Jakub Handrlica, Liliia Serhiichuk
Vladimír Sharp
(eds.)

Ukrainian Law and the Law of the Czech Republic: An Unexpected Encounter

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Ukrainian Law and the Law of the Czech Republic: An Unexpected Encounter

Editors:

Jakub Handrlica

Jakub Handrlica is a Full Professor in Administrative Law at the Law Faculty, Charles University in Prague. He has obtained his master degree in law (*summa cum laude*) from the Faculty of Law, Charles University, LL.M. from the Ruhr University in Bochum and a *diplôme universitaire de troisiéme cycle* from the University of Montpellier 1. He obtained his Ph.D. at the Faculty of Law, Charles University in 2009 for his thesis on independence administrative authorities. At the Charles University, he became Associate Professor (2017) and Full Professor in Administrative Law (2021). Since 2022, he serves as Vice-Dean for Postgraduate Studies. Recently, his main area of interest is international administrative law, which analyses governance of foreign elements by the provisions of administrative law. In 2019-2022, he was main researcher of a project granted by the Czech Science Agency on »*International Administrative Law: A Legal Discipine Revisited*«. In 2022-23, he was main main researcher of the project granted by the Ministry of Education on »*Ukrainian Law and the Law of the Czech Republic: An Unexpected Encounter*«. Also, he is Visiting Fellow at the European Law & Governance School (ELGS) in Athens, Hellenic Republic and member of the research network »*Réseau du Droit Administratif Transnational*«. At the same time, he is also member of editorial boards of legal journals »Tribuna Juridica – Juridical Tribune« and »Rivista trimestrale di diritto amministrativo«.

Liliia Serhiichuk

Liliia Serhiichuk is a Ph.D. candidate at the Law Faculty, Charles University in Prague. She has obtained her master's degree in international law from the Kyiv State University of Trade and Economics. Subsequently, she studied at the Kyiv International University, where she obtained the title Doctor of Philosophy in 2022. At the same time, Liliia has obtained many experiences by serving as a judicial clerk at courts in Ukraine – in particular at the Grand Chamber of the Supreme Court in Kyiv, Criminal Cassation Court of the Supreme Court in Kyiv and at the Kyiv Appeal Administrative Court. Since 2022, she is studying at the Law Faculty, Charles University in Prague, firstly as a *freemover* and subsequently as a Ph.D. candidate at the Department of Administrative Law and Administrative Science. The topic of her dissertation reads »*Smart Public Law for Smart Cities*«. She has been actively involved in research projects, addressing mutual legal cooperation between the Czech Republic and Ukraine. At the same time, she has been involved in the research activities under the European University Alliance 4 EU+. In this respect, she has actively participated at the research project »*Regulatory Sandboxes: Mirage and Reality in Public Law*«, which was a joint academic undertaking of the Charles University, the University of Milan,

the University of Geneva (Digital Law Center) and the University of Copenhagen (Legal/Tech Lab).

Vladimír Sharp

Vladimír Sharp is an Assistant Professor of Administrative Law at the Law Faculty of Charles University. Vladimír holds a master's degrees in international legal studies (summa cum laude) from Nottingham Law School (England, UK), as well as a *juris doctor* and a Ph.D. from Charles University (Prague, Czechia), where he defended his dissertation on tailor-made legislation in 2023. Vladimír is also a practicing attorney and has extensive professional experience both from the international law firms, and the public sector where he had served as a Deputy Director at the Ministry of Justice of the Czech Republic. Vladimír lectures at several universities, as well as at the Judicial Academy of the Czech Republic, and is also an appointed examiner of the insolvency practitioner's exams. At the same time, she has been involved in the research activities under the European University Alliance 4 EU+. In this respect, he has actively participated at the research project »*Regulatory Sandboxes: Mirage and Reality in Public Law*«, which was a joint academic undertaking of the Charles University, the University of Milan, the University of Geneva (Digital Law Center) and the University of Copenhagen (Legal/Tech Lab).

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Contributions to the round table, which was held at the
Law Faculty, Charles University in Prague
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Introductory Note

Jakub Handrlica, Liliia Serhiichuk
Vladimír Sharp

The aggression of the Russian Federation against the territory of Ukraine has so far triggered considerable attention by the scholarship of international public law.[1] In this scholarship, implications of the aggression to the obligations, arising from the instruments of international public law have so far been detailly analysed. This publication has no ambition to further analyse these problems, as it has been devoted to another legal dimension of the occurrences, which have followed the aggression against Ukraine. The aim of this publication is to address the question of mutual cross-fertilisation between Ukrainian law and the law of the Czech Republic. Having said this, this publication also aims to contribute to a much broader debate about impacts of the massive influx of persons from Ukraine for public law in Europe.[2]

Pursuant to the official statistics provided by the European Commission, the Czech Republic has accepted 390 000 refugees from Ukraine so far, making it the third most common European Union destination for Ukrainians fleeing their country, and the country with the highest number of Ukrainian refugees per 100 000 inhabitants.[3] Consequently, these refugees further increased the already existing Ukrainian diaspora, which was established after the collapse of the Iron Courtain.[4]

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[1] See Ingrid Wuerth Brunk and Monika Hakimi, "Russia, Ukraine, and the Future of World Order", *American Journal of International Law*, 116 (October 2022), at pp. 687-697 (see also other articles, published in this special issue).

[2] See Julian Lehman and Angeliki Dimitriadi, "Temporary Protection: The Ukrainian Field Trial", in *EU Responses to the Large-Scale Refugee Displacement from Ukraine: An Analysis on the Temporary Protection Directive and Its Implications for the Future EU Asylum Policy*, ed. Sergio Carrera and Meltem Ineli-Ciger (Migration Policy Centre/ Robert Schuman Centre/European University Institute, 2023), at pp. 270-281; Julia Motte-Baumvoll, Tarin C. Frotta Montalverne and Gabriel B. Guimaraes, "Extending Social Protection for Migrants under the European Union's Temporary Protection Directive: Lessons from the Invasion of Ukraine", *Brazilian Journal of International Law*, 19, issue 2 (October 2022), at pp. 344-363; Tamara Kortukova, Yevgen Kolosovskyi, Olena L. Korolchuk, Rostyslav Shchokin and Andrii S. Volkov, "Peculiarities of the Legal Regulation of Temporary Protection in the European Union in the Context of the Aggressive War of the Russian Federation Against Ukraine", *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique*, 36 (December 2022), at pp. 667–678, Georgios Milios, "The Activation of the Temporary Protection Directive for People Displaced from Ukraine as a Consequence of War", *Revista electronica de estudios internacionales*, 44 (December 2022), at pp. 43-60.

[3] https://ec.europa.eu/migrant-integration/library-document/situation-refugees-ukraine_en.

[4] See Yana Leontiyeva, "Ukrainians in the Czech Republic: On the Pathway from Temporary Foreign Workers to One of the Largest Minority Groups", in *Ukrainian Migration to the European*

The massive influx of Ukrainian citizens into the territory of the Czech Republic in the aftermath of the aggression of the Russian Federation against Ukraine has caused a radical increase of mutual encounters between the elements, governed by either Ukrainian, or Czech Law. This massive influx of Ukrainians has inter alia caused a vast circulation of various decisions, issued by the authorities of Ukraine. Beside the judicial decisions, a myriad of acts of administrative nature – such as the driving licences, passports, personal identification documents, vaccination certificates – have entered the space, governed by the law of the Czech Republic.

These increase of mutual encounters between the two legal regimes has naturally triggered a number of challenges to judicial and administrative practice.[5] In the national legislation, many of these challenges were addressed by tailor-made acts, referred to as "Leges Ukrainae", which provided for regime of a temporary protection, for health and social insurance for displaced persons and for rules on education. At the same time, the mutual relations between the Ukrainian law and the law of the Czech Republic became subject of attention of the legal academy.[6]

The fact is, however, that another influx of displaced persons from Ukraine to our territory has occurred exactly one hundred years ago. In aftermath of the Bolshevik Revolution and subsequent civil war, a large wave of immigration occurred to the then existing Czechoslovakia. Among these immigrants, there were numerous persons from the territory of (todays) Ukraine. To facilitate the education of these displaced persons, the Ukrainian Free University (UFU) was established. While originally situated in Vienna, the UFU moved to Prague in the autumn of 1921. With the prohibition of teaching in the Ukrainian language at the universities in the territory of the Second Polish Republic and the closing of all Ukrainian universities in Ukraine by the Bolshevik government, the Ukrainian Free University in Prague became the sole Ukrainian university in the entire free world.[7] Initially envisioned had been three faculties - juridical, philosophical and natural sciences, but the perennial lack of funds did not permit for a separate faculty in the natural sciences. Hence the juridical faculty received the name "Faculty of Jurisprudence and Social Sciences", and the philosophical faculty

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Union. Lessons from Mogration Studies, ed. Olena Fedyuk and Marta Kindler (Springer Open – Centre for Migration Research, 2016), at pp. 133-150.

[5] See eg. Jakub Handrlica, Vladimír Sharp and Kamila Balounová, "The administrative law of the Czech Republic and the public law of Ukraine: A study in international administrative law", *Juridical Tribune*, 12 (June 2022), at pp. 195-214.

[6] Several very similar projects have been pursued in the previous months on various universities accross Europe. See eg. *The Temporary Protection Directive: Central Themes, Problem Issues and Implementation in Selected Member States,* ed. Sandra Mantu, Karin Zwaan and Tineke Strik (Nijmegen, 2023). Also see Oksana Kuzmenko, Vira Ryndiuk, Liudmila Kozhura, Viiktoria Chorna and Roman Tytykalo, "Legal aspects of temporary protection for Ukrainians in the member states of the European Union", *Juridical Tribune*, 13, issue 2 (June 2023), at pp. 224-240.

[7] Roman S. Holiat, *Short History of the Ukrainian Free University* (New York: Shevchenko Scientific Society, 1964), at p. 13.

was divided into two sections: "Historico-philosophical" and "Natural Sciences."[8] Education and research in juridical sciences has always been one of the key fields of the UFU's activities and some of the scientific endeavours are still appreciated by today's academy of law.[9] Lectures in law[10] were held at the "Faculty of Jurisprudence and Social Sciences" until the very end of the Second World War. It is highly probable, that some of the legal problems, arising recently from the massive influx of refugees from Ukraine, were already addressed during the academic discussions at the UFU in the 1920s and 1930s.

Today, there is no Ukrainian university residing in Prague.[11] Consequently, it is a natural task for the Charles University and in particular its Law Faculty to address the issue of mutual encounters between the legal system of the Czech Republic and Ukraine. To address this issue, a round table entitled "Ukrainian Law and the Law of the Czech Republic: An Unexpected Encounter" has been organised under the umbrella of a research project, supported by the Ministry of Education, Youth and Sports of the Czech Republic. The presentation of the round table can be consulted here: https://www.prf.cuni.cz/en/news/round-table-ukrainian-law-and-law-czech-republic-unexpected-encounter-was-held-faculty-law.

The round table, which was held at the Law Faculty in Prague on 13th June 2023, was an interdisciplinary one. Academicians and Ph.D. candidates from departments of civil law, international public law, administrative law and health law held their presentations on various aspects of the mutual encounters between the two legal systems. At the same time, both Czech and Ukrainian presenters This publication aims to present the written versions of their presentations to the wider readership.

The publication is being divided to three sections, addressing:

(1) legal issues, arising from recognition of judicial and administrative decisions between the Czech Republic and Ukraine,

(2) legal issues, arising with respect to the temporary protection pursuant to the Council Directive 2001/55/EC[12] and the Council Implementing Decision

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[8] Ibid, at p. 14.

[9] See Oleksandr O. Merezhko, "On the Origins of the Ukrainian Science of International Law", *Jus Gentium – Journal of International Legal History*, 2 (July 2017), at pp. 443-485.

[10] Following courses were offered by the Faculty of Jurisprudence and Social Sciences in the 1930s: civil law, history of Ukrainian law, administrative law, international law, commercial law, criminal law and procedure, roman law, ecclesiastical law, economics.

[11] After the Second World War, the Ukrainian Free University at first resolved to remain in Prague, although a majority of the faculty and student body departed from Czechoslovakia and headed for the nearest sector of Germany not occupied by the Bolsheviks. Consequently, the UFU decided to move to Munich, Bavaria in 1945.

[12] See 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, OJ L 212, 7.8.2001, pp. 12-23.

(EU) 2022/382[13],

(3) legal issues, arising from national legislation, arising for those, enjoying temporary protection in the territory of the Czech Republic.

The publication deals primary with national legal frameworks of the Czech Republic and Ukraine, however, is written in English. The reason behind is twofold:

Despite belonging to the large group of Slavonic languages, neither Czech, nor Ukrainian serves today as a toll of mutual communication between academicians from both jurisdictions. Thus, English serves as a *lingua franca* in the mutual communication and therefore, it was selected as the language of the round table.

Secondly, the authors hope the articles published will be of interest also in other jurisdictions, which had to face very similar challenges in the aftermath of the February 2022.[14]

The authors and editors of this publication hope, the articles will attract the attention of foreign readership and will trigger further comparative research in this field.

At last but not least, the authors thank the ADJURIS – International Academic Publisher for the opportunity to publish this result of their research.

[13] See 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, OJ L 71, 4.3.2022, pp. 1–6.

[14] See eg. Catherine Xhardez and Dagmar Soennecken, "Temporary Protection in Times of Crisis: The European Union, Canada, and the Invasion of Ukraine", *Politics and Governance*, 11, issue 3 (September 2023), at pp. 264-275.

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SECTION I
RECOGNITION OF JUDICIAL AND ADMINISTRATIVE DECISIONS

Recognition and Enforcement of Judgments between the Czech Republic and Ukraine

Senior lecturer **Miroslav SEDLÁČEK**[1]
Ph.D. candidate **Tetiana KRAVCHENKO**[2]

Abstract

The recognition and enforcement of judgments between the Czech Republic and Ukraine are crucial elements in fostering international legal cooperation and ensuring access to justice for individuals and businesses operating across borders. This paper explores the legal framework and procedures governing the recognition and enforcement of judgments between these two countries. It highlights the significance of bilateral and multilateral agreements, such as the Lugano Convention or the Hague Convention, in facilitating this process. Additionally, it discusses the challenges and complexities that may arise in cross-border enforcement cases, including issues related to jurisdiction, reciprocity, and public policy. The paper underscores the importance of a well-established legal framework and effective judicial cooperation to promote legal certainty and enhance the ease of doing business and cross-border legal transactions between the Czech Republic and Ukraine.

Keywords: *recognition of judgments; enforcement of judgments; jurisdiction.*

JEL Classification: K15, K41

1. Introduction

The recognition and enforcement of judgments between nations are fundamental aspects of international legal cooperation and essential for ensuring justice, protecting the rights of individuals, and promoting business activities across borders. This paper focuses on the intricate process of recognizing and enforcing judgments between two countries with rich legal traditions and growing international engagement: the Czech Republic and Ukraine.

In today's increasingly interconnected world, where cross-border transactions and disputes have become commonplace, establishing clear and effective mechanisms for recognizing and enforcing judgments is paramount.[3] This is particularly significant for both the Czech Republic and Ukraine, as they strive to

[1] Miroslav Sedláček, Faculty of Law, Charles University, Prague, Czech Republic E-mail: sedlacek@prf.cuni.cz, https://orcid.org/0000-0001-5494-6457.
[2] Tetiana Kravchenko, Faculty of Law, Charles University, Prague, Czech Republic E-mail: tetiana.kravchenko@prf.cuni.cz, https://orcit.org/ 0000-0001-7717-9852.
[3] Rossen Koroutchev, "Ukrainian Migration During the First Year After the Beginning of the Russian Armed Conflict in 2022", *Journal of Liberty and International Affairs*, 9, issue 2 (July 2023), at p. 165.

foster economic growth, enhance legal certainty, and encourage foreign investment.

To understand this complex and dynamic landscape, we will delve into the legal framework governing the recognition and enforcement of judgments in these two countries. This framework is shaped not only by national legislation but also by bilateral and multilateral agreements that both nations have entered into, such as the Lugano Convention and the Hague Convention.

In this paper, we will explore the key principles, procedures, and challenges associated with recognizing and enforcing judgments between the Czech Republic and Ukraine. We will also address the critical issues of jurisdiction, reciprocity, and public policy that may arise in cross-border enforcement cases. Ultimately, our examination of these matters will highlight the importance of a robust legal framework and effective judicial cooperation in promoting legal certainty and facilitating cross-border legal transactions and investments between these two nations.

2. Enforcement of judgments in the Czech Republic

In the Czech Republic, the General Regime does not encompass international laws or treaties applicable to specific cases. Instead, the recognition and enforcement of foreign judgments are governed by the International Private Law Act[4].

A foreign "judgment"[5] eligible for recognition in the Czech Republic can refer to a foreign court's decision or a foreign authority's ruling on private law matters falling under the jurisdiction of civil courts in the Czech Republic. This also encompasses foreign court settlements, arbitral awards, notarial deeds, and other public documents pertaining to such matters.

For Czech courts to assert jurisdiction for recognition and enforcement,[6] a connection to the jurisdiction is essential. Section 16(2) of the International Private Law Act[7] dictates that a foreign judgment's recognition occurs within the court district where the creditor, as per the judgment,[8] is based. If no such court exists in the Czech Republic, recognition happens in the district court where any relevant event might transpire. This is commonly where the assets of the judg-

[4] Act No. 91/2012 Coll., on International Private Law.

[5] Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (signed at Brussels, 27 September 1968) by Mr. P. Jenard. OJ C 59/1, 5. 3. 1979, p. 3.

[6] For purposes of this paper “enforcement” includes both the conditions and the procedure for enforcement of foreign judgments.

[7] Act No. 91/2012 Coll., on International Private Law.

[8] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

ment debtor are situated. In the absence of these grounds linking the foreign judgment to the Czech Republic, the local courts could potentially reject jurisdiction for recognition.[9]

As outlined in section 252 of Act No. 99/1963 Coll., the Code of Civil Procedure,[10] the court competent for enforcing a foreign judgment is typically the district court where the debtor resides or where their assets are located.

The process of recognizing and enforcing a foreign judgment involves initiating judicial enforcement.[11] This starts when the creditor submits an application to the court, specifying the chosen enforcement method and identifying the debtor's assets to be seized through judicial enforcement.

Upon meeting all formal prerequisites, the court orders enforcement according to the creditor's specifications without issuing a separate resolution for recognition. The debtor has the right to appeal this decision, which suspends the commencement of enforcement until the appeal is resolved. If the debtor doesn't file an appeal or if the appeal is unsuccessful, the court's employees proceed with enforcement.[12]

2.1. Czech national rules

Rules on the recognition and enforcement of foreign judgments that are rules of international civil procedural law and under the Czech doctrine part of private international law are contained in the Czech Act on Private International Law (hereinafter "Czech PILA").[13] General provisions in Sections 14–16 of the Czech PILA apply to judgments in commercial matters, provided the judgment was given by court of a country that is not an EU Member State and provided the Czech Republic and the country whose courts rendered the judgment are not parties to an international treaty laying down special rules for recognition and enforcement. Sections 17–19 of the Czech PILA contain special procedural rules that apply when the enforcement of a foreign judgment is subject to a declaration of enforceability (exequatur) required prior to the enforcement of foreign judgments in other than commercial matters by certain EU Regulations and international treaties[14].

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[9] Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (signed at Brussels, 27 September 1968) by Mr. P. Jenard. OJ C 59/1, 5. 3. 1979, p. 3.

[10] Section 252 of Act No. 99/1963 Coll., the Code of Civil Procedure.

[11] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[12] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

[13] Act No. 91/2012 Coll., on Private International Law.

[14] E.g., Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and en-

2.2. Executor enforcement

To initiate the process of enforcing a judgment, the creditor submits a motion to an executor chosen by the creditor. Subsequently, the executor submits this motion to a competent enforcement court. Once all necessary formalities are satisfied, the enforcement court appoints the executor to oversee the execution of the relevant judgment. Notably, starting from January 1, 2022, no special decision for recognition is obligatory.[15]

During the enforcement proceedings and in the execution of related duties, the executors function as public officials. Upon receiving authorization from the enforcement court, the executor identifies the assets owned by the debtor. This leads to the issuance of enforcement orders aimed at seizing the said assets.[16]

Before executing any orders to seize the debtor's assets, the executor must grant the debtor a 30-day period to make a voluntary payment. Subsequently, any assets seized, which are not of a financial nature, are auctioned off by the executor, typically in a public auction. The resulting proceeds are then transferred to the creditor.[17]

2.3. Grounds of recognition

The grounds for contesting the recognition or enforcement of a judgment are outlined in the International Private Law Act. Section 15[18] of this act establishes the general obstacles to recognizing and enforcing foreign judgments in the Czech Republic. A foreign judgment cannot be recognized or enforced if:

Recognition is impeded by the exclusive jurisdiction of Czech courts in the relevant matter, or if the foreign proceedings wouldn't have been permissible under Czech court competence rules.[19] An example is Czech courts' exclusive jurisdiction over proceedings involving real estate in the Czech Republic.

There are ongoing proceedings for the same legal matter in a Czech court

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forcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations the Maintenance Regulation, Convention on the International Protection of Adults.

[15] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[16] Opinion of the Court of Justice of 7 February 2006 on the competence of the European Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (case No. 1/03), [2006] ECR I-1145.

[17] Art. 12 COTIF and Art. 31 para. 3 CMR.

[18] Act No. 91/2012 Coll., on Private International Law.

[19] Opinion of the Court of Justice of 7 February 2006 on the competence of the European Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (case No. 1/03), [2006] ECR I-1145.

that began prior to the foreign proceedings leading to the judgment sought for recognition (lis pendens).[20]

A Czech court has issued a final judgment for the same legal matter, or a foreign authority's final judgment has been acknowledged and accepted in the Czech Republic (res judicata)[21].

The foreign authority, through its process, has denied the opposing party in the judgment being recognized proper legal procedure, particularly if the party wasn't properly served a summons or notice to initiate proceedings.[22]

Recognizing the judgment would go against the public policy or order of the Czech Republic.

Reciprocity isn't assured. This is exempt if the foreign judgment doesn't concern a Czech citizen or legal entity. The Ministry of Justice can declare reciprocity with a specific country, allowing Czech courts to recognize and enforce judgments from that country. In its absence, a Czech court might confirm reciprocity with the concerned country's authorities. Additionally, Section 268 of the Civil Procedure Code[23] offers grounds for the judgment debtor to request the termination of enforcement if:

- Enforcement was ordered before the judgment became enforceable.
- The judgment used for enforcement is reversed or invalidated after enforcement is ordered.
- The enforcement affects exempt property or property where the debt can't be satisfied.
- The proceeds from enforcement won't cover enforcement costs.
- Enforcement affects property with a third-party right, obstructing the judgment's enforcement.
- A right established by a previous judgment has lapsed, except if enforcement already happened, and enforcement can't proceed due to other reasons.

The final ground is broad, allowing the debtor to present relevant reasons to suspend or terminate enforcement. These challenges are admissible at any point in the enforcement process. Requests to halt enforcement can be made repeatedly if new grounds arise. Furthermore, enforcement may pause if the judgment debtor faces unavoidable and detrimental consequences without fault, as

[20] Outline of the Convention. Accessed [August 30, 2023] at: https://assets.hcch.net/docs/89be0bce-36c7-4701-af9a-1f27be046125.pdf.

[21] Hans Van Loon, Towards a Global Hague Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, *Collection of Papers of the Faculty of Law, University of Niš*, 2019, Year LVIII, No 82, at pp. 15–36. Accessed [August 30, 2023] at: http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj /ZFull/PF_Zbornik_2018_82.pdf.

[22] Study on the Hague Conference on Private International Law "Judgments Convention", 2018, p. 13. 301 Moved Permanently. [online]. Accessed [August 30, 2023] at: https://europeancivilljustice.files.wordpress.com/2018/04/studyforeuparliament haguejudgmentsproject-2018 .pdf.

[23] Section 268 of the Civil Procedure Code.

long as the judgment creditor isn't significantly harmed by the temporary suspension. The court can also pause enforcement if termination based on any of the previously mentioned grounds seems probable.

2.4. Legal framework applicable to recognition and enforcing foreign judgments

Apart from the already mentioned distinction between judgments in property matters and other judgments, there are certain subject matters that are governed by international treaties and conventions:

- The Geneva Convention of 19 May 1956[24] on the Contract for the International Carriage of Goods by Road applies to specific commercial activities and subject matters, and contains provisions for reciprocal enforcement provided that the formal conditions set out therein have been met.
- The Hague Convention of 15 April 1958[25] on the Recognition and Enforcement of Decisions Relating to Maintenance.
- The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations governs the reciprocal recognition of decisions relating to divorces and legal separations[26].
- The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations governs the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of both adults and children[27].
- The European Convention of 5 October 1973 on the Grant of European Patents applies to specific commercial activities and contains provisions for reciprocal enforcement[28].
- The Convention of 9 May 1980 concerning International Carriage by Rail applies to specific commercial activities and contains provisions for reciprocal enforcement[29].

[24] The Geneva Convention of 19 May 1956, on the contract for the international carriage of goods by road (CMR).
[25] The Hague Convention of the Recognition and Enforcement of decisions relating to maintenance obligations towards children of 15 April 1958.
[26] The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations governs the reciprocal recognition of decisions relating to divorces and legal separations.
[27] The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations governs the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of both adults and children.
[28] The European Convention of 5 October 1973 on the Grant of European Patents applies to specific commercial activities and contains provisions for reciprocal enforcement.
[29] The Convention of 9 May 1980 concerning International Carriage by Rail applies to specific commercial activities and contains provisions for reciprocal enforcement.

- The European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children governs the reciprocal recognition and enforcement of decisions concerning custody of children[30].
- The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement[31], and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children applies to questions of parental responsibility and contains provisions for reciprocal recognition and enforcement.

2.5. Courts approach to recognition and enforcement of a foreign judgments

When enforcing a foreign judgment, Czech courts generally do not review the judgment as to its substance unless prompted to do so by either party. Therefore, the mere application of Czech law in a foreign judgment should not affect the court's approach to recognition and enforcement of that judgment.

However, if a foreign judgment contains a clearly incorrect application of Czech law, the judgment debtor could successfully object to the enforcement of such judgment.[32]

2.6. Enforcement of foreign judgments is recognized and enforced. General methods

As previously mentioned, the Czech legal framework provides two avenues for enforcement: court-based enforcement conducted by legal officials, and executor enforcement carried out by semi-private bailiffs known as executors.[33]

Since the implementation of executor enforcement in 2001, the utilization of judicial enforcement has dwindled considerably due to several inherent drawbacks. Chief among these is the requirement for the judgment creditor to

[30] The European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children governs the reciprocal recognition and enforcement of decisions concerning custody of children.

[31] The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children applies to questions of parental responsibility and contains provisions for reciprocal recognition and enforcement.

[32] Zdeněk Kučera, Monika Pauknerová, Květoslav Růžička, K. et al., *Mezinárodní právo soukromé.* Eighth edition (Plzeň – Brno: Aleš Čeněk – Doplněk, 2015), at p. 375.

[33] Judgments of the Supreme Court of the Czech Republic, Case No. 25 Cdo 1751/98 dated 24. 3. 1999 and No. 25 Cdo 2503/2011 dated 25. 11. 2012.

pinpoint specific assets owned by the debtor that are susceptible to judicial enforcement.[34] Oftentimes, the judgment creditor lacks immediate means to identify these assets.

In contrast, executors possess the authority to actively investigate and confiscate the debtor's assets. They hold the power to approach banks and other entities for information regarding a debtor's accounts, compelling the freezing of said accounts upon their directive. Furthermore, executors can issue orders to garnish the debtor's monthly earnings from their employer. Upon being served with the resolution to initiate execution proceedings[35], the judgment debtor is legally restrained from disposing of any assets. Actions contrary to this directive are deemed null and void. In judicial enforcement, such prohibition only extends to assets explicitly designated by the creditor.

The efficacy of executor enforcement significantly surpasses that of judicial enforcement. A driving factor behind this efficiency lies in the financial incentive for executors to perform effectively, given that their compensation is linked to the amount successfully enforced[36].

Additional downsides of judicial enforcement encompass the obligation of the judgment creditor to pay a court fee upfront, generally amounting to 5% of the enforcement sum, prior to the commencement of enforcement proceedings. Although this sum is later added to the enforcement amount, certain judgment creditors may find this upfront court fee discouraging[37], particularly when uncertainties exist regarding the outcome of judicial enforcement. Conversely, an executor's remuneration and expenses are not required in advance and are typically covered from the proceeds of enforcement. However, if executor enforcement fails to yield proceeds, the judgment creditor might be liable to cover the execution costs. Executor enforcement also boasts greater time efficiency.[38]

3. Enforcement of judgments in Ukraine

Foreign judgments can be enforced within Ukraine after receiving recognition from the competent domestic court. The enforcement process is guided by relevant international agreements and conventions. In cases where no specific in-

[34] Art. 51 para. 1 Treaty between the Czech Republic and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil and Criminal Matters (No. 133/2003 Coll. of Int. Treaties).
[35] Tomáš Břicháček In: Petr Bříza, Tomáš Břicháček, Zuzana Fišerová, Pavel Horák, Lubomír Ptáček, Jiří Svoboda, *Zákon o mezinárodním právu soukromém. Komentář* (Praha: C. H. Beck, 2014), at p. 107.
[36] Monika Pauknerová, Dvojí exequatur a mezinárodní právo soukromé. In: Tereza Kyselovská, David Sehnálek, Naděžda Rozehnalová, (eds.), *In Varietate concordia: soubor vědeckých statí k poctě prof. Vladimíra Týče* [Brno: Masarykova univerzita, 2019, Spisy Masarykovy univerzity, Edice Scientia: řada teoretická, 651, (online)], at p. 258.
[37] Act No. 120/2001 Coll., on Court Bailiffs and Enforcement Activities (Enforcement Code).
[38] Sections 251–351a Act No. 99/1963 Coll., Civil Code of Procedure.

ternational agreement exists between Ukraine and the foreign country, the principle of reciprocity governs the process. The detailed procedure for this is outlined in Ukraine's legal framework under Chapter IX.1-2 of the Civil Procedure Code[39].

Ukraine is a party to the Hague Convention on Civil Procedure of 1954[40], which specifically applies to the recognition and enforcement of foreign orders related to costs and expenses of legal proceedings. Additionally, Ukraine has ratified two significant multilateral treaties among members of the Commonwealth of Independent States (CIS):

- The Minsk Convention on Legal Assistance and Legal Relations in Civil, Matrimonial, and Criminal Cases of 1993[41]. This convention includes parties such as Azerbaijan, Belarus, Armenia, Kazakhstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, Georgia, Kyrgyzstan.
- The Kyiv Convention on Settlement of Commercial Disputes of 1992[42]. This convention involves parties like Armenia, Kazakhstan, Tajikistan, Turkmenistan, Uzbekistan, Kyrgyzstan.

Moreover, Ukraine has entered into bilateral mutual assistance treaties for legal relations and legal assistance with various countries. These treaties establish the framework for reciprocal recognition and enforcement of foreign judgments. Notable countries among these treaties include Albania, Bulgaria, China, Cyprus, the Czech Republic, Estonia, Georgia, Greece, Hungary, Iran, Iraq, Italy, Latvia, Libya, Lithuania, Macedonia, Moldova, Mongolia, Poland, Romania, Tunisia, Turkey, Uzbekistan, Vietnam, and Yemen.

When a foreign court renders a judgment under a bilateral agreement in effect with Ukraine, the provisions of the agreement dictate the process for recognition and enforcement. However, it's worth noting that most of these bilateral treaties do not cover judgments related to commercial disputes.

Ukraine has signed the Hague Convention on Choice of Court Agreements and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters[43]. However, as of now, these conventions have not been ratified by Ukraine.

3.1. Average duration of enforcement procedure

During the initial stage in a court of first instance, the review of the application typically spans a maximum of two months. However, the timeline could

[39] Chapter IX.1-2 of the Civil Procedure Code.
[40] The Hague Convention of 1 March 1954 on Civil Procedure.
[41] The Minsk Convention of 22 January 1993 on Legal Aid and Legal Relations in Civil, Family and Criminal Cases.
[42] The Kyiv Convention on Settling Disputes Related to Commercial Activities of 1992.
[43] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

extend further due to variables like the court's workload, responses from the parties involved, the intricacy of the issue, and similar factors. Should an appeal be submitted, the process of reviewing the initial court's decision might require an additional 3-4 months. In instances where a second-level appeal (cassation) is pursued, the proceedings could occupy an additional 3-4 months.

3.2. Deny recognition and enforcement of a foreign court judgment

In accordance with the stipulations outlined in Article 468 of the Civil Procedure Code of Ukraine[44], the court holds the authority to decline the request for the recognition and enforcement of a foreign judgment in certain circumstances, including but not limited to the following:

- Non-Forceful Effect: When the foreign judgment has not achieved legal force as per the regulations of the jurisdiction in which it was issued.
- Lack of Notification: If the party that faced defeat in the proceedings was not appropriately and punctually notified, impeding their ability to present their case.
- Exclusive Jurisdiction: In instances where the subject matter of the foreign judgment falls exclusively within the competence of Ukrainian courts.
- Prior Ukrainian Proceedings: When a Ukrainian judgment pertaining to the same dispute between identical parties is already valid, or if Ukrainian legal proceedings concerning the same dispute and parties were instigated before the foreign proceedings and are still ongoing.
- Statutory Enforcement Timeframe Missed: If an interested party fails to adhere to the statutory time limit prescribed for executing enforcement.
- Legal Incompatibility: In scenarios where the subject of the dispute cannot be subjected to adjudication within the framework of Ukrainian laws.
- Threat to Ukrainian Interests: In cases where the enforcement of the foreign judgment could pose a risk to Ukrainian interests, particularly invoked when the matter involves sanctions.
- Prior Foreign Judgment Recognition: If a foreign judgment relating to the same dispute between identical parties has already been acknowledged and executed within the territory of Ukraine.

It is essential to recognize that each situation will be assessed on an individual basis by the court.

Furthermore, as per Article 81 of the Law of Ukraine on International Private Law[45], Ukraine refrains from enforcing foreign state judgments that aim to recover debts from state-owned entities of strategic significance, particularly those linked to defense, if the judgment favors a legal entity owned or controlled

[44] Article 468 of the Code of Civil Procedure of Ukraine.
[45] Article 81 of the Law of Ukraine on International Private Law.

by an aggressor and/or occupying state. Nevertheless, if a bilateral or multilateral treaty is applicable, it serves as a legal foundation for enforcement, and the grounds for denial outlined in such treaties are correspondingly referenced.

3.3. Cost and expenses can a claimant expect in this enforcement procedure

In adherence to Article 3 of the Law of Ukraine titled "On Court Fees"[46] when submitting an application for the recognition and enforcement of a foreign court judgment, the petitioner would be liable to pay a court fee. The amount of this fee is estimated at around 38 EURO for corporate entities and 15 EURO for individuals. Additionally, the petitioner would be responsible for covering translation costs if there is a requirement for translating documents into Ukrainian. Moreover, there would be attorney fees associated with representing the case in court.

In the event that coercive enforcement measures are pursued against the debtor, the petitioner would also bear expenses. The magnitude of these expenses will hinge on the chosen method of enforcement, which includes the option of engaging a private bailiff or utilizing the services of the State Enforcement Bailiff Service.

3.4. A time limit to apply for enforcement of a foreign court judgment

As stipulated by Article 463 of the Civil Procedure Code of Ukraine[47], a foreign judgment can be submitted for enforcement to Ukrainian courts within a span of three years, commencing from the day following the foreign judgment's attainment of legal force.

However, an exclusive exception to this timeline applies to foreign court judgments centered on the retrieval of periodic payments. Such judgments are eligible for submission to Ukrainian courts for enforcement throughout the complete duration of the payment retrieval process, encompassing the entirety of the debt recovery term, with the additional aspect that debts from the preceding three years would also be encompassed within this scope.

3.5. Final and definitive court judgment: provisional enforcement

As outlined in Article 466 of the Civil Procedure Code of Ukraine, the application to enforce a foreign court judgment must encompass proof of the judgment's legal effectiveness. This requirement persists even if the judgment itself does not explicitly indicate its entry into force.

[46] Article 3 of the Law of Ukraine titled "On Court Fees".
[47] Article 463 of the Code of Civil Procedure of Ukraine.

Furthermore, in accordance with the stipulations outlined in Article 468 of the Civil Procedure Code of Ukraine[48], if the foreign judgment has failed to attain legal force, the court retains the authority to reject the recognition and enforcement of the judgment within Ukraine.

3.6. Necessary requirements to the foreign court judgment

In accordance with the provisions delineated in Article 466 of the Civil Procedure Code of Ukraine[49], for a foreign judgment to be acknowledged and executed within the borders of Ukraine, it must have acquired legal validity. Additionally, the claimant is obliged to validate that due notification has been delivered to the opposing party in the foreign court proceedings, particularly if this party did not partake in the said proceedings.

It is important to note that additional requisites could come into effect through either Ukrainian laws or bilateral treaties. For instance, as exemplified in Article 22 of the Agreement between Ukraine and the Republic of Cyprus regarding Legal Assistance in Civil Matters (2004)[50], a certificate affirming the definitive nature of the judgment is a prerequisite.

3.7. Procedure of competent court

As per Article 464 of the Civil Procedure Code of Ukraine[51], the appropriate initial domestic civil court, determined by the debtor's place of residence or registration, is responsible for examining the application for enforcement.

Should the debtor lack a place of residence or registration within Ukrainian jurisdiction, or if such information is undisclosed, the decision to authorize the enforcement of a foreign court judgment will be deliberated by a court contingent upon the location of the debtor's assets within the territory of Ukraine.

3.8. Informational requirements for the application to enforce a foreign court judgment

A concerned party is obligated to submit a written request for the acknowledgment and execution of a foreign judgment, furnishing pertinent information about the involved parties and the grounds for the request. The grounds should encompass:

- The affirmation that the foreign judgment was issued and has obtained legal force.

[48] Article 468 of the Code of Civil Procedure of Ukraine.
[49] Article 466 of the Code of Civil Procedure of Ukraine.
[50] Article 22 of the Agreement between Ukraine and the Republic of Cyprus regarding Legal Assistance in Civil Matters (2004).
[51] Article 464 of the Code of Civil Procedure of Ukraine.

- Particulars concerning the foreign court where the judgment originated.
- Any awarded claims delineated within the judgment.

If deemed necessary, the petitioner retains the option to petition the Ukrainian court for provisional measures, to be upheld while awaiting the conclusive judgment regarding the recognition and enforcement process.

3.9. Documents must be included to the application

An application for enforcement of a foreign judgment must provide the following information according to Article 466(3) of the Civil Procedure Code of Ukraine[52]:

- Certified copy of the judgment.
- Formal certificate of the judgment entered into force.
- Formal notice that a party that did not participate in the consideration of the case was duly notified of the proceedings.
- A document specifying which part of the judgment must be enforced (if applicable).
- Documents certifying the powers of the legal representative.
- Duly certified translation of any documents into Ukrainian, confirmation of payment of court fee and the copy of all the above mentioned documents to be submitted to the debtor.

3.10. Phases of the procedure to enforce a foreign court judgment

An interested party is required to lodge an application with the appropriate initial domestic court for the recognition and implementation of the foreign judgment. The judgment rendered by the first instance court can subsequently undergo an appeals process or be subjected to a second-level (cassation) appeal review.

Upon the entry into force of the court judgment that acknowledges the foreign judgment, it can subsequently be presented for the enforcement of coercive measures, adhering to the standard procedure outlined for the enforcement of domestic court judgments. For this specific intent, the court overseeing the case of recognition and enforcement issues an official order for execution, commonly referred to as a writ of execution.

The claimant then engages the State Bailiff Service or a private bailiff to oversee the enforcement of the court judgment against the debtor or their assets.

3.11. Means of enforcement

The assets subject to enforcement include:

[52] Article 466(3) of the Code of Civil Procedure of Ukraine.

- Debtor's monetary funds from bank accounts.
- Debtor's shares.
- Debtor's rights to intellectual property.
- Movable and immovable property.
- Salary/pension/other income.

Under the Civil Procedure Code of Ukraine[53], a court is not authorised to review the actions of a foreign court in assuming jurisdiction, unless the subject matter of the dispute is within the exclusive jurisdiction of the Ukrainian court. Additional competences for an enforcing court may be contained in bilateral and multilateral agreements.

4. Conclusions

On April 24, 2023, the Council of the European Union reached an agreement to establish treaty relations with Ukraine under the framework of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters[54]. This decision lays the foundation for a more efficient process of recognizing and enforcing judgments between the European Union and Ukraine in civil and commercial cases, thereby promoting international trade and cooperation between these two legal jurisdictions.

The Hague Judgments Convention, ratified in 2019[55], is an international treaty binding signatory states to recognize and enforce judgments in civil or commercial matters from other states that are also parties to the Convention. This encompasses both monetary and non-monetary judgments, including decisions on costs. Nevertheless, it excludes matters related to administrative, revenue, antitrust, insolvency, intellectual property, and certain other subjects.

In order for a judgment to qualify for recognition or enforcement under the Judgments Convention[56], it must meet one of the following criteria according to Article 5:

- The defendant explicitly consented to the court's jurisdiction or presented objections regarding the substance of the claim while not challenging the court's jurisdiction.
- The judgment pertained to a contractual obligation and was issued by a court in the state where the performance of the obligation occurred or was supposed to occur.
- The individual against whom recognition or enforcement is sought is the party that initiated the claim.

[53] Code of Civil Procedure of Ukraine.
[54] The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention) of 2019.
[55] Ibid.
[56] Ibid, Article 5.

- The individual against whom recognition or enforcement is sought had permanent residence or conducted business activities in the state where the court handling the case is situated.

Requests for the recognition or enforcement of judgments under the Judgments Convention[57] will be considered without delving into the merits of the case. The rejection of recognizing or enforcing judgments is confined to specific circumstances, such as instances involving improper notification of the defendant, obtaining the judgment through deceit, inconsistency of the judgment with the state's public policy etc., as defined in Article 7 of the Convention.

Overall, the primary aim of the Judgments Convention is to simplify and standardize the procedure for recognizing and enforcing judgments from state courts, promoting transparency among diverse legal jurisdictions.

The EU Council's decision to establish treaty relations with Ukraine signifies a significant milestone in EU-Ukraine collaboration. EU member states have ascertained that there are no essential barriers, such as concerns regarding the autonomy and effectiveness of the judiciary, the combatting of corruption, or the upholding of fundamental rights, that could impede the EU from entering into such treaty relations.

This development will streamline the process of recognizing and enforcing judgments in civil and commercial matters between the EU and Ukraine, bolstering international trade and offering enhanced legal assurance for businesses and individuals participating in cross-border transactions.

The Convention becomes effective on September 1, 2023. Consequently, enterprises operating within the EU and Ukraine should be ready to navigate the new legal landscape and capitalize on its advantages.

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Beyond Reciprocity: Recognition of Ukrainian Administrative Acts in the Times of Emergency

Professor **Jakub HANDRLICA**[1]

Abstract

Recognition of foreign administrative acts has triggered a considerable attention of the scholarship of public law in Europe. The fact is, however, that most of the scholarship has paid attention to those models of recognition, which have been established to exist in the period of peace. In this respect, the feature of recognition has been understood as a tool, facilitating circulation of persons, products and capital. Thus, the existing academic debate on recognition has focused on this feature from the perspective of reciprocity (= mutual recognition). The current occurrences, which have arisen in the aftermath of the Russian aggression against Ukraine, represent a salient opportunity to analyse the feature of recognition from a different viewpoint. While the major approach of the EU law to the feature of recognition has been until recently based on reciprocity, the emergency legislation issued after February 2022 is built upon unilaterality. This article will focus different pieces of EU legislation, which have been issued to govern certain issues in recognition, arising with respect to the war in Ukraine.

Keywords: *recognition of foreign administrative acts; mutual recognition; reciprocity; temporary protection.*

JEL Classification: K23, K32

1. Introduction

Recognition of foreign administrative acts represents a classical topic of the scholarship in administrative law.[2] In the last decades, the legal scholarship has focused its attention to the model of *transnational administrative acts*.[3] The model has been used by various regimes, established by international agreements. The mutual recognition of driving licenses among the Contracting Parties to either the Geneva Convention, or to the Vienna Convention on the Road Traffic,

[1] Jakub Handrlica, Full Professor of Administrative Law, Faculty of Law, Charles University, Prague, Czech Republic, Email: jakub.handrlica@prf.cuni.cz, https://orcid.org/0000-0003-2274-0221.

[2] See Felice Morgenstern, "Recognition and enforcement of foreign legislative, administrative and judicial acts which are contrary to international law", *International Law Quarterly,* 4, issue 3 (July 1951), at pp. 326-345.

[3] For terminology and different models, see Raúl Bocanegra Sierra and Javier Garcia Luengo, "Los actos administrativos transnacionales", *Revista de Administración Pública,* 177 (September - December 2008), at pp. 9-29. Also see Emilie Chevalier and Olivier Dubos, "The Notion of "Transnationality" in Administrative Law: Taxonomy and Judicial Review", *German Law Journal,* 22, issue 3 (May 2021), at pp. 325-343.

may serve as salient examples. However, while the use of this model in international law has been only arbitrary, transnational administrative acts have finally gained consistent use under the EU law. Under this model, the applicable rules of EU law provide for extraterritorial effects of certain administrative acts also in the jurisdiction of other EU member states. At the same time, these applicable rules either prohibit, or limit the need for new mandatory decisions in the jurisdiction of destination.

The fact is, that the academic discourse on recognition of foreign administrative acts has been so far centred around several tenets:[4]

Firstly, mechanisms of recognition have been understood as a tool for enhancing free movement of persons, products and capital within the European Union.[5] *Secondly,* addressing recognition of foreign administrative acts in existing scholarship has in principle implied addressing recognition, which is based on reciprocity. A free movement of persons, products and capital within the European Union without facilitating a mutual recognition will only barely produce any effects.[6] *Thirdly*, most of the discission has so far focused on regimes of recognition, which existed in the period of peace. One may easily understand this approach, because most of the applicable legislation on transnational administrative acts has been designed to be used in peace, rather than in the period of emergency.[7] Neither the regimes, established during the COVID-19 pandemics, have changed the existing tenets of recognition.[8] Recognition of the immunity passports, as established by the EU law during the period of pandemics[9], shared certain common features with regimes of recognition already established before. This regime too was triggered by the need to facilitate a free movement of individuals and – at the same time - was based on the reciprocity. The applicable law also provided for mutual recognition of immunity passports with non-EU member states, under precondition of reaching a common minimal standard and based on the reciprocity. Consequently, one may argue that reciprocity has represented

[4] See Luca De Lucia, "Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts", *Review of European Administrative Law,* 5, issue 2 (Winter 2012), at pp. 17-45.
[5] See Juan J. Pernas García, "The EU's Role in the Progress Towards the Recognition and Execution of Foreign Administrative Acts", in *Recognition of Foreign Administrative Acts,* ed. Jaime Rodríguez-Arana Muñoz (Heidelberg/New York: Springer International, 2016), at pp. 15-33.
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[9] See Regulation (EU) 2021/953 of the European Parliament and Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, OJ L 211, 15. 6. 2021, pp. 1-22.

a key tenet of recognition under the EU law.[10]

The aggression of the Russian Federation against the territory of Ukraine has caused another challenge for the recognition schemes in the European Union. On 24 February 2022, Russian armed forces initiated a large-scale invasion of Ukraine at multiple locations from the Russian Federation, from Belarus and from non-government-controlled areas of Ukraine. Consequently, substantial areas of Ukrainian territory now constitute areas of armed conflict from which millions of persons have fled or are still fleeing. As a result of this unprovoked military aggression against Ukraine, millions of persons have been displaced.[11] In response, the Council has for the first time established the existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict in accordance with Council Directive 2001/55/EC[12] by adopting Council Implementing Decision (EU) 2022/382[13], which sets out the categories of displaced persons entitled, in the Union, to temporary protection or adequate protection under national law (thereinafter "*temporary protection*").[14]

The massive influx of displaced individuals from the territory of Ukraine has implied increased circulation of various acts of Ukrainian administration in the European Union.[15] Consequently, urgent need to address the increased circulation of driving licences, university diplomas, school-leaving certificates etc. has occurred.[16] These occurrences have triggered the need to establish new emergency schemes of recognition, which would work *beyond* the existing scheme of reciprocity.

In this respect, this article aims to address three different pieces of EU legislation, which have been issued to govern certain issues in recognition, arising with respect to the war in Ukraine. While these pieces of EU legislation do govern rather different areas of administration, they share a very basic common feature – they haven't been based on any *reciprocity*.

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[10] See Christine Janssens, *Principle of Mutual Recognition in EU Law* (Oxford: Oxford University Press, 2013), at pp. 11-18.

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[14] See Oksana Kuzmenko, Vira Ryndiuk, Liudmila Kozhura, Viiktoria Chorna and Roman Tytykalo, "Legal aspects of temporary protection for Ukrainians in the member states of the European Union", *Juridical Tribune*, 13, issue 2 (June 2023), at pp. 224-240.

[15] See Lucas Rasche, "Ukraine's refugee plight. A paradigm shift for the EU's asylum policy?", Hertie School: Jaques Delors Centre, 2022, pp. 3-4.

[16] See Elspeth Guild and Kees Groenendijk, "The impact of war in Ukraine on EU migration", *Frontiers in Human Dynamics*, 5 (June 2025), at pp. 65-85.

This article aims to address these very recent developments in following way: Firstly, three different pieces of EU legislation will be outlined, which were issued after February 2022 to address the issue of recognition. Having analysed these very recent pieces of EU legislation, this article aims to identify main features of EU's reaction to the aggression against Ukraine by the means of recognition. At the same time, this article aims to contribute to the existing scholarship on recognition of foreign administrative acts from the perspective of emergency legislation.

2. Emergency legislation on recognition after February 2022

Following the Russian military aggression and invasion of Ukraine on 24 February 2022, the European Union has been facing an unprecedented inflow of people fleeing from the war and seeking protection. The European Commission reacted on these events already on 8 March 2022 in its communication, entitled "European solidarity with refugees and those fleeing war in Ukraine". Here, the Commission outlined the substantial support the EU had made available to help people fleeing Russia's invasion of Ukraine, as well as the Member States receiving them. This includes direct humanitarian aid, emergency civil protection assistance, support at the border, as well as a clear legal status allowing those fleeing the war to receive immediate protection in the EU.[17]

In the next months, several documents of both legally binging and non-binding nature have been issued to address the issue of recognition with respect to displaced persons from Ukraine. The communication, entitled "Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs", issued on 23 March 2022, represents a very early attempts to summarise the problems arising. Few weeks later, a recommendation on the recognition of qualifications for people fleeing Russia's invasion of Ukraine was issued on 5 April 2022. Thereinafter, the European Union reacted to increased number of driving licences, issued by competent Ukrainian authorities, by issuing of a regulation on recognition on 18 July 2022.

Following paragraphs aim to outline recognition schemes, established by these newly adopted pieces of EU legislation and to analyse their relation *vis-á-vis* recognition regimes, existing under the international agreements. In this respect, general observations will be presented at the very end of this chapter to these recent developments in recognition.

[17] See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, European solidarity with refugees and those fleeing war in Ukraine, COM(2022) 107 final.

2.1. Communication on "Welcoming those fleeing war in Ukraine"

The communication, entitled "Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs"[18] represents a very early attempt, summarizing basic problems in recognition of products of application of Ukrainian law, which began increasingly to appear before the administrative authorities of the respective Member States after 24 February 2022.

While the communication has no a binding nature, it may serve as a good overview of various issues, that arose in recognition already few weeks after the massive influx of displaced persons began. The communication also clearly reveals diversity of fields, where a need for recognition arose: With the respect to the access of education by the displaced children from Ukraine, the communication calls for recognizing educational qualifications acquired in Ukraine.[19] With respect to the higher education, the communication states that: "higher education institutions are already looking at how to welcome and integrate students and academic staff fleeing Ukraine into their campuses. Flexibility is needed to facilitate access to courses and offer opportunities to students who benefit from temporary protection and need to continue their education. This will need swift consideration of how to recognise and take account of higher education credits and qualifications achieved in Ukraine."[20]

With respect to the access to healthcare, the communication announced that the Commission will explore how the qualifications of Ukrainian healthcare workers, including mental health professionals, can be recognised so that they can play their role in meeting new needs.[21] Further, concerning the access to jobs, the communication announced developing new guidelines to facilitate the recognition of professional qualifications obtained in Ukraine. At the same time, the European Training Foundation was empowered to accelerate comparison between the European Qualifications Framework and the Ukrainian national qualifications framework.[22]

The communication reveals that problems in recognition were identified very early after the outbreak of war as representing one of the most crucial point for accommodating displaced persons from Ukraine in the European Union. At the same time, the communications clearly reveal the diversity of fields, where certain activity by the European Union in recognition was considered as needed.

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[18] See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs, COM(2022) 131 final.
[19] Ibid, at p. 6.
[20] Ibid, at p. 7.
[21] Ibid, at p. 8.
[22] Ibid, at p. 10.

2.2. Recommendation (EU) 2022/554 (recognition of qualifications)

European Commission's Recommendation (EU) 2022/554[23] represents first follow-up of the "Welcoming those fleeing war in Ukraine" communication. By this recommendation, the Commission encourages Member States to ensure that professionals enjoying temporary protection: "can access jobs that correspond to their qualification level by relying on an efficient, rapid and well-functioning system of recognition of their professional qualifications."[24]

In this respect, the European Commission has recommended the Member States to issue swiftly their recognition decisions for incoming professionals enjoying temporary protection. If there were significant differences between the training acquired in a professional's home country and the training required for the same activity in the host Member State, the Recommendation (EU) 2022/554 encouraged the Member States to take the decision to impose any compensation measure as soon as possible, preferably no later than a month after the applicant asks for recognition.[25]

The Recommendation (EU) 2022/554 represents a non-binding piece of EU legislation. Thus, this instrument basically relies in both substantive and procedural rules on recognition of professional qualifications, as established in the national frameworks of the respective Member States. Consequently, the Recommendation (EU) 2022/554 does not aim for harmonization of these rules. Rather, it aims at coordination of the procedures, leading to the recognition.[26] In this respect, the Member States were encouraged:

1. to speed up the process by putting in place fast-track procedures for handling applications of professionals enjoying temporary protection,
2. to ensure that only essential documents are required,
3. to accept other forms of proof than original documents (e.g. digital copies),
4. to dispense with certain requirements, e.g. not asking for certified translations,
5. to reduce or eliminate costs, such as application fees, where possible.[27]

There are two further issues, addressed by the text of the Recommendation (EU) 2022/554, which deserves more detailed attention. Firstly, the Recommendation (EU) 2022/554 pays extensive attention to the academic recognition

[23] Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia's invasion of Ukraine, OJ L 107I , 6.4.2022, p. 1–8.
[24] See Recommendation (EU) 2022/554, sub (1).
[25] Ibid, sub (2).
[26] See Lucia Lopez De Castro Garcia-Morato, "Mutual recognition of professional qualifications in the European Union", *Revista General de Derecho Europeo*, 51 (May 2020), at pp. 523-524.
[27] See Recommendation (EU) 2022/554, sub (3).

for individuals, enjoying temporary protection.[28] In general, the Commission recommended The Commission to promote fast, flexible, and efficient recognition procedures for academic recognition by responsible institutions.[29] Especially with respect to the higher education, it was recommended to recognise Ukrainian higher education qualifications that fulfil all the requirements from the Bologna Process.[30] At the same time, the Recommendation (EU) 2022/554 also addressed the problem of cross-border recognition within the European Union. In this respect, the Member States were encouraged that "*as far as possible and in line with national law*", a recognition decision made in one Member State should be accepted in other Member States.[31]

Secondly, the Recommendation (EU) 2022/554 also pays attention to the problem of incomplete evidence on qualifications. In this respect, it primary recalls obligations arising to the Member States from the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (thereinafter "*the Lisbon Recognition Convention*"). This instrument of international law obliges its Contracting Parties to take all reasonable and feasible steps - within and in line with their respective legal framework - to develop alternative ways of assessment of the qualifications of refugees in situations where no documentary evidence can prove such qualification.[32] Beyond the obligations, arising to the Member States from the Lisbon Recognition Convention, the Member States were encouraged by the Commission to first check whether a reliable confirmation of the qualification achieved can be obtained from the Ukrainian authorities in the cases, the applicant does not possess complete information. To facilitate this process, the Commission has announced to work with Member States in cooperation with Ukrainian authorities and awarding bodies to have missing documentation of qualifications confirmed and will explore whether the European Digital Credentials for Learning can be used to re-issue documentation of qualifications digitally for that purpose.

At this place, several general observations can be done concerning the Recommendation (EU) 2022/554. Firstly, the Recommendation (EU) 2022/554 in principle relies on existing recognition frameworks, as established by the respective international conventions. At the same time, we are referring about an instrument of soft law, which is of a non-binding nature. However, we must bear in mind that recommendations have practical and legal effects occurring partly due to their normative content in which a course of action is prescribed and further supported by arguments intended to persuade the addressees of a political

[28] Ibid, sub (7) – (10).
[29] Ibid, sub (7).
[30] Ibid, sub (8).
[31] Ibid, sub (10).
[32] See Lisbon Recognition Convention, art. VII. The 'Recommendation on the Recognition of Refugees' Qualifications under the Lisbon Recognition Convention and Explanatory Memorandum', gives further guidance how Member States should proceed in this situation to properly implement these obligations.

position.[33]

2.3. Regulation (EU) 2022/1280 (recognition of driving licences)

Driving licences enhance the mobility of their holders and facilitate their everyday lives by permitting them to drive power-driven vehicles. In the context of the grave migration crisis, which has occurred in the aftermath of the aggression against Ukraine, driving licences promote the participation of persons enjoying temporary protection in economic and social activities in their new environment. The Convention on Road Traffic concluded at Vienna on 8 November 1968 (thereinafter "*the Vienna Convention on Road Traffic*"), to which Ukraine is a Contracting Party, provides for certain rules which allow for the recognition of driving licences under certain conditions.[34] However, not all Member States of the European Union are Contracting Parties to that Convention.[35] That means, holders of Ukrainian driving licences may not enjoy benefits of recognition in the whole territory of the European Union. In addition, there is currently no harmonised Union framework for the exchange of driving licences issued by third countries, such as Ukraine.[36]

In this respect, it was argued that diverging requirements between the different Member States as regards the recognition of driving licences may adversely affect the life and the freedoms of displaced persons fleeing Russia's military aggression against Ukraine, at a time when those persons are especially vulnerable. Some of the Member States decided to address these problems by establishing their own tailor-made rules on recognition of driving licenses. For example, the Ministry of Transport of the Czech Republic reacted to massive influx of persons, possessing Ukrainian driving licenses in March 2022 with a non-binding recommendation, addressing most urgent application problems arising.[37] Pursuant this recommendation, the driving licences issued by Ukrainian authorities were to be considered as valid, even if their validity lapsed in the months after February 2023. In this way, the recommendation reacted to the virtual impossibility to exchange the driving licence in an ordinary way before the competent Ukrainian administrative authority.

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[33] See Corina Andone and Sara Greco, "Evading the Burden of Proof in European Union Soft Law Instruments: The Case of Commission Recommendations", *International Journal of the Semiotics of Law – Revue internationale de Sémiotique juridique*, 31, issue 2 (September 2017), at p. 79.

[34] See Vienna Convention on Road Traffic, art. 41.2.

[35] Neither Ireland, not Spain are participating at the international regime of recognition, as established by the Vienna Convention on Road Traffic.

[36] The requirements related to a possible exchange of driving licences are mostly laid down in the national legislation of Member States, or under existing bilateral agreements between those Member States and Ukraine.

[37] See Jakub Handrlica, Vladimír Sharp and Kamila Balounová, "The administrative law of the Czech Republic and the public law of Ukraine: A study in international administrative law", *Juridical Tribune*, 12, issue 2 (June 2022), at pp. 195-214.

However, these isolated attempts to address the problems arising in the aftermath of the aggression have not been considered as satisfactory.[38] Having said this, it was considered as appropriate to have a common Union framework applicable to the recognition of driving licences issued by Ukraine and held by persons enjoying temporary protection. To reduce the burden on such persons and on the authorities of the Member States, driving licences duly issued by Ukraine to those persons should be recognised for as long as the period of their temporary protection lasts.

The European Union has addressed these problems by the Regulation (EU) 2022/1280.[39] The framework for recognition of Ukrainian driving licences is being reconnected with the regime of temporary protection, as proved by the subject matter of the Regulation: "This Regulation lays down specific and temporary measures applicable to driver documents issued by Ukraine in accordance with its legislation and held by persons enjoying temporary protection or adequate protection under national law in accordance with Directive 2001/55/EC and Implementing Decision (EU) 2022/382."[40]

Consequently, the newly established recognition regime is limited to a) those documents, issued by the competent authorities of Ukraine, b) those holders of such documents, enjoying temporary protection in any of the Member States. Having said this, the regime of recognition does not cover exclusively citizens of Ukraine, but all individuals enjoying temporary protection and possessing a driving licence, issued by the legitimate Ukrainian administration.

Concerning the regime of recognition, the Regulation (EU) 2022/1280 provides that: "Valid driving licences issued by Ukraine shall be recognised in the territory of the Union when their holders enjoy temporary protection or adequate protection under national law in accordance with Directive 2001/55/EC and Implementing Decision (EU) 2022/382 until the moment when that temporary protection ceases to apply. That recognition is without prejudice to the application of national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive on the territory of that Member State, in accordance with the principle of territoriality of criminal and police laws."[41]

Several commentaries must be made to this provision. Firstly, in contrast to the Recommendation (EU) 2022/554, the Regulation (EU) 2022/1280 represents a directly applicable piece of EU legislation. Consequently, there is no need to implement the article 3.1. into the national legal framework of the Member States. The legal effects of foreign acts are here provided directly by the virtue of

[38] See Constança Urbano de Sousa, "The Protection of Displaced Persons from Ukraine in Portugal", *European Journal of Migration and Law*, 24, issue 3 (September 2022), at p. 314.
[39] See Regulation (EU) 2022/1280 of the European Parliament and of the Council of 18 July 2022 laying down specific and temporary measures, in view of Russia's invasion of Ukraine, concerning driver documents issued by Ukraine in accordance with its legislation, OJ L 195, 22.7.2022, pp. 13–20.
[40] See Regulation (EU) 2022/1280, art. 1.
[41] See Regulation (EU) 2022/1280, art. 3.1.

the legislation (*ex lege*), without any need to be matter of further administrative procedures. Having said this, it is crystal clear that in many Member States, the recognition scheme, as established by the Regulation (EU) 2022/1280, exists in parallel to the recognition regime, as established by the Vienna Convention on Road Traffic. The Vienna Convention on Road Traffic requires the holders of driving permits to present international driving permits for their rights to drive to be recognised in certain cases.[42] Such holders may also be required to present a certified translation of their driving permits. However, those requirements constitute a disproportionate burden on the people displaced from Ukraine and are unlikely to be complied with in many cases.[43] Therefore, under the recognition scheme of the Regulation (EU) 2022/1280, persons enjoying temporary protection should not be required to present such documents on the territory of the Union.[44] This has been explicitly conformed by the wording of the article 3.2.[45] Thus, the recognition scheme, as established by the EU law, is much more wider and beneficial to the licence holders, than the regime of recognition, as established by the respective international agreement. In principle, the newly established regime of recognition covers both paper and electronic driving licences, issued by competent authorities of Ukraine. However, a reservation applies to the electronic format of driving licences, if the competent authorities of the Member Staes "*are not able to verify their authenticity, integrity and validity.*"[46]

Lastly, the article 3.1. refers on the time limit for recognition and provides that the recognition applies "*until the moment when that temporary protection ceases to apply*."[47] In this respect, the problem of extension of validity arises. As driving licences usually have a limited period of validity, they need to be regularly renewed. The current context does not allow Ukraine to carry out its tasks in a normal fashion, which is why it may not be in a position to renew existing administrative documents.[48] Therefore, this issue was especially addressed by a separate article[49], which provides that "*Member States shall consider the holders of the relevant driver documents issued by Ukraine to be in possession of a valid document provided that Ukraine informs the Commission and the Member States of its decision to extend the validity of those driver documents.*" Having said this,

[42] See Vienna Convention on Road Traffic, art. 41.2.
[43] See Regulation (EU) 2022/1280, recital (7).
[44] Ibid.
[45] See Regulation (EU) 2022/1280, art. 3.2., which reads as follows: "Where a person enjoying temporary protection or adequate protection under national law in accordance with Directive 2001/55/EC and Implementing Decision (EU) 2022/382 is in possession of a valid driving licence issued by Ukraine, Member States shall not require the presentation of its certified translation or an international driving permit, as referred to in Article 41(2) of the Vienna Convention on Road Traffic. Member States may require the presentation of a passport, document of temporary residency or other adequate document in order to verify the identity of the holder of the driving licence."
[46] See Regulation (EU) 2022/1280, art. 7.
[47] Ibid, art. 3.1.
[48] Ibid, recital (9).
[49] Ibid, art. 5.

it must be added that several non-EU jurisdictions have also faced similar problems. In Norway, for example, the validity of Ukrainian driving licences was extended by law for 3 years on 31 December 2022.

The Regulation (EU) 2022/1280 has addressed two further issues, which remain beyond the scope of regulation by the respective international agreements. *Firstly*, the circumstances of fleeing war often entail the loss or theft of driving licences, or their being left behind in the war zone without an immediate possibility of recovering them. For such cases, the competent authorities of the Member States have been empowered[50] to issue temporary driving licences that replace the original ones for the duration of the temporary protection, provided that the competent authorities of the Member States are in a position to verify the information provided by the displaced persons, for example by accessing the national registers of Ukraine. Such temporary driving licences shall bear the note: „Special issuance valid only for the duration of temporary protection (lost or stolen UA licence)".

By the virtue of the Regulation, these temporary driving licences shall be mutually recognised in the Union, and their administrative validity should not exceed the duration of the temporary protection.[51]

Secondly, the Regulation (EU) 2022/1280 has explicitly provided for rules on prevention of fraud and forgery. Reflecting the fact that the fight against fraud and forgery is instrumental in maintaining road safety and law enforcement, the Regulation provides that: „When applying this Regulation, Member States shall use all appropriate means to prevent and combat fraud in connection with driver documents issued by Ukraine, and their forgery."[52]

Concerning the prevention of fraud and forgery, the Regulation in principle relays on the mutual cooperation with the competent authorities of Ukraine. In this respect, the Regulation provides[53], that the competent authorities of the Member States may refuse to recognise a suspicious driver licence under following preconditions: a) in the event of a negative answer or absence of answer from the Ukrainian authorities consulted by them on the rights claimed by the holder of a driver document issued by Ukraine and b) when there are serious doubts as to the authenticity of the driver document which suggest that road safety could be endangered.

While the Recommendation (EU) 2022/554 has basically relied on recognition frameworks, as established under the existing international agreements, the Regulation (EU) 2022/1280 went further. It has established a framework of recognition, which is parallel to the recognition scheme, as existing under the international law (the Vienna Convention on Road Traffic). Both these regimes of recognition are co-existing peacefully together. The fact is, however, that the

[50] Ibid, art. 6.1.
[51] See Regulation (EU) 2022/1280, art. 6.3.
[52] Ibid, art. 7.
[53] Ibid.

regime under the Regulation (EU) 2022/1280 is much more tailor-made to the emergency situation, which occurred in the aftermath of February 2022.

At the same time, the recognition scheme, as established under the Regulation (EU) 2022/1280, is of temporary nature. The whole regime of recognition is strictly interconnected with the existence of the framework for temporary protection under the Directive 2001/55/EC. Consequently, the Regulation (EU) 2022/1280 will cease to apply on the day following that on which the period of application of temporary protection in respect of displaced persons from Ukraine comes to an end.[54]

3. Encounter between Ukrainian and other legal frameworks

The Regulation (EU) 2022/1280 provides for recognition of foreign driving licences, referring to them as to: "driving licences issued by Ukraine, proving that, and under what conditions, a driver is authorised to drive under the law of Ukraine."[55]

The definition, as provided by the Regulation (EU) 2022/1280, deserves certain clarification. In order to gain recognition within the European Union, two preconditions must be fulfilled:

1. Firstly, the respective driving licence must be "issued by Ukraine". That means, the Regulation presumes, that the driving licence must be issued by legitimate Ukrainian authorities. Consequently, the recognition regime does not cover the driving licences, issued by the separatist entities, which existed in the Eastern parts of Ukraine (the Donetsk and Lugansk Peoples' Republics).[56]

2. The second precondition for a recognition of a driving licence is the fact, a driving licence must authorise the driver to drive "under the law of Ukraine". In this respect, the question arises, how to treat driving licences issued by the authorities under the occupation by the Russian Federation. If such driving licences were issued pursuant to the law of Ukraine, one may argue that the regime as established by the Regulation (EU) 2022/1280 will cover them.[57] Having said this, a delicate question arises, how to treat those driving licences, issued by the authorities in those regions, which have been illegally annexed by the Russian Federation. One may argue, that these licences will be covered by the recognition scheme, as established by the Vienna Convention on Road Traffic. The question arises, however, if the recognition also covers those licences, issued by the authorities on the illegally annexed territories. Such interpretation will be obviously

[54] See Regulation (EU) 2022/1280, art. 9.2.
[55] Ibid, art. 2.a.
[56] See Jakub Handrlica, Gabriela Prokopová, Liliija Serhiichuk and Vladimir Sharp, "The enigma of recognition of administrative acts issued by non-recognised regimes", *Juridical Tribune*, 13, issue 4 (December 2023), at pp. 509-521.
[57] See Franziska Mauritz, "Zuordnung okkupierter oder annerkrierter Gebiete im Internationalen Privatrecht", *Bucerius Law Journal*, 12, issue 1 (July 2018), at pp. 39-48.

in a strict contrast to the intention, the Contracting Parties to the Convention had at the time of the adoption.

The Regulation (EU) 2022/1280 provides that "*valid driving licences issued by Ukraine shall be recognised in the territory of the Union when their holders enjoy temporary protection or adequate protection under national law in accordance with Directive 2001/55/EC and Implementing Decision (EU) 2022/382 until the moment when that temporary protection ceases to apply*."[58] This provision represents a directly applicable norm, which is an integral part of the legal systems of the respective Member States. Consequently, no implementation into the national legislation is needed. Consequently, the Regulation (EU) 2022/1280 provides that a result of application of Ukrainian law (a driving licence) gains legal consequences in the whole jurisdiction of the European Union. Thus, the Regulation does not require any formal proceedings from the part of national administrative authorities.

The Regulation (EU) 2022/1280 does *not* provide for another example of a *transnational administrative act*.[59] Under the concept of *transnational administrative acts,* an act is being issued by a competent administrative authority of a Member State. Under this concept, the Member State does not only await, that its own acts will be recognised by other jurisdictions. The Member State is also prepared to recognise corresponding administrative acts, issued by other Member States to the European Union. Neither of these features are followed by the scheme, as established by the Regulation (EU) 2022/1280. The Regulation provides for recognition of acts, issued by non-EU Member State (Ukraine). At the same time, reciprocity has not been guaranteed by the Regulation. Consequently, the newly established concept goes beyond the existing recognition schemes and represents a brand-new feature in EU law.

4. Recognition beyond reciprocity

After analysing several pieces of the EU legislation on recognition, as adopted in the aftermath of the 24 February 2022, general remarks are to be drawn with respect to these legislative developments.

Firstly, there is a clear tendency of the European Union to establish its own regimes of recognition, which exist parallel to those recognition schemes, as established under the international conventions.[60] As outlined in the introduction to this article, a robust framework for recognition of transnational administrative

[58] See Regulation (EU) 2022/1280, art. 3.1.

[59] See Raúl Bocanegra Sierra and Javier Garcia Luengo, "Los actos administrativos transnacionales", *Revista de Administración Pública*, 177 (September - December 2008), at pp. 9-29.

[60] Hedda Marie Grieg Riisnæs, "Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive", Master Thesis, Department of Comparative Politics, The University of Bergen, 2023, at p. 12.

acts has been established by the instruments of EU law. The outlined developments represent another step of the EU legislation towards creating its own recognition schemes, which supersede the schemes under international law.[61] The mutual relations between the Regulation (EU) 2022/1280 and the Vienna Convention on Road Traffic represent a salient demonstration of these developments.

The fact is, however, that while the major schemes of recognition of foreign administrative acts have been so far based on the feature of reciprocity, the EU legislation as adopted in the aftermath of the 24 February 2022 is strictly based on unilaterality. That means, reciprocity is neither expected, not awaited from the side of Ukraine. In these terms, the newly established regimes have been designed as temporary regimes, which are tailor-made exclusively to address the emergency, arising in the aftermath of the aggression against Ukraine.

Having said this, one may also argue that the new schemes for recognition clearly demonstrate the ability of the European Union to address issues, arising in the field of recognition in emergency situation. The instruments of EU law react much flexible to the emergencies, that the instruments of international law. Also, the EU law has a clear tendency to adopt more flexible measures, such as the unilateral recognition in the above-mentioned cases.

5. Conclusions

The newly emerging EU legislation, which has been established in the aftermath of the Russian aggression against Ukraine, represents another contribution to the already existing robust framework of recognition within the EU. The fact is, however, that the recognition schemes, as established recently with respect to the major migration crisis, do not follow the patterns of existing models. In particular, they do not follow the reciprocity scheme, which has represented a very integral part of the existing models of recognition. Also, the newly established schemes have been modelled as temporary measures. While they haven't been designed to represent a long-lasting tool of governance, they are a salient demonstration of the EU's ability to flexibly establish regimes, which exist in parallel to the measures of international public law.

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IV. Thesis

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V. Policy brief

1. Lucas Rasche, "Ukraine's refugee plight. A paradigm shift for the EU's asylum policy?", Hertie School: Jacques Delors Centre, 2022.

SECTION II.
LEGAL ISSUES OF TEMPORARY PROTECTION

Temporary Protection as a Bridge between Ukraine and Czechia: An Unexpected Choice of Where to Stay and How

Senior lecturer **Věra HONUSKOVÁ**[1]
Ph.D. candidate **Enes ZAIMOVIĆ**[2]

Abstract

An unexpected encounter between Ukraine and the Czech Republic is also taking place in the area of residency status of people coming from Ukraine to the Czech Republic in the hundreds of thousands from February 2022. Czech law was prepared for this situation. At a regional level within the European Union, there is the Common European Asylum System, a set of secondary legislation that includes an instrument enabling EU countries to respond to the arrival of large numbers of people: The Temporary Protection Directive. It has never been used before, but only now, in response to this situation. In our article, we assess the appropriateness of its use and the possibilities it offers in terms of a durable solution. We focus on the national, European and international levels.

Keywords: *temporary protection; Temporary Protection Directive; prima facie status determination; durable solution for temporary protection holders*.

JEL Classification: K23, K32

1. Introduction[3]

How would the Czech Republic and/or the European Union react to a hypothetical armed conflict in Ukraine and the flight of hundreds of thousands of people to EU countries? We asked this question in a 2016 article.[4] It might have seemed like not such a pressing issue at that time. However, the entry of Russian troops into Ukraine made it a key issue six years later. The aim of the question in the article was to draw attention to the neglected possibilities offered to Member States in similar situations by the Common European Asylum System: a package of secondary legislation focusing on asylum and migration issues and, among other things, regulation of temporary protection. In 2015, EU Member States responded to the mass arrival of hundreds of thousands of people to the EU through standard individualised procedures granting refugee status (asylum) or subsidiary

[1] Věra Honusková, Faculty of Law, Center for Migration and Refugee Law, Charles University, Prague, Czech Republic, E-mail: honuskova@prf.cuni.cz, https://orcid.org/0000-0003-0180-0707.
[2] Enes Zaimović, Faculty of Law, Center for Migration and Refugee Law, Charles University, Prague, Czech Republic. E-mail: zaimovie@prf.cuni.cz, https://orcid.org/0009-0000-2024-3024.
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[4] Věra Honusková, "Řešení hromadného přílivu uprchlíků skrze status *prima facie*," in *Výjimečné stavy a lidská práva,* eds. Veronika Bílková, Jan Kysela, Pavel Šturma (Prague: Auditorium, 2016), 145.

protection. Because of the high number of arrivals, we argued that another solution – temporary protection – could have been used as a response. However, EU states decided otherwise at the time and reinforced the no-entry strategies with an agreement with Turkey, which meant stopping the flow of people at the EU's borders.[5] A few years later, EU Member States in a similar situation decided differently and granted temporary protection to those fleeing war-torn Ukraine.

On the following pages we examine the temporary protection status granted by EU Member States to those fleeing the armed conflict in Ukraine after the Russian aggression of 24 February 2022. *Temporary protection* is a protective status that created an imaginary bridge between Ukraine and the Czech Republic and other EU member states. A bridge that had to be built in a rush; the question is whether this bridge will be demolished or rebuilt into another one once the situation calms down and peace is secured in Ukraine. Therefore, we focus on the question of whether temporary protection for persons from Ukraine and its implementation in the Czech Republic are appropriate tools for providing immediate protection and long-term solutions for its holders. Will the Czech state be inspired by the past? In the 1990s, the Czech Republic accepted people from the former Yugoslavia based on national temporary refuge (*dočasné útočiště*) status and offered them a dignified long-term solution. Will it make a similar decision now, or will it consistently enforce the temporary nature of the protection granted without allowing the current holders to find another solution?

For the purposes of this paper, we understand temporary protection to represent a specific status codified in EU law.[6] However, in certain parts of the

[5] The EU-Turkey statement was agreed in 2016. It was aimed at addressing the arrival of large numbers of people into the EU via Turkey, with Turkey agreeing to prevent people coming through Turkish territory from travelling to EU countries.

[6] The concrete expression in European law is determined by the relevant EU directive. The general concept itself is discussed in more detail in Jean-François Durieux, "Temporary Protection and Temporary Refuge," in *The Oxford Handbook of International Refugee Law*, eds. Cathryn Costello, Michelle Foster, and Jane McAdam (Oxford: Oxford University Press, 2021).; in Joanne Fitzpatrick, "Temporary Protection of Refugees: Elements of a Formalized Regime". *The American Journal of International Law* 94, no. 2 (2000); in G.l.L. Coles, "Temporary Refuge and the Large Scale Influx of Refugees", *The Australian Yearbook of International Law Online* 8, no. 1 (1983), where an important insight into and basic anchoring of the concept of Temporary Refuge is described; also important are the writings of Guy S. Goodwin-Gill, e.g. Guy S. Goodwin-Gill, Jane McAdam, *The Refugee in International Law (3rd ed.)* (Toronto: Oxford University Press, 2007), 340–342; an important perspective is presented by Jean-François Durieux, "The Duty to Rescue Refugees", *International Journal of Refugee Law*, 28, no. 4 (2016). See also Ineli-Ciger and her works on the temporary protection, among others Meltem Ineli-Ciger, *Temporary Protection in Law and Practice* (Leiden: Brill Nijhoff, 2018), 169-178; Meltem Ineli-Ciger (2016) "A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?" *International Community Law Review* 18, no. 3-4 (2016). More on the directive can be found also in Karoline Kerber, "The Temporary Protection Directive", *European Journal of Migration and Law*, 4 no. 2 (2002). Important consequences of mass-influx situations are dealt with in Jean-François Durieux and Jane McAdam, "Non-refoulement through Time: the case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies", *International Journal of Refugee Law* 16, no. 1 (2004).

article, the temporary protection status is put in the context of public international law and is thought of as one of the protection statuses providing a safe haven for individuals fleeing their countries of origin. Thus, we include temporary protection in the range of possible state responses to situations where a person's life or freedom is threatened, and their state is unable or unwilling to protect them from danger; with other responses being refugee status or regional statuses such as the EU Qualification Directive's subsidiary protection.[7] We consider temporary protection in the broader context of other protection statuses primarily to explore the possibility of ending or continuing it through other statuses.

2. Temporary protection as a tool for dealing with ad hoc situations that the current international law cannot cope with

Temporary protection is not a one-off tool to address the situation of people fleeing Ukraine. It is a tool that has been used from time to time in the past. An instrument that is above all flexible in its approach to providing protection to persons fleeing their country of origin.[8] Although it is not enshrined in any instrument of international law and is not found in customary international law, temporary protection status is nevertheless mentioned by UNHCR in many soft-law documents, is regionally codified in EU law and is even used in the domestic law of some states. Not only its definition, but also its use varies: from a national status for a specific group of persons arriving for different reasons, to the rather specifically defined *ratione personae* status and its possible use in the EU Temporary Protection Directive, to the UNHCR guidelines. The most prominent example of the use of temporary protection was in the 1990s in European countries, where hundreds of thousands of people fleeing the armed conflict in the former Yugoslavia arrived.[9] Its use continued with the Turkey's response to the mass influx of Syrians since 2011 and the EU's current response to the armed conflict in Ukraine.[10] Temporary protection is also currently being used by the US and Colombia, for example, as a national status for Venezuelan citizens who have fled the country. The use of temporary protection or similar instruments based on it is therefore not unique in the world.

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[7] See Art. 15 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) OJ L 337 (hence "Qualification Directive").

[8] Matthew J. Gibney defined temporary protection as a "*diverse and multifaceted phenomenon – it has had no single manifestation, purpose or character*". In this respect, see Matthew J. Gibney, "Between Control and Humanitarianism: Temporary Protection in Contemporary Europe," *Georgetown Immigration Law Journal* 14, no. 3 (2000): 690.

[9] Hélène Lambert, "Temporary Refuge from War: Customary International Law and the Syrian Conflict," *International and Comparative Law Quarterly*. 66, no. 3 (2017), p. 732.

[10] Ineli-Ciger, "Temporary Protection", 169-178.

Temporary protection is one of those statuses that complement the basic protection status: refugee status. The refugee regime also forms a frame of reference for the other arrangements that relate to it as a basic one. Refugee status is the only universal treaty protection status and is regulated by the fairly widely accepted Convention Relating to the Status of Refugees.[11] Since 1951 and 1967 respectively, when the Protocol to the Convention Relating to the Status of Refugees was adopted, international law has made it possible to protect those who, "*owing to well-founded fears of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or unwilling, owing to such fears, to avail themselves of the protection of that country*".[12]

To this basic definition of persons considered by the state parties to the Refugee Convention to be in need of and deserving of protection, additional categories of persons have been added progressively. At the universal level of international law, only the convention relating to stateless persons has been adopted;[13] the envisaged convention on territorial asylum have not been brought to a successful conclusion.[14] Other treaty instruments were not considered at all, although a number of possible new categories of persons in need of protection but not covered by the Convention emerged.[15] The most recent document adopted by states on the universal level in this context was the Global Compact on Refugees, which is not legally binding,[16] and thus brought only limited solution to the new challenges. There have been more developments at the regional level in the recent decades, where states in several parts of the world have adopted additional protection statuses to fill some of the gaps in protection under the Convention. The most important are the (both binding) African Convention and the European Qualification Directive. The soft-law Latin American Cartagena Declaration is also important for national practice.[17] These regional treaty instruments are

[11] Convention Relating to the Status of Refugees 28 July 1951, 189 UNTS 137 (hence "Refugee Convention").
[12] Art 1A (2) of Refugee Convention.
[13] Convention Relating to the Status of Stateless Persons, 28 September 1954, 360 UNTS 117 (hence "1954 Convention").
[14] For more information see Paul Weis, "The Draft United Nations Convention on Territorial Asylum." *The British Yearbook of International Law*, 50 (1979): 151-171.
[15] For instance, people fleeing from extreme poverty or environmental migrants.
[16] See Resolution on the Office of the UNHCR which affirms the global compact on refugees adopted by the General Assembly on 17 December 2018 (A/RES/73/151), see also New York Declaration for Refugees and Migrants, adopted by the General Assembly on 19 September 2016 (A/RES/71/1).
[17] See also the extended regional refugee definitions in the Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, Art. I (2); Qualification Directive and the Cartagena Declaration on Refugees adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984.

mainly aimed at protecting persons coming from armed conflict and similar situations.[18] Through regional instruments, states have thus bridged one of the biggest gaps in the Convention's protection.[19]

If both universal and regional treaty arrangements prove insufficient, temporary protection may be an alternative. Indeed, *ratione personae* at the national level is usually defined only on an ad hoc basis for a specific group of persons from a specific country; only at the EU level have states agreed on legislation that includes a generally defined situation only to be redefined subsequently by a decision of the EU Council, if necessary.[20] This means that there is some leeway in the European instrument as to how the situation is defined; however, the TPD regulation in any case explicitly envisages that displaced persons for the purposes of granting temporary protection include persons who have fled areas of armed conflict or endemic violence.[21] In the case of the granting of temporary protection to persons fleeing armed conflict, there is thus essentially a duplication of protection, as regional treaty instruments may provide similar protection. So, in the specific case of persons from Ukraine, could their situation be legally covered by both a regional instrument targeting persons fleeing armed conflict and temporary protection? In order to answer this question, we need to take into account another fact. Particularly in the European or generally Western context, statuses such as refugee status or other regional statuses are granted in individual status determination procedures.[22] This means that each person arriving is subject to a procedure in which his or her application is thoroughly examined, and the state handles a series of documents that confirm or exclude the person's claim to protection. This is the type of procedure that, in the words of Durieux and Hurwitz, is "*time-consuming, cumbersome and complicated - a perception borne out by the tremendous backlogs and multiple appeals plaguing asylum procedures in many industrialized countries*",[23] it is a procedure with which,

[18] See the widened definition of a refugee in the OAU Convention and Cartagena declaration where external aggression, occupation, foreign domination or events seriously disturbing public order and generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order respectively are seen as the reasons for the refugee status.

[19] With respect to protection gaps, see also Volker Türk and Rebecca Dowd, "Protection Gaps," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, Nando Sigona (Oxford: Oxford University Press, 2014), p. 238.

[20] Art 5 (3) of TPD provides that "*The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive."*

[21] Art 2 (i) of TPD.

[22] Refugee status is technically a declaration of fact; a refugee is a refugee from the moment he or she crosses the international border of his or her state.

[23] Jean-Francois Durieux and Agnes Hurwitz, "How Many Is Too Many: African and European Legal Responses to Mass Influxes of Refugees," *German Yearbook of International Law* 47 (2004): 119.

in Kagan's words "*a typically intensive adjudication*".[24]

This luxury of a detailed individual approach is afforded to States when only a small number of persons seeking protection enter their territory. European or Western states have developed sophisticated, often borderline legal, non-entry strategies that have prevented the arrival of larger numbers of people for many years. However, in the event of the arrival of a larger number of persons, these states have either needed a different type of procedure than the individualised procedure - or they have had to resort to the application of a different type of protection status. Temporary protection is the result of the second option, i.e. the creation of a new type of protection status. As can be seen from the above, in addition to the creation of a new status, another option could have been chosen in cases of a large influx of persons, namely the granting of status not in an individualised procedure but in a so-called prima facie procedure. The individualised procedure is not an adequate response to the arrival of hundreds of thousands of persons and proves to be a lengthy, costly and sometimes unnecessary procedure given the particularities of the incoming group.[25] This corresponds to the *prima facie* recognition that is usually associated with the granting of refugee status. This is a type of procedure which assumes that the arriving person is a refugee unless the contrary is clear. There is no individualized procedure; the person is recognized as a refugee "*on the basis of readily apparent, objective circumstances in the country of origin*" that led to the person's departure from the country and thus the obvious refugee character of the person's claim.[26] This method of status determination can also be used for other statuses. Temporary protection is by its very nature an instrument that makes use of this kind of *prima facie* status determination.[27] In its European version, however, it represents not only a procedural route to status determination but also a completely new status containing specific catalogue of rights. In the case of persons arriving from Ukraine, the EU, and

[24] Michael Kagan, "The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination." *International Journal of Refugee Law* 18, no. 3 (2006).

[25] UNHCR (2001). *Protection of Refugees in Mass Influx Situations: Overall Protection Framework. Background paper prepared for the Global Consultations on International Protection*.

[26] The UNHCR in its Guidelines on International Protection No. 11 describes a *prima facie* refugee status determination as "…*recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin, or in the case of stateless asylum-seekers, their country of former habitual residence*." UNHCR (2015). *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status*. para 1. Currently, the only instruments that explicitly mention the *prima facie* refugee status determination are the above-mentioned guidelines and the UNHCR Handbook and Guidelines on procedures and criteria for determining refugee status. See also UNHCR (2001). *Protection of Refugees in Mass Influx Situations: Overall Protection Framework. Background paper prepared for the Global Consultations on International Protection*. Durieux, Hurwitz, "How Many", 105; Matthew Albert, "*Prima facie* Determination of Refugee Status: an Overview and its Legal Foundation". *Working Paper Series No. 55. Oxford: Refugee Studies Centre* (2010).

[27] It also uses a group approach. For more on group approach see Ivor C. Jackson, *The Refugee Concept in Group Situations* (Leiden: Martinus Nijhoff Publishers, 1999): 3.

hence EU States, have used this very instrument, which allows for the granting of a specific status through the procedural route of the prima facie procedure. However, they could also have chosen the other route, i.e. the granting of refugee or subsidiary protection status prima facie. In other words, States could have, at least in theory, followed the same procedure, i.e. simply issued a confirmation that the arrivals were refugees or beneficiaries of subsidiary protection, without further lengthy proceedings, if they considered that individuals arriving on their territories met the relevant legal definitions.[28]

The temporary protection has also been used by States because it is explicitly called "temporary". This could be one of the reasons why the Member States have not chosen the route of granting subsidiary protection or refugee status through the *prima facie* status determination procedure. With regard to *temporality* of temporary protection, it should be borne in mind that international law sees any protection by a State to be of a temporary nature, presupposed only for to the period for which it is truly needed. The Convention contains a suspensive provision in Article 1C defining when a person ceases to be protected, and these situations include a moment when protection is no longer needed;[29] the Qualification Directive contains similar provisions for the cessation of refugee status and the status of subsidiary protection.[30] A person who no longer needs the protection of another state and can return to his or her own state constitutes a separate category for dealing with his or her situation in practice. Indeed, repatriation is - along with local integration and resettlement - one of the traditional approaches to durable solutions advocated by UNHCR,[31] and returnees also fall within UNHCR's core mandate and are supported by it.[32] In theory it is simple: if the reason ceases to exist, the protection ceases to exist and people should return back into their countries which now have the capacity to protect them. According to UNHCR statistics, returns are part of the solution to the refugee situation in practice, but they are only a fraction of the total.[33]

However, in some world regions, especially in Western countries, this practice was relatively rare during the last few decades. In terms of regional regulation and practice in the EU, the withdrawal of protection occurred, for example, in the context of the accession of Central and Eastern European countries to

[28] On the other hand, some scholars point to the fact that the current EU legislation makes the idea of group determination procedures incompatible with EU's procedural rules on granting international protection. In this respect, see Nikolas Feith Fan and Meltem-Ineli Ciger, "Group-based Protection of Afghan Women and Girls Under the 1951 Refugee Convention", *International & Comparative Law Quarterly*, 72 no. 3 (2023): 815.

[29] See Art. 1C of the Refugee Convention.

[30] See art 11(1) and art 19(1) of the Qualification Directive.

[31] See the website of UNHCR, https://www.unhcr.org/ke/durable-solutions [accessed June 8, 2023].

[32] See UN High Commissioner for Refugees (UNHCR), Note on the Mandate of the High Commissioner for Refugees and his Office, October 2013, available at: https://www.refworld.org/docid/5268c9474.html [accessed 28 July, 2023], p. 7.

[33] Hundreds of thousands returned versus millions on the run. See UNHCR (2023). Global Trends: Forced Displacement in 2022.

the EU, and some authors even speak of a decade of "*repatriation*" in the 1990s after the end of the Cold War.[34] But, on the other hand, along with legislation on non-entry strategies, the implicit discourse of permanence of protection has been established in application of the EU legislation. This legislation of course contains the aforementioned provisions that refugees and other beneficiaries of protection should return to their home country once the reason for which they left it has passed. In practice, however, the return has not been common. This probably has something to do, inter alia, with the extent of human rights protection, which may prevent States from enforcing the return of persons who still may be at risk when returning to their territory, even if this *threat* no longer has the quality of being grounds for granting of refugee or other status.[35] The discourse of permanence was manifested by the non-application of provisions to end protection and the strengthening of instruments aimed at permanence, i.e. explicit integration provisions or the possibility to change the type of residence status after some years of stay in the EU.[36] This is also probably why an instrument explicitly focused on temporality, i.e. the Temporary Protection Directive, was created. However, this need also existed for objective reasons. Shortly before the CEAS was created, Europe had experienced an unprecedented situation of hundreds of thousands of people arriving from the countries of the former Yugoslavia, fleeing the armed conflict there.

3. Temporary Protection Directive

The Temporary Protection Directive was the first instrument adopted under the comprehensive Common European Asylum System. It was a direct response to the use of temporary protection by European countries in the 1990s.[37] The use of temporary protection, at that time managed by individual states

[34] Joanne Fitzpatrick, "The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection", *Georgetown Immigration Law Journal*, no.13 (1999).

[35] See among others Art. 3 or Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 2013, U.N.T.S. 221 (hence "European Convention on Human Rights").

[36] This especially concerns the status of long-term residents in EU which currently applies to refugees and beneficiaries of subsidiary protection. In this respect, see Consolidated text: Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016 (hence "LTR Directive").

[37] The adoption of the Directive followed the Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (95/C 262/01). When discussing temporary protection in Europe, academics sometimes point to older examples of European states´ responses to large-scale influxes during the 20th century, such as Austria's temporary help to refugees from Hungary in 1956-57 or from Czechoslovakia in 1968, and then focus more on the temporary refuge granted to people fleeing wars in the former Yugoslavia in the 1990s. For full information, see also Meltem Ineli-Ciger, "Time to Activate the Temporary Protection Directive," *European Journal of Migration Law* 18, (2016).

through their own national temporary protection schemes, implicitly meant a coordinated response by states within the region to a common problem. The creation of the Temporary Protection Directive represented a preparation for harmonised responses in the future that are subject to discretionary activation of temporary protection by the decision of the EU.[38] The major difference within Common European Asylum System is that the TPD allowed Member States to respond to a mass influx of people by granting status to an entire group at once. As previously discussed in the first part of this paper, this is an exception to the general rule entailing highly individualized procedures conducted in proceedings on international protection to which Member States committed themselves in the development of the Common European Asylum System[39] and its relevant instruments. Highly individualized proceedings remained to be adhered to by the Member States even in the situation of large influxes in 2015, temporary protection with its group-oriented approach to providing protection was always perceived to be a more practical route when large influx of people become a threat to standard asylum systems.[40] This can be valid only to the extent that influx of individuals represents a homogeneous flow of people in terms of its structure, so it is obvious at first glance what reasons lead a group to leave its homeland. The TPD reflects this when it states that *"mass influx" means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme."*[41]

The *ratione personae* scope of TPD may overlap with other forms of protection within the EU's secondary legislation; TPD explicitly refers to the fact that some beneficiaries of EU's temporary protection scheme may also fall within the scope of refugee definition under Refugee Convention.[42] Therefore, TPD allows for applications for international protection by temporary protection holders during the duration of temporary protection.[43] At the time when TPD was adopted, subsidiary protection was not yet explicitly codified in EU law, but came into the EU law in 2004 with the adoption of Qualification Directive. Nevertheless, this concept was already known and, like refugee status, subsidiary protection may overlap with the definition of beneficiaries of temporary protection in the Directive: „*(i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights*".[44] Thus, one of the reasons for

[38] See art 4(2) of TPD.
[39] Qualification Directive contain an individualized procedure.
[40] Lambert, "Temporary Refuge", 725.
[41] Art 2(d) of TPD.
[42] Art 2 (c) of Lex Ukraine.
[43] We speak of entitlement because, as noted above, the granting of the refugee status is declaratory. On the question of the possibility to apply for refugee status during temporary protection and the possibility for the State to postpone the granting of refugee status, see Article 17 of TPD.
[44] See art 2(c) of TPD.

using the TPD today could also be related to the issue of the *temporality* of its duration. Nor can it be overlooked that temporary protection is an option for Europe to proceed differently in the event of an influx of large numbers of people, rather than reinforcing non-entry strategies. This is also why the TPD is being accepted despite the fact that we are paying the price of certain humanitarian compromises here. The same scenario occurred during 1990's when temporary protection filled the protection gap within the framework of Refugee Convention but also brought the issue of temporariness of protection to light.[45]

The *ratione materiae* scope of TPD is described in another part of this paper. The general overview of its framework could be that the status under TPD is defined by establishing a minimal common standard across the EU. This standard is subject to change by the Member State through a number of 'may clauses' which were anchored by TPD in its normative framework. This means that EU's temporary protection status may vary from country to country in terms of the possibility to work, access to the general education system, or the extent of health care provided to temporary protection holders. The minimal standard must, however, be always ensured by each Member State providing protection. What is extremely important for our paper is the "what comes after the temporary protection" question. The temporary protection is limited in the Directive to three years,[46] which means that the current temporary protection scheme for Ukrainians should end no later than 4 March 2025. If the conflict in Ukraine does not end sooner, and instead continues beyond the three-year period, this issue will be crucial.

The activation of the TPD in 2022 took place at EU level, as foreseen by the Directive. It was a surprisingly quick response. Following the Russian aggression from 24 of February, the response came in a week, on the 4th of March 2022, when the Council of the European Union issued an implementing decision declaring temporary protection (hence "Council Implementing Decision").[47] For the purposes of responding to the mass influx in 2022, the EU Council adopted a definition of eligible persons, explicitly stating that it applied to persons who became displaced from Ukraine "*… on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date*" and specifically to "*Ukrainian nationals residing in Ukraine before 24 February 2022, stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022 and family members of both groups*".[48] Since there was

[45] Gibney, "Between Control," 690-691.

[46] See art 4 of TPD.

[47] Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection (hence "Council Implementing Decision").

[48] See Art. 2 of the Council Implementing Decision, which specifies the terms in the following paragraphs. States may extend protection to other categories of persons fleeing Ukraine in need of protection.

a visa-free regime, there was no problem with admission of Ukrainians to the territory of the EU states, only situation of relatively small number of people coming from Ukraine but not Ukrainians (and having a visa duty) was an issue to deal with.

In terms of the immediate need to protect persons, this was an appropriate instrument to use. It is unclear what would have happened if temporary protection had not been declared at EU level. It is likely that the states themselves would have used this instrument. Indeed, one of the states neighbouring Ukraine, Slovakia, decided to introduce temporary protection under the national regulations for citizens of Ukraine and their family members entering the territory of the Slovak Republic in connection with the armed conflict in Ukraine, in order to facilitate the processing of their stay, access to work and health care in Slovakia already after 4 days.[49] The prospect of hundreds of thousands of people crossing the border in clear need of protection, and national systems equipped for hundreds or at most thousands of people, would very likely lead other states to make the same decision. However, given the historical experience of Central and Eastern European countries, a greater willingness to help refugees from Ukraine cannot be ruled out.

4. Reception of Temporary Protection Directive in the legislation of the Czech Republic

The Czech Republic transposed the TPD already in 2003 when the Act on Temporary Protection of Foreigners was adopted.[50] However, its content, focused primarily on procedural aspects of providing temporary protection, proved to be insufficient in practice following the outbreak of the armed conflict in Ukraine as the old legislation needed to be specified based on the Council Implementing Decision and its procedural aspects adapted to the current reality of the enormous number of individuals seeking protection in the Czech Republic. In response to this, the Czech Republic adopted a special regulation that fully adopted the definition of displaced persons and beneficiaries of temporary protection under the Council Implementing Decision. The so-called Lex Ukraine[51] is the cornerstone of the legislation regulating the provision of temporary protection in the Czech Republic; the Czech Republic issued it almost immediately after the EU announced the activation of TPD through the Council Implementing Decision. Technically, Lex Ukraine is an umbrella term for a set of three interrelated Acts which have been issued on 21 March 2022, following a speedy legislative

[49] See Slovak Governmental Resolution No. 144 of 28 February 2022. See Slovak Act No. 480/2002 Coll. on Asylum.

[50] Act No. 221/2003 Coll., on Temporary Protection of Foreigners (hence "Temporary Protection Act").

[51] Act No. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation (hence "Lex Ukraine").

procedure in the Czech Parliament: 1) Act No. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation, 2) Act No. 66/2022 Coll., on measures related to employment and social security in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation, and 3) Act No. 67/2022 Coll., on measures related to education system in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation. These Acts have been amended several times since its adoption. Lex Ukraine provides answers to basic questions on temporary protection: who is a beneficiary of temporary protection,[52] how long is the protection granted for[53] and what rights the holder of temporary protection has.[54]

In addition, other pieces of legislation regulate provision of temporary protection in the Czech Republic as well. Several other and subsidiarily applicable regulations,[55] including the old Temporary Protection Act or the general Residence of Foreigners Act,[56] regulate various other aspects of the procedure for granting temporary protection, including the rights associated with temporary protection. Thus, in the case of the Czech Republic, we can rather speak of a complex set of several legal regulations that have fully implemented the TPD and the Council Implementing Decision into the national legal system. Despite the fact that such a complicated structure of temporary protection raises many interpretation problems in practice, the Czech practice of providing temporary protection can be described as one of high quality, especially when taking into account the initial time pressure and tens of thousands of people arriving daily on the territory of the Czech Republic just a few days after the Russian aggression. The normative arrangement of temporary protection in the Czech Republic exceeds in many ways the minimum standard provided by the Directive and provides temporary protection holders with a more favourable standard of treatment than the minimum provided by TPD.[57]

Moreover, the formal linking of temporary protection with national long-term visas has enabled the Czech Republic to address the problem of limited administrative capacities quite effectively. The act of declaration of temporary protection with regard of a person is ensured simply by attaching a long-stay visa to his/her travel document. This has minimized the time needed to issue the formalized residence permit required by the TPD.[58] Visas declaring temporary protection status were thus issued practically anywhere: the Ministry of the Interior of

[52] Art 3 of Lex Ukraine.
[53] Art 7b (2) of Lex Ukraine.
[54] Art 6b, 7, 7aa of Lex Ukraine.
[55] Art. 4 of Lex Ukraine.
[56] Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic.
[57] The Czech Republic, for example, continues to allow temporary protection holders to be self-employed and otherwise employed within the meaning of Article 12 of the TPD without any restrictions.
[58] Art 6 of TPD.

the Czech Republic was able to register temporary protection holders in this way even in public libraries or specially adapted assistance centres operating 24 hours a day during certain periods of especially high influx.

The drawback is the fact that the standard of rights granted by the Czech Republic has a steadily decreasing tendency, which can be explained by the longer duration of protection and the overall number of temporary protection holders in the Czech Republic (325 000 as of April, 1, 2023).[59] For example, the recent legislative amendments of Lex Ukraine have negatively affected the amount of so-called humanitarian benefits or accommodation allowances, which are now covered by the Czech Republic only in narrowly defined cases. The entitlement to fully-covered health insurance ended in the summer of 2022. From then on, a newly registered temporary protection holders enjoy only 150 days of fully-funded health insurance by the state. After this period, temporary protection holders must cover the cost of health insurance themselves or through payments to the national social security system by their employers. In addition to this, the Czech Republic has progressively reduced financial support to owners providing accommodation to temporary protection holders.

In practice, some of the procedural institutes introduced by Lex Ukraine remain legally problematic. One of these is the institute of *inadmissibility* of temporary protection application.[60] In majority of cases under Lex Ukraine, temporary protection is not granted through inadmissibility of application: this entails a *de facto refusal* of the application and mainly concerns situations where the foreigner does not fall within the definition of a displaced person under the Council Implementing Decision. The foreigner's application is returned to him/her and he/she is only informed of the reasons for the refusal; the possibility of judicial review in cases where the application is found inadmissible is expressly prohibited by the Lex Ukraine.[61] Czech regional administrative courts have already found the preclusion of judicial review to be inconsistent with the right to appeal under Article 28 of the TPD and the right to effective judicial protection and a fair trial under Article 47 of the EU Charter, as interpreted by the CJEU in the case *El Hassani*.[62,63] However, this legal questions is still waiting for a unifying conclusion of the Czech Supreme Administrative Court.

[59] See the website of the Czech Interior Ministry, https://www.mvcr.cz/clanek/v-ceske-republice-je-aktualne-325-tisic-uprchliku-z-ukrajiny.aspx [accessed July 3, 2023].

[60] Art 5 of Lex Ukraine; the application for temporary protection is inadmissible under this provision of Lex Ukraine if the applicant had already applied for temporary protection in another EU Member State in the past, or if he or she submitted the application in the Czech Republic after having already been granted temporary protection by another EU Member State.

[61] Art 5 (2) of Lex Ukraine.

[62] Decision of the Regional Administrative Court in Plzeň, n. 55 A 6/2022-17; Decision of the Municipal Court in Prague, n. 11 A 80/2022-79; Decision of the Regional Administrative Court in Ústí nad Labem, n. 59 A 45/2022-30.

[63] Case *C-403/16*. Judgment of the *Court* of Justice of the European Union (First Chamber) of 13 December 2017.

The case law of the Czech courts continues to evolve and points to other problematic aspects of the regime established by Lex Ukraine too. One of them is the issue of secondary movements of temporary protection holders within the EU. Article 11 of TPD explicitly prohibits secondary movements,[64] however, according to the Council Implementing Decision, EU have exceptionally decided not to implement this provision of TPD.[65] However, Lex Ukraine considers any application submitted by a temporary protection holder from another EU Member State to be manifestly inadmissible.[66] If, on the other hand, the holder of temporary protection in the Czech Republic decides to move to another Member State, Lex Ukraine does not prohibit this possibility and links this decision to the termination of the status in the Czech Republic.[67] Criticism of this regime, which aims to avoid an increase in the number of individuals holding temporary protection status in the Czech Republic, didn't take a long time to come, both from the expert community as well as courts.[68] The Regional Administrative Court in Plzeň recently held in its decision: "*The Czech legislator has introduced a striking "double standard", where if a Ukrainian national obtains temporary protection in another Member State (presumably because he/she shifts his/her focus of interest there), the temporary protection granted in the Czech Republic will expire (...) However, the law does not envisage a move in the opposite direction, i.e. coming to the Czech Republic and enjoying a new temporary protection status on its territory, as it "sanctions" it by making the application inadmissible.*"[69] The court clearly had no sympathy for Lex Ukraine's legal solution for temporary protection holders moving to the Czech Republic. The Court described the "double standard" the Czech Republic opted for in Lex Ukraine as manifestly violating EU law and the principle of solidarity.: *"The Court therefore considers that the applicable Czech legislation is contrary to the principle of solidarity on which the entire temporary protection system, activated as a result of the Russian aggression in Ukraine, is based."* As in other cases, the court concluded that some of the grounds for concluding that the application for temporary protection is inadmissible go beyond the limits set by the TPD for exclusion from temporary protection and that Lex Ukraine is therefore contrary to EU law in this respect. However, the validity of the above-mentioned conclusions also remains to be decided by

[64] Art 11 of TPD provides that "*A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply."*

[65] Recital n 15 of the Council Implementing Decision.

[66] Art 5 (1) (d) of Lex Ukraine.

[67] Art 5 (8) (b) of Lex Ukraine.

[68] Veronika Víchová, "Problematické aspekty dočasné ochrany", in *Ročenka uprchlického a cizineckého práva 2022*, eds. Dalibor Jílek, Pavel Pořízek (Brno: Kancelář veřejného ochránce práv, 2022), 165-186.

[69] Decision of the Regional Administrative Court in Plzeň, n. 57 A 20/2023-66.

the Czech Supreme Administrative Court.

5. Rebuilding the bridge? The way forward

The question of permanent solutions to be offered to temporary protection holders once temporary protection has reached its time limit and the protection scheme under the Temporary Protection Directive ceases to exist remains unresolved. The question of "what comes after temporary protection" is of utmost importance given the limited period of time for which the TPD protects temporary protection holders. The temporary protection regime must end within three years of its activation, regardless of whether the armed conflict in Ukraine continues, i.e. no later than on 4 March, 2025. As of 1 April 2023, the Czech Republic has issued more than 500,000 visas to Ukrainians under the temporary protection scheme, 325,000 of whom have re-registered as of that date and are considered by the Czech state to be present on its territory.[70] Of these people, 68 % are of working age, 65 % are women and 35 % are men. Among those currently holding temporary protection, 28 % are children and 4 % are elderly.[71] It is a significant and diverse group of persons who have gradually integrated into Czech society despite the fact that their protection is temporary. Their stay is in itself an integrating fact that has impact on both sides, the host society and the beneficiaries: getting a job, establishing social relationships, and joining collectives means changing society. Although this will not have to be considered in the legal assessment of the situation of the beneficiaries of temporary protection after the end of their protection, as the basis of their status is explicitly defined as temporary, the state will need to consider this fact when assessing the appropriateness of any actual long-term solution for former holders of temporary protection.

Many of these persons are interested in staying long-term in the Czech Republic;[72] they are employed in the Czech Republic, and their minor children attend Czech schools. However, the current temporary protection scheme makes it impossible for them to move to any other alternative residence permitted under the general Act on the Residence of Foreigners. Thus, with certain exceptions, temporary protection holders are currently placed in the temporary protection regime and are waiting to see what the Czech Republic's reaction will be in relation to their future.[73] This temporary nature is foreseen by the Temporary Protection Directive, and its implementation is in line with the intention to grant protection

[70] See the website of the Czech Interior Ministry, https://www.mvcr.cz/clanek/v-ceske-republice-je-aktualne-325-tisic-uprchliku-z-ukrajiny.aspx [accessed August 15, 2023].
[71] Ibid.
[72] According to the research "Integration of refugees in the labour market and housing" from June 2023, prepared by the Czech non-profit organisation PAQ Research, 52% of the current temporary protection holders plan to stay in the Czech Republic.
[73] Enes Zaimović, "V čem tkví dočasnost dočasné ochrany?" in *Ročenka uprchlického a cizineckého práva 2022*, edited by Dalibor Jílek, Pavel Pořízek (Brno: Kancelář veřejného ochránce práv, 2022), 141–164.

for a limited period of time and then return to the country of origin. This also corresponds to the political stance of Ukraine, which is very keen, both in the Czech Republic and at EU level, on the return of its citizens to their homeland. Will the end of temporary protection mean return of the beneficiaries to the country of origin?

The recent actions of the Czech authorities do not provide an answer to the above-mentioned question. A legal solution has not yet been presented, except for the recent amendment to Lex Ukraine in the form of adopting a simple regulation to voluntary returns.[74] It is likely that the state has already set out possible scenarios. The steps it is now taking are likely to lead to involuntary return (in compliance with the TPD) or to the transfer of those who will not be able to return to refugee or subsidiary protection procedure[75] because it may well prove to be legally impossible for some of the current holders of temporary protection to return, should the armed conflict still be ongoing when the maximum three-year period for temporary protection expires. Based on the Art. 3 ECHR commitments and subsidiary protection regime under the EU law the refugees would most likely be eligible for this type of protection.

A clue to the direction of where the Czech Republic's future plans might go was offered indirectly by the Minister of the Interior in relation to the Czech Republic's political agreement to the adoption of the New Pact on Migration and Asylum – the package of changes in this area proposed by the European Commission. The current Czech Government's *yes* to the future of European asylum policy has provoked rough reactions in the Czech Parliament, given the planned solidarity mechanism that envisages the redistribution of applicants for international protection among the Member States.[76]

The Czech Minister of Interior and Prime Minister stressed together in reply to the objections of the opposition that the solidarity mechanism within the New Pact on Migration and Asylum will take the form of not just relocations, but also of alternative measures, including the financial contributions or capacity building of frontline Member States,[77] and that the Czech Republic and other Central European Member States will seek to secure certain exceptions within this new framework, considering the number of Ukrainians residing in their territories. The Minister of Interior reiterated later that mandatory relocations will remain to be a "red-line" for the Czech Government.[78] Most importantly, the Prime Minister and the Minister of Interior also noted that after the end of tem-

[74] Art 6 (8) of Lex Ukraine.
[75] Art 20 of TPD.
[76] See the Czech online newspaper iDnes: "Zrada občanů, řekl Babiš k dohodě o migraci. Fiala jí hájil, podržel Rakušana", June 2023, https://www.idnes.cz/zpravy/domaci/snemovna-mimoradna-schuze-migrace-ano-rakusan.A230614_140922_domaci_kop, [accessed July 15, 2023].
[77] *Ibid.*
[78] See the Twitter account of the Czech Minister of Interior Vít Rakušan, 15 June 2023, https://x.com/vit_rakusan/status/1669302164840239105?s=46 [accessed July 15, 2023].

porary protections, the Czech Republic will become a clear beneficiary of solidarity funds within the New Pact.[79] How could this be the case? A possible explanation is that Minister of Interior assumes that many Ukrainian national will enter refugee or subsidiary protection procedures after they cease to be protected by the framework of the Temporary Protection Directive. For hundreds of thousands of temporary protection holders, who are with growing uneasiness awaiting the decision on whether they will be able to stay, these are rather confusing statements. However, they may fit into the logic of decreasing rights and the discourse of the Czech Republic presented previously. When the Ministry of Interior of the Czech Republic responded to the question on why rules on benefits of the social security system connected to habitual residence in the Czech Republic do not apply to temporary protection holders, the answer was simple: the temporality of temporary protection entails the return to country of origin.[80]

Thus, there is no possibility in Czech national law to switch from temporary protection to the standard residence regime. Thus, the only future option under national law to allow persons to remain in the Czech Republic could be the option envisaged by the Temporary Protection Directive for former holders of temporary protection to enter protection procedures. At the level of EU law, the possibilities are also not open, again logically, since temporary protection is by definition temporary and EU law therefore presupposes the return of persons to their country of origin. At the same time, the question is whether the EU will not consider changes following Ukraine's political plan to join the EU. At the moment when Ukraine would become part of the Schengen area with the possibility of free movement of persons, considerations on how to deal with the current temporary protection regime are of course useless. However, Ukraine's accession to the EU is unlikely to take place before 2025, so this line of reasoning can be postponed. In terms of EU law as a whole, it would be worth considering amending the Temporary Protection Directive, if necessary, for example by extending the period for which temporary protection is granted. In addition, an amendment to the Long-Term Residence Regulation would also be an option.[81]

6. Conclusion: a test for the future

Temporary protection is a new and, at the same time, old and long-neglected phenomenon of EU asylum law. Despite the relative simplicity of TPD

[79] See the Twitter account of the Czech Minister of Interior Vít Rakušan, 8 June 2023, https://twitter.com/Vit_Rakusan/status/1666888162235277323?s=20 [accessed July 15, 2023], see also the Czech online newspaper iDnes, June, 13, 2023, https://www.idnes.cz/zpravy/domaci/reforma-migracnich-pravidel-evropske-unie-ministr-vnitra-rakusan.A230613_133129_domaci_kop? [accessed July 15, 2023].

[80] See the Czech online news server Česká justice, https://www.ceska-justice.cz/2022/11/vnitro-chce-prodlouzit-docasnou-ochranu-ukrajincu-zmekci-se-podminky-pro-lekare/ [accessed June 8, 2023].

[81] It is not an option now, see Art 3 (2) (b) of LTR Directive.

and its uncertain future under the New Pact on Migration and Asylum, it has demonstrated the viability of taking different paths as well as its ability to help millions of people in an efficient and rapid way. The current situation is unprecedented and represents a significant step forward in terms of effectiveness compared to the past. Thus, to answer the first question within this paper, temporary protection can indeed be an effective way of dealing with large influxes of individuals seeking protection abroad. Some of its stand-alone elements, including the group identification process, can be inspiring in their own right.

However, temporary protection has, above all, 'bought time' for EU Member States to address a future problem: the temporary nature of temporary protection. With the end of the temporary protection regime approaching in 2025, it is necessary to address what options will be offered to Member States and to temporary protection holders after this date. Member States, including the Czech Republic, may take inspiration from the past in offering a dignified solution for temporary protection holder. In the 1990s, the Czech Republic decided to take a different approach. It offered people who were then enjoying temporary refuge in the Czech Republic not only the opportunity of voluntary return, supported by investment in the places they were returning to, but also the opportunity to remain in the Czech Republic. In order to make this possible, it created the legal option of transferring to the regime of the Foreigners' Residence Act and offered those who had managed to build up such a background during their stay in the territory that they were able to meet the conditions for obtaining permanent residence the possibility of obtaining it. In addition, it allowed those who could not return for humanitarian reasons to apply for humanitarian type of protection.[82] Giving a free choice to beneficiaries of temporary protection could prove to be more useful than pursuing the temporality of protection. Especially if we are planning a common future with Ukraine in the EU.

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[82] For more information about the Czech Republic approach toward temporary refuge in 1990s see Věra Honusková, "The Czech Republic and Solidarity with Refugees: There Were Times When Solidarity Mattered," *Czech Yearbook of International Law*, no. 9 (2018): 242.

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II. International agreements

1. Convention Relating to the Status of Refugees 28 July 1951, 189 UNTS 137 (hence "Refugee Convention").
2. Convention Relating to the Status of Stateless Persons, 28 September 1954, 360 UNTS 117 (hence "1954 Convention").
3. Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 2013 U.N.T.S. 221 (hence "European Convention on Human Rights").

III. EU law

1. Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (hence "Council Implementing Decision").
2. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016 (hence "LTR Directive").
3. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) OJ L 337 (hence "Qualification Directive").

IV. Legislative acts of the Czech Republic

1. Act No. 221/2003 Coll., on Temporary Protection of Foreigners (hence "Temporary Protection Act").
2. Act No. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation (hence "Lex Ukraine").
3. Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic.

Managing Language Barriers by the Means of Administrative Law: Linguistic Dimension of the Ukrainian Crisis in the Czech Republic

Junior lecturer **Kamila BALOUNOVÁ**[1]
Senior lecturer **Vladimír SHARP**[2]

Abstract

Every encounter of two different cultures almost inevitably brings along an issue of translation and interpretation. When it comes to bureaucratic procedures, the Czech law requires that certain inter-linguistic actions be executed with the assistance of so-called court translators and court interpreters, i.e. highly skilled professionals holding a special license issued by the Ministry of Justice. While the regulatory regime of certified translation and interpretation had been designed as to satisfy the ordinary day-to-day needs of the judicial system, an unexpected and acute crisis concerning thousands of foreign nationals having not one, but two or more native languages, seemed to have put the relatively rigid system to the trial. Our presentation will address the problematic regulatory issues arising from this situation and propose both practical and theoretical or conceptual solutions to the existing problems.

Keywords: *interpreting; translation; administrative proceedings; emergency situations; migration crisis.*

JEL Classification: K23, K32

1. Introduction[3]

The ongoing international armed conflict in Ukraine, which began on February 24, 2022, has compelled many civilians to leave their homes in search of safety, protection, and aid. Large numbers of refugees from Ukraine have crossed borders into neighboring nations, while countless others have been internally displaced within the country. According to the data provided by the United Nations High Commissioner for Refugees, as of the end of April 2023, neighboring countries such as Estonia, Poland, Romania, and Slovakia had received over 5 million requests for temporary protection or similar national protection schemes from Ukrainian refugees. Poland recorded the highest number of applications, exceeding 1.5 million. As of April 30, 2023, the Czech Republic had received over half a million applications and ranks among the countries with the highest

[1] Kamila Balounová, Faculty of Law, Charles University, Prague, Czech Republic, E-mail: balounka@prf.cuni.cz; https://orcid.org/0000-0001-6874-6341.
[2] Vladimír Scharp, Faculty of Law, Charles University, Prague, Czech Republic, E-mail: sharp@prf.cuni.cz, https://orcid.org/0000-0003-2998-6865.
[3] K. Balounová has authored the sub-chapters 2, 3 and 4.2, V. Sharp has authored the sub-chapters 4.1, 4.3 and 4.5. The introduction, conclusions and section 4.4 have been jointly contributed to by both co-authors.

number of asylum requests.[4,5]

Interpretation and translation have played and continue to play a crucial role in communicating with Ukrainian nationals and managing the refugee crisis.[6] Refugees who find themselves in a new country commonly have slim to no command of the language spoken in that country. Despite the fact that both Ukrainian and Czech belong to the Slavic language family, it cannot be said that the languages are the same or that they can easily understand each other, and the majority of Ukrainian refugees are not able to communicate in Czech with desirable fluency, and oftentimes are not able to speak English as the *lingua franca* either. In situations like this, interpreters and translators and their skills come into play. Interpreters and translators constitute a metaphorical bridge between the refugees and the local authorities and help the refugees to fully understand the process of applying for asylum, legal regulations, court proceedings, and other aspects of their legal protection.

This chapter aims to unravel how the Czech legal system has dealt with the language barrier during the Ukrainian crisis and analyze the tools that the Czech legal framework has to offer in this regard. Furthermore, the chapter will examine some of the issues that have arisen upon the arrival of refugees, particularly how the Czech legal system has coped with the shortage of court interpreters and translators, the requirements placed on so-called *ad hoc* interpreters and translators, and how the court interpreters and translators have been remunerated during the peak of the crisis.

2. Interpreters and translators in the Czech legal framework

Translation and interpretation play important roles in judicial and administrative proceedings, as they allow individuals who do not speak the language used in these proceedings to fully participate and understand what is being said.

In judicial proceedings, translation and interpretation are crucial in ensuring that all parties involved in a case, including witnesses and defendants, fully understand the proceedings and can effectively communicate with the court. Similarly, in administrative proceedings, translation and interpretation can ensure that individuals who do not speak the language used by government agencies can fully participate in proceedings, such as applying for benefits or appealing a decision. This can help to prevent discrimination against individuals based on their language abilities and ensure equal access to justice.

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[4] See United Nations High Commissioner for Refugees (UNHRC). Operational data Portal. Ukraine refugee situation. Available from: https://data2.unhcr.org/en/situations/ukraine [cited on 17 September 2023].

[5] Statistics are compiled from data provided by authorities of each country. The statistics include all refugees who have left Ukraine due to the armed conflict.

[6] Jakub Handrlica, Vladimír Sharp and Kamila Balounová, "The administrative law of the Czech Republic and the public law of Ukraine: A study in international administrative law", *Juridical Tribune*, 12, issue 2 (June 2022), at pp. 200-201.

In both types of proceedings, qualified and certified interpreters and translators are essential to ensure accurate communication and interpretation. They must have a deep understanding of legal and administrative terminology in both the source and target languages and must be able to convey the meaning and nuance of the original text or speech accurately.[7]

Translation and interpreting services are free trades in the Czech Republic, so providers of these services must only comply with the terms and conditions of the Trade Law with no necessity for any professional knowledge or professional certification. By contrast, court (sometimes referred to as „sworn"[8]) translation and interpreting is governed by law (Court Translators and Interpreters Act no 354/2019 Coll.) in order to ensure adequate quality and professional knowledge.[9] Provided that a translator and/or interpreter wants to be listed as a court translator and interpreter, they have to comply with the conditions defined by the law, such as linguistic knowledge (of the Czech language and the foreign language), five-year experience, and the knowledge of legal regulations dealing with the profession, procedures where the profession is performed, and the actions related to the performance.

The Czech legal system requires the appointment of court interpreters and translators in judicial or administrative proceedings. This requirement can be found in procedural regulations such as the Code of Civil Procedure (Section 18), the Code of Criminal Procedure (Section 2, Paragraph 14, and Section 28), and the Administrative Code (Section 16, Paragraph 3, and Section 18, Paragraph 4). Additionally, in administrative law and many specific regulations, there are provisions specifying the need for the services of a court interpreter or translator. It is necessary to ensure whether a specific legal act requires the appointment of a court interpreter or translator, such as whether a special legal regulation imposes an obligation to submit an authenticated translation.

If a legal regulation does not stipulate the necessity of appointing a court interpreter or translator, the public authority may engage a community interpreter or translator. These individuals are usually engaged in interpreting or translation professionally but are not listed in the registry of court interpreters and translators. This means that they do not fulfil the rigorous requirements imposed on

[7] Esin Kucuk, "Temporary Protection Directive: Testing New Frontiers?", *European Journal of Migration and Law*, 25, issue 1 (March 2023), at pp. 1-30.

[8] This translation is borrowed from the English legal system and is technically incorrect in the context of Czech regulation. The Czech system is license-based meaning that in order to become enlisted as a court interpreter or translator it is required to undergo a formal procedure including the assessment of one's formal and actual qualification for that role. Unlike the English system, where the person is sworn-in (typically on an ad-hoc basis) to interpret in the proceedings, Czech interpreters and translators do not take such oath and perform their function on a professional basis.

[9] Legal regulation includes also Act No. 384/2008 Coll., on Communication Systems for Deaf and Deafblind Persons, which allows individuals with hearing impairments to choose the most suitable means of communication with other participants while ensuring their right to an interpreter. Act No. 108/2006 Coll., on Social Services, ensures free provision of interpreting services for persons with hearing impairments.

court interpreters and translators. For example, the Asylum Act does not specify in its provisions that it is necessary to appoint a court interpreter for acts, so the administrative authority may also use the services of a community interpreter not registered in the list of court interpreters and translators. This procedure speeds up and facilitates communication with the parties.

The influx of refugees during the Ukrainian crisis has presented challenges for the availability of court interpreters and translators. During the peak of the crisis, the demand for interpretation and translation services significantly increased and has often exceeded the existing resources, leading to shortages in some cases. At that time, the list of court interpreters and translators comprised 141 interpreters and translators between the Czech language and the Ukrainian language (cf. 490 court interpreters and translators were listed in the language combination Czech and Russian).[10,11] To address the shortage, the legal system had to rely on ad hoc interpreters and translators who were willing to assist in bridging the language gap. However, utilizing ad hoc professionals without formal certification posed certain challenges in terms of ensuring consistent quality and adherence to legal terminology.

The paradox of regulating court interpretation and translation services lies in a delicate balance. On the one hand, there is a strong and undeniable public interest in guaranteeing the utmost quality and effectiveness of these services within the legal system. Accurate interpretation and translation are crucial for ensuring fair and just legal proceedings, especially in cases involving individuals who do not speak the official language of the court. On the other hand, however, there is a certain amount of rigidity and bureaucracy connected with the public regulation. This rigidity can sometimes hinder the flexibility needed to adapt to sudden life situations and complicates the work of court interpreters and translators. It makes it difficult for people who need their help to access court interpreters and translators, any communication and handling especially urgent matters. Balancing the need for rigorous quality control with the necessity for adaptability and responsiveness to the specific needs of individuals within the legal system remains a challenge in the realm of court interpretation and translation services.

[10] Although with Act no. 354/2019 Coll. coming into effect, translation and interpreting were considered two different activities, the database of the Ministry of Justice had not enabled distinguishing between a court interpreter and a court translator. As a result, the exact number of court interpreters in the Czech Republic could not be defined with certainty.

[11] As of May 15, 2023, there were 124 court interpreters and 136 court translators for the Ukrainian language registered in the Ministry of Justice's list of court interpreters and translators. The majority of them were listed for both activities, interpretation and translation. Therefore, the overall number of available court translators and interpreters did not change significantly.

3. Regulation of interpretation and translation in the Administrative Code

Section 16, Paragraph 1 of the Administrative Procedure Code provides that the language of proceedings is Czech. If the parties to the proceedings do not speak the language of the proceedings, the Administrative Procedure Code grants them the right to an interpreter. This right is granted to anyone who declares that he or she does not speak the language in which the proceedings are conducted (Section 16, Paragraph 3), to citizens of the Czech Republic belonging to a national minority traditionally and permanently living in the territory of the Czech Republic (Section 16, Paragraph 4), and to deaf and deaf-blind persons (Section 16, Paragraph 5). The right to an interpreter may be claimed by the parties to the proceedings, i.e. both natural persons and legal persons acting on behalf of natural persons who do not speak the Czech language, if they declare that they do not speak the language of the proceedings.

The administrative authority is not obliged to ascertain whether a party to the proceedings is proficient in the language in which the proceedings are conducted. It is therefore necessary for the party to the proceedings to notify the administrative authority that the need for an interpreter has arisen.[12] The Administrative Code distinguishes between "proceedings initiated upon request" and "proceedings initiated ex officio. In the case of proceedings upon request, the costs of interpreting are borne by the party to the proceedings. Where proceedings are initiated *ex officio* or where a special law so provides, the administrative authority shall bear those costs. This special law is, for example, the Asylum Act, which provides in Section 22, Paragraph 2 that the Ministry of the Interior shall provide the party to proceedings with an interpreter free of charge in matters of international protection for acts for which refugee has been summoned or requested by the Ministry.

In the case of the right to interpretation in proceedings initiated upon request, the Administrative Code further distinguishes between an applicant who is not a citizen of the Czech Republic and a citizen of the Czech Republic belonging to a national minority. An applicant who is not a citizen of the Czech Republic and who has declared that he or she does not speak the language in which the proceedings are conducted has the right to an interpreter, but bears the costs of such interpreting. A citizen of the Czech Republic who belongs to a national minority that has traditionally and long lived in the territory of the Czech Republic (such minorities include the Ukrainian minority) has the right to make submissions and act in the language of his or her national minority. The cost of any interpreter is borne directly by the administrative authority in this case, regardless of whether the proceedings are conducted ex officio or upon request.

Ukrainian refugees, since they were not citizens of the Czech Republic

[12] Jana Filipová, 'K některým otázkám úpravy jednacího jazyka ve správním řízení'. *COFOLA Conference Proceedings* (2009), available from: https://www.law.muni.cz/ [cited on 16 May 2023].

when they entered the Czech Republic, bore the costs of an interpreter in administrative proceedings, unless the proceedings were ex officio or an exception provided for by a special law, since only citizens of the Czech Republic may invoke the rights of persons belonging to a national minority.

4. Regulatory status quo and the challenges of the refugee crisis

Every collision of the rigid regulatory regime with an unexpected and unpredictable event almost inevitably creates all sorts of problems associated with the fact that the legislator cannot foresee (and neither does nor should he intend to) the encounter of the "black swan".[13] This was also the case with the Ukrainian refugee crisis in the Czech Republic, when the public regulation of court interpretation and translations services found its natural limits. The temporary shortcomings caused by the existence of a legal "status quo" *vis-à-vis* the development of the situation presented the practice with a tough choice: stick to the peacetime requirements and deal with a shortage of qualified interpreters and translators, or adopt leniency and loosen the requirements, hence settling for a lower quality of the provided services. This subchapter deals with different problems identified during the crisis and offers solutions to these problems.

4.1. Procedural aspects of court interpreter or translator's appointment

The Court Translators and Interpreters Act is fairly strict when it comes to the process of the appointment of a court interpreter of translator, and for a good reason too. It is commonly known to the invited that the factual non-existence of the procedural framework could be easily misused to create unfavourable conditions for the appointees, especially when not provided with necessary background or an appropriate timing, or when appointed to perform in-person interpretation hundreds of kilometres from their registered seat.[14] For these reasons, the new law formalised the process of appointment, thus leaving rather small room for deviations from the prescribed procedure.

Firstly, the law stipulates that the public authority shall, as a matter of principle, appoint an interpreter with a registered seat or contact address in the

[13] The phenomenon of „black swans" in public law has already been described on different occasions by the very authors of this publication. For the sake of brevity, the curious readers are advised to explore this concept based on the existing literature, see e.g. Jakub Handrlica, Vladimír Sharp, and Gabriela Blahoudková, '"Black Swans" in Administrative Law', *The Lawyer Quarterly* 11, no. 3 (2021): 479–92.

[14] For instance, it was not uncommon that court translators and interpreters were appointed without any prior consultation and regardless of their availability or location, causing them to formally resign from individual appointments and complicate the situation even further.

district of the regional court in which the public authority has its seat or workplace.[15] When selecting an interpreter, the public authority must also take into account their specialization, if published in the register.[16] The public authority must also discuss the assignment with the interpreter or translator in advance, i.e. prior to their appointment, where such consultation must include the timeframe for the execution of the task and the detailed information on the subject of the interpretation or translation.[17] Secondly, it is normally required that the court interpreter or translator be appointed through a formal and written act of the public authority, which further acts as the legal base (title) for their remuneration, since the performance of court interpretation and translation is not done on a contractual basis but rather *ex actu*.

The appointment of a court interpreter or translator under the aforementioned regime may take days, if not weeks or months. It is probably needless to mention that some situations require much faster solution, where the public authority simply cannot afford to wait that long. Such situation can be demonstrated on a routine traffic control where traffic police may pull over a foreign national unable to speak any language common for him and the policeman. Since such situation may include the elements of the administrative proceedings,[18] it would be formally necessary to contact a local court interpreter (i.e. an interpreter with the registered seat in the district of the respective regional court), and, presuming that such person exists and is kind enough to pick up the phone in the middle of the night, further investigate whether such interpreter is available to interpret, formally appoint him, deliver the appointment notice, and finally wait for the interpreter to arrive and perform his duties.

To those curious as to how situations like that are resolved in practice, the Occam's razor suggests that the easiest explanation is most probably the correct one. It is highly probable that the policeman in the described scenario would simply call an interpreter and ask him to perform the interpretation over the phone, without any formal appointment prior to such interpretation. As for how this solution can be brought to compliance with the regulation, two possible solutions come to mind. The first solution is to accept the concept in which the appointment does not necessarily have to be formal and written in the first place. In this regard, the wording of the law seems to leave sufficient space for such interpretation in which the oral appointment executed in time-sensitive conditions would be considered valid. This solution can be argued to be quite practical and is not entirely unimaginable, as the administrative law is already familiar with other types of informal acts including the oral ones, such as police instructions

[15] See Section 25 of the Court Translators and Interpreters Act.
[16] Ibid.
[17] Ibid.
[18] This might be the case e.g. where the traffic ticket is issued and paid on the spot, which constitutes one of the so-called simplified administrative decisions.

etc.[19] The second solution would be to formalize the appointment ex post, thus creating a legal fiction that the act of appointment was written from the very beginning.

4.2. Refusal to interpret because of work overload

The Court Translators and Interpreters Act stipulates the obligation for court interpreters and translators to perform interpreting or translating services if the client is a public authority. This means that if they are asked to interpret or translate by, for example, the police, an administrative authority or a court, they must accept the contract. They may refuse to perform the act only in the cases specified in the exhaustive list (Section 19 Court Translators and Interpreters Act)[20]. Among the reasons for which court interpreters or translators may refuse to perform a task is "overload". The exact statutory wording is "*An interpreter shall refuse to perform an interpreting act if the number or extent of the interpreting acts assigned to him or her that have not yet been performed does not allow him or her to perform the next act in a proper and timely manner.*" Where a court interpreter or translator is to carry out acts previously commissioned by a public authority, he or she may refuse to carry out a further interpretation or translation if, for various reasons (such as time or difficulty), the performance of a new act would mean that he or she would not be able to carry out the already commissioned act in a timely manner (i.e. to submit the translation on time or to appear at the appointed time for the interpretation) or properly, i.e. with professional care. To take an example: if a court interpreter is called by the police and is needed at a police station for questioning that day, the court interpreter may refuse to interpret for the police if he or she is interpreting in court that day and would not be able to make it to the police station in time for questioning. Similarly, a court translator may refuse to translate for the prosecution if he or she already has so many translations that he or she would not meet the deadlines for submission.

The ability to perform another new act properly and in a timely manner is dependent on variable, subjective and individual factors, whether it is the time and expertise required for each act, the length of time to produce the act, or the personal ability and capacity of the court interpreter or translator. It is therefore a matter for the court interpreter or translator himself to assess whether he is capable of carrying out the next task in a proper and timely manner.

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[19] In the Czech administrative doctrine, such acts are traditionally referred to as „*interventions de facto*“ or „*factual acts*“. See e.g. Pavel Všetička, 'Povaha a Členění Faktických Úkonů Realizovaných Ze Strany Orgánů Veřejné Správy', *Časopis pro Právní Vědu a Praxi* 27, no. 1 (2019): 115–44, or Josef Staša, 'Faktické Zásahy', in *Správní Právo. Obecná Část*, by Dušan Hendrych, 9th ed. (C. H. Beck, 2016), 185–86.

[20] Section 19, Paragraph 1, Letter d) of the Court Translators and Interpreters Act (other grounds for refusal to perform the act include suspension of the authorisation to perform interpreting and translation activities, lack of authorisation in the language in which the act is to be performed or serious medical circumstances.

In the context of the refugee wave from Ukraine, the demand for court interpreters and translators with Ukrainian language skills has increased dramatically.[21] This inevitably led to situations where public authorities had difficulty finding a free court interpreter or translator due to high workload. In cases where no court interpreter or translator was available and it was not possible to postpone the procedure, the public authorities appointed ad hoc interpreters and translators.[22]

During the peak of the refugee crisis in the Czech Republic, it's worth highlighting the significant role played by community interpreters and volunteers. It should be noted that initial communication with refugees did not have to be provided by court interpreters or translators. The refugees who arrived on the territory of the Czech Republic found themselves in a completely unfamiliar environment, without knowing what further steps to take and what all had to be arranged. In information centres, call centres or other similar locations, the services of community interpreters were sufficient to provide newcomers with basic information. Due to the large number of refugees who headed to the Czech Republic during the peak of the crisis, intercultural workers and volunteers, often Ukrainians living in the Czech Republic for a long time, but were not interpreters by profession, actively contributed to this initiative.

It is also important to note that, although Russian and Ukrainian are not identical languages, they are close to each other. Both languages belong to the East Slavic language group. The grammar of the two languages is similar, both languages use the alphabet, however, there are letters in both the Russian and Ukrainian alphabets that are not used in the latter. A substantial difference is also the phonetic difference of the same letters, as well as the different vocabulary. It is easier for Ukrainians to understand Russian than vice versa, which is due to the influence of the Russian language on Ukrainian territory (in education, television and radio broadcasting, etc.).[23] Therefore, during the peak refugee influx, we could see Russian-speaking interpreters as well as Russian-speaking volunteers trying to assist in facilitating basic communication. This collaborative effort was instrumental in ensuring that refugees received the support and information they desperately needed during their initial days in the country.

[21] See Iryna Gerlach and Olha Ryndzak, "Ukrainian Migration Crisis Caused by the War", *Studies in European Affairs*, 26, issue 2 (April 2022), at pp. 17-29.

[22] This possibility is granted to public authorities by the Court Translators and Interpreters Act in Section 26.

[23] Interview with Mgr. Uljana Cholodová, Ph.D. from the Department of Slavic Studies of the Faculty of Arts of the Palacký University in Olomouc on CT 24 from March 1, 2022. Available from: https://ct24.ceskatelevize.cz/.

4.3. Transcription of names

Another practical problem that has intensified during the Ukrainian refugee crisis is almost purely linguistic, and that is the inconsistency in transcription (or, more precisely, transliteration[24]) of names from the Cyrillic alphabet into the Roman alphabet used in the Czech Republic and other European countries.[25] The core of this problem lies predominantly in the two following factors.

Firstly, there is more than just one way to transcribe given names and surnames, and it can be argued that there is no "correct" way either. Names and surnames can be transcribed based on different, more or less legitimate approaches, e.g. phonetically (where more than just one phonetic transcription is imaginable), historically etc. This can be demonstrated on the example of different possible transcriptions of the surname "Шварцман", which could be transcribed into English as "Shwartsman", "Shvartsman" or "Schwartzman", into German as "Schwarzman", "Schwartzman" or "Schwarzmann", or into Czech as "Švarcman". From the Czech perspective, an argument can be made that the correct transcription is "Švarcman" since it fully corresponds to the Cyrillic original phonetically. However, it can also be objected that the historical German roots of this surname demand that it be transcribed according to the German rules of grammar. The same, of course, goes for the given names, including the most seemingly universal ones. For instance, the name "Александр" of Greek origin is being transcribed on different occasions as "Alexander", "Aleksandr", "Aleksander" or "Alexandre".

Secondly, as the result of the adoption of different standards for the romanization of the Russian Cyrillic alphabet during the soviet era,[26] it became customary and common that names and surnames are transcribed in official documents such as passports using the English mutation.[27] With the English language being the *lingua franca* of the 21st century, this would appear as a legitimate approach: after all, it is not technically possible nor practically executable to transcribe the names into all languages. Nevertheless, this approach creates two problems. The first problem has to do with the official transcription *per se* and the qualification of the responsible civil servants: since the names are generally transcribed into English language only phonetically (and not "grammatically" if you will), such romanization can create a considerable amount of confusion. As a matter of example, the author has personally witnessed the name "Джон" being transcribed as "Dzhon" instead of "John". The second problem lies in the paradox

[24] In the following text, the not entirely technically correct term "transcription" will be used for the sake of comprehensibility.

[25] Sometimes referred to as the Romanization of Russian.

[26] Such as OST 8483 introduced on 16 October 1935.

[27] See 'Romanization Of Russian', in *Academic Accelerator*, Encyclopedia, Science News & Research Reviews, accessed 20 September 2023, https://academic-accelerator.com/encyclopedia/romanization-of-russian.

where the Czech Republic on the one hand ought to recognize the official foreign document, and thus also accept the transcription provided in such document, while on the other hand has its own standards of transcription, according to which the name "Джон" from the aforementioned example would have to be entered into the official registers neither as "Dzhon" nor as "John", but as "Džon".

As for the legal dimension of this problem, the standard of transcription may be viewed through the lens of two regulatory regimes. From the perspective of court translation, there are no provisions explicitly stipulating the requirements for the transcription, and court translators are hence left with a lot of room for creativity, which is only partially limited by the informal and non-binding best practice standards. Despite the fact that best practice as such forms naturally and is more of a factual standard than a formal one, the situation around the Ukrainian refugee wave had escalated to the extent where the Ministry of Justice of the Czech Republic issued a regulatory benchmark suggesting a universal standard for transcription.[28] According to this recommendation, it is desirable to use a hybrid model and transcribe names and surnamed both according to the official foreign document, and to the Czech standard.

From the perspective of public administration as such, or more precisely from the viewpoint of public registries and official evidence, the standard of transcription is formalized through the Government Regulation No. 594/2006 Coll., on the transcription of characters into the form in which they are displayed in the information systems of public administration. This rather technical regulation contributes to an undesirable duality, i.e. a state where the same person is registered in different systems under different names. Developing the abovementioned example, a person named "John Doe" may be registered in different systems both as "Dzhon Do" (according to the official transcription provided in the foreign document), and "Džon Dou" (according to the cited government regulation), neither of which are entirely correct. Moreover, since the government regulation on transcription is only binding for the public administration and not for court translators, should a translator choose another transcription standard, this could be hardly qualified as an administrative offence, making the ministerial benchmark effectively unenforceable.

The state in which the same person is forced to officially act under different names (if in different stages of one's life) is confusing and far from ideal. Conceptually, this issue could be addressed simply, and that by using only one transcription at a time and potentially changing it on an individual basis. In that case, should Džon Dou qualify for an official name change and be willing to do so, the transcription could be changed to John Doe based on the application of the person in question.

[28] 'Dohledový Benchmark č. 1/2022 k Přepisování Cizích Jmen a Příjmení, Jakožto i Zeměpisných Označení Do Českého Jazyka Při Výkonu Překladatelské Činnosti' (Ministry of Justice of the Czech Republic, 17 October 2022), https://tlumocnici.justice.cz/wp-content/uploads/2022/10/Benchmark_c__1_2022_k_prepisovani_cizich_jmen_a_prijmeni.pdf.

4.4. Remuneration for the interpretation and translation services

Further issue that has intensified during the Ukrainian refugee crisis was the remuneration of court translators and interpreters. It is no secret that the financing of translation and interpretation services has long been surrounded by controversy and critique.[29] However, the crisis brough another vital factor into the equation, and that is the increased short-term demand for translators and interpreters from Russian and Ukrainian languages on one side, and the insufficient supply of such professionals on the other.

The universal economic laws of supply and demand tell us that with the increased demand must also come an increased price of the services in question. While it would most certainly be the case in free market conditions, the remuneration for the interpretation and translation services provided to the public authorities is governed by the Decree of the Ministry of Justice of the Czech Republic No. 507/2020 Coll., on the remuneration and compensation of court interpreters and court translators. While the decree generally allows for the increase of the regular rates, such increase is limited by various factors. For instance, Section 7 paragraph 2 of the decree provides that the remuneration rate for an interpretation or translation can be increased by up to 30 % if the act is demanding for a reason other than those explicitly provided elsewhere and accounted for in the basic rate. Section 7 paragraph 4 of the decree further stipulates that, should it be necessary to perform the interpretation or translation on a day off (such as weekends or state holidays) or a non-working day or during the nighttime determined by the Labor Code, the rate of remuneration for the interpretation or translation can be increased by up to 50 %.

The question of whether the aforementioned increase is reasonable and sufficient is more of a philosophical and economical nature than a legal one. As far as the regulation is concerned, the most obvious shortcoming of the described regime is that the increase is not claimable nor obligatory, while there are also little to no objective criteria for granting such increase. In order to provide incentives for the public authorities to adopt a good practice of remunerating court translators and interpreters for their work fairly, the Ministry of Justice of the Czech Republic issued a communique appealing to other authorities to make use of the cited provisions of the decree on remuneration.[30] While the communique

[29] See e.g. Veřejný ochránce práv, 'Ombudsman Na Sněmu Soudcovské Unie Upozornil Na Nedostatečné Odměny Znalců a Tlumočníků Nebo Neutěšenou Situaci Pomocného Justičního Personálu a Zaměstnanců Soudů', 14 October 2022, https://www.ochrance.cz/aktualne/.

[30] Ministry of Justice of the Czech Republic, 'Dohledové Sdělení Ke Stanovování Odměn Za Tlumočení a Překlady ve Ztížených Podmínkách', accessed 20 September 2023, https://tlumocnici.justice.cz/wp-content/uploads/2022/03/Dohledove_sdeleni_k_odmenovani_tlumocniku_rustiny_a_ukrajinstiny.pdf. The communique has been revoked as of 16th June 2023.

provides some objective criteria to build on, each case had to be assessed individually taking into account different challenges encountered by court translators and interpreters. Apart from the overall pressure and overworkedness, such factors may include the circumstances of the translation or interpretation, e.g. the fact that the interpretation is being done over the phone.

Over-the-phone interpretation can be generally considered more challenging for the court interpreter for several reasons. First, visual cues and non-verbal expressions such as gestures, facial expressions, and body language are eliminated when interpreting over the phone. These signals can be important for understanding and interpreting the speaker's intent. Without them, the interpreter must rely solely on vocal communication. Second, the telephone connection may be prone to technical problems such as poor sound quality, distortion, noise or dropped connections. These problems can make it difficult to hear and understand the spoken word, increasing the interpreter's effort. A third problem is the limited availability of information. When interpreting over the phone, the interpreter does not have direct access to visual or material sources of information (such as the interpreting venue, presentations, pictures, etc.). Interpreting over the phone is also more taxing on the hearing. The absence of visual cues means that the interpreter must listen more carefully and focus on each word to get as much information as possible. This leads to faster fatigue of the interpreter and a consequent reduction in performance.

It must also be considered that there are very few ways to increase the efficiency of the translation and interpretation services, since almost all the activities ought to be carried out by the translator or interpreter personally and thus cannot be delegated. The Court Translators and Interpreters Act obliges a court interpreter to interpret in person.[31] This means that a court interpreter cannot authorise another person to interpret for them before a public authority, but could theoretically use the assistance of other persons, e.g. a consultant or their own staff, to prepare materials, etc. If a court interpreter or translator does not personally carry out the interpreting or translating activity, this could be considered an administrative offence.[32]

4.5. Ad hoc translation and interpretation

Further issue connected to the short-term shortage of court translators and interpreters is the issue of the so-called *ad hoc* (one-off) appointment of a translator or an interpreter. Section 26 of the Court Translators and Interpreters Act allows the public authority to appoint a person, who is licensed neither as a court interpreter nor translator, as an *ad hoc* translator or interpreter on a single occasion, if a licensed translator or interpreter is not available. As for the qualification of such person, the law only provides that they ought to process the "*professional*

[31] See Section 4, Paragraph 2 of the Act.
[32] Under Section 37, Paragraph 1, Letter c) or Paragraph 2, Letter c) of the Act.

knowledge required for such translation or interpretation". While it is clear that the problem of non-availability of court interpreters and translators has to be addressed somehow, this particular procedural regime appears to have created such a *laissez-faire* when it comes to criteria for such substitution, that it creates two problems.

First of all, it is not clear what qualification needs to be possessed by a person in order to be appointed an *ad hoc* translator or interpreter. While the qualification requirements for the purpose of the licensing procedure are explicitly specified, in case of *ad hoc* provision of services the wording of the law is extremely vague and can most certainly be misused to appoint a person who is objectively unqualified for such role. Second of all, even if the qualification requirements were specified, it is not clear how the appointing authority is supposed to verify the qualification. There is no procedural framework for such verification whatsoever, meaning that the public authority could even theoretically accept an oral affidavit from such person, i.e. their statement that they possess necessary qualification. This issue inevitably circles back to the quasi-philosophical question of whether a "bad interpreter" is better than "no interpreter".

5. Conclusions

One of the greatest challenges of public regulation of services (especially the quasi-public ones) lies in the delicate balance between the need to satisfy the demand for such services on the one hand, and the public interest in assuring the high quality of such services on the other. During the times of the short-term (if critical) increase in demand for translation and interpretation services, the regulator is forced to make a tough choice: satisfy the demand by settling for the inferior quality of services, or stick to the strict requirements and be left with a shortage of qualified professionals. Since it would appear that the law of supply and demand are uncompromising in this regard, the optimal solution would be to motivate the qualified translators and interpreters with financial incentives, i.e. by providing them with a reasonable remuneration for their services. This approach could be adopted only partially under the current regulatory regime, not mentioning the political aspects concerning its the funding. Other challenges arisen from the refugee crisis could be addressed using the suggestions outlined in this chapter: while some of them would require legislative changes, other could be resolved by means of legal interpretation and minor adjustments to the current practice.

Transcription issues from the Cyrillic alphabet to the Czech language

Cyrillic alphabet	English transcription	Czech transcription according to the applicable Government directive
є	ye (at the beginning of the word), or ie	je
ж	zh	ž
ї	yi (at the beginning of the word), or i	ji
й	y (at the beginning of the word), or i	j
х	kh	ch
ц	ts	c
ч	ch	č
ш	sh	š
щ	shch	šč
ю	yu (at the beginning of the word), or iu	ju
я	ya (at the beginning of the word), or ia	ja

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2. Iryna Gerlach and Olha Ryndzak, "Ukrainian Migration Crisis Caused by the War", *Studies in European Affairs*, 26, issue 2 (April 2022), at pp. 17-29.
3. Jakub Handrlica, Vladimír Sharp, and Gabriela Blahoudková, ""Black Swans" in Administrative Law', *The Lawyer Quarterly*, 11, no. 3 (October 2021), at pp. 479–92.
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10. 'Romanization Of Russian', in *Academic Accelerator*, Encyclopedia, Science News & Research Reviews, accessed 20 September 2023, https://academic-accelerator.com/encyclopedia/romanization-of-russian.

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SECTION III.
UKRAINIANS IN THE CZECH REPUBLIC UNDER TEMPORARY PROTECTION

Ukrainians under the Temporary Protection of the Czech Republic: From Theory to Practice

Ph.D. candidate **Nataliya ISAYEVA**[1]

Abstract

The article is devoted to the study of theoretical and practical aspects of the status of persons with temporary protection in the Czech Republic. Normative provisions of international legal acts and national legislation regarding the protection of this category of persons have been considered. It is outlined what legal consequences are caused by such status for both the persons who are its recipients and for the country that grants the status to a person. The information on the practical problems faced by Ukrainians with the status of temporary protection is provided. The ways of overcoming the issues by the authorities of the Czech Republic are explored, and the author's recommendations for improving the regulatory and legal framework are provided in order to resolve conflicts and gaps in the legislation.

Keywords: *Ukrainians, temporary protection, human rights, social-economic right, cultural rights.*

JEL Classification: K23, K32, K38

By our native hearth in Ukraine, boundless and wide,
We believed that elsewhere is a more perfect site.
Warm, gentle people embrace us with grace,
Yet better than our homeland, we'll never find a place.
P. Maga[2]

1. Introduction

Due to the military invasion of Ukraine by russia and the acti ve military actions on Ukrainian soil, the topic of population migration and geopolitics is one of the most pressing in the world. Ukraine and all countries worldwide have faced significant socio-economic challenges as such a massive population migration in a short period has never occurred in recent history.

According to the data from the State Statistics Service of Ukraine, on

[1] Nataliya Isayeva, Doktor of Philosophy in Law (Ukraine), Ph.D. candidate, Faculty of Law, Charles University, Prague, Czech Republic, E-mail: n.s.isayeva@gmail.com, https://orcid.org/0000-0001-6939-2223.

[2] "Я так хочу додому", pisni.org.ua, acessed September 26, 2022, https://www.pisni.org.ua/songs/4459636.html.

February 1 2022, the population of Ukraine was 41,130,432 people[3]. As of October 4, 2022, over 7.6 million refugees from Ukraine have been recorded across Europe, with 4.2 million registered for Temporary Protection or similar national protection schemes. Inside Ukraine, more than 7 million people have been internally displaced, 17.7 million people are in desperate need of humanitarian assistance, including 3.3 million children.[4] In particular, in the Czech Republic, various forms of protection have been granted to 543,190 individuals, with 341,177 Ukrainian citizens currently residing in the territory of the Czech Republic[5].

It is important to note that while Ukrainians under temporary protection are commonly referred to as 'refugees' in everyday language, there are crucial legal distinctions between these statuses 'refugee' and 'internally displaced person.' These distinctions have significant legal implications, both for individuals who hold these statuse and for the country that grants them. In this discussion, the status of 'individuals under temporary protection' within the Czech Republic as a member of the European Union and a participant in the Schengen Area will be clarified. Most Ukrainians residing outside Ukraine currently hold this status. Conversely, individuals who have relocated exclusively within Ukraine's borders due to the ongoing conflict are classified as 'internally displaced persons' and therefore are not subject to international legal protection and receive protection only from Ukraine.

2. Social, economic, and cultural rights of individuals with temporary protection in the Czech Republic

In light of the European border openings and the introduction of the temporary protection mechanism, the question of providing the socio-economic rights of individuals under temporary protection within specific EU nations, notably the Czech Republic, has become a significant concern. Providing shelter to Ukrainians amidst the russian-Ukrainian war and ensuring the socio-economic rights of Ukrainians under temporary protection serves as a testament to solidarity with Ukraine and an expression of support for the Ukrainian nation.

The legal framework governing the rights and obligations of individuals under temporary protection on the territory of the Czech Republic includes the

[3] Mariia Timonina, ed., Resident Population of Ukraine by Sex and Age, as of January 1, 2022 (Kyiv: State Statistics Service of Ukraine, 2022), https://ukrstat.gov.ua/druk/publicat/kat_u/2022/zb/06/roz_nas22.pdf.ps://ukrstat.gov.ua/druk/publicat/kat_u/2022/zb/06/roz_nas22.pdf.

[4] "Ukraine emergency response in neighbouring countries: Supporting children and families on the move across Europe," www.unicef.org, accessed September 3, 2023, https://www.unicef.org/eca/ukraine-emergency-response-neighbouring-countries.

[5] "Ukraine Refugee Situation", Operational Data Portal: Refugee Situations, accessed 11 August 2023, https://data.unhcr.org/en/situations/ukraine#ga=2.228732760.514168680.1646989952-176134281.1646551413.

Temporary Protection Directive 2001/55/EC[6], Act No. 221/2003 Coll. On Temporary Protection of Foreigners[7], and the National Law 'Lex Ukraine', along with regular amendments regarding temporary protection, accommodation, health insurance, labour rights, social security, education, and others.

A person has the right to be under temporary protection in only one EU country at the same time. That is, if a person, after receiving temporary protection in the Czech Republic, requests such status in another EU country, the corresponding status in the Czech Republic is annulled.

It should be noted that during the year of the Russian-Ukrainian war, amendments were made to the current legislation of the Czech Republic more than 5 times. This necessity is related to new challenges which the Czech Republic faced during the stay of Ukrainians with temporary protection on its territory and the prompt response of the legislative power to the life challenges and difficulties of Ukrainians as well as public authorities of the host country.

The rights of individuals under temporary protection encompass the following: the freedom to move and reside within Czechia; residence and work authorizations; social assistance (beneficiaries who do not have sufficient resources may benefit from dedicated social services); health assistance: beneficiaries have full free access to the public health insurance system; family reunification: upon request, temporary protection will be granted to close family members who can prove that the family was united in the country of origin and that you were separated because of the war in Ukraine. Close family members are considered: spouse, registered partner, unmarried minor child and adult dependent relative living with the family[8]

The rising number of refugees has attracted significant political attention, largely because Ukrainian refugees are concentrated in specific geographic areas. To be more precise, approximately one-third of these refugees have settled in three of the Czech Republic's largest cities. Two-thirds of Ukrainian refugees are female of working-age (18–64), and around one-third are children up to 15 years of age. The high geographic concentration of refugees and the high number of school and kindergarten-age children has the potential to exert strong pressure on the Czech school and health care systems, as well as the housing market.[9]

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[6] 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, 212 OJ L § (2001).

[7] Zákon č. 221/2003 Sb., o dočasné ochraně cizinců [Act No. 221/2003 Coll., Act on the Temporary Protection of Foreigners].

[8] European Union Agency for Asylum, *Czechia* (Luxembourg: Publications Office of the European Union, 2022), https://data.europa.eu/doi/10.2847/546269.

[9] Davit Adunts, Bohdana Kurylo, and Jitka Špeciánová, *Location Choice and Dispersal Policies: Ukrainian War Immigrants in the Czech Republic* (Prague: Research Institute for Labour and Social Affairs, 2022), https://www.rilsa.cz/wp-content/uploads/2023/02/Policy-Paper-VUPSV-v.-v.-i.-c.3-2022.pdf.

The right to housing: Since the majority of Ukrainians chose to reside in large cities, believing that it would be more likely to find employment and integrate into the host community, they encountered unforeseen challenges.[10] For instance, the availability of social housing in such major cities as Prague and Brno was catastrophically insufficient, and renting accommodation with monthly costs of 15,000 Czech crowns or more was often considered unfeasible. Normally, to rent housing, individuals needed to provide evidence of employment and financial capability to cover the rent (landlords needed assurance that they would not encounter payment issues in the future). This complicates the housing search process for newcomers who have recently arrived in the country and have not yet secured employment, even though they may have some savings to pay for accommodation.

Until July 1, 2023, there was a law in effect in Czechia that allowed Ukrainians to live in accommodation for which the state directly compensated its citizens. Consequently, Ukrainians had the chance to reside in hotels, hostels, sanatoriums, individual apartments, or cohabitate with the local citizens under one roof. The state covered these accommodation expenses by transferring funds directly to the owners. Starting from July 1, 2023, changes in legislation came into effect under Lex Ukrajina 5[11], altering the mechanism of housing cost coverage, reducing the list of individuals eligible for social housing and humanitarian aid. As a result, funds for accommodation are transferred to Ukrainians (with certain exceptions) and factored into their monthly humanitarian assistance, provided that individuals under temporary protection are entitled to it. This has introduced a level of complexity for Ukrainians. Prior to this point, they only needed to enter into a rental or lease agreement and provide their passport details. Landlords would subsequently apply for housing compensation provided through a specialized website. Ukrainians were not directly involved in this process until July 1, 2023. It is also noteworthy that while the initial wave of individuals seeking temporary protection did not require proof of residence confirmation, the current process demands documentary confirmation of existing residence when applying for temporary protection visas.[12] Securing long-term rental accommodation within three days of arriving in Czechia has proven to be particularly chal-

[10] Marie Jelínková, František Ochrana and Michal Placek, "The admission of Ukrainian refugees from the perspective of municipalities in Czechia", *Geografie*, 128, issue 3 (June 2023): pp. 271-299.

[11] Zákon č. 75/2023 Sb. Zákon, kterým se mění zákon č. 66/2022 Sb., o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, ve znění pozdějších předpisů, a další související zákony [Act No. 75/2023 Coll. Act amending Act No. 66/2022 Coll., on measures in the field of employment and social security in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, as amended, and other related laws].

[12] See also Carmen Azcarraga Monzonis, "The mass influx of displaced people from Ukraine and their temporary protection", *Revista General de Derecho Europeo*, 57 (May 2022), at pp. 90-92.

lenging. The address of such individuals is registered in a special registry maintained by the Ministry of Internal Affairs. If a person moves to a different address, they must inform the Czech Ministry of Internal Affairs about the change in registration. This is especially crucial since other governmental entities, such as employment centers and health insurance providers, exchange information with this registry. This eliminates the need to send documents to various organizations separately.

For the purpose of comparison, let's consider the registration of residence for internally displaced persons in Ukraine. Unfortunately, the registry of residence and the registry of internally displaced persons in Ukraine are not interlinked. Even when a person is registered as an internally displaced person, they still need to separately inform different structures and authorities. In practice, this can lead to certain difficulties. For instance, typically after a lawsuit is filed, a judge requests information from the Unified State Demographic Register to verify whether the territorial jurisdiction of the case is accurately determined. If a person has permanent registration in temporarily occupied territory but is registered as an internally displaced person in the Unified State Demographic Register, there is no information about their temporary registration. Therefore, courts need to directly query the Ministry of Social Policy to obtain additional information from the Unified Database of Internally Displaced Persons. This action sequence requires the additional time, the efforts of employees, and financial resources where there should ideally be no such requirement. By examining the example of information exchange with the Czech Ministry of Interior's registry, we can observe the harmonious function and established communication between government entities, leading to savings in finances and the conservation of human resources. Consequently, we believe that Ukrainian government authorities need to study the Czech experience in interaction and information exchange, enhancing operations and information exchange not only between the Unified State Demographic Register and the Unified Database of Internally Displaced Persons, but also between other registries that often duplicate certain information or, at times, even contain inconsistencies. Therefore, it remains important that theory is consistently aligned with practice, and Ukraine undertakes reforms to align national legislation with European standards.

Regarding the medical field and health insurance. Initially, upon issuance of temporary protection visas, medical insurance was provided immediately, covered by the receiving country. However, changes to legislation that came into effect in June 2022 altered this arrangement. According to these changes, the period of free medical insurance was reduced from one year to 150 days. Subsequently, a system was introduced where the majority of Ukrainians are required to pay for their own medical insurance, except for specific categories of citizens defined by law as vulnerable (children under 18, students under 26, persons with disabilities, individuals over 65, those caring for a child under 7, and some others). The law also stipulated that individuals registered with the Labor Office as

job seekers are entitled to have their medical insurance covered.

Thus, the government aimed, firstly, to encourage Ukrainians to integrate into society, learn the Czech language, and find employment in Czechia. Secondly, it aimed to reduce the burden on the country's budget for economic stabilization and increase revenue to the national budget through higher tax payments and reduced expenditures. Moreover, the labor market for individuals under temporary protection is fully open, with no restrictions in place. Specific permits are not required. Freedom of movement and entitlements to work also enhance labour market integration, thereby potentially helping to avoid the mental distress and depression that are sometimes associated with restricted labour market access.[13]

While individuals under temporary protection have full access to the medical system and insurance, finding doctors, including pediatricians, family doctors, dentists, and specialists, to register and serve them remains another challenge for this group. The number of doctors in the Czech Republic is not proportionate to the number of Ukrainians who arrived simultaneously, many of whom were children in need of medical care, including psychological support. The stress they experienced affected their health and exacerbated chronic illnesses.

To improve the healthcare situation, the Ministry of Health, in response to the Ukrainian crisis, established UA POINT within clinical hospitals. Here, Ukrainian refugees in need receive immediate medical assistance. These services are available for adults, children, and teenagers, and there is also a gynecological and obstetric clinic if needed[14]. Translation services are provided as well. This initiative showcases the Czech government's ability to react swiftly to challenging situations, addressing them promptly, even if it's on a local scale and involves providing urgent medical assistance.

However, individuals under temporary protection still need to find a regular doctor for themselves and their children. It's essential to check if the doctor they approach works with the same insurance company in which they are registered; otherwise, they will have to pay for the visit out of their pocket. Furthermore, in order to address the issue of the shortage of medical staff, not only in the Czech Republic but also with the goal of integrating Ukrainian healthcare professionals, the Ministry of Health of the Czech Republic has developed a Methodo-

[13] Niklas Nutsch and Kayvan Bozorgmehr, "Der Einfluss postmigratorischer Stressoren auf die Prävalenz depressiver Symptome bei Geflüchteten in Deutschland. Analyse anhand der IAB-BAMF-SOEP-Befragung 2016", *Bundesgesundheitsblatt - Gesundheitsforschung - Gesundheitsschutz* 63, no. 12 (1 December 2020): 1470–82, https://doi.org/10.1007/s00103-020-03238-0.

[14] "UA POINT – медичне обслуговування українських біженців," Ministerstvo zdravotnictví České republiky, March 30, 2022, https://www.mzcr.cz/uapointy-lekarska-pece-pro-ukrajinske-uprchliky/.

logical Instruction for the employment of both medical and non-medical personnel[15].

3. The right to work

Under current EU and Czech Republic legislation, individuals with temporary protection have unrestricted access to the labor market. The so-called 'lex Ukraine' has taken a step in the right direction in this respect by allowing refugees free access to the labour market. Its regulation would be administratively unmanageable given the expected numbers of arrivals. It would also be counterproductive, as it would necessarily increase the refugees' dependence on various forms of assistance and slow down their integration.[16]

As most Ukrainians did not speak the Czech language finding a job that matched their qualifications required time for language acquisition and the validation of qualifications obtained in Ukraine. Persons under temporary protection have the right to register for job search assistance at the Czech Employment Office. He re, experts use a database to match existing vacancies to individuals' qualifications and job preferences. The Employment Offices also organize Czech language courses to expedite the job search process and the adaptation of Ukrainians.

However, as mentioned earlier, the majority of those under temporary protection in the Czech Republic are women and children. Consequently, women face several disadvantages in European labor markets. They are less likely to find employment, are often engaged in lower-paying roles, and earn smaller wages compared to men, even within similar occupations. Immigrant women, in particular, experience these disadvantages on multiple levels – as women, as immigrants, and as immigrant women.[17]

In addition, as a rule, women arrived in the Czech Republic completely alone with children, and therefore, in addition to employment and earning money, women still need to take care of children and devote time to them, take care of housing, prepare food. All without the usual support network. The lack of available schools and daycare centres exacerbates this challenge. The demand for these services far exceeded the offers in this area. Despite these challenging circumstances Ukrainians woman try to be independent, find work and earn money for their family by themselves. They understand that if they fail to integrate, find work, and balance all their responsibilities on their own, they may be compelled

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[15] "Zaměstnávání Zdravotnických Pracovníků Z Ukrajiny v ČR," Ministerstvo zdravotnictví České republiky, April 7, 2022, https://www.mzcr.cz/zamestnavani-zdravotnickych-pracovniku-z-ukrajiny-v-cr/.

[16] Štěpán Mikula, "Lex Ukraine is a step in the right direction, but it does not offer a long-term solution." posted 15 March 2022 accessed May 15, 2023, https://www.econ.muni.cz.

[17] Tommaso Frattini, Irene Solmone, *6th Migration Observatory Report: "Immigrant Integration in Europe"* (Fondazione Collegio Carlo Alberto and Centro Studi Luca d'Agliano, 2022), https://www.fieri.it/wp-content/uploads/2022/03/Obs_Mig_6_Annual_Report.pdf.

to return home, exposing themselves and their children to potential risks.

4. The right to education

Persons under temporary protection in the Czech Republic, along with their children, have unrestricted access to education. In this regard, the European Commission has played a significant role by developing a "roadmap"[18] for EU member states that have implemented temporary protection mechanisms for Ukrainians. The aim is to ensure and fulfil the socio-economic and cultural rights of these individuals, particularly in the field of education. Moreover, the European Commission, in its recommendations, emphasized the importance of prioritizing measures to support and expedite the integration of Ukrainian children into the host communities. This includes: determining refugee learners' educational and personal needs; providing learning arrangements for refugee learners; promoting the social, emotional and mental well-being of refugee learners.[19]

The immediate priority is to offer refugee children a place where they feel secure and can access education, together with addressing psychological trauma and language barriers. This requires a comprehensive approach, which combines limited elements of 1. Reception and admission 2. Prepare education institutions and educational staff to include refugee children 3. Prepare education systems to include Ukrainian teachers and Early Childhood Education and Care (ECEC) staff 4. Targeted activities facilitating inclusion of refugee children in education 5. Reaching out to refugee families and communities 6. Long-term measures to promote inclusive education 7. Measures relevant for ECEC in particular, such as information and financial support to access ECEC.[20]

Additionally, the procedure for admitting Ukrainian migrant students to educational institutions is outlined in Czech national legislation, including Laws No. 67/2022[21], No. 20/2023[22] and others. Recognizing the importance of ensuring

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[18] European Commission "Communication From The Commission to The European Parliament, The European Council, The Council, The European Economic and Social Committee and The Committee of the Regions. Welcoming Those Fleeing War in Ukraine: Readying Europe to Meet the Needs" (Brussels: European Commission 2022).

[19] Noorani Sogol, Birch Peter and Antonello Diana, *Supporting refugee learners from Ukraine in schools in Europe: Eurydice report* (Luxembourg: Publications Office of the European Union, 2022), https://data.europa.eu/doi/10.2797/135181.

[20] "Policy guidance on supporting the inclusion of Ukrainian refugees in education," European Education Area, accessed April 13, 2022, https://education.ec.europa.eu/node/2053.

[21] Zákon č. 67/2022 Sb., o opatřeních v oblasti školství v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace [Act No. 67/2022 Coll., on certain measures taken in the field of education with respect to the military conflict in the territory of Ukraine, which has been initiated by the invasion of the Russian Federation].

[22] Zákon č 20/2023 Sb. Zákon, kterým se mění zákon č. 65/2022 Sb., o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, ve znění pozdějších předpisů, a další související zákony [Act No. 20/2023 Coll. Act amending Act

the cultural rights of Ukrainians and integrating children and students into Czech society, the Czech Republic's authorities have issued a series of methodological recommendations for educators. These guidelines aim to enhance the educational process, benefiting both teachers and students.

The number of Ukrainian children studying in educational institutions in the Czech Republic[23]

	All children (UA&CZ)	UA children 30.09.2022	UA children 31.03.2023	% UA children 30.09.2022	% UA children 31.03.2023
Kindergarten	**369 205**	**6 904**	**7 668**	**1,9 %**	**2,1 %**
Preparing to school	**6 731**	**358**	**473**	**5,3 %**	**7,0 %**
Primary school	**1 007 778**	**39 478**	**39 680**	**3,9 %**	**3,9 %**
Universities	**463 200**	**3 457**	**3 368**	**0,7 %**	**0,7 %**
Conservatory	**3 873**	**88**	**92**	**2,3 %**	**2,4 %**

It's worth noting that most Ukrainian children in the Czech Republic are enrolled in two schools simultaneously (online in Ukraine and offline in the Czech Republic). Though it can be psychologically challenging for children to follow two different curricula at the same time, it is essential for them to maintain contact with their classmates and teachers, continue learning their native Ukrainian language, and remain connected to Ukraine and its civic society. Moreover, in larger Czech cities, there was insufficient capacity in Ukrainian schools, as determined during the research[24] Some Ukrainian parents also faced difficulties enrolling their children in Czech schools due to a lack of information and refusal from schools and kindergartens. Only about 20% of Ukrainian children were intensively studying the Czech language in school. According to their parents, most

No. 65/2022 Coll. on some measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation, as amended, and other related laws].

[23] Ministerstvo školství, mládeže a tělovýchovy, *Mimořádné šetření k počtům ukrajinských uprchlíků v regionálním školství: duben 2023,* (Praha: Ministerstvo Školství, Mládeže a Tělovýchovy, 2023), https://www.msmt.cz/file/59799_1_1/.

[24] Daniel Prokop, "Vzdělávání a Uprchlíci: Praha Bude Přehlcená, Nejvíce Zatížen 2. Stupeň ZŠ a Mateřské Školy," PAQ Research, April 15, 2022, https://www.paqresearch.cz/post/vzdelavani-a-uprchlici-praha-bude-prehlcena-nejvice-zatizen-2-stupen-zs-a-materske-skoly.

children could only grasp basic Czech words and phrases. Two-thirds of parents mentioned that their children had not yet joined Czech teams, partly because only about one-fifth participated in team sports and clubs. Another issue is that approximately one-fifth of young people (16-17 years old) were not involved in any form of education – neither distance nor Czech high schools[25]. This matter was raised by many mothers of school-age children during events providing free consultations on the rights of persons with temporary protection in the Czech Republic, conducted by the author of this article in cooperation with Czech NGOs in 2022.

However, looking at the dynamics in the table, it's evident that the number of students in Czech educational institutions increased over the year. This could indicate a direct interest from parents, as offline learning facilitates quicker socialization for their children, helps them make new friends, learn the Czech language, and understand the culture of the host community. If a child doesn't study in the Czech language or interact with native speakers, they may struggle to learn the language and integrate into society. This could be another reason for people to return home before the end of the war, due to the challenges of adaptation and persistent stress, potentially worsening a child's emotional state.

Despite some challenges faced by the Czech government in the field of education, it has implemented several measures to improve the conditions for Ukrainian children in educational institutions. Czech support mechanisms are set by the Education Act (No. 561/2004) and Decree No. 27/2016 on the education of pupils with special educational needs and talented pupils. Such mechanisms may include modified teaching methods, a plan of pedagogical support or pedagogical intervention (support may include help with preparation for lessons, with homework or with interpersonal communication). Teaching assistants may be involved in the provision of support to learners with insufficient knowledge of the language of schooling or other special educational needs. Support from other educational staff (e.g. a school psychologist) may also be requested. Other supporting services, including translation and interpreting services, are provided by the National Pedagogical Institute. In addition, migrant and refugee learners are also entitled to the same language support measures provided to other students in basic schools, such as learning Czech as a foreign (second) language for 3 hours per week (at a maximum of 120 hours or 200 hours). This may apply, for example, if the abovementioned language training is not sufficient or if a pupil is not 'newly arrived' but still needs support[26]

The right to use vehicles with Ukrainian registration and driver's licenses issued in Ukraine in the Czech Republic is governed by the respective laws and

[25] Daniel Prokop "Odmítání při zápisech, málo češtiny a aktivit pro děti: Problémy očima ukrajinských rodičů", PAQ Research, 18 July 2022, https://www.paqresearch.cz/post/vzdelavani-ukrajinskych-deti-v-cesku.

[26] Noorani, Birch and Antonello, *Supporting refugee learners from Ukraine in schools in Europe.*

regulations. The Ministry of Transport of the Czech Republic provides information in both Czech and Ukrainian languages regarding the use of Ukrainian driver's licenses on the territory of the Czech Republic.

According to Czech legislation, individuals with temporary protection have the right to use Ukrainian driver's licenses if these licenses comply with international standards established by the Vienna Convention on Road Traffic (1968)[27]. Additionally, as part of the research, the author submitted a request to the Ministry of Transport of the Czech Republic and received a response indicating that Ukrainian citizens who have been granted temporary protection in the Czech Republic have the right to operate vehicles with Ukrainian registration on the territory of the Czech Republic without time limitations, provided that the driver ensures the vehicle is in proper technical and operational condition. It is important to note that, in such cases, there is no requirement for regular vehicle inspections in the Czech Republic. To use a vehicle with Ukrainian registration on the territory of the Czech Republic, it is necessary to have a valid Green Card and a driver's license. Therefore, individuals with temporary protection from Ukraine have the opportunity to use their vehicles in the Czech Republic with significant ease and minimal requirements.[28]

The procedure and amount of social payments for individuals with temporary protection in the Czech Republic have been constantly changing over the past year. The latest changes came into effect on July 1, 2023. Currently, Ukrainians seeking humanitarian financial assistance are required to provide a greater number of documents, including bank statements from both Ukrainian and Czech banks. Individuals with disabilities must provide relevant supporting documents. The algorithm for determining eligibility for humanitarian assistance is also changing. As mentioned earlier, housing expenses will now be taken into account, and the assistance will be paid directly to Ukrainians with temporary protection instead of being transferred to individuals who provided housing for rent. The amount of humanitarian assistance is also changing. Starting from July 1, 2023, adults over 18 years of age, during the first 150 days after being granted temporary protection, will receive 4,860 Czech crowns (subsistence minimum). After this initial period, the assistance amount will be reduced to 3,130 Czech crowns (minimum for subsistence). For comparison, prior to July 1, during the first 150 days, the assistance was 5,000 Czech crowns. Vulnerable groups, for whom the amount remains at 4,860 Czech crowns even after 150 days, include students aged 18 to 26 (in the Czech school system), pregnant women, individuals caring for children up to 6 years old (one person per family - parent or guardian), persons

[27] "Informace pro Držitele Ukrajinských Řidičských Průkazů," Ministerstvo dopravy, accessed April 4, 2022, https://www.mdcr.cz/Zivotni-situace/Ridicske-prukazy/Informace-pro-drzitele-ukrajin skych-ridicskych-pru.

[28] See Jakub Handrlica, Vladimír Sharp and Kamila Balounová, "The administrative law of the Czech Republic and the public law of Ukraine: A study in international administrative law", *Juridical Tribune*, 12, issue 2 (June 2022), at pp. 195-214.

with disabilities, individuals over 65 years old, and individuals caring for a person with a disability.

The application for humanitarian assistance is submitted online, and certain documents must be provided, including the applicant's identification details, residential address, information about the grant of temporary protection, details of all the applicant's income, information about the employer, identification of the applicant's bank accounts and information about the funds in those accounts, property declaration, and, if the applicant has rental expenses for housing registered in the housing register, they must provide identification details of the property owner and information about vulnerability (proof of disability, even if it has expired, but only after February 24, 2022)[29].

It is evident that the Czech authorities approach these issues with understanding, considering the challenges faced by Ukrainians and the limited ability to confirm an individual's disability status with temporary protection. They also take into account the existing legislation of Ukraine, particularly Cabinet of Ministers Resolution No. 390 dated March 30, 2022, which amends certain Cabinet of Ministers resolutions regarding the re-examination period for persons with disabilities and the extension of the validity of certain medical documents during a state of war[30]. The re-examination, the term of which fell during the period of martial law on the territory of Ukraine, is postponed to the period after the termination or cancellation of the martial law, but no later than six months after its. It is legislated that disability certificates that expired during the war are valid until the end of martial law and 6 months after its official end. All payments for people are preserved as well as the status of a person with a disability termination or cancellation, provided that referral is impossible.

Therefore, from one perspective, the process of receiving assistance has changed, becoming more demanding, and the amounts of such aid have decreased. However, vulnerable categories still have the right and the opportunity to receive financial assistance. As a result, there is a reduction in the disbursement of humanitarian aid, prompting individuals under temporary protection to take steps towards self-sufficiency and employment. Nevertheless, attention should be drawn to the fact that humanitarian financial aid provided to individuals with temporary protection in the Czech Republic is higher than the payments made to internally displaced persons in Ukraine (1200 Czech crowns (2000 UAH) for

[29] The International Organization for Migration 'Тимчасовий захист в Чехії. Lex Ukrajina V: Законодавчі зміни у сфері соціального забезпечення' (Prague, 2023).

[30] Постанова Кабінету Міністрів України 390-2022, Про внесення до деяких постанов Кабінету Міністрів України змін щодо строку повторного огляду осіб з інвалідністю та продовження строку дії деяких медичних документів в умовах воєнного стану [Resolution of the Cabinet of Ministers of Ukraine 390-2022, On making changes to some resolutions of the Cabinet of Ministers of Ukraine regarding the period of re-examination of persons with disabilities and extension of the validity period of certain medical documents under martial law]

adults, 1800 Czech crowns (3000 UAH) for individuals with disabilities and children[31]).

The principle of the rule of law holds fundamental value for the system of protection for refugees, asylum seekers, and internally displaced persons. On one hand, its fundamental principles such as equality, justice, legal certainty, proportionality, and others define the purpose and essence of such protection. On the other hand, these principles allow for the filling of gaps in national legislation and, as a source of law, contribute to the integrity and efficiency of the legal protection system. At the same time, the contemporary migration crisis, with millions of refugees, asylum seekers from Ukraine, and millions of internally displaced persons within the country, has exposed a range of issues within the legal protection system for vulnerable categories of individuals. These challenges require comprehensive and swift solutions[32].

5. Conclusions

Based on the analysis of the status of Ukrainians with temporary protection in the Czech Republic, the needs of identified categories for national and international support, as well as an analysis of the legislative framework, considerations and proposals from scholars and practitioners, and the research of international organizations, the following conclusions and suggestions can be made:

Rapid Changes in Legal Framework: The legal framework concerning individuals with temporary protection in the Czech Republic is changing very rapidly. This rapid evolution poses both positive and negative consequences. While it allows for timely adjustments to address the needs of this category of people, it also creates challenges. Workers in government offices and Ukrainian individuals may struggle to adapt to and understand these frequent changes. For instance, the launch of a new online procedure for humanitarian aid applications is prone to errors and often rejects documents. Individuals residing in a foreign country and not proficient in the Czech language may have difficulties solving such problems without the assistance of experts. Consequently, employees in employment centers face double or even triple workloads as they must verify documents independently and update the system. Many Ukrainians turn to these centers for help. However, due to an uncoordinated system and untested programs, some people do not receive the expected aid.

Reforms in Ukrainian Legislation: The Ukrainian government needs to undertake reforms and align its national legislation in the field of data exchange between the Unified State Demographic Register and the Unified Information

[31] "Як отримати виплати для ВПО," Edopomoga.gov.ua, accessed August 17, 2023, https://groshi.edopomoga.gov.ua/#how-get-payments.

[32] Mendjul M.V. "The principle of the rule of law and the legal basis of the system of protection of refugees, asylum seekers and internally displaced persons," *Analìtično-porìvnâl'ne pravoznavstvo*, no. 3 (July 18, 2023): 421–24, https://doi.org/10.24144/2788-6018.2023.03.76.

Database of Internally Displaced Persons. Such actions will serve as a tangible example of Ukraine's European integration process.

Improving the Healthcare System in the Czech Republic: The Czech healthcare system requires improvement and the integration of Ukrainian professionals. First, this will alleviate the burden on current healthcare workers and reduce societal tension arising from difficulties in booking appointments or waiting for months for medical consultations. Second, it will provide employment opportunities for a significant number of Ukrainian citizens, allowing them to independently support themselves and their families. Consequently, this will lead to a reduction in state expenditures on humanitarian aid.

These conclusions and suggestions aim to address the challenges faced by Ukrainians with temporary protection in the Czech Republic and to create a more effective and integrated system of support and assistance.

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Enforcing Medical Insurance under the Leges Ukrainae

Ph.D. candidate **Liliia SERHIICHUK**[1]

Abstract

Who would want to flee the war? Start over in another country? Overcoming the language barrier, thinking about how to find a job, apartment and kindergarten for your child? Where to find friends or people who will understand and help? Nobody wants to feel it. Ukrainians who have found temporary protection from the war in the Czech Republic are forced to face Czech legal norms every day. Ukrainian law and the law of the Czech Republic are two different but interrelated legal systems. Massive influx of Ukrainian citizens into the territory of the Czech Republic after Russia's aggression against Ukraine in February 2022 caused a radical strengthening of interaction between elements of both Ukrainian and Czech law. The strengthening of interaction took place primarily in the field of practical application of law. The full scale of this phenomenon is easily demonstrated by the fact that the Czech Republic has received the largest number of Ukrainian refugees per capita in the European Union – 470,000 refugees, which is 4 percent of the population. In this regard, it is easy to understand that the appearance of thousands of Ukrainian certificates, licenses and other acts represented primarily the problem of practical application of legislation. However, the connection between the two legal systems has also attracted the attention of the legal community and is important to the debate both from both practical and theoretical point of view.

Keywords: *medical insurance, temporary protection, digitalization, refugees.*

JEL Classification: K23, K32

1. Introduction

On February 24, 2022, war began in Ukraine. We were stunned and didn't know what to do. This is not only the day when the war in Ukraine began, it is also the day when a huge wave of solidarity rose. This is the day we saw that there are many real heroes among us.

Russian troops began intensive shelling of units of the Armed Forces of Ukraine in eastern Ukraine, crossed the northern and eastern borders, and missile and bomb strikes on airfields and weapons depots almost throughout Ukraine.

[1] Liliia Serhiichuk, Faculty of Law, Charles University, Prague, Czech Republic E-mail: liliia.serhiichuk@prf.cuni.cz, https://orcid.org/0009-0004-9446-6705.

The Verkhovna Rada of Ukraine immediately adopted a decision on the imposition of martial law.

Since then, Putin's war has been going on for a year and a half, and every citizen of Ukraine is still fighting against the military regime of the invader.

Every day the death toll on both sides is growing, civilians, entire cities and suburbs are under fire every day. Russia's military aggression has triggered the migration of a large number of Ukrainians in search of protection abroad.[2]

Russia's armed aggression against Ukraine has violated international law and order and caused numerous sufferings to many people. Such actions of the aggressor have shaken European security and political stability around the world. In this way, many European countries have paid even more attention to aspects of foreign policy in order to strengthen their defence capabilities. Some of them have declared their desire to join NATO. The world community at the level of states and governments, as well as within influential international organizations, condemns such actions of Russia and expresses support for Ukraine, which, in turn, manifested itself in such a legal mechanism as the provision of temporary protection. citizens of Ukraine in conditions of armed conflict.

The idea of temporary protection in the countries of the European Union was supported by the UN High Commissioner for Refugees, as well as a proposal to share responsibilities among Member States for the maintenance and assistance of people who leave Ukraine in difficult times.

Thus, temporary protection as a political and legal instrument for the provision of assistance, is immediate in time and collective in nature in relation to an indefinite circle person who arrived from Ukraine to foreign countries in connection with the relevant sad events.[3] It also means that evacuated Ukrainians do not have to submit individual applications to receive shelter.[4]

As of June 13, 2023, the total number of Ukrainian refugees was 8,255,288, of which 5,140,259 refugees from Ukraine are registered for temporary protection or similar national protection schemes in Europe.

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[2] See Tamara Kortukova, Yevgen Kolosovskyi, Olena L. Korolchuk, Rostyslav Shchokin and Andrii S. Volkov, "Peculiarities of the Legal Regulation of Temporary Protection in the European Union in the Context of the Aggressive War of the Russian Federation Against Ukraine", *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique*, 36 (December 2022), at pp. 667–678. Also see Julia Motte-Baumvoll, Tarin C. Frotta Montalverne and Gabriel B. Guimaraes, "Extending Social Protection for Migrants under the European Union's Temporary Protection Directive: Lessons from the Invasion of Ukraine", *Brazilian Journal of International Law*, 19, issue 2 (October 2022), at pp. 344-363 and Catherine Xhardez and Dagmar Soennecken, "Temporary Protection in Times of Crisis: The European Union, Canada, and the Invasion of Ukraine", *Politics and Governance*, 11, issue 3 (September 2023), at pp. 264-275.

[3] For further details, see Catherine Xhardez and Dagmar Soennecken, "Temporary Protection in Times of Crisis: The European Union, Canada, and the Invasion of Ukraine", *Politics and Governance*, 11, issue 3 (September 2023), at pp. 264-275.

[4] The EU adopted a mechanism for the protection of Ukrainian refugees. Without filing for asylum. URL: https://www.the-village.com.ua/village/city/city-news/323889-es-uhvaliv-mehanizm-zahistuukrayinskih-bizhentsiv-bez-podannya-na-pritulok.

In the Czech Republic, the number of refugees who received a temporary or similar type of protection is 543,190 and this figure changes daily.[5]

Therefore, this article will reveal the problems faced by Ukrainians during the forced resettlement to the Czech Republic.

At the international level, temporary protection of refugees is regulated by a number of adopted regulations.

On July 28, 1951, the Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention or the Geneva Convention, was adopted. This document is a United Nations multilateral treaty that defines who a refugee is and sets out the rights of those granted asylum and the responsibilities of nations that grant asylum.

The Convention states that the term «refugee» applies to any person who «due to justified fear of persecution for reasons of race, religion, nationality, belonging to a certain social group, group or political views, is for beyond the borders of the country of his citizenship and cannot or because of such fear does not want to use it defense of this country». It also applies to any person with such well-founded fear who has no citizenship and is «outside the country of its former habitual residence residence»[6].

On July 20, 2001, Directive No. 2001/55/EC «On minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons and on measures promoting the balancing of efforts between member states to receive such persons and bear their consequences» was adopted. The directive defines the legal basis for granting temporary protection to persons, including those forcibly displaced from the territory of Ukraine.

According to paragraph A of Art. 2[7] of the specified legal act, temporary protection is a procedure of an exceptional nature to provide in the event of a mass or imminent mass influx of displaced persons persons from third countries who cannot return to their country of origin, immediate temporary protection 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 others persons requesting protection.

Later, after the aggression of Russia and on the territory of Ukraine, on the basis of the Directive on temporary protection 2001/55/EC, the Council of the EU adopted the Decision on its activation for Ukrainians 2022/382 dated 04 of March, 2022.

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[5] The data are taken from the electronic resource «Operation Data Portal. Ukraine Refugee Situation». URL: https://data.unhcr.org/en/situations/ukraine.

[6] Convention Relating to the Status of Refugees of 1951. URL: https://www.ohchr.org.

[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. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0055.

This directive bypasses the traditionally overburdened procedure for granting asylum (obtaining refugee status/subsidiary protection) and offers a quick and simplified way to access protection in EU countries.

For a better explanation of the provisions directly before the implementation of the decision to the Council of the EU in the context of providing temporary protection to people fleeing from war with Ukraine, on March 21, 2022, the European Commission issued Operational instructions[8]. The document is not legally binding. Its purpose is to help to the EU member states in the implementation of Directives and Decisions of the Council of the EU.

Temporary protection does not mean obtaining refugee status under the Convention Relating to the Status of Refugees of 28 July 1951, which provides rights similar to a residence permit. However, persons who have received temporary protection in the EU can apply for refugee status at any time.

In accordance with Art. 2 of this Decision[9], which establishes the presence of a mass influx of displaced persons from Ukraine within the meaning of Ar. 5 Directive 2001/55/EC and introduces temporary protection, include:

(a) citizens of Ukraine who lived on the territory of Ukraine until February 24, 2022;

(b) stateless persons and third-country nationals, except for Ukraine, who were granted international protection or equivalent national protection in Ukraineuntil February 24, 2022; and

(c) family members of persons specified in clauses (a) and (b).

The European migration policy is based on the minimum standard of the social package, determining the duration of temporary protection (Articles 4–7), determining the procedure granting asylum (Articles 17–19), outlining the scope of obligations member states (Articles 8–16) and the rules of the return procedure and measures after the expiration of temporary protection (Articles 20–23).[10]

Yes, this decision establishes only the minimum standards of protection that each EU country must provide. Therefore, it is necessary to look at the legislation of the EU country where you plan to stay.

In the case of temporary protection, access to work in the host country

[8] Communication from the Commission on operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the 435 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 2022/C 126 I/01. EUR-Lex Access to European Union law. OJ C 126I, 21.3.2022, p. 1–16. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri= CELEX%3A52022XC0321%2803%29.

[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 URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.071.01.0001.01.ENG.

[10] 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.

and other support shall be provided from the moment of submission of the application, in contrast to a person who wished to receive refugee status - waiting on average up to 6 months, while a decision on granting such status is made.

With temporary protection, the opportunity to return to the country of citizenship without hindrance remains. At the same time, while waiting for the decision of the authorized body to grant refugee status, it is forbidden to cross the border of the host country. Temporary protection can be obtained in any EU country that a person considers safe (subject to exceptions), unlike refugee status, which can only be obtained in the country the person crossed the border for the first time.

Persons under temporary protection have the right to apply for refugee status at any time.

2. Leges Ukrainae

Having come to the Czech Republic from Ukraine because of the war, you have the right to stay freely in the country and obtain temporary protection. The legal basis for the registration of such a status is the legal act adopted by the Czech state on March 17, 2022 called «Leges Ukrainae».[11]

«Leges Ukrainae» - this is a package of laws aimed at creating conditions for providing assistance to forcibly displaced persons on the territory of the Czech Republic (as of July 1, 2023, 5 amendments were made).

According to the amendment to Leges Ukrainae IV, temporary protection was extended for Ukrainians, by registering on a special website and visiting regional centers to affix a new visa, valid until March 31, 2024.

In addition, Ukrainians who had to leave their homeland due to the Russian military invasion will be able to extend their temporary protection in the Czech Republic for another year, until the end of March 2025. The procedure is described in another amendment to the law under the general name Leges Ukrainae V[12], which the Ministry of Internal Affairs of the Czech Republic sent on July 31 for interdepartmental discussion. The authors of the bill state that the course of the war so far does not indicate that the refugees will be able to return home in the near future. At the political level, the extension should be approved at the level of the European Union by the end of October.

[11] Jakub Handrlica, Vladimír Sharp and Kamila Balounová, "The administrative law of the Czech Republic and the public law of Ukraine: A study in international administrative law", *Juridical Tribune*, 12, issue 2 (June 2022), at pp. 195-214.

[12] Návrh zákona, kterým se mění zákon č. 65/2022 Sb., o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, ve znění pozdějších předpisů, a další související zákony. URL: https://odok.cz/portal/veklep/material/KORNCU9ADWIR/ALBSCU9B5Z33.

3. Medical insurance

Temporary protection in the Czech Republic guarantees Ukrainians basic social rights, including health insurance. The temporary protection visa issued last year was valid until March 31, 2023, so all refugees had to extend it. The availability of health insurance depends on the validity of the temporary protection status. Once the temporary protection has been extended, the refugee will be insured and will receive a new insurance card.

The terms of health insurance for Ukrainians are as follows: 150 days from the date of obtaining the visa, the state pays.

If the insurance is not paid by the employer, then the owner of temporary protection between the ages of 18 and 65 must independently pay commercial insurance starting 150 days from the moment of granting temporary protection or be registered at the Labor Exchange to look for work.

If a person is employed under a Work Performance Contract (DPP) with a salary of up to 10,000 kroner, in this case the employer does not pay tax and insurance deductions for them, so they will have to pay for the insurance themselves.

Students between the ages of 18 and 26 who study in high schools or universities in the Czech Republic and Ukraine (including online education) are considered «dependents» and do not have to pay for insurance.

Persons receiving a disability pension, or persons on maternity leave or child care leave, must adhere to the instructions that will be published on the «VZP» website for this purpose.

After 150 days of stay in the country for persons aged 18 to 64, the state will stop paying for health insurance automatically. The state will continue to pay for such insurance in cases where a person's serious health condition prevents them from working. The new term «vulnerable person» appeared in the law. From July 1, a written statement, under oath (čestné prohlášení) is not enough to receive payments or to confirm that a person really belongs to a vulnerable group. Everything that a person indicates in the statement, must be documented. This is: bedridden patients, women with risky pregnancy and persons with oncological diseases in the last stages who need palliative care.

In the case of documentary confirmation, from July 1, people with vulnerability will not lose free housing, in the future they will receive assistance in the amount of the subsistence minimum (people with a disability 1.5 times greater) and paid medical insurance.

In the case of a trip to Ukraine (for several days), you can inform the insurance company that you are not in the Czech Republic, and then you are not obliged to pay insurance for this period, but in this case you cannot use the services of the state health care system.

If you return to Ukraine on a permanent basis, you must cancel the insurance.

Otherwise, a debt to the Czech Republic will arise, which prevents further residence in the Czech Republic[13].

It should be noted that from July 1, 2023, amendments to the Leges Ukrainae entered into force. Yes, we are talking about the changes made regarding financial assistance, social housing for refugees and solidarity payments to those who sheltered Ukrainians.

4. Digitalization issues

Digitization, which makes life easier for everyone, does not stand still and, of course, for faster adaptation of Ukrainians in the Czech Republic, dozens of sites and applications have been created to help our citizens.

Among the main ones, among others, you should pay attention to the following:

1. We stand behind Ukraine[14] - independent information guide covers all sources of help. It was created 3 days after the start of the war, and in just the first week after launch, it helped 156,000 people find the necessary form of assistance. More than 83 thousand visitors asked for help directly from Ukraine. The website with a daily traffic of 1,500 visitors was created in cooperation with the platforms Stojíme za Ukrajnou, Česko.Digital and Solidpixels.

2. Umapa[15] - 40,000 website visitors and almost 10,000 important points on the map for refugees from Ukraine. In total, it is used by 25,000 users in the Czech Republic, Ukraine, Poland, as well as in Germany, Slovakia and the USA. The map has a clear application for iOS and Android, its built-in version is used by several portals.

3. Aid to Ukraine[16] - the aid market, to which the Standing for Ukraine website is directly linked, contains more than 37,000 aid offers. The creation of the website was initiated and coordinated by Daniel Kolsky, Honca Böhm and Honca Sladek from Contember and was created in cooperation with the Consortium of NGOs Working with Migrants in the Czech Republic.

4. Movapp[17] - application creates a linguistic bridge between people from Ukraine and the Czech Republic. The excellent application is complemented by printed materials for download or, for example, the Textbook for Ukraine, prepared by the PPF Foundation in cooperation with the Kellner Family Foundation and the Ministry of Education and Culture of the Czech Republic. Movapp has long outgrown the borders of our country. Since the summer, it has Polish and

[13] Data taken from the official website of the insurance company VZP. URL: https://pomocukrajine.vzp.cz/.
[14] We stand behind Ukraine. URL: https://www.stojimezaukrajinou.cz/en.
[15] Umapa. URL: https://www.umapa.eu/.
[16] Aid to Ukraine. URL: https://www.pomahejukrajine.cz/.
[17] Movaap. URL: https://www.movapp.cz/cs.

Slovak versions. Over the course of a year, the site was visited by 100,000 visitors who viewed a quarter of a million pages.

5. Place in school[18] - the website was created on the initiative of the Faculty of Pedagogy of Charles University. Data on school occupancy is provided by the Ministry of Education and Culture. The solution has integrated the Umapu community and thus clearly shows vacancies in one place. The goal of the project was to help not only Ukrainian, but also Czech families to find a suitable school for their children.

6. Jobs for You[19] - the employment market for workers from Ukraine. Offers from state-verified employers from all over the Czech Republic. This site is created for verified job offers and fair conditions for workers from Ukraine.

7. Nasiukrajinci.cz[20] - this site provides information to refugees from Ukraine in all spheres of life, helps them to integrate more quickly into Czech society and offer assistance to those who need it.

8. I can help[21] - the site is specially designed for Ukrainians to search for free housing in all countries of the world, where you can see the location of housing, conditions of stay and information about the owner.

9. A million people for democracy[22] - the site for the possibility of providing assistance to Ukrainians, which offers various initiatives. Companies, institutions and individuals have joined this challenge and are helping in a coordinated way. All citizens of the Czech Republic, who have the opportunity and ability to help Ukrainians, provide their help here.

10. Charles University in Prague[23] provides information on scholarships, opportunities to interrupt studies or Czech language courses for foreigners, as well as other forms of assistance offered by Charles University to all those who find themselves in a war situation in Ukraine and need some form of support.

Also, in October of last year, the Ministry of Education and Science of Ukraine, in cooperation with the Association of Innovative and Digital Education, launched the Ukrainian Education Hub in the Czech Republic[24], within which Ukrainians can participate in educational events, master classes and courses for free. The opening of the offline format of the project is planned for 2023.

The mission of the Ukrainian educational hub in the Czech Republic, which is implemented with the support of the International Visegrad Foundation, is to promote the effective integration of Ukrainians into society, meet their needs and teach new skills for greater competitiveness in the local labour market. In order for the war to end sooner, we all need to unite even more. Not only to

[18] Place in school. URL: https://mistoveskole.cz/.
[19] Jobs for You. URL: https://jobs4ua.cz/.
[20] Nasiukrajinci. URL: https://www.nasiukrajinci.cz/ua.
[21] I can help. URL: https://icanhelp.host/.
[22] A million people for democracy URL: https://milionchvilek.cz.
[23] Charles University in Prague. URL: https://cuni.cz/UK-11730.html.
[24] Ukrainian Education Hub in the Czech Republic. URL: https://eduhub.org.ua/.

Ukrainians, but also to the entire civilized world. It is necessary that we are not forgotten abroad. Helping us and admiring the courage of Ukrainians, they were also interested in our culture and traditions. In turn, Ukrainians abroad learn new languages, traditions and cultures of the country that provides protection.[25]

In addition, the close interaction between our citizens and citizens of the Czech Republic encourages the exchange of already existing digital tools that work in Ukraine and the Czech Republic, and to receive new ideas from each other. In the Czech Republic, they plan to launch a mobile application where all documents can be downloaded. The expected application «eDokladovka» may appear before the end of the year. It will be possible to download various types of documents into the application - from identity cards, driver's licenses to professional cards and residence permits for citizens of foreign countries.

5. Conclusions

The Czech Republic demonstrates consistent support for the sovereignty and territorial integrity of Ukraine and supports our country both at the bilateral level and within the framework of international organizations - the EU, the UN, the Council of Europe, the OSCE.

The government of the Czech Republic decided to close the airspace for Russian aircraft, recalled its ambassadors from Russia and Belarus, closed the Russian consulates in Karlovy Vary and Brno, and suspended the work of the Czech consulates in St. Petersburg and Yekaterinburg.

In addition, the Czech Republic suspended visas and permits for long-term and permanent stay for citizens of the Russian Federation and Belarus, and also began large-scale inspections of economic ties of business entities.

The Czech Republic took patronage over the Dnipropetrovsk region, and the program of humanitarian stabilization, reconstruction and economic assistance for 2023-2025 was approved at the government level.

Undoubtedly, further explorations in this direction are relevant and promising, in particular in the aspect possible development of recommendations for improvement of the relevant procedure and specific research social support provided by various member states of the European Union.

In addition, an important direction in the interaction between Ukraine and the Czech Republic is interaction in the field of improving the legislation of both countries for further effective and quick cooperation in solving various practical issues that citizens face every day.

[25] See Marie Jelínková, František Ochrana and Michal Placek, "The admission of Ukrainian refugees from the perspective of municipalities in Czechia", *Geografie*, 128, issue 3 (June 2023): pp. 271-299.

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About the Authors

Kamila Balounová is a Junior Lecturer at the Law Faculty of Charles University. Kamila holds a master's degree in law from Charles University in Prague and a second master's degree in interpreting from the Faculty of Arts at the same University. She is continuing her studies with a PhD in public law. She gained considerable experiences from study stays at the University in Vienna (Austria) and at the Catholic University in Leuven (Belgium). Kamila lectures at the Faculty of Law of Charles University and works as a researcher for the Czech Academy of Sciences at the Centre for Climate Law and Sustainability. The topics she focuses on are court interpreters and translators, environmental law and climate law.

Jakub Handrlica is a Full Professor in Administrative Law at the Law Faculty, Charles University in Prague. He has obtained his master degree in law (summa cum laude) from the Faculty of Law, Charles University, LL.M. from the Ruhr University in Bochum and a *diplôme universitaire de troisiéme cycle* from the University of Montpellier 1. He obtained his Ph.D. at the Faculty of Law, Charles University in 2009 for his thesis on independence administrative authorities. At the Charles University, he became Associate Professor (2017) and Full Professor in Administrative Law (2021). Since 2022, he serves as Vice-Dean for Postgraduate Studies. Recently, his main area of interest is international administrative law, which analyses governance of foreign elements by the provisions of administrative law. In 2019-2022, he was main researcher of a project granted by the Czech Science Agency on »*International Administrative Law: A Legal Discipine Revisited*«. In 2022-23, he was main main researcher of the project granted by the Ministry of Education on »*Ukrainian Law and the Law of the Czech Republic: An Unexpected Encounter*«. Also, he is Visiting Fellow at the European Law & Governance School (ELGS) in Athens, Hellenic Republic and member of the research network »*Réseau du Droit Administratif Transnational*«. At the same time, he is also member of editorial boards of legal journals »Tribuna Juridica – Juridical Tribune« and »Rivista trimestrale di diritto amministrativo«.

Věra Honusková is a Senior Lecturer in International Public Law at the Department of International Law at the Law Faculty, Charles University in Prague. She is a founder and a head of the Centre for Migration and Refugee law, where her research group focuses on issues such as temporary protection. She is a founder of a specialization programme Migration Law at the faculty, where she uses the opportunity to explore teaching not only from a theoretical perspective (courses on Asylum and Refugee Law and Migration Law), but also through various experiential methods such as simulations, legal clinics and internships. She regularly organizes and participates in conferences in the Czech Republic and

abroad (e.g. the Future of Europe as a Place of Refuge, Prague, 5-6 December, 2019), and publishes extensively in this fields. Her 20 years of experience in the field of asylum and migration law includes work in NGOs, in an attorney´s office and as a member of a Commission for decision-making in matters of residence of foreigners and the Committee on the Rights of Foreigners of the Government Council for Human Rights. JUDr. Honusková is the Czech representative in the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe. She is also a member of the International Law Association and the European Society of International Law. Her latest publications include: Honusková, Věra. "European Response to the Mass Influx of People Caused by the Russian Invasion of Ukraine: Testing the Limits of International Refugee Law" International and Comparative Law Review, vol.23, no.1, 2023, pp.53-71; Honusková, V. "Humanitarian Smuggling: the Way Forward". In de Frouville, O., Šturma, P. Vers la Pénalisation du Droit International des Droits de l´Homme? Paris: Pedone. [2022], Grimes, R., Honusková, V., Stege, U. (eds.) Teaching Migration and Refugee Law: Theory and Practice. Routledge. [2022].

Tetiana Kravchenko is a Ph.D. candidate at the Law Faculty, Charles University in Prague. She has obtained her master degree in law from the Taras Shevchenko National University of Kyiv. Subsequently, she has initiated her studies at the Taras Shevchenko National University of Kyiv to obtain the title Doctor of Philosophy. At the same time, Tetiana has obtained many experiences by serving as an intern in Podolsk State Administration in Kyiv, The Ministry of Justice of Ukraine, the department of international law, department of international legal assistance in civil cases, office of international legal assistance, Podolsk District Court of Kyiv, Kyiv Local Prosecutor's Office № 7, as Attorney assistant in Kyiv, also have legal practice in Baker McKenzie law firm, Asters law firm and have an experience in Czech Republic as a lawyer in PRK partners during last two years. Since 2022, she is studying at the Law Faculty, Charles University in Prague as a Ph.D. candidate at the Department of Civil law. The topic of her dissertation reads «*Aplication Problems in Procedure of Annulment of Arbitral Award*».

Nataliya Isayeva is a practicing attorney, member of the Ukrainian National Bar Association, served on the Committee of Lawyers' Practice. Since the beginning of Russian military aggression Nataliya is a volunteer lawyer at the International pro bono legal services platform UA.SUPPORT which helps Ukrainian refugees with legal aid. She has obtained her PhD degree in law from the Dnipropetrovsk State University of Internal Affairs. At the same time, Nataliya has obtained many experiences by serving as a judge's assistant in Zaporizhzhya District Administrative Court. Also, she worked at the Department of registration of normative legal acts of the Department of registration of normative legal acts, legal work and legal education, Main Territorial Department of Justice

in Zaporizhzhya Region. Since January 2020 she is a Public Monitor of the National Preventive Mechanism at the Secretariat of the Verkhovna Rada Commissioner for Human Rights (Ombudsmen). Since August 2022 Nataliya is Ph.D. candidate at the Department of Medical Law at the Law Faculty, Charles University in Prague. The topic of her dissertation reads «*Internal displacement in Ukraine from the perspective of socio-economic and cultural rights*». She has been actively involved in research projects, addressing mutual legal cooperation between the Czech Republic and Ukraine. In 2023 published like a coo-author monography «*Socio-economic and cultural rights and freedoms of internally displaced persons: theoretical and legal characteristics*». At the same time, she has been involved in the research activities Geographic Migration Centre, in this case she has actively participated at Summer School on Migration Studies organized by the Faculty of Science of Charles University in partnership with UNIC and IOM Prague.

Miroslav Sedláček is a Senior Lecturer in the Department of Civil Law of the Faculty of Law, Charles University, where he is involved in scientific activities as well as in teaching civil procedure law courses (Civil Procedure I, Civil Procedure II, Civil Procedure III including Alternative Dispute Resolution and Insolvency Law). He earned his Ph.D. in Civil Law at the Faculty of Law, Charles University, in 2015. His second area of interest is EU Law (in 2017 graduated *Summa cum Laude* from the one-year LLM Programme of International and European Business Law at the Faculty of Law, Eőtvos Loránd University, Budapest). He also visited several universities abroad as an invited speaker (e. g. in 2019, 2020, 2021, 2022 and 2023 at the Faculty of Law, University of Hamburg, in 2021 at the Faculty of Law, University of Regensburg, both under DAAD Fellow, and in 2016 at the Faculty of Law, University of Turku). He is the main coorganiser of the European PreDoc Conference "Civilistické pábení" (2019, 2020, 2021, 2022 and 2023 held in Prague). He has a quite comprehensive publication record and has actively attended international conferences and scientific symposia. He also participated in several research projects, especially under the Czech Science Foundation (GACR), where he is the main researcher of the project Digital Resolution of Civil Disputes and Guarantee of the Right to a Due Process, since 2023 (No. 23-06243S). He is also an executive editor of the journal Acta Universitatis Carolinae Iuridica (since 2020, the journal is under the SCOPUS database).

Liliia Serhiichuk is a Ph.D. candidate at the Law Faculty, Charles University in Prague. She has obtained her master degree in international law from the Kyiv State University of Trade and Economics. Subsequently, she studied at the Kyiv International University, where she obtained the title Doctor of Philosophy in 2022. At the same time, Liliia has obtained many experiences by serving as a judicial clerk at courts in Ukraine – in particular at the Grand Chamber of

the Supreme Court in Kyiv, Criminal Cassation Court of the Supreme Court in Kyiv and at the Kyiv Appeal Administrative Court. Since 2022, she is studying at the Law Faculty, Charles University in Prague, firstly as a *freemover* and subsequently as a Ph.D. candidate at the Department of Administrative Law and Administrative Science. The topic of her dissertation reads »*Smart Public Law for Smart Cities*«. She has been actively involved in research projects, addressing mutual legal cooperation between the Czech Republic and Ukraine. At the same time, she has been involved in the research activities under the European University Alliance 4 EU+. In this respect, she has actively participated at the research project »*Regulatory Sandboxes: Mirage and Reality in Public Law*«, which was a joint academic undertaking of the Charles University, the University of Milan, the University of Geneva (Digital Law Center) and the University of Copenhagen (Legal/Tech Lab).

Vladimír Sharp is an Assistant Professor of Administrative Law at the Law Faculty of Charles University. Vladimír holds a master's degrees in international legal studies (summa cum laude) from Nottingham Law School (England, UK), as well as a *juris doctor* and a Ph.D. from Charles University (Prague, Czechia), where he defended his dissertation on tailor-made legislation in 2023. Vladimír is also a practicing attorney and has extensive professional experience both from the international law firms, and the public sector where he had served as a Deputy Director at the Ministry of Justice of the Czech Republic. Vladimír lectures at several universities, as well as at the Judicial Academy of the Czech Republic, and is also an appointed examiner of the insolvency practitioner's exams. At the same time, she has been involved in the research activities under the European University Alliance 4 EU+. In this respect, he has actively participated at the research project »*Regulatory Sandboxes: Mirage and Reality in Public Law*«, which was a joint academic undertaking of the Charles University, the University of Milan, the University of Geneva (Digital Law Center) and the University of Copenhagen (Legal/Tech Lab).

Enes Zaimovič is a Ph.D candidate at the Law Faculty, Charles University in Prague, who focuses primarily on Refugee law at international level. In his research and Ph.D. project, he deals with cessation clauses incorporated into the Refugee Convention and the question of "temporariness" of protection the Convention affords to its beneficiaries. In his legal practice, he also focuses on refugee and migration law on European and national levels as a junior attorney in a law firm specializing in refugee and migration law in Prague.