.org/10.1093/ijrl/eeac012>.

<sup>46</sup> Bastaki Jinan, "Temporary Protection Regimes and Refugees: What Works? Comparing the Kuwaiti, Bosnian, and Syrian Refugee Protection Regimes" 34, 2 (2018): 73-84? <https://doi.org/10.7202/1055578ar>.

related rights<sup>47</sup>. States resort to temporary protection practices as an urgent but realistic solution. The protection provided in the case of a mass influx in the EU lacks a systematic framework, but has a variable content in proportion to the capacity of the asylum system of the receiving member state<sup>48</sup>.

Sydorenko and Kulchytska (2022) point out that since the EU Council introduced the mechanism of temporary protection for the first time in history, it was expected that it would not work perfectly, problems would emerge in the work that the European Union would have to solve. The EU, which acted uniquely quickly and effectively at the beginning of the full-scale Russian military invasion of Ukraine, is now mired in bureaucracy. The practice of different countries remains uncoordinated. In particular, many problems have arisen related to the lack of a uniform approach in the EU member states to the document certifying the right to residence within the limits of temporary protection<sup>49</sup>. The basic rules are set out in the Communication 2022/C 126 I/01 On operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. Thus, with the receipt of a document certifying the right to reside within the framework of temporary protection, the 90-day period for staying in the EU disappears, a person receives the right to long-term stay and free travel throughout the territory of the EU, with the only requirement - to spend more time in the country of registration than in all other countries combined. And also, the right to go to Ukraine for a short time to solve domestic or personal issues, and then return to the EU, and this trip will not nullify the protection. However, the rules prescribed by the European Commission are advisory, each EU member state has its own migration policy, and in practice it turned out differently<sup>50</sup>. Also, sometimes the procedure for obtaining temporary protection by Ukrainians turned out to be rather long. For example, in Germany, it is necessary to ask the state for a temporary residence permit (*Aufenthaltserlaubnis*), which then has to wait for a very long time - the procedure in some lands is delayed for months. Unfortunately, significant bureaucracy and inconsistency of decisions between the competent EU authorities sometimes lead to the untimely receipt of temporary protection by Ukrainians, who are fugitives from Russian military aggression, which in practice complicates the protection of their rights built on general principles and provisions on human rights.

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<sup>47</sup> "Information for people fleeing the war in Ukraine", European Commission, accessed December 27, 2022, [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine_en).

<sup>48</sup> Apan Ahmet, "Temporary Protection as a Device for Political Realism in the Management of a Mass Influx: The Cases of EU and Turkey", *AMME İdaresi Dergisi* 55, 1 (2022): 1-33.

<sup>49</sup> The idea is that the Commander's powers are civil, political and military. See Dan Constantin Măță, *Command Acts of Military Nature. Considerations on the Actuality of the Regulation*, „Perspectives of Law and Public Administration”, Volume 8, Issue 1, May 2019, p. 37.

<sup>50</sup> Sydorenko S. and Kulchytska K., "The complexities of europrotection: what problems await Ukrainian women fleeing war in the EU", *European Pravda*, July 19, 2022, accessed December 27, 2022, <https://www.eurointegration.com.ua/articles/2022/07/19/7143461/>.

## 6. Conclusions

Summing up, it should be noted that the legal status of a refugee differs from the legal status of a forcibly displaced person who received temporary protection in EU member states by the following main characteristics:

1) the legal status of a refugee and temporary protection are regulated by various international documents (Convention Relating to the Status of Refugees of 28 July 1951 (Geneva Convention) and Council Directive 2001/55/EC of 20 July 2001), and also have different reasons for obtaining them: well-founded fears of a person becoming a victim of persecution (individual, internal) and a mass influx of displaced persons (collective, external), respectively;

2) a refugee is an individual legal status that is granted after a rather long and complex administrative procedure (approximately six months), which determines whether a person has a justified danger of being persecuted. Temporary protection is collective and immediate, represents a maximally simplified and rapid procedure of an exceptional nature in the case of a mass influx of displaced persons, which consists in providing immediate temporary protection to all who have applied, due to a real threat;

3) refugee status can be applied for only in the safe country that the person crossed the border with first when leaving Ukraine (or in the country of residence of family members). That is, today - these are only the states that border Ukraine. In contrast, temporary protection can be obtained at the person's choice in any EU country that he or she considers safe. The Directive applies in all EU member states (except Denmark). Temporary protection does not apply in Schengen zone states that are not EU members (Switzerland, Norway, Liechtenstein, Iceland). These countries independently decide on the order and number of refugees from Ukraine that they are ready to accept;

4) after receiving temporary protection, individuals can return to their country of citizenship at any time without hindrance, as well as move freely between EU countries. In contrast, a person who has applied for refugee status cannot cross the border of the host country during the approximately 6-month of waiting for the decision of the authorized body on the results of consideration of his application. After that, it will be possible to return to the country of citizenship only after receiving refugee status and on the condition that the grounds for granting refugee status have disappeared;

5) at this time, temporary protection for Ukrainians, activated in March 2022 for an initial one year period, was automatically prolonged by two six month periods until March 2024. Also, the European Commission may propose ending temporary protection if the situation in Ukraine allows a safe and lasting return. In contrast, obtaining refugee status is usually a long process that ends with the acquisition of citizenship;

6) temporary protection and refugee status provide almost the same range of rights for the time of stay in the EU. These are the right to residence and housing, access to education for children, the right to medical and social assistance, and access

to the labor market. The main difference is that with temporary protection, these rights become available immediately from the moment of data registration and confirmation that the person is covered by temporary protection. When a person applies for refugee status, certain rights are unavailable or limited for approximately 6 months while the application is being considered and a decision is made (in particular, the right to work).

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