

UDC 341.433

DOI 10.31733/2078-3566-2023-5-28-35



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COMPARATIVE CHARACTERISTIC OF THE STATUS OF A REFUGEE AND A PERSON WHO HAS OBTAINED TEMPORARY PROTECTION IN THE CONTEXT OF ARMED AGGRESSION BY THE RUSSIAN FEDERATION (EUROPEAN EXPERIENCE)

Олена Остапенко. ПОРІВНЯЛЬНА ХАРАКТЕРИСТИКА СТАТУСУ БІЖЕНЦЯ ТА ОСОБИ, ЩО ОТРИМАЛА ТИМЧАСОВИЙ ЗАХИСТ В УМОВАХ ЗБРОЙНОЇ АГРЕСІЇ З БОКУ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ (ЄВРОПЕЙСЬКИЙ ДОСВІД). У статті досліджуються питання співвідношення правового статусу біженця та особи, яка набуває тимчасовий захист, їх особливості шляхом порівняння інститутів притулку та тимчасового захисту. Як критерії порівняння, обрано правову основу, суб'єктний склад, підстави набуття відповідного статусу, обсяг прав та обов'язків.

Правове регулювання тимчасового захисту здійснюється Директивою 2001/55/ЄС про мінімальні стандарти для надання тимчасового захисту у разі масового напливу переміщених осіб та про заходи, що сприяють збалансованості зусиль між державами-членами щодо прийому таких осіб та відповідальності за наслідки такого прийому та Імплементативне рішення Ради Європи 2022/382 від 4 березня 2022 року. Іншими джерелами регулюється статус біженців та інститут притулку. Це Декларація про територіальний притулок, ухвалено резолюцією 2312 (XXII) Генеральної Асамблеї ООН від 14 грудня 1967 року, Конвенція про статус біженців від 28 липня 1951 року, Протокол щодо статусу біженців від 31 січня 1967 року та Конвенція, що визначає державу, яка відповідає за розгляд заяв про надання притулку, що подані в одній з держав-членів Європейських Співтовариств (Дублінська конвенція) від 15 червня 1990 року.

Встановлено, що для набуття статусу біженця особа повинна відповідати наступним ознакам: мати обґрунтовані побоювання стати жертвою переслідувань за ознакою расової належності, релігії, громадянства, належності до певної соціальної групи чи політичних поглядів; знаходитися за межами країни своєї національної належності; і бути не в змозі користуватися захистом цієї країни або не бажати користуватися таким захистом внаслідок таких побоювань; або, не маючи визначеного громадянства і знаходячись за межами країни свого колишнього місця проживання в результаті подібних подій, не може чи не бажає повернутися до неї внаслідок таких побоювань. Директива 2001/55/ЄС поширюється на такі категорії осіб, переміщених з України 24 лютого 2022 року або після цієї дати внаслідок військового вторгнення російських збройних сил, що розпочалося в цей день: громадян України, які проживали в Україні до 24 лютого 2022 року; осіб без громадянства та громадян третіх країн, крім України, які користувалися міжнародним захистом або еквівалентним національним захистом в Україні до 24 лютого 2022 року; та членів сімей зазначених осіб.

З'ясовано, що механізм тимчасового захисту передбачає застосування державами-членами мінімальних стандартів тимчасового захисту до переміщених осіб, що регламентують прийому та проживання осіб, які користуються тимчасовим захистом, і складатися з двох компонентів: фінансового і щодо фактичного прийому осіб у державах-членах, і кожна держава-член самостійно визначає і деталізує умови прийому осіб та їх фінансового забезпечення (підтримки). Статус біженця надається у довготривалій адміністративній процедурі, передбачає наявність певних обмежень (вилучення паспорта, неможливість працевлаштування тощо), але за наявністю такого статусу особа набуває правосуб'єктність, аналогічну до громадянина.

У ході дослідження зроблено висновок, що правовий статус біженця та особи, яка набуває

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тимчасовий захист, регламентується різними правовими актами, заснований на реалізації індивідуального або колективного права, набувається (й припиняється) з різних підстав, за різних умов (перша країна в'їзду чи будь-яка) протягом різних строків і шляхом застосування різних адміністративних процедур.

Ключові слова: тимчасовий захист, Директива 2001/55/ЄС, мінімальні стандарти тимчасового захисту, право притулку, територіальний притулок, статус біженця.

Relevance of the study. Due to the armed aggression of the Russian Federation initiated on February 24, 2022, from the territory of Ukraine beyond its borders, notably into the European Union (EU) countries, a vast number of Ukrainian citizens have left. According to Eurostat data, their number reached 4.2 million as of September 30. All of them obtained temporary protection in EU countries. Compared to the end of August 2023, the number of beneficiaries of temporary protection from Ukraine in the EU increased by 31,920 (+0.8 %) [1]. However, in certain media, the data is already being distorted, indicating an increase in refugees [2] (or using the term "refugees" in the title and "persons who obtained temporary protection" in the content [3, 4, 5, 6]). Thus, there is a conflation of two different rights – asylum (through which a person may obtain refugee status) and temporary protection (and the acquisition of corresponding status by a person receiving such protection). Additionally, this mixing of concepts may be due to Directive 2001/55/EC on minimum standards for granting temporary protection in the event of a mass influx of displaced persons and measures to promote a balance of efforts between Member States regarding the reception of such persons and responsibility for the consequences of such reception [7, 8], which establishes in its preamble and Article 3(1) that "temporary protection must comply with the international obligations of Member States regarding refugees. In particular, it must not prevent the recognition of refugee status in accordance with the Geneva Convention of July 28, 1951, on the Status of Refugees as amended by the New York Protocol of January 31, 1967, ratified by all Member States". However, under the current conditions, EU countries are not considering granting refugee status to Ukrainians but are only providing them with temporary protection. Thus, based on an analysis of international and national law norms, it is necessary to determine the peculiarities of the legal status of persons granted temporary protection and refugees.

Recent publications review. In legal scientific literature, general theoretical issues of migration law and migration regime have been studied in works by M. Balamush, A. Mozol, A. Suprunovsky, N. Parkhomenko, Yu. Okunkovska, V. Polishchuk, V. Teremetsky, etc. The subject of analysis by foreign scientists J. Bastaki, R. Bleck, H. Kozera was forced migration in the context of the legal status of persons who received temporary protection in host countries and issues of repatriation (M. Valenta, Z. Straba). Ukrainian scholars have explored the experience of post-conflict reconstruction in the post-Yugoslav countries (S. Kosarevich), the use of international assistance (B. Danylyshyn), the legal status of refugees (T. Bohdan, S. Brytchenko, V. Ivanova, O. Kopylenko, K. Levandovsky, Yu. Lushpienko, O. Malinovska, O. Sivash, Yu. Todik, O. Fritsky, K. Shymkevych, et al.). Considering certain specificities in the application of Directive 2001/55/EC to Ukrainian citizens who massively migrated to EU countries and obtained temporary protection there, the possibility of an alternative to such protection and international protection (refugee status) is an actual research topic.

The article's objective is to investigate problematic issues related to the correlation of the legal status of persons granted temporary protection and refugees, outlining the characteristics of their legal subjectivity.

Discussion. As a result of the mass departure of Ukrainian citizens from its territory due to open armed aggression by the Russian Federation against Ukraine, the EU Council activated Directive 2001/55/EC adopted in 2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced persons and measures to promote a balance of efforts between Member States regarding the reception of such persons and responsibility for the consequences of such reception (hereinafter – Directive 2001/55/EC). The adoption of this international act in 2001 was prompted by mass movements of people due to an armed conflict in former Yugoslavia.

Its underlying idea was "to create a space of freedom, security, and justice for those legitimately seeking protection in the European Union due to forced circumstances" [7], which required the development of a joint asylum policy among states. According to the provisions of Directive 2001/55/EC, the Action Plan of the Council and the Commission of December 3, 1998, envisages the accelerated adoption of minimum standards for temporary protection of displaced persons from third countries unable to return to their country of origin and measures promoting

a balance of efforts between Member States regarding the reception of displaced persons and responsibility for the consequences of such reception, in accordance with the Amsterdam Treaty [8]. This balance is based on a solidarity mechanism, consisting of two components: financial and the actual reception of persons by Member States. The latter have the right to accept or provide more favourable conditions for persons enjoying temporary protection in the event of a mass influx of displaced persons [8].

Directive 2001/55/EC, considering the exceptional nature of its provisions, establishes the limited duration of protection. Its duration, according to Article 4 of Directive 2001/55/EC, is set for one year. If the protection is not terminated according to the provisions of Article 6(1)(b), it can later be automatically extended for six-month periods, up to a maximum of one year. Subsequent provisions (paragraph 2 of Article 2) of the said act specify that if the reasons for temporary protection continue to exist, the Council may, by a qualified majority upon a proposal by the Commission – also considering any request by a Member State to submit a proposal to the Council – decide to extend this temporary protection by up to one year [7, 8].

On March 4, 2022, after a considerable number of Ukrainian citizens moved to European countries, the EU Council's Implementing Decision 2022/382 recognized the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC. As a result, a decision was made to apply the mechanism of temporary protection [9]. The advantages of the introduced regime of temporary protection in the EU for Ukrainians include the speed of its acquisition process and the provision, within such protection, of the right to work and education. In the autumn of 2023, the Directive 2001/55/EC for Ukrainian citizens who obtained temporary protection was extended until March 4, 2025 (summing up to three years). Thus, the fate of individuals who acquired temporary protection in Europe remains unknown. Additionally, the situation is complicated by the armed conflict in the Middle East.

Directive 2001/55/EC defines temporary protection as an exceptional procedure to ensure immediate temporary protection for such persons in the event of a mass or imminent influx of displaced persons from third countries who cannot return to their country of origin. This occurs particularly if there is a risk that the asylum system will be unable to cope with such an influx without negative consequences for its effective functioning, the interests of the persons concerned, and other persons seeking protection. It is activated to provide collective protection to displaced persons and alleviate pressure on the EU's national asylum systems, protecting them from overload and minimizing bureaucratic procedures for the prompt provision of fundamental rights to displaced persons [10, 11].

It is in this context that it is pertinent to examine the difference between the asylum system (refuge) and temporary protection.

Asylum in international law doctrine can be diplomatic or territorial. In the context of our research, we are concerned with territorial asylum. The legal regulation of this institution is established by the Declaration on Territorial Asylum, adopted by resolution 2312 (XXII) of the United Nations General Assembly on December 14, 1967 [12]. It stems from the Universal Declaration of Human Rights, acknowledging the right to seek asylum from persecution in other countries. No person regarding whom there are serious reasons to consider that they have committed a crime against peace, a war crime, or a crime against humanity shall have the right to seek asylum or enjoy it. The assessment of grounds for granting asylum belongs to the state providing this asylum (Article 1 of the Declaration).

Article 2 establishes that the status of persons granted territorial asylum should, without prejudice to the sovereignty of the state, be a matter of concern for the international community. If any state finds it difficult to grant or continue to grant (extend) asylum, the state individually or jointly or through the UN should, in a spirit of international solidarity, consider appropriate measures to alleviate the burden placed on that state.

No measures such as refusal of permission to cross a border or, if they have already entered the territory where they seek asylum, expulsion or return to any country where such a person may be persecuted, should be applied to any person falling under the Declaration, except on grounds of national security or for the protection of vital interests, such as in cases of mass influx. If any state decides that such an exception is justified, it should consider the possibility of transferring that person to another state – either by providing temporary asylum or by other means (Article 3 of the Declaration).

According to Article 4 of the Declaration, the state providing asylum should not allow persons who have received it to engage in activities contrary to the purposes and principles of the UNO. In addition to the aforementioned 1967 Declaration, the refugee status is also regulated

by the Convention Relating to the Status of Refugees dated July 28, 1951, the Protocol Relating to the Status of Refugees dated January 31, 1967, and the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities (the Dublin Convention) dated June 15, 1990. Temporary protection, as previously mentioned, is regulated by Directive 2001/55/EC and the EU Council's Decisions on its activation in connection with the war in Ukraine, No. 2022/382 dated March 04, 2022, and the extension of the period of temporary protection on 19.09.2023.

According to the provisions of national and international law, a refugee is a person who meets the following criteria: 1) has well-founded fears of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinions; 2) is outside their country of nationality; 3) is unable or unwilling to avail themselves of the protection of that country due to such fears; 4) or, having no nationality and being outside their former habitual residence country due to similar events, is unable or unwilling to return there due to such fears. Therefore, an individual's pursuit of asylum and subsequent attainment of refugee status is contingent upon the individual circumstances, primarily linked to political persecution or other reasons making their presence in their country of nationality unsafe. The existence of such circumstances (grounds for granting asylum and refugee status) must be proven by the individual and verified by the competent authorities of the country where the person seeks asylum.

The provisions of Directive 2001/55/EC regarding the granting of temporary protection apply to displaced persons, defined as citizens of third countries or stateless persons who have been compelled to leave their country or region of origin or have been evacuated, particularly in response to appeals from international organizations, and cannot return under safe and stable conditions due to the situation in that country. They fall under the scope of Article 1A of the Geneva Convention or other international or national documents providing international protection, including: (i) individuals who have fled from areas of armed conflict or outbreak of violence; (ii) individuals facing serious risk or who have become victims of systematic or widespread violations of human rights.

According to Article 2 of the EU Council's Implementation Decision 2022/382, it applies to the following categories of individuals displaced from Ukraine on February 24, 2022, or after that date due to the military invasion by Russian armed forces that began on that day:

- a) Ukrainian citizens who were residing in Ukraine before February 24, 2022;
- b) stateless persons and citizens of third countries, excluding Ukraine, who were beneficiaries of international protection or equivalent national protection in Ukraine before February 24, 2022;
- c) family members of individuals mentioned in points (a) and (b).

Member States implement either this Decision or equivalent protection under their national legislation for stateless persons and citizens of third countries, excluding Ukraine, who can prove that they legally resided in Ukraine before February 24, 2022, based on a valid permanent residence permit issued according to Ukrainian legislation and who cannot return to their country or region of origin in safe and sustainable conditions. According to Article 7 of Directive 2001/55/EC, Member States may also apply this Decision to other individuals, including stateless persons and citizens of third countries, excluding Ukraine, who resided in Ukraine on legitimate grounds and cannot return to their country or region of origin in safe and sustainable conditions.

Therefore, in accordance with the preamble and text of the Decision, temporary protection due to the armed aggression of the Russian Federation is established for Ukrainian citizens; citizens of third countries (excluding Ukraine) who enjoyed refugee status or equivalent protection in Ukraine before February 24, 2022; family members of those individuals whose families were already residing in Ukraine at the time of the mass influx of displaced persons; for stateless persons and citizens of third countries (excluding Ukraine) who can prove that they legally resided in Ukraine before February 24, 2022, based on a valid permanent residence permit issued according to the law and who cannot return to their country or region of origin in safe and sustainable conditions.

It should be noted that concerning the last category of individuals, protection should be provided either through the application of this Decision or another appropriate form of protection according to national legislation, which is determined by each member state. Those seeking protection must have the opportunity to prove their compliance with these criteria by providing relevant documents to the competent authorities in the respective member state. If they cannot provide the necessary documents, member states should redirect them to the appropriate

procedure. According to Directive 2001/55/EC, member states can extend temporary protection to all other stateless persons or third-country nationals, excluding Ukraine, who have been residing in Ukraine on legitimate grounds and cannot return to their country or region of origin in safe and sustainable conditions. Among such individuals could be citizens of third countries who were studying or working in Ukraine on a short-term basis at the time of the events that led to the mass influx of displaced persons. These individuals, in any case, must be admitted to the Union for humanitarian reasons, without requiring, among other things, a valid visa or sufficient means of subsistence or valid travel documents to ensure safe passage for returning to their country or region of origin. Member states may also extend temporary protection to additional categories of displaced persons, other than those covered by this Decision, if these individuals are displaced for the same reasons and from the same country or region as specified in this Decision. In such a case, member states must immediately inform the Council and the Commission. In this context, member states should consider extending temporary protection to individuals who fled Ukraine shortly before February 24, 2022, due to increased tension or who found themselves on the territory of the Union (for example, on vacation or for work reasons) just before this date and cannot return to Ukraine due to the armed conflict.

An individual may claim the right to temporary protection on the territory of any EU country (except Denmark) at the applicant's choice (unlike asylum, which is obtained in the first country entered by the individual). If a person meets the criteria specified in Directive 2001/55/EC and left the territory of Ukraine due to military aggression, they have the right to seek temporary protection from any EU country or submit an individual application for refugee status (according to the Dublin Convention of 1990, such status can only be obtained in the first safe country whose border the person crossed). However, EU countries, under current conditions, exclusively provide temporary protection to Ukrainians (globally, the state of war in Ukraine does not directly imply grounds for obtaining refugee status).

The fundamental difference between asylum and temporary protection lies in the fact that refugee status is acquired through an individual's right to international protection, provided after going through the respective administrative procedure. Temporary protection involves the application of a set of exceptional temporary and immediate measures in the case of a mass influx of people from an armed conflict zone, aimed at implementing a mechanism for the collective protection of these individuals, ensuring minimum standards for subsistence.

Another distinction between refugee status and someone granted temporary protection is associated with the period of validity. According to Directive 2001/55/EC, temporary protection is currently extended for up to three years, and its termination is linked to the cessation of hostilities, improvement of the situation, and the creation of safe conditions in Ukraine. Refugee status has no expiration date – the individual is guaranteed the right of indefinite residence in the respective state. It can be revoked immediately upon the appearance of evidence indicating grounds for its review (thus, the cessation of hostilities will not automatically be a reason for ending refugee status). The validity period of refugee documents varies between countries. In Ukraine, for instance, documents are issued for five years and extended during the refugee's re-registration by the territorial authority of their place of residence [13], while in Poland, a residence permit is granted for three years. If an individual acquires new citizenship or returns to their country of residence, their refugee status is terminated.

It's important to note that the administrative procedure for obtaining refugee status or temporary protection also differs. Firstly, the refugee status acquisition procedure is governed by the national legislation of each individual country and typically lasts for six months or even longer. Additionally, each state independently establishes the system of bodies responsible for deciding on granting refugee status (in Poland, for example, such applications are made through the border service, in the Czech Republic – through the migration service). In each EU country, the application review process has its peculiarities associated with specific constraints (such as confiscation of a person's passport until the application review is completed). The provision of temporary protection involves a non-prolonged procedure; for example, in Spain, the period for a decision on protection is five days from the application submission [14, art. 206]. The process of obtaining such status includes applying for a residence permit and registering the individual, including in social services or tax authorities. In different EU states, matters of temporary protection fall under the jurisdiction of various authorities (for instance, municipal administrations in Poland, police authorities in Italy, Finland, Spain, the state administration for refugees in Germany, migration service in Portugal, Sweden).

A key point in the status of a refugee or someone who has obtained temporary protection

is the scope of their legal subjectivity. According to Directive 2001/55/EC, a person granted temporary protection has the right to information about the content of temporary protection, to reside in the host country and move freely (including within the EU for a 90-day period), employment, access to housing, medical and social assistance, and education. It's worth noting that this scope might be broader based on the national legislation of the host country, considering the country's ability to independently determine the extent of minimum standards. According to the Implementing Decision, "if a Member State has a national scheme that is more favourable than the mechanisms set out in Directive 2001/55/EC, the Member State should be able to continue to apply it since this Directive allows Member States to adopt or maintain more favourable conditions for persons covered by temporary protection. However, if the national scheme is less favourable, the Member State should ensure additional rights provided for in Directive 2001/55/EC" [9].

The scope of rights for individuals applying for refugee status compared to the conditions of temporary protection is limited. For instance, employment is only possible after obtaining refugee status (i.e., after the conclusion of a lengthy administrative procedure for decision-making), limited medical assistance, prohibition from leaving the host country, residence in specialized refugee centres, etc. However, upon acquiring refugee status, an individual almost obtains the same scope of rights as citizens of that country. Therefore, the choice of the status an individual who wishes to obtain may be influenced by the timeframe (urgency) and the extent of corresponding rights, constituting the content of the legal subjectivity of a refugee or someone granted temporary protection. Another significant factor influencing this choice is the individual's future plans: whether to return to Ukraine or integrate into a specific EU country.

Normative acts also establish various grounds for the cessation of refugee status or for individuals who have obtained temporary protection. For instance, the Implementing Decision stipulates that Directive 2001/55/EC properly takes into account the responsibility placed on member states to maintain legality, order, and ensure internal security. It permits member states to exclude a displaced person from temporary protection if there are serious reasons to believe that the person: has committed a crime against peace, a war crime, or a crime against humanity as defined in international instruments drawn up to include provisions on such crimes; has committed a serious non-political crime outside the receiving member state before being admitted to that member state as a person enjoying temporary protection; or has been guilty of acts contrary to the purposes and principles of the United Nations. The directive also allows member states to exclude a displaced person from temporary protection if there are reasonable grounds to consider such a person a danger to the security of the receiving member state or a danger to the community of the receiving member state [9].

Grounds for the cessation of refugee status include an individual acquiring citizenship in another country (and enjoying the protection of that country), returning to the country the person left or was outside of due to well-founded fear of persecution, or obtaining asylum or a permit for permanent residence in another country.

Conclusion. Summarizing the aforementioned, it's notable that the legal status of a refugee and an individual obtaining temporary protection is regulated by various legal acts. It is based on the realization of individual or collective rights, acquired (and ceased) on different grounds, under different conditions (first country of entry or any), for various periods, and through the application of different administrative procedures.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. 4.2 million people under temporary protection. Official website of the European Union. 10.11.2023. URL : <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20231110-1>.
2. Малиновська О. Перспективи правового статусу українських біженців у Європі після закінчення терміну дії тимчасового захисту. Національний інститут стратегічних досліджень. 20.10.2023. URL : <https://niss.gov.ua/news/komentari-ekspertiv/perspektyvy-pravovoho-statusu-ukrayinskykh-bizhentsiv-u-yevropi-pislya>.
3. Тележніков І. Кількість українських біженців в ЄС зростає – Євростат. UNN – Українські національні новини: Інформаційне Агентство. 10.11.2023. URL : <https://www.unn.com.ua/uk/news/2054823-killist-ukrayinskikh-bizhentsiv-v-yes-zrostaye-yevrostat>.
4. Кількість біженців з України зі статусом тимчасового захисту в ЄС у вересні зросла на 31,9 тис. Євростат. Interfax-Україна: інформаційне агентство. 10.11.2023. URL : <https://interfax.com.ua/news/general/946771.html>.

5. Давигора О. Кількість українських біженців зі статусом тимчасового захисту в ЄС у вересні зросла на 32 тисячі. Уніан: інформаційне агентство. 11.11.2023. URL : <https://www.unian.ua/society/kilkist-ukrajinskih-bizhenciv-zi-statusom-timchasovogo-zahistu-v-yes-u-veresni-zrosla-na-32-tisyachi-12452610.html>.
6. Marta Radio. Скільки українських біженців знаходиться у ЄС? *Gazeta.PL*. 13.11.2023. URL : <https://ukrayina.pl/ukrayina/7,183471,30398531,1057-1082-1110-1083-1100-1082-1080-1091-1082-1088-1072-1111-1085-1089-1100-1082-1080-1093.html>.
7. 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. Official web-site of European Council, Council of European Union. URL : <https://eur-lex.europa.eu/eli/dir/2001/55/oj>.
8. Директива Ради Європи 2001/55/ЄС про мінімальні стандарти для надання тимчасового захисту у разі масового напливу переміщених осіб та про заходи, що сприяють збалансованості зусиль між державами-членами щодо прийому таких осіб та відповідальності за наслідки такого прийому від 20 липня 2001 року. URL : <https://ips.ligazakon.net/document/MU01293>.
9. 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. Official web-site of European Council, Council of European Union. URL : <https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3A%3A2022%3A071%3ATOC&uri=uriserv%3A%3A%3A071%3A01.0001.01.ENG>; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D0382>.
10. Refugee inflow from Ukraine. *Official web-site of European Council, Council of European Union*. URL : https://www.consilium.europa.eu/en/policies/eu-migration-policy/refugee-inflow-from-ukraine/?utm_source=twitter.com&utm_medium=social&utm_campaign=20231019-jha-temporary-protection-ukraine&utm_content=visual-card.
11. Хілініченко В. Статус біженця чи тимчасовий притулок. Що необхідно громадянам? 5.04.2022. URL: <https://vbparters.ua/uk/status-bizhencja-ta-timchasovij-pritulok-shho-neobhidno-znati-gromadjanam/>.
12. Declaration on Territorial Asylum, 14 December 1967. URL : <https://legal.un.org/avl/ha/dta/dta.html>.
13. Про затвердження Положення про посвідчення біженця : постанова Кабінету Міністрів України від 14 березня 2012 р. № 202. URL : <https://zakon.rada.gov.ua/laws/show/202-2012-%D0%BF#top>.
14. Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. URL : <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>.

Submitted 28.11.2023

1. 4.2 million people under temporary protection. Official website of the European Union. (2023). URL : <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20231110-1>.
2. Malynovska, O. (2023). Perspektyvy pravovoho statusu ukraïnskykh bizhentsiv u Yevropi pislia zakinchennia terminu dii tymchasovoho zakhystu [Prospects of the legal status of Ukrainian refugees in Europe after the expiration of temporary protection]. *Natsionalnyi instytut stratehichnykh doslidzhen*. URL : <https://niss.gov.ua/news/komentari-ekspertiv/perspektyvy-pravovoho-statusu-ukrayinskykh-bizhentsiv-u-yevropi-pislya> [in Ukr.].
3. Telezhnikov, I. (2023). Kilkist ukraïnskykh bizhentsiv v YeS zrostaie – Yevrostat [The number of Ukrainian refugees in the EU is growing – Eurostat]. *UNN – Ukraïnski natsionalni novyny: Informatsiine Ahentstvo*. URL : <https://www.unn.com.ua/uk/news/2054823-kilkist-ukrayinskykh-bizhentsiv-v-yes-zrostaye-yevrostat> [in Ukr.].
4. Kilkist bizhentsiv z Ukraïny zi statusom tymchasovoho zakhystu v YeS u veresni zrosla na 31,9 tys. – Yevrostat [The number of refugees from Ukraine with the status of temporary protection in the EU increased by 31,000 in September – Eurostat]. (2023). *Interfax-Ukraïna: informatsiine ahentstvo*. URL : <https://interfax.com.ua/news/general/946771.html> [in Ukr.].
5. Davyhora, O. (2023). Kilkist ukraïnskykh bizhentsiv zi statusom tymchasovoho zakhystu v YeS u veresni zrosla na 32 tysiachi [The number of Ukrainian refugees with the status of temporary protection in the EU increased by 32,000 in September]. *Unian: informatsiine ahentstvo*. URL : <https://www.unian.ua/society/kilkist-ukrajinskih-bizhenciv-zi-statusom-timchasovogo-zahistu-v-yes-u-veresni-zrosla-na-32-tisyachi-12452610.html> [in Ukr.].
6. Marta Radio. Skilky ukraïnskykh bizhentsiv znakhodytsia u YeS? [How many Ukrainian refugees are there in EU?]. (2023). *Gazeta.PL*. URL : <https://ukrayina.pl/ukrayina/7,183471,30398531,1057-1082-1110-1083-1100-1082-1080-1091-1082-1088-1072-1111-1085-1089-1100-1082-1080-1093.html> [in Ukr.].
7. 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. Official web-site

of European Council, Council of European Union. URL : <https://eur-lex.europa.eu/eli/dir/2001/55/oj>.

8. Dyrektyva Rady Yevropy 2001/55/EU pro minimalni standarty dlia nadannia tymchasovoho zakhystu u razi masovoho naplyvu peremishchenykh osib ta pro zakhody, shcho spryiaiat zbalansovanosti zusyly mizh derzhavamy-chlenamy shchodo pryjomu takykh osib ta vidpovidalnosti za naslidky takoho pryjomu vid 20.07.2001 [Directive of the Council of Europe 2001/55/EU]. URL : <https://ips.ligazakon.net/document/MU01293> [in Ukr.].

9. 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/EU, and having the effect of introducing temporary protection. Official web-site of European Council, Council of European Union. URL : https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A071%3ATOC&uri=uriserv%3AOJ.L_.2022.071.01.0001.01.ENG; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D0382/>.

10. Refugee inflow from Ukraine. Official web-site of European Council, Council of European Union. URL : https://www.consilium.europa.eu/en/policies/eu-migration-policy/refugee-inflow-from-ukraine/?utm_source=twitter.com&utm_medium=social&utm_campaign=20231019-jha-temporary-protection-ukraine&utm_content=visual-card/.

11. Khilinichenko, V. (2022). Status bizhentsia chy tymchasovyi prytulok. Shcho neobkhdno hromadianam? [Refugee status or temporary asylum. What do citizens need?]. URL : <https://vbpartners.ua/uk/status-bizhencja-ta-timchasovij-pritulok-shho-neobhidno-znati-gromadjanam/> [in Ukr.].

12. Declaration on Territorial Asylum, 14 December 1967. URL : <https://legal.un.org/avl/ha/dta/dta.html/>.

13. Pro zatverdzhennia Polozhennia pro posvidchennia bizhentsia : postanova Kabinetu Ministriv Ukrainy vid 14.03.2012 № 202 [On the approval of the Regulation on refugee certificates: resolution of the Cabinet of Ministers of Ukraine dated 03/14/2012 no. 202]. (2012). Verkhovna Rada Ukrainy Ofitsiinyi sait – Verkhovna Rada of Ukraine. Official site. URL: <https://zakon.rada.gov.ua/laws/show/202-2012-%D0%BF#top> [in Ukr.].

14. Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. URL : <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>.

ABSTRACT

The article provides a comparative description of the essence, grounds for granting and terminating the status of a refugee and a person receiving temporary protection, as well as the extent of their legal personality. The armed attack of the Russian Federation on Ukraine at the end of February 2022 led to a mass departure of Ukrainians abroad in search of safety and, accordingly, an influx of Ukrainian migrants to the countries of the world. Most Ukrainians ended up in Europe. In connection with the massive influx of displaced persons, the Council of the EU activated Directive 2001/55/EC on the provision of minimum standards for the provision of temporary protection and the application of measures that contribute to the balance of efforts between member states regarding the reception of such persons and responsibility for the consequences of such reception. Directive 2001/55/EC provides for the possibility of obtaining both temporary protection and refugee status, which determines the relevance of the study.

Keywords: *temporary protection, Directive 2001/55/EC, minimum standards of temporary protection, right to asylum, territorial asylum, refugee status.*