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## RIGHTS OF CITIZENS OF UKRAINE IN THE EU

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### **Homonai V.V. Rights of citizens of Ukraine in the EU.**

It is dedicated, a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Due to Russia's military invasion of Ukraine, millions of Ukrainian citizens were forced to flee the war to neighboring EU member states. These EU member states, in accordance with the norms of their national legislation, guarantee basic rights and freedoms to the citizens of Ukraine. Also, these states are members of the integration association, the norms of primary law of which also guarantee basic rights and freedoms to citizens of Ukraine.

The article focuses attention on the catalog of rights of Ukrainian citizens in the EU and on the mechanisms of their protection. It is emphasized that the catalog of human rights contained in the primary law of the EU is not identical to the catalog of human rights enshrined in the national legislation of the EU member states. It is noted that citizens of Ukraine who are in the EU have rights guaranteed to them by EU legislation, which establishes minimum standards, and by the national law of the EU member state in which the citizen of Ukraine resides. The minimum standards of human rights established by the norms of EU primary law must be ensured to every citizen of Ukraine residing in any EU member state. Higher standards of human rights, which are guaranteed by the norms of national legislation, differ in each EU member state.

The article highlights the peculiarities of the implementation of the rights of citizens of Ukraine, whose legal regime of stay in the EU is temporary protection. It is emphasized that until March 4, 2022, such a regime did not exist for citizens of Ukraine. Features of the implementation of the following rights of citizens of Ukraine who enjoy temporary protection are highlighted: residence permit; access to work; access to education: children under the age of 18 have the right to study in educational institutions under the same conditions as citizens of the host country; provision of housing; access to social security; access to medical care; access to information about temporary protection; the possibility of obtaining refugee status; the possibility to return to the state of citizenship at any time. It is emphasized that each EU member state independently establishes requirements for the cancellation of the temporary protection status for EU citizens.

**Key words:** citizen of Ukraine, human and citizen rights and freedoms, temporary protection, martial law, solidarity, temporary protection, EU human rights standards, national human rights standards, human rights protection in the EU, human rights protection in EU member states.

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

Вказується, людина, її життя і здоров'я, честь і гідність, недоторканність і безпека визнаються найвищою соціальною цінністю в Україні. Через військове вторгнення Росії в Україну мільйони громадян України були змушені тікати від війни до сусідніх держав-членів ЄС. Ці країни ЄС відповідно до норм національного законодавства гарантують громадянам України основні права і свободи. Також ці держави є учасниками інтеграційного об'єднання, норми первинного права якого також гарантують громадянам України основні права і свободи.

В статті фокусується увага на каталозі прав громадян України в ЄС та на механізмах їх захисту. Підкреслюється, що каталог прав людини, який міститься в первинному праві ЄС, не тотожний каталогу прав людини, який закріплений в національному законодавстві країн-учасниць ЄС. Зазначається, що громадяни України, які перебувають в ЄС мають права, гарантовані їм законодавством ЄС, що встановлює мінімальні стандарти, та національним правом держави-учасниці ЄС,

в якій громадянин України перебуває. Мінімальні стандарти прав людини, встановлені нормами первинного права ЄС, мають бути забезпечені кожному громадянину України, який перебуває в будь-якій державі-учасниці ЄС. Більш високі стандарти прав людини, які гарантовані нормами національного законодавства – різняться в кожній державі-учасниці ЄС.

В цій статті виділено особливості реалізації прав громадян України, правовий режим перебування в ЄС яких є тимчасовий захист. Підкреслено, що до 4 березня 2022 р. такого режиму для громадян України не існувало. Виділено особливості реалізації таких прав громадян України, які користуються тимчасовим захистом: дозвіл на проживання; доступ до роботи; доступ до освіти: діти до 18 років мають право навчатися в навчальних закладах на тих же умовах, що й громадяни країни перебування; забезпечення житлом; доступ до соціального забезпечення; доступ до медичного обслуговування; доступ до інформації про тимчасовий захист; можливість отримання статусу біженця; можливість повернутися до держави громадянства у будь-який час. Підкреслюється, що кожна держава-учасниця ЄС самостійно встановлює вимоги щодо скасування статусу тимчасового захисту для громадян ЄС.

**Ключові слова:** громадянин України, права і свободи людини і громадянина, тимчасовий захист, воєнний стан, солідарність, тимчасовий захист, стандарти прав людини ЄС, національні стандарти прав людини, забезпечення прав людини в ЄС, забезпечення прав людини в державі-учасниці ЄС.

**Statement of the problem.** A person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Due to Russia's military invasion of Ukraine, millions of Ukrainian citizens were forced to flee the war to neighboring EU member states. These EU member states, in accordance with the norms of their national legislation, guarantee basic rights and freedoms to the citizens of Ukraine. Also, these states are members of the integration association, the norms of primary law of which also guarantee basic rights and freedoms to citizens of Ukraine.

**The purpose of this article** is to describe the rights of Ukrainian citizens who have temporary protection in the EU.

**Analysis of scientific publications.** In the legal literature, the issues of human rights in the EU were investigated in their works by the following scientists: Yuriy Bysaga [1–5], Sibylla Buletsa [6-7], Vyacheslav Volkov [8–11], Lyudmila Deshko [12–16], Roman Petrov [17], Tamar Eiser [18] and others. At the same time, temporary protection in the EU for citizens of Ukraine is new. It did not exist until March 4, 2022. Thus, the chosen research topic is relevant from both a theoretical and a practical point of view.

**Presentation of the main material of the study.** The Charter of the European Union on Fundamental Rights is a document, a legal act that has a public legal, «constitutional» character [19]. One of the tasks of the Charter was to specify the institution of EU citizenship and ensure the equal application of human rights on the territory of all member states. And also to harmonize the legal status (regimes) of social and economic rights, on the one hand, and civil and political rights, on the other, because the level of human rights protection in new EU members, former Eastern Bloc countries differed significantly from the legal practices of Western European states [19; 20].

The Charter enshrines the main political, social and economic rights of citizens of the European Union. Also, the Charter is the primary source of EU law (primary EU law source) at the same level as the treaty establishing the European Communities and the European Union and its annexes. The signatory states of the Charter are bound by the precedent practice of the Court of the European Union, which is another mechanism for the protection of human rights [19; 21].

To ensure the unity of the Union, the Charter proclaims the equality of citizens before the law. No citizen of the Union may be disadvantaged or discriminated against because of his nationality or on grounds of sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. The Charter of Fundamental Rights of the European Union goes even further. Any discrimination based on genetic characteristics, language, political or any other beliefs, belonging to national minorities, property or birth is prohibited. As far as member states are concerned, the principle of equality means that no state has priority over another, and natural differences such as size, population and different structures should only be considered according to the principle of equality [19; 22; 23].

The Charter contributed to the formation of a qualitatively new type of «human rights» worldview of EU citizens: Europe as a multinational society based on respect for human rights and the values of freedom, solidarity and security.

The preparation of a common asylum policy, including common European arrangements on asylum, is an integral part of the European Union's goal of gradually creating an area of freedom, security and justice for those who, due to forced circumstances, legitimately seek protection in the European Union [24]. In recent years, cases of mass influx of displaced persons who cannot return to their country of origin have significantly increased in Europe. That is why the EU has developed exceptional mechanisms to ensure immediate temporary protection of such persons.

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 was adopted [25]. The purpose of this Directive is to establish minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their country of origin, as well as to contribute to the balancing of efforts between Member States regarding the reception and responsibility for the consequences of the reception of such persons. On March 4, 2022, the Council adopted the Implementation Decision [26].

The Directive defines temporary protection as a procedure of an exceptional nature to ensure, in the event of a mass or imminent mass influx of displaced persons from third countries who cannot return to their country of origin, immediate temporary protection of such persons, especially if there is a risk that the asylum system will not be able to cope with such an influx without negative consequences for its effective functioning, the interests of the relevant persons, as well as other persons requesting protection.

According to Art. 8 of the Directive Member States shall take the necessary measures to grant persons enjoying temporary protection a residence permit for the entire duration of the protection. For this purpose, documents or other equivalent evidence are issued. Irrespective of the validity period of the residence permits, the treatment of the Member States towards persons enjoying temporary protection cannot be less favorable than that provided for in Articles 9 to 16 of the Directive. If necessary, Member States shall provide persons admitted to their territory for the purpose of temporary protection with all means to obtain the necessary visas, in particular transit visas. Given the urgency of the situation, it is necessary to minimize all formalities. Visas should be free or reduced to a minimum.

According to Art. 12 Directives of the Member States shall authorize persons benefiting from temporary protection, for a period not exceeding the period of temporary protection, to work as an employed or self-employed person in accordance with the rules applicable to the profession, and to participate in such activities as the opportunity adult education, vocational training and on-the-job training. For labor market policy reasons, member states may give preference to EU citizens and citizens of states bound by the Agreement on the European Economic Area, as well as citizens of third countries who are legally resident and receiving unemployment benefits. Regarding remuneration, access to social security systems related to activities as an employed or self-employed person and other conditions of employment, the general laws in force in the Member States shall apply.

In Art. 13 of the Directive stipulates that Member States shall ensure that persons benefiting from temporary protection have access to suitable housing or, if necessary, the means to obtain housing. Member States shall ensure that persons benefiting from temporary protection are provided with the necessary assistance in terms of social security and means of subsistence, if they do not have sufficient resources, as well as medical care.

The assistance required for medical care includes, at a minimum, emergency medical care and necessary treatment in case of illness. Citizens of Ukraine who enjoy temporary protection in the EU, as Professor Lyudmila Deshko rightly emphasizes in her research, should be provided with emergency medical care that meets the national standards of the EU member state» [26].

If persons benefiting from temporary protection are employed or self-employed, their ability to meet their own needs is taken into account when determining the level of assistance. Member States shall provide the necessary medical or other assistance to persons benefiting from temporary protection and with special needs, such as unaccompanied minors, or persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

According to the Directive, Member States shall grant persons under the age of 18 who benefit from temporary protection access to the education system under the same conditions as nationals of the host Member State. Member States may provide that such access shall be restricted to the public education system. Member States may allow adults benefiting from temporary protection access to the general education system.

According to Art. 15 of the Directive in cases where families residing in the country of origin have been separated due to mass influx circumstances, the following persons are considered family members: (a) the second spouse of the sponsor or his/her unmarried partner who are in a stable relationship, if the law or practice of the Member State concerned treats unmarried couples as spouses under its law on aliens; minor unmarried children of the sponsor or his/her spouse, whether born in wedlock or out of wedlock, or adopted; (b) other close relatives who were living together as part of the family at the time of the events giving rise to the mass influx and who at the time were wholly or mainly dependent on the sponsor.

According to Art. 16 Directive Member States shall take measures as soon as possible to ensure the necessary representation of unaccompanied minors benefiting from temporary protection by legal guardians or, where appropriate, by an organization responsible for the care and welfare of minors or any other appropriate representation. During the period of temporary protection, the member states ensure accommodation of unaccompanied minors: with adult relatives; with a foster family; in reception centers with special conditions for minors or in other premises suitable for minors; with the person who looked after the child during the escape. Member States shall take the necessary measures to ensure such accommodation. The consent of an adult or interested persons shall be established by the Member States. The child's opinion is taken into account according to the child's age and maturity.

In addition to the list of rights discussed above, citizens of Ukraine in the EU have the right to protection and protection of their rights. Protection of the rights of Ukrainian citizens who enjoy temporary protection in the EU is carried out by bodies that are not endowed with jurisdictional powers (for example, the ombudsman). The protection of the rights of citizens of Ukraine who enjoy temporary protection in the EU is carried out by bodies endowed with jurisdictional powers (in particular, national courts).

**Conclusions.** It is emphasized that the catalog of human rights contained in the primary law of the EU is not identical to the catalog of human rights enshrined in the national legislation of the EU member states. It is noted that citizens of Ukraine who are in the EU have rights guaranteed to them by EU legislation, which establishes minimum standards, and by the national law of the EU member state in which the citizen of Ukraine resides. The minimum standards of human rights established by the norms of EU primary law must be ensured to every citizen of Ukraine residing in any EU member state. Higher standards of human rights, which are guaranteed by the norms of national legislation, differ in each EU member state. Each EU member state independently establishes requirements for the cancellation of the temporary protection status for EU citizens.

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