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LEGAL BASIS FOR REGULATING THE MOVEMENT OF THIRD-COUNTRY NATIONALS WITHIN THE EUROPEAN UNION

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Zhurba O.O. Legal basis for regulating the movement of third-country nationals within the European Union.

This article examines the legal mechanisms for regulating the migration of third-country nationals within the European Union, focusing on international legal norms and European standards. Globalization, changes in the composition of the EU Member States and the growth of migration flows create new challenges that require flexible and balanced approaches to migration management. The social, economic and humanitarian aspects of migration are considered, including its impact on the standard of living of the population, access to employment and education, security and respect for human rights and freedoms. Particular attention is paid to how a balance can be maintained between the effectiveness of migration control and compliance with the principles of humanity, proportionality and non-discrimination. These principles are particularly important in the context of the digitalization of border control and the automation of decision-making processes. The article emphasizes the legal status of third-country nationals as subjects of international law with the right to social integration and the protection of fundamental rights. Modern technologies for border control are analyzed, including the automated ETIAS and EES systems. While these systems improve the accuracy of forecasting migration flows, they also call into question compliance with international standards, in particular the principles of non-discrimination and proportionality. The importance of transparent complaint mechanisms and codes of ethics for the use of algorithms in migration management is emphasized. Particular attention is paid to the social rights of migrants, their integration into the labor market and humane return procedures. The reform of the Single Work Permit Directive, which harmonizes national legislation with international employment standards, and proposals for a common return system that guarantees respect for human rights and prohibits collective expulsions are discussed.

The practical significance of this article lies in the development of recommendations for improving EU migration policy, developing transparent and humane control and integration procedures that comply with international legal obligations and guarantee the protection of the rights and freedoms of each migrant.

Key words: legal principles, third-country nationals, European Union, migration policy, social integration, human rights.

Журба О.О. Правові засади регулювання пересування в Європейському Союзі громадян третіх держав.

У цій статті розглядаються правові механізми регулювання міграції громадян третіх країн у межах Європейського Союзу, зосереджуючись на міжнародно-правових нормах та європейських стандартах. Глобалізація, зміна складу держав-членів ЄС та зростання міграційних потоків створюють нові виклики, що вимагають гнучких та збалансованих підходів до управління міграцією. Розглянуто соціальні, економічні та гуманітарні аспекти міграції, включаючи її вплив на рівень життя населення, доступ до працевлаштування та освіти, безпеку та повагу до прав і свобод людини. Особлива увага приділяється тому, як можна підтримувати баланс між ефективністю міграційного контролю та дотриманням принципів гуманності, пропорційності та недискримінації. Ці принципи особливо важливі в контексті цифровізації прикордонного контролю та автоматизації процесів прийняття рішень.

У статті наголошується на правовому статусі громадян третіх країн як суб'єктів міжнародного права з правом на соціальну інтеграцію та захист основних прав. Аналізуються сучасні технології прикордонного контролю, включаючи автоматизовані системи ETIAS та EES. Хоча ці системи покращують точність прогнозування міграційних потоків, вони також ставлять під сумнів дотримання міжнародних стандартів, зокрема принципів недискримінації та пропорційності. Підкреслюється важливість прозорих механізмів розгляду скарг та етичних кодексів використання алгоритмів в управлінні міграцією. Особлива увага приділяється соціальним правам мігрантів, їх інтеграції на ринок праці та гуманним процедурам повернення. Обговорюється реформа Директиви про єдиний дозвіл на роботу, яка гармонізує національне законодавство з міжнародними стандартами зайнятості, та пропозиції щодо спільної системи повернення, яка гарантує повагу до прав людини та заборону колективних вислань.

Практичне значення цієї статті полягає в розробці рекомендацій щодо вдосконалення міграційної політики ЄС, розробки прозорих та гуманних процедур контролю та інтеграції, які відповідають міжнародно-правовим зобов'язанням та гарантують захист прав та свобод кожного мігранта.

Ключові слова: правові засади, громадяни третіх держав, Європейський Союз, міграційна політика, соціальна інтеграція, права людини.

Relevance of the study. In the current state of international relations, characterized by large-scale military conflicts, primarily the armed aggression of the Russian Federation against Ukraine, the problem of the displacement of large numbers of people to safer regions takes on particular legal, humanitarian, and political significance. Finding itself at the center of a global migration crisis, the European Union was forced to activate legal instruments and procedures to respond to the unprecedented mass influx of displaced persons, primarily citizens of Ukraine. This created the conditions for a profound transformation of the mechanisms of legal regulation in the field of migration, which manifested itself in a change in approaches to the application of both EU secondary law and adapted national provisions of Member States.

Numerous studies have attempted to analyze, both directly and indirectly, the phenomenon of legal regulation of migration processes in the European Union from the perspective of an interdisciplinary combination of migration law, international humanitarian law, EU law, and administrative law. A summary of these studies suggests that there is no single, universally accepted approach to understanding the legal mechanism of crisis migration and temporary protection in the context of a mass influx of displaced persons.

However, despite increased research attention to this issue, certain aspects of it remain insufficiently studied. Scientific literature provides limited coverage of the comparative legal dimension of the implementation of temporary protection in EU member states, taking into account their institutional, administrative, and social contexts.

Analysis of recent studies and publications. Contemporary research on the legal framework for the migration of third-country nationals to the European Union reveals a significant renewal of academic discourse on the subject. This is largely due to the rapid pace of digitization of migration management processes, reforms of key directives, and changes in the role of third countries in the socio-economic development of the EU. In their article, L. Gugliotti and A. Elbi [1] formulated one of the most controversial theses in contemporary science, namely that there is a gradual transfer of decision-making powers in the field of border control from people to automated systems. The publication by D. Costacopoulou [2] examines the socio-legal integration of third-country nationals, viewing them not only as objects of regulation, but also as a potential resource for the socio-economic development of the EU. The article by M. Manfredi [3] analyzes the fragmentation of third-country nationals' access to social benefits in EU countries. Of particular interest is the article by P. Melin [4] on the reform of the Single Permit Directive. The range of topics is complemented by a study by A. Palhadsingh [5], which analyzes the proposed common EU system for the return of third-country nationals. Overall, the publications reviewed demonstrate that the current academic discourse on the regulation of third-country nationals' migration in the EU is interdisciplinary and combines legal, technological, and socio-economic perspectives. All scholars emphasize the need to strike a balance between security, human rights, and labor market requirements, which will determine the strategic guidelines for the development of the European Union's migration policy in the coming years.

Objective. The main objective of this article is to examine the legal basis for regulating the movement of third-country nationals in the European Union, taking into account global changes.

Research results. The regulation of migration processes of third-country nationals within the European Union is a complex legal phenomenon at the intersection of international law, EU law, and the national legal systems of member states. The main objective of EU policy in this area is to ensure a balance between the sovereignty of member states, effective management of migration flows, and compliance with international legal standards, including human rights guarantees, principles of humanity, and the obligations of states under international treaties [1].

The EU's institutional mechanism for regulating migration is characterized by close interaction between the political, legislative, and executive levels, complemented by a network of specialized agencies capable of providing both strategic planning and rapid response to challenges related to population displacement as a result of international armed conflicts. Its effectiveness depends on the coordination of all institutions, the speed of decision-making, and the ability to combine legal obligations enshrined in founding treaties and secondary legislation with the realities of the humanitarian and security situation at the EU's external borders.

The European Union's institutional mechanism for regulating migration flows resulting from military action is based on multi-level coordination between supranational governing bodies, intergovernmental structures, specialized agencies, and working groups.

At the strategic level, the key coordinating role is played by the European Council, which provides political guidance in response to migration challenges, sets priorities, and approves political statements that form the basis for the development of legislative initiatives.

Third-country nationals are considered full subjects of international law and are entitled to protection of their fundamental rights, including the right to life, freedom of movement, access to work, and social services. EU Member States, in turn, are obliged to ensure the implementation of these rights in accordance with international law, in particular the provisions of the European Convention on Human Rights and other international instruments establishing standards for the humane treatment of migrants. [2].

Third-country nationals are considered subjects of international law and are entitled to protection of their fundamental rights, including the right to life, freedom of movement, access to work, and access to social services. Modern technologies, in particular automated border control systems such as ETIAS and EES, make it possible to improve the effectiveness of forecasting and managing migration flows. At the same time, the use of algorithms in decisions regarding migrants carries the risk of violating the principles of non-discrimination and proportionality, which are fundamental norms of international law [1, p. 569]. Therefore, international law requires the development of transparent appeal procedures that ensure compliance with the principles of fairness and humanity.

The social rights of migrants in the EU remain one of the most important issues in international law. Fragmented access to social services leads to inequality and may contradict the obligation of states to treat all subjects of law equally [3]. Recognizing the social rights of migrants as an integral part of the international legal order emphasizes the legal and moral responsibility of member states for social justice.

The integration of third-country nationals into the labor market is a central aspect of the international legal order. The reform of the Single Permit Directive aims to protect the rights of migrant workers and align national legislation with international employment standards [4]. Compliance with international standards, including those of the International Labour Organization (ILO), contributes to labour market stability and creates a legal basis for the social integration of migrants.

The procedures for returning third-country nationals are also subject to clear international legal provisions. The common return system is designed to ensure the effectiveness of measures in conjunction with respect for human rights, in particular the prohibition of collective expulsions, the proportionality of measures, and access to legal assistance [5, p. 111]. The implementation of these rules guarantees the humanity and legitimacy of the migration policies of Member States and complies with international standards.

An issue of unauthorized movement deserves special attention, when a refugee, after registering in one country, leaves for another without permission. As a general rule under Article 11 of Directive 2001/55/EU, the state in which a person has temporary protection is obliged to take them back if they find themselves in the territory of another member state without permission. However, in the situation with Ukraine, EU states have agreed not to apply this rule strictly. In fact, a flexible approach was agreed

at the Council level: Ukrainians were allowed a certain freedom in choosing their country of residence in order to distribute the burden between states and take humanitarian circumstances into account. In order to control movement and prevent abuse, the EU actively uses instruments of cooperation between police and migration authorities. The Schengen Information System (SIS) plays an important role as a pan-European database for the exchange of information on wanted persons, refusals of entry, missing persons, etc.

An important feature of temporary protection status is that it grants the right to work without special permission. This fundamentally distinguishes it from asylum seeker status, which often involves a period during which employment is prohibited. With access to the labor market, Ukrainian refugees were able to quickly become self-sufficient and integrate into their host communities. According to the European Commission, hundreds of thousands of Ukrainians found employment in EU countries, especially those with labor markets open to foreign workers (e.g., Poland, the Czech Republic, and Germany). To simplify the recognition of their qualifications, the EU and national governments introduced simplified procedures for the recognition of diplomas, language courses, and training. This is part of broader integration measures aimed at gradually transitioning Ukrainians from temporarily protected persons to full participants in the economic and social life of their host countries.

One of the key freedoms that Ukrainian citizens actually enjoyed during the mass displacement was the ability to move freely within the Schengen area. The Schengen area abolishes border controls between most EU member states, allowing persons who have legally entered the territory of one of these countries to travel further without undergoing additional checks at internal borders. For Ukrainians, this meant that once they arrived in, for example, Poland or Hungary, they could continue on to other EU countries where they had family or other ties without having to obtain new visas. Ukrainian citizens with biometric passports or other documents granting visa-free entry automatically acquired the right to travel within the Schengen area for up to 90 days after crossing the external border. This allowed many displaced families to reach the countries where they wanted to exercise their rights to protection—for example, Germany, Italy, or the Czech Republic—and reunite there with relatives or acquaintances who could provide support.

Comprehensive regulation of migration processes involving third-country nationals requires the harmonization of digital technologies with international legal norms. This includes the development of ethical recommendations on the use of algorithms in decisions concerning migrants, as well as the development of mechanisms to monitor the compliance of these systems with international standards. At the same time, the participating state is obliged to ensure compliance with the principles of humanity, human rights, and social justice, which are central principles of international law.

A balanced approach to regulating the migration of third-country nationals involves integrating digital technologies with international legal norms and social integration mechanisms. Transparent algorithmic systems, equal access to social and labor rights, and adaptation programs create conditions for a safe and humane environment in which migrants' rights are protected and the participating state fulfills its international obligations.

Conclusions. Thus, regulating the migration of third-country nationals within the European Union is a complex international legal issue that requires simultaneous consideration of human rights, humanity, and effective migration management. Ensuring a balance between the sovereignty of member states, the social integration of migrants, and compliance with international human rights standards is a central task of modern migration policy. The use of digital technologies and automated control systems must be complemented by transparent complaint mechanisms and ethical standards of application, and the guarantee of social and labour rights of third-country nationals must remain an integral part of the legal framework. This approach creates the conditions for the development of a humane, fair, and sustainable migration policy that complies with the international legal obligations of Member States and guarantees the protection of the rights and freedoms of every migrant.

REFERENCES:

1. Gugliotta L., Elbi A. Will AI "Subtly" Take Over Decision-making in the EU Border and Migration Context? *European Papers*, 2024. Vol. 9, № 2. P. 567–589. URL: https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2024_3_SS1_6_Lorenzo_Gugliotta_Abdullah_Elbi_00797.pdf (дата звернення: 17.11.2025).

2. Kostakopoulou D. Third Country Nationals in the EU: From Invisible Others to Potential Key Players in the European Integration Process. *Columbia Journal of European Law*, 2024. Vol. 30, № 2. P. 45–68. URL: <https://cjel.law.columbia.edu/print/2024/third-country-nationals-in-the-eu-from-invisible-others-to-potential-key-players-in-the-european-integration-process/> (дата звернення: 16.11.2025).
3. Manfredi M. Access to Social Benefits for Third-country Nationals in the European Union: Between Fragmentation and Equal Treatment. *European Journal of Social Security*, 2025. Vol. 27, № 1. P. 12–29. URL: <https://www.europeanpapers.eu/e-journal/access-social-benefits-third-country-nationals-european-union-between-fragmentation-equal-treatment> (дата звернення: 16.11.2025).
4. Melin P. The Recast Single Permit Directive: an assessment of its (re)design and implications for third-country nationals. *Journal of Immigration and Asylum Law*, 2024. Vol. 38, № 3. P. 201–220. DOI: <https://doi.org/10.1007/s12027-025-00823-1> (дата звернення: 17.11.2025).
5. Pahladsingh A. Proposal for a Common Return System: Legal requirements and fundamental-rights challenges in returning third-country nationals. *European Public Law*, 2025. Vol. 31, № 1. P. 101-119. DOI: <https://doi.org/10.1007/s12027-025-00854-8> (дата звернення: 17.11.2025).