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LEGAL PROTECTION OF THIRD-COUNTRY NATIONALS IN THE EUROPEAN UNION

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Abstract. *The article is devoted to the legal analysis of the EU common policy in order to provide protection to third country nationals. To control the issues caused by a significant increase of the number of asylum seekers and refugees into the territory of the EU Member States the European Union is developing a common policy on asylum and protection of third-country nationals crossing the external borders of the EU Member States. The EU common policy in this area is the European Union coordination policy to establish common rules for asylum for third-country nationals; establish common rules to provide the additional security for third-country nationals who without obtaining the European asylum in whole, however, need the international protection; to create a common system of temporary protection for displaced persons in regard of their substantial influx; to determine common procedures for granting and withdrawing of a single asylum status or additional protection.*

Special attention is paid to the analysis of the asylum procedure of third-country nationals. As well as issues related to the protection of external borders, visa and immigration policies TFEU predicts a joint adoption by the European Parliament and the Council decision under the ordinary legislative procedure, id est voting for proposal of the EU Commission. Simultaneously, under the TFEU, if within one or more EU Member States there is an emergency situation characterized by a sudden influx of third-country nationals, the EU Council for the EU Commission proposal and acting after the consultations with the European Parliament may adopt temporary measures in favor of the interesting Member States.

Nowadays the European Union is in dynamic and permanent development process of a common policy to provide protection to third-country nationals. This policy is implemented through the use of the EU method of coordination in matters relating to the establishment of the common status of asylum for third-country nationals; determining the status of a common additional protection for third-country nationals; the introduction of a common system of temporary protection for displaced persons; establishing of common procedures for granting and withdrawing of a common asylum status or additional protection.

Key words: *Third-country Nationals, Refugees, International Protection, Additional Protection, Temporary Protection.*

Current problems. One of the current and important issues for the European Union is a significant increase of the number of asylum seekers and refugees into the territory of the EU Member States during 2015-2016 years. In particular, during the first quarter of 2015 the citizens of 144 countries, most of them – the citizens of Kosovo (48900 requests), Syria (29100) and Afghanistan (12900) addressed for asylum in Europe. In comparison with 2014 the number of requests has increased by 86%, to 184 800. In addition to humanitarian immigration from Africa and the Middle East, a major dynamic in the EU take refugees from the Balkans. Compared with 2014 the number of asylum applications from Kosovo also increased by 19 times. In its turn, the number of refugees from Ukraine increased by 5 times, from Iraq by 3 times and from Libya and Albania by 2 times.

The aim of the article is to analyze the EU common policy in order to provide protection to third country nationals.

Important research results. To control these issues the European Union is developing a common policy on asylum and protection of third-country nationals crossing the external borders of the EU Member States. The EU common policy in this area is the European Union coordination policy to establish common rules for asylum for third-country nationals; establish common rules to provide the additional security for third-country nationals who without obtaining the European asylum in whole, however, need the international protection; to create a common system of temporary protection for displaced persons in regard of their substantial influx; to determine common procedures for granting and withdrawing of a single asylum status or additional protection.

At the EU level the Geneva Convention on the Rights of Refugees of 28 July 1951 (hereinafter – the Geneva Convention 1951) [1] and its Protocol of 31 January 1967 on the status of refugees (hereinafter – the Protocol of 1967) [2] form the legal basis of the area of shelter and protection of third-country nationals.

The legal basis of the EU common policy in the field of third-country nationals' protection as well as the immigration and asylum policies are defined in Art. 77-80 Chapter V TFEU [3].

Within the perspective that encompasses the issue of third-country nationals' protection, the important attention is paid to particular terminology in this area. According to the EU law there are certain categories of persons who deeply need the protection. They are refugees; persons who seek the additional protection; persons who need the temporary protection and asylum seekers.

The definition of abovementioned notions are stipulated in the Council Directive 2004/83 EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or persons who otherwise need international protection and the content of the protection guaranteed [4].

The common standards for qualification of persons as refugees or persons who need the international protection are provided by the Qualification Directive 2011/95/EC [5].

The key provision of the Qualification Directive is to secure the principle of non-refoulement that is also provided by Art. 33 of the Geneva Convention of 1951. The significant importance of the Geneva Convention of 1951 for the EU legislation in the field of immigration policy was highlighted in the Judgement of the EU Court of Justice in the case «Salahadin Abdulla and Others v. Germany» on March 2, 2010 [6]. Applying the Qualification Directive in the present case, the EU Court of Justice underlined that the Geneva Convention of 1951 was the cornerstone of the international legal regime for the refugees' protection. Moreover, it stated that the provisions of the Directive relating to the definition of the persons entitled to refugee status as well as the content of this status were approved by the competent authorities of the EU Member States in regard of the application of the Geneva Convention of 1951 on the basis of common concepts and criteria.

The doctrine of the European Union provides different points of view of third country nationals' additional protection.

In conformity with K. Heylbroner the additional protection includes the additional forms of human rights and humanitarian protection that have been guaranteed by state if the person does not meet the requirements for refugee status under the Geneva Convention of 1951 [7, p. 220].

A. Blok said that the additional protection arose from too much narrow interpretation by the EU Member States of the definition of a refugee [8, p. 43].

According to the national scientist Z. Makaruha the additional protection is caused by the need of the completely new form of international protection [9, p. 155].

In our opinion, the issue of additional protection arose because of the lack of clear and understandable criteria for granting to third country nationals of the refugee status. In addition, such persons had to be provided at least a minimum level of protection in case of their return to origin country or previous habitual residence.

These reasons have contributed to the consolidation of additional protection status of third country nationals at the EU level. In particular, under the Council Directive 2004/83/EC the status of the additional protection is guaranteed to persons who seek the international protection due to the fact that they are unable to return to their origin country of reasonable fear to be caused serious and unjustified harm. The Directive also defines three forms of injury: torture or inhuman or degrading treatment or punishment; death penalty; threat to life as a result of mass violence caused by international or internal armed conflict [4].

In regard of the temporary protection, the legal instrument of its regulation is the Council Directive 2001/55 of 20 July 2001 on minimum standards for providing temporary protection to displaced persons in the case of a mass influx, as well as measures to ensure a balance of efforts between the EU Member States and overcoming the consequences of the adoption [10].

The persons who possess the temporary protection within the EU Member States territory have the following rights: the right to residence; the right of access to the labor market taking into account the principle of priority of EU citizens, nationals of Member States of the European Economic Area as well as third country nationals legally residing within the territory of the EU Member State.

Deeply analyzing the Directive 2001/55 we should notice the indirect relationship between the temporary protection and asylum procedures. In particular, a person who is under the temporary protection has the right to seek asylum. In this context, as Z. Makaruha suggests, the criteria and mechanisms adopted within the European continent document as the Dublin Convention 1990 are applied [9, p.160]. Thus, this document defines the state responsible for examining of a request for asylum. Such state is deemed to be the EU Member State that has provided the temporary protection.

Taking into consideration that the protection is temporary it provides the principles and measures for return to the country of origin. The priority is given to the voluntary return but in case of its impossibility the coercive return is applied. Nevertheless, the Member State must prove that there are no compelling humanitarian reasons that make it impossible to return, and the health of the person to be returned is proper and adequate.

The legislation of the European Union enshrines the concept and determines the legal status of refugees, persons under additional or temporary protection while the issues of asylum seekers have not been determined.

Instead the Council Directive 2003/9 of 27 January 2003 on fixing the minimum standards for the reception of asylum seekers defines the asylum seeker as a third country national or a stateless person who applied for asylum in respect of whom the final decision has not been adopted (Art.2).

The document states that any application for the international protection is to be the application for asylum [11]. According to the Council Directive 2003/9 the EU Member States guarantee to the asylum seekers the access to information by applicant; documentation indicating the status of asylum seekers; residence and freedom of movement (in limited form); right to family reunification; medical examination (based on the protection of public health); education of children (national regime is applied); access to the labor market that is limited; training and health.

In fact, the rights of asylum seekers are more limited in comparison with rights and freedoms of refugees and persons under additional protection.

The legal status of asylum seekers is enshrined in the EU Council Regulation 2725/2000 on December 11, 2000 on the establishment of EURODAC (European Dactyloscopy) [12]. EURODAC is a system created to compare fingerprints of applicants for asylum and certain categories of illegal immigrants. Due to the EURODAC Cooperational system the EU Member States are able to identify applicants for asylum and the persons who were detained during illegal crossing of the external borders of the EU. Comparing fingerprints the EU Member States can accurately determine whether an applicant for asylum or a foreigner who illegally present on the territory of the Member States previously filed an application for asylum in another EU Member State, and whether the applicant is within the territory of the EU illegally.

Within the European asylum system there are the legal acts belonging to the EU *acquis*, in particular the Council Regulation EC №343/2003 on establishing the criteria and mechanisms for determining the Member State responsible for examining the submitted applications by third countries citizens of asylum on the territory of any of the EU Member States [13]; Regulation №604/2013 (hereinafter – Regulation «Dublin») [14]; the Qualification Directive 2011/95/EC [5]; the Directive 2013/32/EC on common procedures for granting and withdrawing the international protection [15] and the Directive 2013/33/EC on the conditions of admission [16]. All the above mentioned documents have been amended. Denmark, Ireland and the United Kingdom only partially are covered by the relevant provisions of asylum policy documents.

In regard of the asylum procedure of third-country nationals as well as issues related to the protection of external borders, visa and immigration policies TFEU predicts a joint adoption by the European Parliament and the Council decision under the ordinary legislative procedure (voting for proposal of the EU Commission).

Simultaneously, under the TFEU, if within one or more EU Member States there is an emergency situation characterized by a sudden influx of third-country nationals, the EU Council for the EU Commission proposal and acting after the consultations with the European Parliament may adopt temporary measures in favor of the interesting Member States.

With the TFEU asylum issues are governed by the EU Charter of Fundamental Rights (hereinafter – the EU Charter) that provides the right to asylum (Art. 18) and the prohibition of expulsion (Art. 19). However, despite the enshrined in the EU Charter guarantees of the right to asylum, the asylum measures are not provided at the EU level. In general, the persons who apply for asylum within the European Union are citizens of states who need a visa to enter the EU. Taking into account such persons do not comply with the criteria required for ordinary visas, they have to cross the external borders of the EU Member States illegally.

Till 1997 the procedural issues were among the most urgent and important issues in the area of asylum. It means that it was really difficult to define the state responsible for the examination of asylum request. There are a lot of cases when third-country nationals to obtain asylum in the EU often filed petitions in several Member States simultaneously, expecting in such way the success. Paying attention to such circumstances, in 1990 the EU Member States adopted the Dublin Convention determining the state responsible for examining applications for asylum lodged in one of the EU Member States [17]. The document came into force on September 1, 1997.

Nowadays, a great number of amendments thereto were made by the EU Council Regulation № 604/2013 (known as EU Regulation «Dublin III»). According to Art. 3 (1) of the document the EU Member States should consider each application lodged by third-country national or a stateless person to provide the international protection.

The legal measures and instruments for effective implementation of the EU common policy on asylum have been confirmed on September 9, 2015 during the European Parliament ses-

sion. In particular, the European Parliament adopted thenon-legislative Resolution in regard of rights of immigrants and asylum seekers within the EU [18].

The document states that on the basis of immigration policy the EU and its Member States must comply with the principles of solidarity and respect for the fundamental rights of immigrants and asylum seekers. The adoption of the resolution was a result of crossing of the EU external borders by refugees and asylum seekers. Nowadays, according to Frontex report almost 630 000 migrants crossed the EU territory. In particular, during 2015-2016 years 850000 immigrants and 350000 refugees arrived to the European continent.

Conclusions. In general, today the European Union is in dynamic and permanent development process of a common policy to provide protection to third-country nationals. This policy is implemented through the use of the EU method of coordination in matters relating to the establishment of the common status of asylum for third-country nationals; determining the status of a common additional protection for third-country nationals; the introduction of a common system of temporary protection for displaced persons; establishing of common procedures for granting and withdrawing of a common asylum status or additional protection.

In our opinion, nowadays the main problem in the regulation of all immigration issues in Europe is the unwillingness of some European countries and the European Union in particular to harmonize the substantive and procedural rules in these areas. It is confirmed by the EU founding treaties according to which the issues of granting the protection and asylum to third-country nationals include the joint competence of the EU and its Member States, it is confirmed by the EU Court of Justice and adopted national laws of the EU Member States in these areas.

That is, the distinctive feature of the EU regulation of the immigration sphere, asylum and border control policies as well as the protection of third-country nationals is the method of coordination. Through its application the European Union only partially regulates all immigration matters and leaves considerable legal and political space for most of the EU Member States.

The application of the method of coordination is confirmed by the adoption of the EU directives and regulations. These documents are primarily aimed at legal, humanitarian, language support and simplification of administrative procedures for immigrants crossing the EU external borders ensuring the protection of economic, social and other rights.

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ПРАВОВИЙ ЗАХИСТ ГРОМАДЯН ТРЕТІХ КРАЇН У ЄВРОПЕЙСЬКОМУ СОЮЗІ

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Анотація. *Стаття присвячена правовому аналізу спільної політики Європейського Союзу щодо надання захисту громадянам третіх країн. Для регулювання питань, пов'язаних із значним зростанням кількості шукачів притулку та біженців на територію держав-членів ЄС Європейський Союз розробляє спільну політику у сфері надання притулку та захисту громадянам третіх країн, які перетинають зовнішні кордони європейських країн. Спільна політика ЄС у цій сфері – це координаційна політика Європейського Союзу ЄС щодо встановлення єдиного статусу надання притулку для громадян третіх країн; визначення єдиного статусу додаткового захисту для громадян третіх країн, які, не отримуючи європейського притулку, потребують, тим не менше, міжнародного захисту; запровадження спільної системи тимчасового захисту для переміщених осіб у випадках їх значного напливу та встановлення спільних процедур щодо надання та позбавлення єдиного статусу отримання притулку чи додаткового захисту.*

Особливу увагу приділено процедурі прийняття заходів щодо надання захисту громадянам третіх країн. Так само як і в питаннях, пов'язаних із захистом зовнішніх кордонів, візовою та імміграційною політикою, ДФЄС закріплює спільне прийняття рішень Європарламентом та Радою ЄС відповідно до звичайної законодавчої процедури, тобто голосування відбувається кваліфікованою більшістю. Одночасно згідно з ДФЄС, якщо в одній чи кількох державах-членах ЄС виникає надзвичайна ситуація, пов'язана з раптовим напливом громадян третіх країн, Рада ЄС на пропозицію Комісії ЄС та діючи після консультації з Європарламентом, може ухвалити тимчасові заходи на користь зацікавлених держав-членів ЄС.

На сьогодні Європейський Союз перебуває на шляху динамічного та водночас перманентного розвитку спільної політики щодо надання захисту громадянам третіх країн. Реалізація даної політики відбувається за допомогою використання ЄС методу координації у питаннях, пов'язаних із встановленням єдиного статусу надання притулку для громадян третіх країн; визначенням єдиного статусу додаткового захисту для громадян третіх країн; запровадженням спільної системи тимчасового захисту для переміщених осіб; встановленням спільних процедур щодо надання та позбавлення єдиного статусу отримання притулку чи додаткового захисту тощо.

Ключові слова: *громадяни третіх країн, біженці, міжнародний захист, додатковий захист, тимчасовий захист.*

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ПРАВОВАЯ ЗАЩИТА ГРАЖДАН ТРЕТЬИХ СТРАН В ЕВРОПЕЙСКОМ СОЮЗЕ

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Аннотация. *Статья посвящена правовому анализу общей политики Европейского Союза о предоставлении защиты гражданам третьих стран. Для регулирования вопросов, связанных со значительным ростом количества искателей убежища и беженцев на территорию государств-членов ЕС Европейский Союз разрабатывает общую политику в сфере предоставления убежища и защиты гражданам третьих стран, пересекающих внешние границы европейских стран. Общая политика ЕС в этой сфере – это координационная политика Европейского Союза по установлению единого статуса предоставления убежища для граждан третьих стран; определение единого статуса дополнительной защиты для граждан третьих стран, которые, не получая европейского убежища, нуждаются, тем не менее, в международной защите; введение общей системы временной защиты для перемещенных лиц в случаях их значительного наплыва и установления общих процедур предоставления и лишения единого статуса получения убежища или дополнительной защиты.*

Особое внимание уделено процедуре принятия мер по оказанию защиты гражданам третьих стран. Так же как и в вопросах, связанных с защитой внешних границ, визовой и иммиграционной политикой, ДФЕС закрепляет совместное принятие решений Европарламентом и Советом ЕС в соответствии с обычной законодательной процедуры, то есть голосование проходит квалифицированным большинством. Одновременно согласно ДФЕС, если в одной или нескольких государствах-членах ЕС возникает чрезвычайная ситуация, связанная с внезапным наплывом граждан третьих стран, Совет ЕС по предложению Комиссии ЕС и действуя после консультации с Европарламентом, может принять временные меры в пользу заинтересованных государств членов ЕС.

На сегодня Европейский Союз находится на пути динамичного и одновременно перманентного развития общей политики по предоставлению защиты гражданам третьих стран. Реализация данной политики происходит посредством использования ЕС метода координации в вопросах, связанных с установлением единого статуса предоставления убежища для граждан третьих стран; определением единого статуса дополнительной защиты для граждан третьих стран; введением общей системы временной защиты для перемещенных лиц; установлением общих процедур предоставления и лишения единого статуса получения убежища или дополнительной защиты и т. д.

Ключевые слова: *граждане третьих стран, беженцы, международная защита, дополнительная защита, временная защита.*