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MASTER THESIS

THE EUROPEAN LAGAL FRAMEWORK ON THE EMPLOYMENT CAPABILITIES OF THIRD-COUNTRY NATIONALS

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I want to dedicate this Master Thesis to my father Volodymyr Dibrova! Thank you for being my huge motivation and support, for caring about me and for respecting my growth as a personality! You are a big example for me!

Татусю ти найкращий та великий приклад сильної, цілеспрямованої особистості з власним непорушним стержнем! Дякую за твою підтримку, турботу, любов та мотивацію! Пишаюся бути твоєю донькою!

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List of abbreviations

AG Advocate General

AMS Arbeitsmarktservice

CJEU Court of Justice of the European Union

EC European Commission

EEC European Economic Community

ECFR European Charter of Fundamental Rights

EU European Union

EMN European Migration Network

FRA European Union Agency for Fundamental Rights

ICT Intra-corporate transfer

MS Member states

TCN Third Country National

TEC Treaty establishing the European Community

TEU Treaty on European Union

TFEU Treaty on the Functioning of the European Union UN United Nations

PWD Posted workers Directive

Table of cases

Case C-477/17 Raad van bestuur van de Sociale Verzekeringsbank v D. Balandin, I. Lukachenko, Holiday on Ice Services BV [2019] OJ C 93.

Case C-311/13, O. Tümer, ECLI:EU:C:2014:2337 [2014].

Introduction

Third Country National (TCN) is a common (official) term that is often used in the context of migration, regarding the people who applying for residence permit/visas in the countries which are not the ones of their origin. In the European Union TCN is well known term which in principle shows that the individual is neither a citizen of the country she/he lives at, nor from any other EU member state.

EU labor law is of particular interest and this is due to the specifics of the European Union, which distinguishes it from international organizations of the classical type. Another interesting aspect is that the relevant rules of the European Union are currently applicable in 27 countries, the level of economic development and the legal system of each of which are different. Thus, these standards are initially seriously tested for their effectiveness and viability in practice in different conditions.

Sustainable improvement of the living and working conditions of the peoples of the European Union, as stated in the preamble to the Treaty on the Functioning of the European Union, is the main goal of all the efforts of the Member States. Within the limits of their powers, EU bodies and institutions have developed and adopted a huge array of legal acts in the field of hired labor. A large number of relevant rules of law allow us to assert the existence of an independent legal field in the legal system of the European Union – EU labour law.

Regarding the employment, TCN applies as "an employee working temporarily in an assignment country, who is neither a national of the assignment country nor of the country in which the corporate headquarters is located."[1]

The highlighted research question, in this regard, will be the following – **Labour rights of third country nationals in the European Union. (May be the European Union legal framework consider as such that promotes high-quality employment and integration of third country nationals in the EU labor market?)**

Generally, the topic of legal status and migration of TCN was always an ongoing and significant. Most of the EU countries are seeking for incoming highly qualified workers in particular spheres or seasonal workers for seasonal field work for example.[2] Hiring migrant workers for domestic work is a rapidly increasing phenomenon across EU countries. Regarding

[1] Reynolds, Calvin; Strategic Employment of Third Country Nationals: Keys to Sustaining the Transformation of HR Functions.; Questia, ACADEMIC JOURNAL ARTICLE Human Resource Planning; 1 March 1997.
[2] A. Schuster, M. Vicenza Desiderio, G. Urso; Recognition of Qualifications and Competences of Migrants; 2013, p 17.

this it still remains relevant and important to clarify the legality of TCN residence in the European Union Member States. The European Parliament and Council stated that all TCNs legally residing and working in the EU should enjoy at least basic equal treatment rights as the nationals of their respective host member state, regardless of their purpose of, or basis for admission. The right to equal treatment should be granted not only to TCNs allowed into the internal market to work but also to those who entered for other purposes having access to the labor market under EU or national law, e.g.: family member, based on free-Movement rights of TCN in the European Internal Market.

In this work are used analytical and explanatory methods. The explanatory part where most of the types of employment residence are described is based on the legal framework of the European Union and explicitly on the Council Directives or reports. The main part which laid in chapters 2 and 3 of the Thesis is based on normative research. It includes Union and national legal acts, academic publications, and articles as well as Case law. Among them are for instance, Directives regulating the status of TCN depending on their work permit/visa type like Council Directive 2003/109/EC on long term residents, Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; legal regime stated in title V of the Treaty on the Functioning of the EU (TFEU); relevant Articles of the Charter of Fundamental Rights.

Moreover, analysis is based on EU Institutions' research and reports, for example Synthesis Report for the EMN Study "Labour Market Integration of Third-Country Nationals in EU Member States" (February 2019) on how and why structured, well balanced immigration policy is the key tool for effective functioning of the labour market. Academic researches and literature are represented by Becker, Michael A.: "Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals," with analysis on possible development of TCNs status and correlation with EU nationals; comparison of the status of posted workers and intra-corporate transferees that was analysed by Sara Fekete and Scherezade Maestre "Posted Workers and EU Intra-Corporate Transferees – How to Differentiate and Ensure Compliance" Fragomen (2018).

Thesis in the first section describes historical background of development of migration policy in the EU, then second part contributes to general legal framework of the EU regarding the TCN's employment.

In the third chapter frames of legal possibilities for TCN to reside and work in the EU will be presented. Comprehensive information will be provided regarding variety of types of work-visas granted on the territory of the European Union to citizens of third countries. Among

them: Highly qualified workers (EU Blue Card holders), Posted workers, Seasonal workers, workers under the Single Permit Directive, Intra-corporate transferees. As well as the employment opportunities of citizens who have permitted other than a work visa to stay in the EU, for example, students and researchers. In addition, in forth chapter the issue of illegally staying and employed TCN will be analysed.[3]

Moreover, in chapter five, the work will highlight the question of social security rights and benefits that third-country nationals have when they legally reside and work on the territory of a member state of the European Union. This aspect will be laid out during the analysis of the European Court Judgment and Preliminary Opinion in the Case C-477/17 "Sociale Verzekeringsbank v D. Balandin and Others" (Court of Justice of the European Union, 24 Jan 2019). As the right of TCN to claim any coverage under EC Regulation 883/2004 for social security has been disputed for a long time, now, the European Court of Justice has ruled on the position of social security for third-country nationals during their temporary stay and work in the EU. But in Case C-477/17 the Court ruled contrary to the opinion of the Advocate General and stated that third-country nationals who are staying and working legally in the EU are covered by the EC Regulations on social security.[4] During the examination of the Case C-477/17 following Regulations are of the high relevance: Regulation (EC) No 883/2004; Regulation (EC) No 987/2009; and Regulation No 1231/2010 which extends the provisions of two previously mentioned, as it aims to ensure that social security rights provided to TCNs are the same as the ones which apply to European citizens.

[3] International Migration Outlook 2018
[4] Hadzic Daida; European Union – Important Ruling for Third-Country Nationals by European Court; KPMG; 15 February 2019.

1. Brief introduction into European migration policy and its development

The field of migration policy is of a high importance and includes several international aspects (the country's/Union's international commitments under which the state changes its migration policy) and internal factors (security issues, integration of migrants; social expenditures, and political commitments of the government). The components of migration policy include visa policy; border control; granting a residence permit, provided in the case of family reunification; legal status and rights of migrants and refugees within the country; granting refugee status and political asylum; social services; control over the implementation of domestic legislation and expulsion from the country; fight against cross-border crimes; cooperation with other countries for joint management of migration flows.

Modern international immigration is characterized by ever-increasing scale and intensity, creating new challenges not only for nation-states but also for the European Union. Here because of the existing freedoms of the internal market and the relatively high level of the economy of the member states, issue of mass illegal immigration was quite acute in recent decades. This has led to the need to adapt migration policy to the new level of integration of the association established by the Lisbon Treaty and to shift Union's focus to create an area of freedom, security, and justice.

The key tasks of the EU are:

- to implement the existing principles of the unified migration policy of the union;
- harmonization of legislation of member states and creation of a detailed regulatory framework for migration regulation.

The implementation of a single balanced migration policy will contribute both to the effective regulation of the pure migration sphere and to the creation of a truly unified legal order and the EU legal system. The issue of harmonization of EU immigration policy has been repeatedly considered in the works of domestic and European authors, both separately and in the context of reforming the functional structure of the EU, provided by the Lisbon Treaty.[5]

The evolution of EU immigration policy and immigration law is largely due to the constant increase in the level of integration of the association. In turn, the closer the cooperation of the countries of the union in the field of internal affairs, security, and foreign relations, the more urgent rises an issue of unification of migration legislation. As known, the EU and,

[5] Aubarell G., Zarata-Barrero R., Aragall X. New directions of national immigration policies: the development of the external dimension and its relationship with the Euro-Mediterranean process/ G. Aubarell, R. Zarata-Barrero, X. Aragall.: http://ec.europa.eu/home-affairs/policies/external/externalintroen.htm.

accordingly, European law in its development has gone through several stages. Thus, based on literature reviews and research studies, it is possible to pre-identify 4 stages of evolution of EU law.

The first is related to the constitution of the European Communities. The second begins with the emergence of the European Union. The third starts with the signing of the Treaty of Nice. The Lisbon Treaty opens the fourth stage in the development of European law and a new stage in the development of migration legislation, as it constitutes cooperation between the EU countries at a new level in order to create a new functional structure of the association. Tendencies towards the unification of immigration policy appear already at the second stage of the development of EU law, as a common balanced immigration policy is one of the important principles of cooperation in the field of justice and home affairs.[6]

The basic principles for granting political asylum, the order of crossing the external border and exercising control over it, immigration policy key objectives were already in the Maastricht Treaty. The 1997 Amsterdam Treaty led to the "communitarianization" of EU immigration policy by introduced more detailed regulation of long-stay visas and residence permits, family reunification, conditions for entry and stay of third country nationals in the EU. Which are of the high importance in a wide labour force migration and as a research topic in this work.

The Union can influence integration policy only by financing certain projects, such as the European Integration Forum, or by issuing political documents. However, according to scientists, the effect of such influence is not weaker than from harmonization measures. Over the last few years, the Union's legal framework for immigration regulation has expanded significantly: directives have been adopted on the family reunification, the legal status of third-country nationals, and EU Blue Card work permits, regulations for victims of human trafficking and so on.

Despite the dynamic development of the acquis communare in the field of migration, certain issues that are components of immigration policy are still regulated at the national level in a way that is contrary to the interests of the Union and the principle of common immigration policy. Today, there are a number of issues where the unification of regulatory approaches will help the Union to make immigration policy truly common.

The first question concerns migration categories. EU law enshrines the following categories of legal immigration: family reunification, work (including seasonal work, posted

[6] ibid [5].

work, etc.), education and training. However, the national legislation of the member states distinguishes a number of additional migration categories:

- being a descendant of a citizen of the country or previous citizenship; retirement, defined as "stay for private purposes" (Austria, Estonia) or
- "stay for non-profit purposes" (Bulgaria);
- for the purpose of conducting research;
- for the purpose of treatment, etc.

The question of issuing long-term visas and residence permits remains open, which, despite the course of unification of the migration legislation of the member states, is still fully within their competence. Thus, long-term visas are issued only in one third of EU countries (Belgium, France, Germany, Greece, and Italy). The issuance of long-term visas in different EU countries is carried out by different administrative institutions: from diplomatic and consular to the relevant ministries. Residence permits can be issued after obtaining a long-term visa (Spain) in the country of immigration or in the country of origin (Denmark). Long-term visas can exist both as a prerequisite for obtaining a residence permit and independently (Poland, Estonia).[7]

Differences in the procedure for obtaining long-term visas, residence permits are due to different concepts of understanding visa policy in member countries. Visa policy is considered either an element of foreign policy or a means of migration management and security. If a long-stay visa is denied, in most countries the person must apply to an administrative court; in some countries there is an administrative pre-trial hearing (France). Despite the possibility of litigation, administrative authorities are not always obliged to explain the reasons for refusing a visa. Such a rule violates the provisions set out in Council Directive 2003/86/EC: "reasons must be given for decisions rejecting the application"[8].

It may also be noted that the refusal to explain the reasons for the rejection of the application is a violation of Article 14 of the International Covenant on Civil and Political Rights, which guarantees the right to a fair trial.[9] An analysis of Member States' policies on long-term visas and residence permits leads us to the following conclusions.

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[7] Seilonen, Josi; "Fortress Europe – a brief history of the European migration and asylum policy" A historical institutionalist analysis of the migration and asylum policy, and the impacts of the current migration crisis; Lokakuu [2016].

[8] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 10.2003; Article 5.

[9] International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

First, it is necessary to adopt a framework document at EU level that would provide a vision of the concept of EU visa policy on long-stay visas.

Secondly, as in the case of short-stay visas, a clear list of migration categories needs to be approved. It should be noted that it is necessary to extend the provision on the obligation of the administrative institution to explain the reasons for refusing a visa to all categories of immigrants (because so far this provision applies only to family reunification, which violates the person's right to effective and fair trial).

Thus, according to the provisions of EU Directive 2003/86/EC[10], migrants arriving for family reunification must participate in integration activities, but Member States (Netherlands, Austria), however, are more likely to legislate integration conditions. It should be noted that strict integration conditions can be restrictive in terms of human rights (especially in the case of people with disabilities). As for the quota system, it has survived only in a quarter of the EU countries and concerns only the labor migration. In Austria and Estonia, there are quotas for all types of immigration. The existence of immigration quotas for family reunification is considered a serious violation of human rights. The analysis shows that the unification of policies on general immigration conditions and procedures is fragmentary and leaves many questions for further regulation.

Family reunification is one of the most common goals of immigration as a benefit based on TCNs' work and stay permits. As already mentioned, the inconsistency of national legislation with the acquis communare is observed in the field of integration measures. A separate issue is the understanding of the family. In particular, the definition of members of the so-called "nuclear family" is left entirely to the discretion of the member state, and only a few countries perceive unmarried partners as potential migrants for the purpose of family reunification. Today, the concept of the family in Europe is actively developing, the family includes other relatives in addition to the couple and children, which necessitates a revision of existing rules.

The issue of unification of entry conditions for certain types of immigration needs a separate study, also with the treatment of victims of trafficking, fight against cross-border crimes and cooperation with third countries in the field of management of migration flows and combating illegal migration and organized crime. This chapter aims to provide basic overview on the European migration policy as the research topic is part of this whole big theme. Such topics as long-term permits and family reunification will be discussed in the following chapters

[10] ibid [8].

in more detail. We see the need to give such brief introduction to focus the attention of the reader on how broad and multifunctional issue considering TCN residing in the European Union is, since it contains and involves different legal aspects within both EU as the whole and each Member State in particular.

2. General legal framework of EU law and policies regarding the employment of the third-country nationals

After the introduction of the citizenship of the European Union and the subsequent development of unified approaches to the status of migrants from third countries, changes appeared in the field of regulation of the situation of foreigners, and although, according to the principles of international law, sovereignty presupposes that states have the right to independently determine the conditions for admitting foreigners to their territory and indicate the priorities of immigration policy.[11]

Since the proclamation in the Treaty on the Establishment of the European Economic Community (EEC) the task of removing obstacles to the free movement of persons between the member states, the consolidation of the provisions on the prohibition of discrimination based on citizenship and on the free movement of workers played an essential role. Since then, the Member States have to some extent felt more influence from the Union on their national regulation of migration policy. Then some countries tried to declare interference in their internal affairs regarding the establishment of migration policy, namely, their personal prerogative. In this regard, in 1985, the Commission of the European Communities issued Decision 85/381[12] introducing a procedure for prior notification of consultations on migration policy with respect to non-Community states, referring to the provisions of Art. 118 of the EEC Treaty and the need to take into account the general policies and measures taken within the Community, in particular, in the field of labor market regulation, when developing the migration policies of individual member states.[13]

Within the framework of this document, the member states were to inform the Commission and other members of the Community in advance about the measures being developed related to the entry, residence and employment of workers from third countries and members of their families, ensuring equality in treatment with respect to working and living conditions, wages and economic rights, assistance to these persons in integration in society, in the workplace and in the cultural sphere, voluntary return to the country of origin, as well as draft agreements with third countries on this issue. In addition, it was envisaged to hold consultations in order to develop a common position of the Commission and the member states

[11] Becker, Michael A. (2004) "Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals," Yale Human Rights and Development Journal: Vol. 7: Iss. 1, Article 5., pp132-136.
[12] Commission Decision (EEC) 85/381 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries [1985] OJ L 217.
[13] ibid [6].

on international instruments for regulating migration, harmonizing legislation regulating the status of foreigners, including general provisions in bilateral agreements with third countries.

For a considerable time, such important components as "free movement of persons" on the territory of the EU single market, as well as "freedom of movement of workers" were inaccessible to citizens of third countries that are not part of the European Community. Of course, there were some exceptions to this rule, but nevertheless, in general, the restrictions were higher than the permissions. For example, immigrants from third countries, even with a residence permit in one of the member states, were not entitled – in contrast to the citizens of the Union – to freely move to other member states and engage in labour or business activities there.

In general, this issue can be highlighted as clearly a system of advantages in relation to citizens of the European Union, which definitely makes sense and can be justified by the presence of legislative and legal agreements between countries that pursue common all-Union goals and make their contribution to them. At the same time, given the high need and interest of these states in qualified workers in the person of third-country nationals, this situation could be revised in certain cases.

Considering the above, it is worth noting that an attempt to balance the rights and overcome the listed problems was made within the framework of immigration policy by EU legislative acts approved by the Council of the European Union at the end of 2003.

The EU acquired this competence thanks to the 1997 amendments to the Amsterdam Treaty. These corrections are presented in the form of directives, albeit with caveats:

- Directive 2003/109/EC "Concerning the status of third-country nationals who are long-term residents". It establishes the foundations of the legal status of legal immigrants from foreign countries, including the principle of their equality with European citizens.[14]
- Directive 2003/86/EC "On the right to family reunification". Which lays down the conditions for the family members of legal immigrants to move to the Union and provides them with the opportunity to engage in labour or other socio-economic activities in the Member States.[15]

[14] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.1.2004, pp44-53

[15] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p12-18.

The combination of economic and social components in EU policy requires balancing the provisions of the founding treaties on fundamental economic freedoms with the objectives of social policy, which include, inter alia, improving living and working conditions, in order to harmonize them by improving regulation and promoting social dialogue. Article 12 of the EU Charter of Fundamental Rights (ECFR)[16] provides that everyone has the right to freedom of peaceful assembly and association at all levels, including trade union affairs, including the right of trade unions and join them to protect their interests. This wording also covers the right to participate in trade union activities.

The literature focuses on the fact that there is no clear system for constructing the rights of third-country nationals in the EU legal system.[17] Since only elements of TCN status, that are to some extent related to the conditions of admission and their stay in the Union, are regulated at the supranational level. In general, in EU law, representatives of third countries are not particularly distinguished as a homogeneous group. But, for example, family members of citizens of the Union or permanently living/working there TCNs are distinguished as a subgroup. The specificity of their legal status is due to particular legal regulations in the member states. These persons have rights derived from the rights of citizens of the Union. It is no coincidence that the position of EU citizens and their family members are traditionally regulated in the same regulatory documents. EU law applies to family members only if they accompany a Union citizen who has exercised his or her right to free movement and residence in the Community or join him in the receiving state.[18]

As for the specific object of legal regulation of national legislation, in the EU member states, it is the work of employees, self-employed and seasonal workers from third countries.

2.1. Third country nationals' labour market examination

Before granting employment to immigrants, most countries require national authorities to assess the situation on the national labor market. All European countries use different permit systems for immigrants coming from third countries (the so-called 'labor market checks').[19] Among them are the following types of permits issued by the state to the employer or to the

[16] Charter of Fundamental Rights of the European Union OJ C 326, 26.10.2012, p. 391–407, Article 12, p8.
[17] EMN Synthesis Report – Intra-EU Mobility of third-country nationals; 2013.
[18] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, pp77-123.
[19] EMN Synthesis Report – Intra-EU Mobility of third-country nationals; 2013; pp 35-38.

employees themselves. In general, there are countries where the system of one permit is used, an immigrant from a third country receives a residence and employment permit at the same time. When two permits are required, a third-country employee is required to obtain a separate residence permit and a separate work permit. There is another system that requires three work permits. Such countries, which require a third permit, make it necessary to protect their internal labor market. By their logic, an employer can obtain a work permit for an employee from a third country only if there are no workers in the national labour market with the appropriate qualifications or profession who could take the position. Various agencies are responsible for implementing such a permit system. For example, the National Employment Agency (France), the Ministry of Labor and Social Insurance (Cyprus), sometimes the responsibility lies within local authorities (Belgium). However, it should be noted that most, namely about two-thirds of European countries use the system of two permits.[20]

The European Union aims to regulate labor immigration from third countries, by using two systems, namely 'labor market checks' (varieties of this system are described above) and quotas. The second system (quotas) implies a limited number of quotas on the use of hired third-country nationals labor force. The inspection is arranged to make sure that these categories of workers are not available on the national market.[21]

Certain European countries, before granting a work permit to a third-country national-worker, require proof that the worker has certain qualifications, education, or experience that are necessary for the position for which he/she is applying. Bulgarian law stipulates that an employee wishing to obtain a work permit must have at least a secondary professional education or relevant qualifications or experience in the field. Other countries require knowledge of the language as a special condition that is necessary for this work. Such additional conditions may also include a health requirement, no criminal record in both Estonia and Romania, or an agreement between the host country and a third country that allows labour immigration practiced in Belgium, also restrictions on the employment of certain categories of workers in Ireland.[22]

[20] ibid [15], pp34-38.
[21] Labour Market Integration of Third-Country Nationals in EU Member States; Synthesis Report for the EMN Study; February 2019, pp6-15.
[22] Hill Robert: An international guide to employment law across 28 countries - Europe highlights; (23 May 2017), https://www.lexology.com/library/detail.aspx?g=6e59f071-8bdf-4ee8-8003-523daf192c4a.

Most European countries use this labour market verification system, and countries such as Austria, Estonia, Greece, Italy, Portugal, Romania, Slovenia, and Spain generally use both systems together.[23]

Upon successful acquisition of the right to stay and work in a country of the European Union, a long-term TCN resident enjoys equal rights with national citizens.[24] This directly applies to working conditions as an employee or access to non-employment activities, conditions of dismissal and wages, conditions of education and vocational training, including benefits and scholarships due to the national law, approvement of diplomas, certificates, and other professional achievements accordingly to the applicable local procedures. It also includes the right to social security, assistance, and protection as defined by national law; freedom of association, membership of workers and employers, or any other professional organization and membership, including any benefits that may flow from it, without prejudice to national provisions on public policy and public security; free access to the entire territory of the Member State within the limits provided by national law for security reasons. A person who has the status of a long-term resident also has the right to reside in any other Member State, if this is recognized for the purposes of economic activity as a self-employed person or a freelancer, vocational training, or other purposes under Art. 14 of Directive 2003/109/EC.[25]

Under Directive 2003/109/EC, in Article 11 [3] (a), (b) there are only two cases in which the Member States are allowed to restrict the equality of persons holding long-term resident status with respect to nationals of the host country in matters of employment. These include:

a. When certain activities under the national law of a Member State or under existing Union law are reserved to national or EU citizens.
b. Member States may require proof of adequate language skills in order to gain access to education or training.

Directive 2009/50/EC of 25 May 2009[26] laying down the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment lays down the conditions of entry and residence for more than three months into the territory of the

[23] EMN Synthesis Report – Intra-EU Mobility of third-country nationals; 2013; pp 35-38.
[24] Becker, Michael A. (2004) Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals, (Yale Human Rights and Development Journal: Vol. 7: Iss. 1, Article 5).
[25] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, pp44-53.
[26] Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, pp17-29, para (14) preamble p19.

Member States of citizens from third country who come for highly qualified employees and have a European Blue Card, as well as members of their families.

In addition, the provisions of the Directive determine the conditions of entry and stay of the above-mentioned citizens, as well as members of their families, in a Member State other than that in which the European Blue Card is issued.[27]

By "highly qualified worker" the Directive means a worker who, regardless of the type of legal relationship, enjoys protection in a Member State, as a worker under national labor law or in accordance with a national practice, in order to carry out real and effective work on behalf of or under supervision of another person; receives for the specified work a salary and possesses professional abilities of proper and special character which are confirmed by high professional qualification.[28] (A full description of the specialists holding the Blue Card will be presented in the next chapter.)

All the above-mentioned legal acts and Directives are not an exhaustive list that can be used to legally determine the status and right to work of representatives of third countries entitled to stay and work legally in the EU. This list will be supplemented in the process of researching the topic of this work in the following chapters, as well as in particular already presented sources will be considered in more depth in accordance with the analyzed information.

2.2. The legal status of the third-country nationals as the workers

The current world is characterized by an intensification of international migration. There are different purposes describing such tendency. Some people are pushed by political and economic instability in home state, war/armed conflicts, lack of work or weak social system. On the other hand, MS are also interested in such labor force entering EU because of demographic trends like ageing population or other social/political reasons. In this regard, such an important component of integration processes as the movement of people, along with the free movement of goods and capital, is the subject of joint political decisions of the European Union.

In 2004, the European Council approved the Common Basic Principles for Immigrant

[27] ibid, Preamble pp17-19.
[28] ibid, Article 2, p21.

Integration Policy.[29] They are as follows: integration is a dynamic, two-way process of mutual agreement between immigrants and residents of member countries; immigration presupposes respect for the EU's core values; employment is a key condition for integration and a decisive factor in ensuring the participation of immigrants in society, their contribution to society and the obviousness of this contribution to other members; basic knowledge of the language, history, structure of the host society is necessary for the integration of immigrants, and the creation of conditions for them to acquire this knowledge is extremely important for successful integration; education is crucial for preparing immigrants, especially their descendants, for a more active role in society; immigrants' access to public institutions and services along with local residents is an essential basis for integration; interaction between immigrants and citizens is a fundamental mechanism of integration; the diversity of cultures and religions is guaranteed by the Charter of Fundamental Rights and must be ensured, unless it conflicts with other rights or national law; the participation of immigrants themselves in the democratic process and in the formation of integration policies, especially at the local level, promotes integration; the inclusion of integration issues in sectoral policies at all levels is an important component of the formation and implementation of integration policy.[30]

Free movement of workers has been recognized as one of the fundamental rights of European citizens since the founding of the European Community in 1957 and ever since plays a crucial role in the established internal market. This principle also is important regarding the opening of the European labor markets for migrant workers and their families.

The scope of the rights provided for in the Treaty establishing the European Community has been significantly expanded by secondary acts and decisions of the Court of Justice. The most important among them are two normative acts - the EU Council Directive "On the abolition of restrictions on movement and residence within the Community" 68/360 of 15.10.1968[31] and the Regulation "On the free movement of workers within the Community" 1612/68 / EEC of 15.10.1968[32].

[29] Immigrant Integration Policy in the European Union. Council Conclusions //Press Release 2618th Council Meeting. Justice and Home Affairs. (Brussels, 19 November 2004); Available: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf

[30] Common Basic Principles for Immigrant Integration Policy in the EU; Council of the European Union: PRESS RELEASE, 2618th Council Meeting, Justice and Home Affairs; (Brussels, 19 November 2004).

[31] Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257, 19.10.1968, p. 13–16.

[32] Regulation (EU) 492 on freedom of movement for workers within the Union Text with EEA relevance [2011], OJ L 141.

The first regulates formalities such as housing, and the second is an extension of the fundamental principles of Art. 39 of the Treaty establishing the European Community, describing the rights of migrant workers. European Union law differentiates between workers who are EU citizens and enjoy the freedom of movement for employment within the European Union and non-EU workers by defining the legal status of the latter as "economic migrants".

Should be noted that obviously that TCN in regard to the citizens of the European Union, are definitely faced with difficulties in exercising their right to free movement. Third-country workers who are not members of the European Union do not yet have the right of free access and stay in the territory of an EU Member State for the purpose of employment to the extent desired unless that right is established and governed by a separate agreement between the Community and the EU state. To regulate the implementation of economic migration of third-country nationals, the European Commission develops and publishes special consultation documents on specific issues: Notices (analytical references on economic migration regulation), "Green Papers" (containing an analysis of the current situation in economic migration regulation and possible measures) which should be applied at the Union level.

Nowadays, such a clear division between the activities of the EU and the Council of Europe has changed. The protection of human rights has become a unifying regulator of cooperation between organizations and is one of the key activities of the European Union, in particular. On 12 September 2012, the European Parliament adopted a Resolution on the EU's foreign and security policy.[33] This document stipulates that the EU's foreign policy should be based on the promotion and protection of EU values and be guided by the principles that underlie the creation of the Union itself, and the principles of democracy and human rights should be at the heart of its policy.

In addition, in October 2012, the European Union received the Nobel Prize for its significant contribution to the maintenance of peace, mutual understanding, democracy and human rights in Europe. This event shows that today, along with the issues of economic and political integration, human rights are given a key place in the activities and functioning of the EU.

At the same time, one of the four fundamental freedoms guaranteed by EU law, which includes the right of a person to live and work in the member states of this integration association, is the freedom of movement of persons. Today, the legal basis for freedom of

[33] European Parliament resolution of 20 January 2021 on the implementation of the Common Foreign and Security Policy – annual report 2020 (2020/2206(INI)).

movement of persons is determined by the provisions of the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU) as amended by the Lisbon Treaty, acts of Union institutions (secondary EU legislation - regulations and conclusions under Article 289 TFEU) and case law.

There is no clear definition of the concept of "freedom of movement of persons" in the European Union, enshrined at the treaty level. EU law mostly uses the term "freedom of movement of persons" without its interpretation. Thus, Article 26 of the third part of the TFEU "Internal policy and activities of the Union" provides for the Union to take measures to create or ensure the functioning of the internal market, where the internal market covers an area without internal borders, which ensures the free movement of goods, persons, services, and capital.

Part Two of the TFEU "Non-Discrimination and Citizenship of the Union" (Articles 18 to 25 TFEU), the provisions of Article 20, establish the citizenship of the Union and the right of citizens to move and reside freely within the territory of the Member States. Section IV "Free movement of persons, services and capital" (Articles 45-66 TFEU) sets out the principles for the free movement of persons within the Union. Pursuant to the provisions of EU law, the scope of freedom of movement of persons may be extended to other states only upon their accession to the European Union, as was the case with the Member States that joined the European Union in 2004 and 2007.

Regarding the status and the rights of TCNs, range of Directives and Regulations were presented by European bodies in order not only to regulate position of TCNs in general as was described above, but also to give them more direct and concrete definition considering type of their resident/work permit. At glance those types will be clarified in chapter 2, however, there still seems logical to mention Regulation No 1231/2010, extending Regulation (EC) No 883/2004[34] and Regulation (EC) No 987/2009[35] to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.[36] In particular, in the preamble to Regulation No 1231/2010 declares, inter alia:

[34] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p1-123.
[35] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284.
[36] Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, OJ L 344, 2.12.2010, p1-3.

'(1) The European Parliament, the Council and the European Economic and Social Committee have called for the better integration of nationals of third countries who are legally resident in the territory of the Member States by giving them a set of uniform rights which match as closely as possible those enjoyed by citizens of the Union.'[37]

In order to monitor the progress of integration policy, the European Commission, together with Eurostat, has developed several indicators. They are divided into four groups: employment (employment rate, unemployment rate, level of economic activity); education (structure of the population / migrants by level of education, share of illiterates, quantity of people with higher education in the age group 30-34, share of young people who do not finish school); social inclusion (average income of migrants compared to the average income of the entire population, risk of poverty, assessment of physical health, the ratio of the share of property owners among migrants and the total population); political participation (share of migrants who have acquired the citizenship of the host country, share of migrants who have permanent / long-term residence permits, share of migrants in elected positions).

Thus, the integration policy provides for targeted measures not only in migration but also in other spheres of society, especially in the labor market, to ensure migrants' access to educational, medical, social services, their active participation in the cultural and political life of the host country. Particular attention should be paid to specific groups of migrants, including young people, women, and refugees. At the same time, the efforts of governments should also be directed at society as a whole, ensuring its readiness to accept migrants, cultural and linguistic diversification, and the formation of a new identity.

[37] ibid [30], p1.

3. Closer objective of the categories of third-country national workers

Such an important component of integration processes as the movement of people, along with the free movement of goods and capital, is the subject of joint political decisions of the European Union. It concerns the situation within both the community and its migration relations with third countries.

In accordance with Article 2 of the TEU, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, in particular of persons belonging to minorities. Regarding working conditions more specifically, they are represented in Article 31 of the Charter of Fundamental Rights of the European Union, under the title 'Fair and just working conditions. Namely, it says 'Every worker has the right to working conditions that respect his or her health, safety and dignity'. This provision applies to EU nationals and TCNs as well.[38]

According to Article 15 of the Charter of Fundamental Rights, every citizen of the European Union has the freedom to seek employment, to work, to exercise the right to establish and provide services in any Member State. Third-country nationals who have been officially authorized to work in the territory of a Member State are entitled to work conditions equivalent to those enjoyed by citizens of the European Union as mentioned in Article 15 para 3 CFR. It is based on principle of equal treatment, even though not every Directive, regarding the status of work permit for TCN, fully includes this topic.[39]

Moreover, Article 15(3) sets out the non-discrimination principle at work, based on nationality at the whole EU level. However, it should be noted that TCNs are given the right of equivalent conditions at work, but primarily this does not identifies with identical or equal rights.[40] Since equivalent means similar or identical in value, meaning or effect; virtually equal, when equal stands for something not comparable, while having precisely the same set of characteristics; indistinguishable.[41]

Other important acts that determine the status of TCN due to labour market of the EU are Directive 2000/43/EC implementing the principle of equal treatment between persons

[38] ibid [12], Article 31, p401.
[39] ibid [12], Article 15, 15 (3), p398.
[40] ibid.
[41] WikiDiff,https://wikidiff.com/identical/equivalent.; Equality and Human Rights Commission, https://www.equalityhumanrights.com/en/advice-and-guidance/equal-work.

irrespective of racial or ethnic origin[42] and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation.[43] Each of them determines 'employment and working conditions, including dismissals and pay'; those provisions can be found in Article 3(1)(c) of both directives.

Free movement of workers has been recognized as one of the fundamental rights of EU citizens since the founding of the European Community in 1957. This right was introduced in order to open European labor markets to migrant workers and their families. The scope of the rights provided in the Treaty establishing the European Community has been significantly expanded by secondary acts and decisions of the Court of Justice. The most important among them are two normative acts – the EU Council and European Parliament Directive "On the abolition of restrictions on movement and residence within the Community" 2004/38/EC[44] and the Regulation 492/2011 "On freedom of movement for workers within the Union.".[45] The first regulates formalities such as a residence permit, and the second is an extension of the fundamental principles of Art. 45 of the TFEU, describing the rights of migrant workers. European Union law differentiates between workers who are EU citizens and enjoy the freedom of movement for employment within the European Union and non-EU workers by defining the legal status of the latter as "economic migrants".

The issue of free movement granted to TCNs was always ongoing. There are different approaches to the understanding of TCNs' exclusion from this right. Since, this right was implemented within the EU, it makes sense that only direct official parties of the agreement are allowed to enjoy such benefit as free movements of people. Although, it may be examined from another perspective, in case we would see it as common space where people are allowed to move, as they want, like for example in particular nation state. While also TCN does not require any additional permission to move within one state where he/she acquired residence permit. In result, members of third countries have rather limited access to the free movement of people, as they have to proceed over all the official migration procedures to move to another EU state for the period of time exceeding three months.

[42] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180.
[43] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.
[44] Directive 38 (EC) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; [2004], OJ L 158.
[45] Regulation 492 (EU) of the European Parliament and of the Council on freedom of movement for workers within the Union; [2011]; OJ L 141.

Of course, there are some legal exceptions and measures given in EU legislation to regulate some particular categories of TCNs to provide them with wider possibilities regarding the freedom of movement. Among such categories are third country nationals who already hold EU residence in one MS for a long day. TCNs coming to EU for the first time do not have such opportunities indeed. Precisely the respective categories will be presented in further paragraphs of this chapter. In particular such legal acts, which are relevant in this regard: Directive 2009/50/EC for Blue Card holders – highly skilled workers. Such workers are allowed to move to another MS, but the new application for a Blue Card with the same work conditions as in the first MS, in other MS is also required. Directive 2003/109 /EC third country long-term residents, who obtained their residence status after living in the first Member State not less than 5 years. Such requirements also apply to such categories as students and researchers under Directive 2005/71/EC and Directive 2004/114/EC. They have to obtain one more visa for their stay in other MS when it is longer than 3 months.

Considering all the data that was mentioned, chapter will underline the employment opportunities for different categories of TCN. This will be done rather in the form of providing a general description of the different types of work permits, and in addition may discuss in more detail the key inconsistencies or issues that relate to them, where necessary.

Labor immigration plays an important role and is a significant stimulus for the economic and often demographic development of EU members. The EU has built its own system that promotes the quality and effective development of migration policy as well as the integration of foreign labor potential to member countries in accordance with their priorities and directions of political strategy. This helps countries to improve their demographic and labor market situation through a high-quality workforce from third countries, as well as for these categories of people it is an opportunity for professional and career growth and quality realization as professionals.

Given the purpose of the stay and official status of a migrant in an EU country, his/her opportunities, and legal rights to obtain a position or labor market engagement in any professional activity are different. For example, students and researchers whose main purpose of staying in the EU is education and scientific research would have much more limited access and rights in the EU labor market. While Blue Card holders will have much broader rights and, free access to most labor benefits in the European Union. The categories analyzed in this section include the following: long-term residents in another Member State, students and researchers, highly skilled workers (EU Blue Card holders), posted workers, seasonal workers, the self-employed and others.

3.1. Long-term residents in another Member State

Under the Directive 2003/109/EC, third-country nationals who hold long-term resident permits in one EU Member State have the right to reside for more than three months in a second Member State to exercise an economic activity, to pursue studies or for any other purpose, subject to certain conditions being met[46]. This is to be awarded after a person has lived legally in an EU State for an uninterrupted period of five years.[47]

However, there are more conditions to be met such as a stable and regular source of income (some Member States require long-term residents to demonstrate a specific level of resources, in France, for example, applicants must demonstrate that their "own resources" are at least at the level of the minimum wage; in Italy, they must demonstrate regular means of subsistence amounting to double the minimum required by law for exemption from participation in health care costs; in Slovak Republic, the financial resources to be proven must be at least the minimum subsistence amount per each month of stay whilst in Poland, the required level is based on a formula of income minus accommodation costs which must be higher than the income level granting entitlement to social assistance), health insurance and, when required by the EU State, special integration measures.[48]

If all the requirements are fulfilled and the person is allowed to hold the long-term permit, which is renewable, and grants most of the EU-citizens benefits in particular areas, which are mentioned:[49]

- access to employment and self-employed activity
- education and vocational training
- social protection and assistance (at least core benefits)
- access to goods and services, etc.

Moreover, those persons could also be allowed to freely move from one MS to another. There is one exception when Directive 2003/109/EC on long-term resident status does not therefore apply for Ireland and Denmark regarding their special arrangements regarding immigration and asylum policy.

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[46] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, pp44-53; Chapter III, Article 14 (1, 2), pp14-15.
[47] In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application. (32).
[48] ibid [20], Chapter III, Article 15, pp15-16. / EU Commission; Migration and Home Affairs: https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/long-term-residents_en.
[49] ibid [20], Chapter III, Article 14 (2), Article 21 (1), pp15, 19.

The majority of Member States require a labor market test to third-country nationals who are long-term residents and apply for a residence permit in their Member State.[50] Language often becomes necessary in the rule of some MS. Such countries as Austria, Estonia, Germany, Latvia and, from 2014 Poland also require third-country nationals to perform a good command of local language.[51]

Summarizing some national provisions, as well as considering the implementation by the member states of the Directive 2003/109/EC[52], it is possible to alleviate certain simplifications in the procedure of access to the labor market, as well as in obtaining a residence permit for long-term residents from other MS. Among states holding such ruling are Germany, Czech Republic, Cyprus, Hungary, Latvia, Netherlands, Poland, and Belgium. Briefly specking, there long-term residents do not have to apply for visas, continuously or repeatedly prove financial wealth, they simply have free entrance to the local labor market. For example, in the Netherlands long-term residents only have to demonstrate their residence status in the previous Member State. In this regard, Belgium may be considered as the most indulgent state as here the facilitated process takes place immediately on arrival even without all the required and important documents in hand.[53]

Concerning the periods of a stay for long-term residents, it is also highly diverse from state to state. While Cyprus provides a so-called immigration permit with no time restriction, however, Poland for example allows long-term residents only with national visa, which has strict expiration date.[54]

There were also total exceptions from these rules and regulation for the MS that have not joined the Directive 2003/109/EC, such Ireland, and United Kingdom but since Brexit in 2020, this is no longer relevant to this analysis, as the main research is to determine the situation of TCN employees in the European Union and its Member States.

Another important topic regarding all of the TCNs and those holding long-term residence is social security rights. In case of the discussed category of residents, the variety of social security rights and their protection as well as access to correspondent benefits is rather

[50] According to the Commission's conformity assessment exercise in respect of Directive 2003/109/EC, conducted in 2011, only nine Member States have chosen to exempt long-term residents from another Member States from the labour market test (Belgium, Cyprus, Hungary, Latvia, Poland, Portugal and Sweden). Report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM(2011) 585 final) 28th September 2011.
[51] Report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM (2011) 585 final) 28th September 2011; p3.
[52] ibid [20].
[53] EMN Synthesis Report – Intra-EU mobility of third-country nationals 2013, pp23-24.
[54] ibid [21], p24.

positive. Long-tern Directive provides equal treatment to them in Article 11 (d).[55] As this issue will be examined more closely in chapter five, it seems to be exhaustive note in this paragraph.

3.2. Students and researchers

Directive 2016/801/EC[56] takes an important part in legal definition of students and researchers rights as they are subject to the law as third-country nationals residing in one of the member states. Of course, this requires compliance with certain legal and statutory rules for this category of TCN who wish to obtain an education or degree in one of the Member States. In particular, Articles 8-11 provide necessary conditions of compliance with which is mandatory for acquiring the right of TCN to stay in the EU for the reasons of studying for a period of time exceeding 3 months. Such requirements include the necessary documents, an invitation from the University or other proof of enrolment, valid health insurance, sufficient funds to finance education and living expense, or proof of sponsorship/stable income that guarantees satisfactory financial status, paid tuition fees, etc.[57]

Moreover, in accordance with the provisions of the Directive, international students also have access to the labor market in the member states which should not be less than 15 hours. Often at the national level, the level of tolerance, the number of possible hours, rights and restrictions are different, since MS are permitted to set up own rules by the Direction in this regard. The directive serves as a guide but does not deny the rights of MS to self-regulate student employment.[58] In addition to the fact that certain countries set an extended number of hours that a student is entitled to work in parallel with their studies, Austria, for example, encourages the creation of self-employment or freelance by students.[59]

However, the situation was not always the same, at the beginning of migration development students were obliged to sign up the document guaranteeing their return to the home state. Therefore, any person willing to acquire foreign education or degree had anyway to come back to their country afterwards. Later, this rule was completely changed, allowing

[55] ibid [42], Article 11 (d), p49.
[56] Directive 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange, schemes or educational projects and au pairing, OJ L 132, 21.5.16.
[57] ibid [29] Article 7, p12.
[58] Directive 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange, schemes or educational projects and au pairing, Article 24, OJ L 132, 21.5.16, p22.
[59] EMN Synthesis Report – Immigration of International Students to the EU; European Migration Network Study 2012; pp38-43.

student and researchers not only to get a chance to study in the EU but also to possibly stay after and find a job.[60]

In this respect, there are many contradictions in terms of approach to the legal regulation of student employment. Some countries provide unrestricted access to the labor market to international students, while others prohibit any employment during the first months of study. In particular, Italy issues student visas with the right to work without additional permits, while Austria requires the employer to register a third-country national student in local AMS, which prologues the process of employment for students. In addition, although the right to work is reserved for students here, if you want to work more than the allowed 20 hours[61], the employer must prove to AMS that there is no suitable local candidate for this vacancy.[6263]

Of course, such indicators and rules can be justified by the different state of the labor market in the MS, as well as the needs that exist. Often the right to employment is limited to certain sectors of the economy because it meets the needs of the local national labor market. The main problem for international students is the predominant employment in low-skilled sectors, which of course can provide some additional income, but in the vast majority it is not a way to gain professional experience or expand career opportunities in areas where education is directly obtained, which clearly would be extremely practical and valuable for personal development and would help with quality employment after graduation.[64]

Upon graduation (Article 25 of the Directive 2016/801/EC)[65], graduates may apply for the relevant work permits / residence permits on other grounds without leaving the Member State, in most MS, in accordance with existing national conditions. With regard to employment opportunities, it is clear that different practices reflect common national strategies. Restrictions may be placed on the type of work that former foreign students may receive, for example, it may be relevant to a completed academic program, or in some cases minimum wage requirements may apply.[66]

Most Member States allow self-employment, although there may be a requirement for the graduate to demonstrate access to investment and capital or compliance with sectoral

[60] De Lange T. (2014). Third Country National Students in the EU: Caught between Learning and Working. International Journal of Comparative Labour Law and Industrial Relations, Vol. 31, No. 4, 453-472, pp457-458.
[61] ibid [32], pp38-39.
[62] Krause, K. and T. Liebig, The Labour Market Integration of Immigrants and their Children in Austria, OECD Social, Employment and Migration Working Papers, (No. 127, OECD Publishing, (2011) p38).
[63] EMN Synthesis Report – Intra-EU Mobility of third-country nationals; 2013, pp35-36.
[64] ibid [32], pp39-43.
[65] ibid [52], Chapter IV Rights; Article 25, pp42-43.
[66] ibid [29] Article 25 p22.

priorities. In recent years, some Member States have introduced new programs to retain graduate entrepreneurs from third countries. In some cases, graduates from third countries may be offered a period of stay in order to seek employment in a Member State; such conditions vary depending on the length of stay, which can be up to 18 months.[67]

Further, we will talk about researchers who come to the Member States to conduct research, scientific analysis within the project, university, or the organization. According to the EU Directive, the legal registration of a researcher's stay in a Member State is regulated by Article № 13: "The specific procedure for researchers is based on collaboration between the research organizations and the immigration authorities in the Member States: it gives the former a key role in the admission procedure with a view to facilitating and speeding up the entry and residence of third-country researchers in the Community while preserving Member States' prerogatives with respect to immigration policing".[68]

Primary researchers are allowed to stay for a three-month duration to proceed with their research. In case of the stay for less than three months, mobile third-country nationals may generally enter and also reside in a second Member States. However, there are still possible restrictions, in particular for third-country nationals arriving from Bulgaria and Romania or from Ireland and United Kingdom. Entry and stay are as usually a subject to the conditions applied in most Member States. Researcher must provide a hosting agreement/contract signed in the first Member State, notice that the person does not pose a threat to public order or public security/health, evidence of required financial wealth.

There is, although, even more requirements of sufficient conditions to reside on the research purpose for the period more than three month. The agreement or contract should be performed (in cases of such states as: Cyprus, Czech Republic, Germany, Estonia, France, Ireland); also, sometimes, medical, and criminal record are required (Czech Republic); the minimum of qualification level (applied in France); necessary is the proof of sufficient income and health insurance (Estonia).[69]

However, it should be noted that there has been some easing in terms of official status and benefits for students and researchers. Namely, according to the "Annual report on migration and asylum 2019"[70], it is noted that some MS have implemented new provisions that clearly improve the condition of this group (student and researchers) of representatives of third

[67] ibid, Article 25 p22.
[68] ibid, Article 8 p12.
[69] European Migration Network June 2020; Annual Report on Migration and Asylum 2019, pp17-18.
[70] ibid, pp17-18.

countries, as well as their relatives. At present, particularly in Ireland, family members of students and researchers have the right to access the labor market without obtaining an extra work permit. At the same time, countries such as the Czech Republic, France and Austria grant students and researchers the right to obtain an annual visa after completing their job search.

As a result of the analysis of the position of students and researchers in the EU labor market, it is worth noting certain points. Firstly, of course, it is necessary to understand that the main purpose of their stay in the MS of the European Union is to obtain a degree and / or conduct research projects. At the same time, we should not forget that at a certain stage of training, gaining practical experience in the form of internships, part-time work, other types of work are extremely important or even necessary.

Nevertheless, for some students (researchers) the question of the possibility of additional earnings to finance themselves fully or partially during their stay in MS is also an urgent need. Secondly, despite the main purpose of this TCN group's stay in the EU, most of them aim to continue their employment in the country where they are studying or in another MS. This could be directly enshrined in defining intra-mobility[71] within the EU as an opportunity for free movement within the European Union. This right also derives from the Founding Treaties of the European Communities, but in this respect, the previously existing EU Directive 2004/114/EC[72] and Directive 2005/71/EC[73] for students and researchers have shown an extremely urgent need for revision. As a result, the European Commission proposed a revision of the EU Directive on the conditions of mobility rights of students and researchers from third countries, and a new Directive 2016/801/EU was created, which addresses most issues of free movement and mobility of students in the EU.[74]

[71] Tottos, A. (2013), The Intra-EU Mobility Right of Third-Country Nationals in the European Union. – Studia Iuridica Auctoritate Universities Pecs Publicata, Vol. 151, 239-254, p240.
[72] Directive 2004/114 EC of the Council of the European Union of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004.
[73] Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005.
[74] Tottos, A. (2014) Legal Issues of Harmonizing European Legal Migration. – Hungarian Yearbook of International Law, Vol. 2014, 343-368, p193.

3.3. Highly qualified workers (EU Blue Card holders)

" Labour migration into Europe boosts our competitiveness and therefore our economic growth. It also helps tackle demographic problems resulting from our ageing population."[75]
José Manuel Barroso

In March 2000, the Council of the European Union set the goal of stating that the European Community should become the most competitive, active, promising, dynamic, and knowledge-intensive progressive economy in the world. It must first and foremost be capable of sustainable economic growth, include access to a significant number of jobs, but not inferior in quality and social orientation.

This was the main goal by creating the respective Blue-card. However, it should be noted what Commission in the explanatory memorandum indicated what are the biggest challenges and boosters of such project as the "Blue Card Directive"[76] that was adopted in 2009. The following points that prompted the implementation:

> the EU as a whole [...] seems not to be considered attractive by highly qualified professionals in a context of very high international competition [...]. The attractiveness of the EU compared to such countries [USA and Canada] suffers from the fact that at present highly qualified migrants must face 27 different admission systems (1), do not have the possibility of easily moving from one country to another for work (2), and in several cases lengthy and cumbersome procedures (3) make them opt for non-EU countries granting more favourable conditions for entry and stay.[77]

So, the Blue identification card without the right to grant citizenship was proposed by the head of the European Commission, Manuel Barroso, at a press conference on October 23, 2007 in Strasbourg, France, by analogy with a Green card already used in the United States for similar purposes. The suggested colour for the map is Blue - after the EU flag. According to the plan, the Blue card was supposed to meet the EU's needs for skilled labor force due to the strong aging of the population, although three countries - Ireland, Denmark, and the United Kingdom - refused to participate in the project. It was expected that the most candidates would apply for a Blue card from developing countries in Asia and Africa, primarily from India and

[75] José Manuel Durão Barroso. President of the European Commission "Opening remarks of President Barroso – Legal Immigration" Press conference Strasbourg, 23 October 2007; EUROPA — Rapid — Press Releases. Europa.eu.
[76]Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.09.
[77] European Commission (COM) 637, Explanatory Memorandum to the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, [2007], p. 3.

China, but the number of applicants from Turkey, Ukraine and Russia was prognosed to be also quite significant.

The projected "Blue-card" presented by the European Commission offers a standard work application procedure for non-EU citizens. According to the draft, the document will be valid for two years, but may be renewed. Those who receive a Blue card will be granted a certain group of rights, such as the right to family reunification. The proposed project also stimulates the movement of the mentioned citizens across the EU between the member countries of the project. The legal basis for such a proposal is Article 63 (3) (a) and (4) of the Treaty of Rome, which states that the Council will take action to develop immigration policy.

The proposed project was presented by Manuel Barroso together with the Commissioner for Justice, Freedom and Security Franco Frattini. Barroso motivated his proposal by the alleged shortage of qualified workers in the EU, the difficulty for third-country representatives to travel between the EU countries, the problem of conflicting EU legislation on the entry of immigrants and the "rights gap" between EU citizens and legal immigrants. The Blue card project was proposed along with another draft, COM (2007) 638, which proposed simplification of documentary procedure and the adoption of a general body of rights for legal immigrants from third countries.[78]

To apply for a Blue Card, the applicant must provide:

- a work contract or a job offer with a salary at least one and a half times higher than the average salary in a given EU member state (an EU member state has the right to reduce salary requirements to 1.2 for especially demanded professions),
- valid identity card and residence permit (passport and visa),
- insurance contract,
- documents confirming compliance with the requirements for regulated professions (for example, for doctors), or
- documents confirming the availability of an appropriate higher education for unregulated professions (preferably obtained in the respective MS).

Additionally, the applicant may be required to have a document confirming knowledge of the language, police clearance certificate, medical record, work record or for family reunification, documents confirming relationship.

[78] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p1-9.

Although, in principle, what does "for the purpose of highly qualified employment" stated in the Directive means? It is important question that has to be answered in order to have better understanding of who is actually eligible to apply for a Blue card.

Moreover, there are three definitions determined in Article 2 of the Directive, 'highly qualified employment', 'higher professional qualifications' and 'higher education qualification'. All the definitions are disclosed in this paper in order to provide a more complete picture of who is a potential applicant for this permit for TCN to work and reside in the EU.

'Highly-Qualified Employment', the explanation of this term can be found explained in the European Commission Proposal on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM (2007) 637. As the lead to specify the meaning of 'Highly-Qualified Employment' helped the existing proposal implemented by the Court of Justice in the "Free movement law of EU citizens", which sounds as "the exercise of genuine and effective work under the direction of someone else for which a person is paid"[79]) with a novelle that higher education qualifications or at least three years of equivalent professional experience are necessary.[80]

In the aforementioned Proposal, term is defined in the Article 2 and says:

> … This definition is based on two elements: the first is the requirement of exercising an economic activity in an employed capacity, therefore excluding third-country nationals wishing to carry out a self-employed activity. The second covers the necessary "higher professional qualifications" requirements. In this respect and in order to include professionals who do not necessarily need a post-secondary diploma to exercise their activity (experienced managers, certain IT professionals, etc.) the proposal allows taking into account of a minimum of three years professional experience in the profession, instead of the higher education qualifications.[81]

During the adoption of the Directive there were different concerns and propositions from the Member States[82], however, the implemented final version of the Directive (Article 2(b)) determines 'highly-qualified employment' the employment of a person who:

— in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else,

[79] Case 66/85 Lawrie Blum [1986] ECR 2121; and Case C-456/02 Trojani [2002] ECR I-7573.
[80] European Commission (COM) 637 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, 2007, p. 19.
[81] ibid 44.
[82] Eisele K. Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants (NEUJOBS research project, CEPS Paper in Liberty and security, 2013) pp3-4.

— is paid, and,
— has the required adequate and specific competence, as proven by higher professional qualifications[83]

'Higher Professional Qualifications' is defined in the Proposal (Article 2(g)) of the Commission as

> qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;[84]

There were obviously some other opinions and suggestions how to define respective definition made by States during the sessions. In the final conclusion, Council gave MS the right to be more flexible regarding the higher educational qualifications. It, therefor, may be based on the national law regulations. Of course, the Blue card has to be a special possibility for the third country nationals and so be harder to obtain. In this regard, the higher education qualification may well be replaced by a corresponding professional experience of at least five years and necessarily at a level comparable to the higher education qualification and the relevant profession or industry that is specified in the employment contract or is binding in the job offer.

'Higher Education Qualifications' is as well stated in Article 2(h) of the Blue Card Directive

> '. any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education program, namely a set of courses provided by an educational establishment recognized as a higher education institution by the State in which it is situated. For the purposes of this Directive, a higher education qualification shall be taken into account, on condition that the studies needed to acquire it lasted at least three years'.[85]

These definitions are to make it easy to understand what the required qualification for the TCN is in order to be eligible to get access to the EU labor market and to acquire some

[83] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011.
[84] ibid [44].
[85] ibid.

relatively high level of benefits that employment in the EU can provide. However, it is often not that easy to fulfil the qualification obligations or specially to attract the employer who would provide you with a work contract, which is the main point in becoming a Blue card.[86]

Still, as our analysis, of the most relevant visa permits on the basis of employment shows, the Blue card remains to be the most attractive for the TCN as the way to legally reside and work in the European Union, having the closest level of benefits to the EU citizens.

3.4. Posted workers

Referring to the Directive 96/71/EC[87] posted workers (PWD) are employees who carries out his/her work in another MS other that the one they are officially residing and working. Posted workers may be sent in the framework of subcontracting, intra-company moves or temporary work but only for a limited period of time.[88] Person is to be provided with the same basic working conditions and rights as workers in his/her host MS. After posting is finished, worker has to be back to his/her general workplace in sending Member State.

All the working conditions that apply to posted workers can be found in the respecting Directive or briefly on the official website of European Union[89], besides them are[90]:

- All the basic elements of remuneration based on the national law or universally applicable collective agreements;
- Allowances or the reimbursement of expenses to cover travel, board, and lodging costs in the host country during the posting;
- Maximum work periods;
- Minimum rest periods;
- Health and safety;
- Conditions on hiring workers, in particular through agencies providing temporary staff;
- Employment conditions for pregnant women, women who have recently given birth and young people;
- Equal treatment, other rules to prevent discrimination;

[86] ibid [66], pp7-9.
[87] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, p1-6.
[88] Deloitte LLP; Posted Workers Directive Time for action; 2019.
[89] Posted workers; https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm 2021
[90] ibid [71], Article 3 (1), pp3-4.

- Accommodation, if provided by the employer.

Legal basis of the Directive was primary based on primary law provisions in particular Title IV, Chapter 1, Articles 45-48 of TFEU; and partly built on the case law judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04. Due to them host Member State may not impose administrative formalities or additional conditions on posted workers who are nationals of third countries, if they are legally employed in another Member State.[91]

There are general conditions, which apply for third-country nationals due to legal framework of the European Union. For example, TCN posted from another Member State usually do not have to apply for an entry visa, this is the case for Latvia and France where TCN posted workers coming within the Schengen Area do not need an entry visa.

Secondly, posted workers are not required a working permit. In Ireland, such person has to apply for a "Van der Elst" visa, with minimum formalities. In other MS this rule also functioning but with few exceptions, Republic, Ireland, Lithuania do not oblige for a working permit but if posting is for less than three months. In Austria the posted TCN worker must meet the national wage and working conditions as well as social insurance provisions, in Netherlands in case if employer is located in a country which is subject to the free movement of services and does not concern temporary agency work, permit is not required. Among MS with similar visa approaches for posted workers also are Belgium, France, Germany, Italy, Latvia, Malta, Poland, and Sweden. However, there are mostly some additional conditions for post workers, which depends on the MS.[92]

Moreover, nowadays, new legal regulation was implemented, namely before the beginning of posted work, employees have to be informed regarding following information:

- MS in which the work abroad is to be performed;
- the estimated duration of the work in other MS;
- information regarding currency that are used for the salary payment;
- where relevant if there are benefits in cash or another means of over-worked promotion;
- the conditions about the possible repatriation;
- the remuneration to which the worker is entitled due to the local law of the host MS;

[91] EMN Synthesis Report – Intra-EU mobility of third-country nationals 2013, pp28-29.
[92] ibid, pp28-29.

- where relevant, any allowances and/or reimbursing for expenditure on travel, accommodation;
- the link to the single official national website developed by the host Member State.

These requirements fall within the Directive 2019/1152 on transparent and predictable working conditions[93]. Such workers are to be instructed if their stay is longer than 4 weeks and is set up in Article 4 of the respective legal act. Although, this regulation applies from 1 August 2022 on, but regarding already ongoing employees at that date, information is to be provided for an employee request.

During the assignment of employees within the EU territory, PWD implies some obligation on the entrepreneurs that they have to comply with. For example, a significant standards of labor law provisions provided in the host country during the assignment period. First of all, it is important due to the EU Commissioners opinion to ensure equal conditions between foreign and local employers in the MS. This includes the principle of "equal pay for equal work", which between posted and local employees. The principle of "equal pay for equal work" stipulates that the remuneration / income assigned to employees must be at the same level as the salaries of their local peers. This also includes the same additional elements of wages, such as bonuses or allowances. It can be concluded that this has affected the set wage threshold that a foreign employer must adhere to.[94]

3.5. Seasonal workers

Seasonal work is a type of temporary employment linked to specific periods of the year and to specific economic sectors.[95] Since the adoption of the Seasonal Workers Directive 2014/36/EU[96] in 2016, more and more attention has been paid to the implementation of the policy on the reception and protection of seasonal workers' rights.

Most of the seasonal workers are young people aged 20 to 45, who come from neighbouring regions of the Member States, generally Ukraine counts as the largest provider

[93]Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, p105-121.
[94]Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ L 159, 28.5.2014, p11-31.
[95] definition of seasonal worker in the EMN Glossary.
[96]Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.14, p375-390.

of seasonal workers to the EU, in some cases the workers may include representatives of non-European countries.[97] Seasonal workers are involved in agriculture, tourism, and manufacturing. The purpose of attracting seasonal workers is to fill the labor market deficit among its citizens. Generally, according to this principle, participating countries introduce softer and faster timing/procedures for third country nationals to encourage workers. According to Eurostat data for 2019, the number of workers recruited varied from one Member State to another: from 300 in Latvia to more than 46,000 in Poland. There was no clear pattern in the EU regarding the validity of permits issued, whereas in some Member States, such as Bulgaria and the Slovak Republic, the vast majority of permits were issued for 1-90 days in 2019. In others, such as Croatia and Portugal, most permits were issued for 7-9 months.[98]

According to the Directive, seasonal workers have a rather unprivileged status over other categories of EU labor migration resources. They will not receive, in particular, certain benefits such as unemployment benefits or family reunification, certain restrictions on housing also. All this is mainly regulated in the participating countries independently, but it is still quite high issue regarding the violation of these workers' rights and often precisely because of their ignorance of their own rights.[99]

This Seasonal Workers Directive exceptionally applies to third-country nationals residing outside the EU at the time of applying for a visa who wish to reside temporarily in an EU Member State. Seasonal work is defined in the Directive as an activity that is associated with a recurring event or pattern of events related to seasonal conditions at certain times of the year.

Therefore, it is not the seasonal worker who is decisive for the applicability of the Directive, but the industry in which the governments of the Member States decide that they will allow them to work.[100]

However, still the main point for EU research[101] is the equal treatment of such workers. It is the question that arises all the time and is especially provoked by third countries themselves. In particular, in Article 23(1) of the Directive mentioned[102]:

[97] Attracting and protecting the rights of seasonal workers in the EU and United Kingdom Synthesis Report for the EMN Study (European Commission, December 2020), p6.
[98] EMN Synthesis Report – Intra-EU mobility of third-country nationals 2013, pp30-31.
[99] ibid [80], Article 23, 24, pp388-389.
[100] ibid [80], Article 2(1) second indent, and Article 3(a) and (b).
[101] ibid [81], p6.
[102] ibis [54].

> **Article 23(1):** Seasonal workers shall be entitled to equal treatment with nationals of the host Member State at least with regard to:
> (a) terms of employment; (b) the right to strike and take industrial action; (c) back payments to be made by the employers, concerning any outstanding remuneration to the third-country national; (d) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004; (e) access to goods and services and the supply of goods and services made available to the public, except housing; (f) advice services on seasonal work afforded by employment offices; (g) education and vocational training; (h) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures; (i) tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.

Nevertheless, there are some power given to MS to restrict such equal treatment for TCN seasonal workers, which is stated in Article 23(2):

> Article 23(2): Member States may restrict equal treatment:
> (i) under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation (EU) No 1231/2010;
> (ii) under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans;
> (iii) under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

Taking both Articles into consideration we can observe that the seasonal workers' Directive provides such workers only with the restricted benefits and possibility to remain on the EU territory for a purpose of work which is seasonal so consist of particular activities and time. In this regard, it seems logical and not somehow discriminating to have less broad spectre of advantages or benefits since the main purpose of their work and stay in the EU remains quite limited to other types of legal residence. However, seasonal workers' rights during their stay and work in EU remain very important and as such, that needs high level of attention and protection.

3.6. Single Permit Directive

In the 2011, the European Parliament has supported a single work permit and residence permit for foreigners. The decision was made on December 13 at a session of the European Parliament in Strasbourg.

A majority of MEPs voted in favour of the draft report (Veronique Mathieu (People's Party Group, France)). Under the approved Directive 2011/98/EU (SPD)[103], member states will retain the right to decide whether or not to issue a residence permit to foreign workers, while they will have to take this decision within a maximum of four months. At the same time, the Directive introduced the same procedure for obtaining a work permit and a residence permit in all EU member states from third countries.

This Directive applies to third-country nationals who want to live and work in EU member states and will not apply to seasonal workers, refugees, or people with a long-term residence permit.[104] The Directive stipulates that holders of a single work and residence permit have the same rights as workers from EU member states in terms of working conditions, recognition of qualifications, the right to join trade unions, the right to pensions and social protection, and tax benefits.

However, Member States are still able to apply certain restrictions on the exercise of such rights. In particular, if the contract of a third-country worker does not exceed six months, the right to social protection may be limited. The document also provides for the opportunity for foreigners to undergo training and education if they work in the EU or are registered as unemployed.[105]

When creating the Directive, the legislator aimed at two points, firstly, to introduce a single established procedure for applying for a permit by third-country nationals (combining a work and residence permit). This would help facilitate the procedure for admitting TCN to the EU labor market, as well as to better direct the migration flows to member countries.

Secondly, the introduction of such standards and requirements is to ensure the most possible equal treatment of third-country nationals to local nationals in member states. It should therefore be noted that the Directive is a key tool for EU immigration policy aimed at third-country nationals who are admitted to work in the Member States to which the Directive applies.[106]

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[103] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011.

[104] ibid [87], provisions (7), (8), (9), p2.

[105] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Commission Work Programme 2021. A Union Of Vitality in a World of Fragility, (Brussels, 19.10.2020 COM(2020) 690 final).

[106] Report (COM) 98 on Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State; [2011].

What should be noted that Directive 2011/98/EU does not provide and grant TCN a right to be admitted for employment. What it actually endues are the procedural rules that MS can apply and that are based on the rights ensured to TCN who acquired the single permit.

As most, although not all Directives providing TCN with legal work and residence permit, this respective SP Directive states the right for equal treatment of third-country workers to EU nationals. In principle, Article 12 remains the longest provision of the Directive and the most relevant in practice. Nevertheless, this Article included lots of discussion during adoption. Not every MS was satisfied with quite broad concept of equal treatment in the Directive. Primary in the Commission proposal equal treatment was exclusively granted only to third-country workers. Regarding the interpretation of the terming in the proposal Article 2(b) each TCN who obtained permit to work legally in Member State would be covered. After long debates, including the Legal Service it was concluded that the scope of the proposal of the Directive was rather too vast and needs to be reduce to those workers who holds only a single permit. This was a major step to creation of a new law category of third-country nationals in the EU, namely those holding a single permit.[107]

At the beginning of the agreement on the Directive and its implementation in the MS, many issues and inconsistencies arose among the countries, and certain shortcomings needed to be revised or refined. However, this document provided a good legal basis for a quality EU migration policy and brought third-country nationals to a new level of employment and legal residence in the EU. All this constitutes migration policy and the legal basis for legal migration and its regulation. Therefore, this legal act occupies a key place among such work permits for TCN, which are considered in this paper.[108]

3.7. Intra-corporate transferees

The proposal for a Directive (the ICT) on the conditions of entry and residence of third-country nationals, within the framework of an intra-corporate transfer, was adopted by the

[107] Council document 9617/09 of 7 May 2009.

[108] Report from the Commission to the European Parliament and the Council on Directive 2011/98/EU on a single application procedure for a single permit for third- country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (COM/2019/0160, 2019).

European Council in 2014 and until November 2016, MS had time to transpose it to the national level.[109]

The main idea was to harmonize existing Directives such as EU Blue Card or Single Permit Directives and to make the sphere of EU competences on the local level broader to allow multinational companies to temporarily assign workers who are qualified as competitive and skilled to subsidiaries located in the EU. Nevertheless, this act operates the mobility of intra-corporate transferees during their work among the Member States.[110]

Due to the Directive 2014/66/EU Intra-corporate transfer is the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States.[111]

In general, the ICT Directive applies to several categories of citizens, including third-country nationals residing outside the territory of the Member States at the time of application. They apply for or admit to the territory of an EU Member State; and for persons applying for admission or being accepted as part of an in-house transfer as managers, specialists, or trainees.

Intra-corporate transferees are non-EU nationals namely third-country nationals who are nominated from a multinational company's entity outside the EU to another entity of the same group/corporation in some MS. For this category of people, the act is provided as legal basis for transparent and harmonized conditions for admission, work, and residence, with guarantees for social security and equality for highly skilled workers. What makes this Directive such a significant act, in the framework of European labor migration legislations, is that it allows International companies to send their highly professional workers to EU without hard formal procedure. Such people are exempted from getting Schengen visa formalities while

[109] Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p1-11.
[110] Minderhoud P., Tesseltje de Lange: The Intra Corporate Transferee Directive: Central Themes, Problem Issues and Implementation in Selected Member States (Wolf Legal Publishers, 2018), pp5-7.
[111] ibid [92], Article 3 (b).

entering this zone to work for the period of less than 90 days, in case of prolonged residence in the MS, more than 90 days some more visa requirements apply.[112]

Moreover, there are some conditions that require all the workers applying for an ICT permit to provide further information regarding:

- direct priority employment outside the MS;
- an enterprise outside the EU and within the EU in which the employment takes place belongs to one enterprise or group of enterprises;
- professional qualification of the specialist and his/her experience;
- valid travel document/passport, or/and if applicable valid visa application;
- insurance policy;
- details of service – duration, remuneration/salary, and dates of return after the expiration of the term.

The Directive itself stipulates that Member States must decide on an application for ICT within 90 days after the submission of a complete application. In addition, this directly provides the possibility of quick procedure.

An ICT permit to stay in one of the MSs is limited to 3 years for managers and specialists (managers/specialists supposed to provide proof of their professional qualifications and relevant experiences required for work in the host country) and 1 year for trainees (trainees have to provide a university degree).[113] After the maximum length of stay, Member States have the option of introducing a cooling-off period (It varies in different MS: from Italy and Lithuania with the least period of 3 months; Austria – 4 months to 6 months in Bulgaria, Croatia, Cyprus, Germany, Latvia, Luxembourg, Malta, and the Netherlands). In this case, worker has to leave MS before re-application for a new ICT permit. However, it is not always necessary to leave the state for a cooling-off period, some member states allow the possibility to acquire some other kind of work permit, which is mostly based on a local contract. It gives a chance for an employee to remain in the MS and continue with his/her professional activities. After that period person is entitled to re-apply for an ICT work permit.[114]

Regarding the mobility between Member States, new provisions were inserted, in result distinction between short-term and long-term were performed. Aim for it was reduction of

[112] Fekete Sara; Maestre Scherezade; Posted Workers and EU Intra-Corporate Transferees – How to Differentiate and Ensure Compliance' Fragomen, 2018.
[113] ibid [92], Article 3, 5; pp8-9.
[114] ICT Permit Study Facilitating EU mobility for third-country nationals; Deloitte, 2018.

administrative procedures in some MS, so the ICT would be permitted to activities in one or more MS due to short term and long-term mobility provisions:

> (25) '… Short-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit, for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State.'[115]

Aiming to avoid any collision or misunderstanding about the difference between short-term and long-term mobility, further rules apply: a short-term mobility in the same MS has not to be longer then maximum of 90 days in any 180-day period. Nevertheless, it should not be allowed to perform a notification for short-term mobility and an application for long-term mobility at the same time. In case when the need of long-term mobility is the mater of issue after the start of short-term mobility, the second MS may inquire to submit a new application for a long-term mobility not later than 20 day before the end of short-term activity, which was permitted.[116]

Covering the provisions of Article 19, at the same time as the applicant, who is employed in the EU, his/her family members are also entitled to apply for family reunification.[117] Due to Schengen rules family members who have a valid residence permit are allowed to stay from 90 to 180 days (differ within MS) but not to work. Albeit when a family member who is accompanying an ongoing ICT in another Member State intends to reside longer than 90 days, a new application to stay is required under respective Article.[118]

It is one of the significant social benefit, which is granted by European legal acts and is an important as such by ensuring adequate and proper conditions for life and work in the EU.[119]

> 'First, under the principle of equality of treatment between nationals and non-nationals, migrant workers must benefit from the same conditions as nationals with regard to coverage and entitlement to benefits in the host country. Second, determination of the applicable legislation ensures, by establishing the rules for determining the applicable legislation, that the social security rights of a migrant worker is governed at any given point by the legislation of one country only. (...) Third, the maintenance of acquired rights principle and provision of benefits abroad means that any acquired right should be guaranteed to the migrant worker in any one territory, even if it

[115] ibid [104], provision (25) of the preamble.
[116] ibid [110].
[117] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, pp. 12-18.
[118] ibid [104], Article 19, pp16-17.
[119] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166.

> has been acquired in another, and that there should be no restriction on the payment of benefits, for which the migrant has qualified, in any of the countries concerned. (...) Fourth, maintenance of rights in the course of acquisition provides for the totalization of periods of insurance, employment, or residence and of assimilated periods for the purpose of the acquisition, maintenance, or recovery of rights and for determining the eligibility to benefits, the calculation of benefits, as well as for determining the cost sharing of benefits paid. Fifth, the provision of administrative assistance, which is twofold. On one hand, authorities and institutions of the signatory countries shall afford one another assistance with a view to facilitating the application of the respective agreements. On the other hand, administrative assistance should be provided to the person covered by the agreement.'[120]

As it was mentioned in previous paragraphs and will be in more detail discussed in Chapter 5, equal treatment and social security rights take one of the higher places among priorities of the whole migration sphere. It is also the point in regard to intra-corporate transfer. Considering application of social security legislation, it may vary despondingly if TCN who is intra-corporate transfer perform his/her activities on the territory of one MS or enforce intra-EU mobility. In the first case mostly applies social security legislation of the originating country. It is based either on bilateral social security agreement between MS and the primer country; or on the law of the MS (which on practice is mostly in use).[121]

When second type is enforced, namely intra-corporate transfer, then it gives another way to social security regulation. First of all, it has to be defined if TCN who is intra-corporate transfer is a subject to relevant legislation in first or second MS. Such provisions contain in Articles 11-16 of the Regulation 883/2004[122] (which applies based on Regulation 1231/2010/EU[123]).[124]

When fist Member State is responsible, than above mentioned conditions apply.[125] However, if competent is second MS, than social security regulation could be based on a bilateral agreement between ICT's country of origin and second Member States, when such

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[120] C. van Panhuys, S. Kazi-Aoul & G.Binette: ESS–Extension of Social Security Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements, ESS – Working Paper No. 57, Social Protection Department Labour Migration Branch Conditions of Work and Equality Department, Geneva: ILO 2014, p3-4.
[121] ibid [112], Article 3, pp12-13.
[122] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p1-123.
[123] Regulation (EU) No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality; OJ L 344.
[124] ibid [112], Article 11-16, pp15-18.
[125] ibid.

agreement plays in more favour to the ICT, it provides that legislation of the country of origin applies.[126] Another possibility is if there is no bilateral agreement as such between those countries, or otherwise agreement was concluded but does not perfume more favourable conditions to the ICT, in this case applies social security legislation of the second MS.

Briefly, as it properly stated in the provision of the legislation mentioned above, in particular Article 18 of the respective Directive 2014/66/EU, which provides ICTs with equal treatment, Article 19 about family reunification; provisions of Regulation 883/2004; Regulation 1231/2010/EU guarantee of social security benefits and rights of TCN as ICT plays a significant role as a leading aim of Directive 2014/66/EU, more precisely, this is main aspect of application regarding ICT permit for mobility.[127]

[126] ibid [104], Article 4, p9.
[127] ibid [109] Article 18-19.; ibid [122]; ibid [123].

4. Illegally staying third-country nationals

To provide overall data on the illegally staying third-country nationals in the EU, it should be noticed that this topic, as mentioned in the EMN Synthesis Report 2017[128] was not a main issue for past few years among EU discussion. It shows rather good tendency, however, there are some exceptions that implies and therefore makes it important to include such paragraph in this work.

Firstly, should be mentioned what are the main reasons of illegal employment of TCN. Mostly, the reason is in employers itself; they simply try to avoid huge social obligations and taxation. And in this case, it is easier to commit through TCN, who may be rather more unaware of their own rights, local laws and can be affected by over-trusting the employer. In addition, scientific investigation provided by the European Agency for Fundamental Rights (FRA) highlighted that "working in an irregular situation is an important risk factor for exploitation".[129] Regarding the main claims from MSs fields such agriculture, manufacturing, domestic care, construction, social assistance, and food services are the spheres of highest illegal employment of third-country nationals. Regarding kinds of businesses being at high risk of such unregulated employment, they placed in the labour-intensive and low-skilled sectors. This especially applies to businesses with high turnover of staff and with minimum/low wages. Countries of main issue were defined among Germany, Ireland, and Spain, where the indicators of such illegal employment were the biggest.

Each of MS aims to actively fight illegal employment among TCN and for that, they implement different strategies and campaigns as preventive measures. These measures are designed to stop or warn both the employer and the employee from illegal action or activity regarding employment and work. Such initiatives often contain simplification in compliance with legal acts and laws along the amendments to the legislative system. Quite frequently, governments use one or another financial prompting for businesses to perform their activity regularly declaring it. What is a significant step in beating illegality in employment with TCN is the strategy where employees and employers are provided with important, useful, legal information, and advice on their own employment rights and duties. They must understand

[128] EMN Synthesis Report – Illegal employment of TCNs in the European Union, (2017), pp5-9.
[129] FRA, Severe labour exploitation: workers moving within or into the European Union, available at http://fra.europa.eu/sites/default/files/fra-2015-severe- labour-exploitation_en.pdf (2015).

what the risks are and that it is important to provide legal and officially declared activity in employment sector.[130]

Some states like Belgium, Spain, Finland, Germany, France, and Slovakia were performing special official campaigns against illegal employment as so and not exceptionally concerning TCN. Such campaigns include promotion of social, retirement and other benefits that are provided to those who legally worked and resided in EU. In addition, employers were got aware of risks by illegally employing person and at the same time of more guarantees, that appears when company provides pure and hones activity.

A few big sector-specific campaigns were promoted in Luxembourg and Sweden; they were based on the health and safety at the working place, working conditions, etc. For example, in the construction industry in Sweden were carried out a joint initiative the 'Swedish Construction Industry in Cooperation'. In the project "Clean Construction Industry" were represented employers with trade unions in this sector, subject to which was a broad string of stakeholders. The main goal was alteration of approaches regarding undeclared work in the sphere.[131]

In other countries, such Austria or Belgium one from preventive rules was that governments were applying an obligation on employers to provide an official notice through responsible agencies or institutions and authorities when employing a TCN. In Bulgaria, for example, the General Labor Inspectorate has to be informed of the TCN employment and then when early termination applies, also the Employment Agency.

In the event of legal abuse and unregistered employment by the employer and TCN employees, the state applies national and Union law to combat and prosecute the crime. First of all, the issue of the subject and object of the crime is investigated, and the essence of the offense is revealed. If the employer is at fault, the provisions of the Employers' Sanctions Directive[132] and of the local criminal and administrative law apply.

However, in case of TCN's illegal employment, such persons are subject to various measures regarding the type and extent of the crime. These may include fines, return, regularization, or expulsion from the country, although it is also possible that the person was unlawfully subjected to such work that was not officially registered or was the victim of illegal

[130] EMN Synthesis Report – Illegal employment of TCNs in the European Union, (2017), pp5-9.
[131] EMN Focussed study 2016: Illegal employment of third-country nationals in the EU – Country Report Sweden Report from EMN Sweden (2016:4), pp6-9.
[132] Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p24-32.

human trafficking.[133] Still, if the illegality was caused and depend on TCN in most cases applies return decision, usually with period for voluntary departure and lose of residence rights.

Should be noticed that when illegal employment was caused from employer and effected employee, in over twenty MS was decided that due to local laws TCNs' residing in the country and being illegally employed, have a possibility to claim a compensation of the salaries they did not get for the relevant duration of the work same as under a legal contract from employers. In this case, trade union and organizations for migrants are allowed to act on behalf of these TCNs.

[133] PICUM: "Undocumented migrant workers: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse"; (2017) http://picum.org/en/publications/reports/.

5. Social security rights of third-country nationals due to EU Directives (Judgment and Preliminary Opinion from Court of Justice of the European Union, Case C-477/17; 24 Jan 2019)

Consideration of such factor as social security rights concerning third country nationals is essential, because it is quite sensitive group of people in the EU. In addition, when such nationals come to MS for work or studying purpose, they seek equal and fair treatment, especially given that their work contributes to the economic development of the member state, especially by paying taxes. And not least, by social insurance which is mandatory in Europe and in particular as a requirement of the MS when issuing long-term residence permits.

In this regard, **t**he Long-Term Residents' Directive 2003/109/EC is one of the exceptional Directives on migration topic which grants TCN equal treatment regarding social assistance when such nationals were provided with status in the respective MS. Other Directives either keeps quite silent on this question or completely passes the right to social assistance to the MS' national laws.

The Directive on admission of scientists and the Blue Card Directive grant to highly qualified workers the same treatment as nationals of the host MS. Article 14(1)(e) of the EU Blue Card Directive[134] provides the equal treatment for the branches of social security as defined in Regulation (EC) No 883/2004[135].

However, each of Directives do not provide rights to family members coming within family reunification purposes or those residing in a third country, as it falls out from the scope of Union legislation.[136]

Nevertheless, there are still quite a lot of clauses that could or are potentially influencing equal treatment of long-term resident third-country nationals. It may be restricted to nationals residing in the member states and to 'core benefits', i.e., minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care.[137]

As in instance, presented by this Directive 2003/109/EC on the long-term residents, in Article 11(1)(e) they are guaranteed with 'social security, social assistance and social protection as defined by national law'. Although at the same time, Article 11(4) of Directive

[134] ibid [76], Article 14(1)(e).
[135] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p1-123.
[136] Recital 16 of Council Directive 2005/71/EC and Recital 18 of Council Directive 2009/50/EC.
[137] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p44-53; Article 11(1)(d), (2) and (4).

make it possible for Member States to limit equal treatment in case when social assistance and protection are concerned to core benefits. [138]

In general, when analysing the issue of access to social security, social assistance, and social protection, the CJEU provided clarifications on the scope of the right to derogation from "basic benefits", which are inserted in Article 11 (4). Namely, Member States are allowed to restrict equal treatment of third-country nationals but with the exception of social assistance or social protection benefits, since they enable TCNs to meet their basic core needs, including food, housing, and health. Paragraph 4a, according to which restrictions on equal treatment should not prejudice the provisions of the Asylum Directive, did not require further clarification from the CJEU. The report also says that regarding these provisions, the Commission did not receive complaints about incorrect interpretation and use of this provision.[139]

Directive 2011/98/EU on the single permit declare that TCN, who complies with this Directive and who have been allowed to work in the host MS, should be able to receive an equal treatment with nationals of the Member State where they reside due to the 'branches of social security, as defined in Regulation (EC) No 883/2004'. However, then in Article 12(2)(b) of this Directive Member States might be allowed to limit equal treatment for third-country workers "who are no longer in employment after having been employed for less than six months".[140]

Special situation appears in seasonal workers' Directive 2014/36/EU. Regarding the definition in Article 3(b) these workers allocate their workplace of residence in a third country, so they could be further withdrawn from social benefits. It comes within the national law of the Member States, which is based on residence in that State. Otherwise, this Directive provides for these workers equal treatment with nationals of the host MS with Article 23(1)(d). Nevertheless, Article 23(2)(i) of Directive gives a right to Member States to limit such treatment for social security and protection by excluding family and unemployment benefits.[141]

It should be mentioned that such issues still remain in present discussion. As it stated in the Commission's Report on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, analysing Article 11 of the

[138] ibid [46], Article 11(1)(e), Article 11(4).
[139] Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, (COM (2019) 161 final), p5-6.
[140] ibid [103], Article 12(2)(b).
[141] ibid [96], Article 3(b), Article 23(1)(d), Article 23(2)(i).

respective Directive, up to now some MS have not adopted particular transposition measures of the equal treatment principle in their own immigration legislation. They prefer to stick to general provisions and non-discrimination principle when dealing with cases regarding security of TCN's rights. In this regard, it appears to cause potential problems when applying equal treatment objectives in concrete case.

Summarizing the analysis of the existing legal documents of the EU and the Directives, it turns out that none of them contains any completely exhaustive provisions on the regulation of social security of third-country nationals living and working in the EU. In addition, provisions such as the aggregation of periods of insurance, employment or residence are also not comprehensively covered. In the vast majority of cases, in order to be able to receive benefits, pensions and other subsidies, Member States require a certain period of employment, as well as regular payment of contributions to be qualified for such benefits. In this sense, it is very likely that third-country nationals will not be able to work the required periods during the often-limited period of employment in the host Member State. Therefore, they are unlikely to be entitled to this range of benefits.[142] It may sound quite rough; however, it does not mean direct discrimination or indifference to TCN rights in the legal framework. Of course, almost in each Directive there are conditions of non-discrimination and access to the equal treatment similar with European citizens.

However, those Directives are not the exhaustive list of all possible working EU instruments providing and insuring TCNs with equal treatment and non-discrimination rights.[143] Among them are:

- Charter of Fundamental Rights; in Article 15(3) of the Charter recognize:

'Nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union'.;

- EU Migration Directives (that were discussed above and are the main sources of analysis);
- Free movement law laid down in Article 45 of the Treaty on the Functioning of the European Union (out of Directives' scope);
- Agreements (Association, Partnership) with third countries;

[142] European Commission: Analytical report on the legal situation of third-country workers in the EU as compared to EU mobile workers, December 2018, pp 31-35.
[143] Groenendijk K.: Equal treatment of workers from third countries: the added value of the Single Permit Directive, (Published online: Springerlink.com, 2015); pp552-556.

- EU Asylum Directive[144].

As the development of EU social policy is ongoing, some other Directives are created to protect and determine the rights and equal treatment of workers and TCN workers in particular. One of them is Directive 2008/94[145] on the protection of employees in the event of the insolvency of their employer. In the case Tümer, by ECJ was ruled that this Directive provides the protection of the TCN workers' rights because provisions in the text are not somehow restricted to nationals of the Union.[146]

Respecting issues were considered in the relatively fresh Judgment and Preliminary Opinion from Court of Justice of the European Union (CJEU) in case C-477/17[147] of 24 Jan 2019. The so-called "Holiday on Ice" (C-477/17; referred to as 'Balandin and Others') case deals with the European social security regulations, which normally cover EU nationals and their family members, to be applicable to the TCNs. Issue was considering two third-country nationals (Ukrainian and Russian) who officially reside outside the EU but were hired on temporary basis by a company "Holiday on Ice Services BV" with its registered office in Amsterdam and in Utrecht. Every year from October to May Company organizes figure skating shows in different countries, including some EU member states. The third-country nationals remain lawfully in the Netherlands during the probationary period and any appearances, as work permits were issued to them.

For many years, the Dutch authority issued A1 certificates[148] to third country nationals who were employed by "Holiday on Ice" based on Article 19(2) of Regulation No 987/2009/EU[149]. The certificates showed that Dutch social security legislation applies to the employees and that the compulsory contributions are also paid in the Netherlands. Those certificates were implemented by the Netherlands legislation and regulated not only stay of

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[144] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p60-95.
[145] Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, OJ L 283, 10.2008.
[146] Case C-311/13, O. Tümer, ECLI:EU:C:2014:2337 [2014].
[147] Case C-477/17: Raad van bestuur van de Sociale Verzekeringsbank v D. Balandin, I. Lukachenko, Holiday on Ice Services BV, [2019] OJ C 93.
[148] ibid [115]; Para II (17), For a number of years, the SvB has issued the third-country nationals employed by HOI with 'A1-statements' for the duration of the performance season, most recently on the basis of Article 19(2) of Regulation No 987/2009. Those statements attested that the Netherlands legislation in the field of social security would apply to the employees and that the corresponding social security contributions would be paid in the Netherlands. Nonetheless, from the 2015/16 season, the SvB refused to grant the A1-statements to the third-country nationals employed by HOI, arguing that it had incorrectly issued such statements in the past.
[149] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009.

third-country nationals but also question in the social security field. Basically, they would apply to the employees so the corresponding social security contributions would be paid in the Netherlands.

Since the 2015/2016 season, the Dutch authorities (sSvB) have refused to issue A1 certificates to TCNs employed by HOI. The District Court of Amsterdam ruled that the Dutch authorities should have issued A1 certificates. However, the issuing authority turned against this arguing that the A1 certificates had previously been wrongly issued. After some continuous consultations, the SvB finally issued A1-statements but validity time was only until 1 May 2016. It caused some misunderstandings since the lengths of the season is until 22 May 2016. In this regard, issue was still not fully covered. It brought the situation to following proceedings. Rechtbank Amsterdam in its judgment of 28 April 2016 decided that the SvB should have issued A1 certificates to Balandin and Lukashenko for the full season. In refer SvB performed an appeal, not agreeing with judgement before the referring court. The reason and arguments for this was that in the SvB's point of view respective TCNs do not fall within the scope of Article 2 of Regulation No 883/2004. Because they are neither nationals of a Member State, nor stateless persons or refugees. The possibility for them to get under the provisions of that regulation is only to fall within the scope of Regulation No 1231/2010, since the purpose of it is to extend, considering particular conditions, the scope of Regulation No 883/2004 and its implementing regulation to third-country nationals.[150]

The issue that occurred was rather regarding weather Balandin and Lukashenko (who due to the Article 1(k) of Regulation No 883/2004 legally stayed and worked temporarily in the EU), may fall within Article 1 of Regulation No 1231/2010.

Case was brought by request from a Dutch Central Council of Appeal, since SvB had quite significant doubts considering the correct interpretation of these provisions, where the Court has attributed what differentiates, regarding the EU social security regulations, a third country national as a 'legal resident' in the territory of an EU Member State. The question was put to the ECJ as to whether third-country nationals who temporarily work for an employer based in the Netherlands but also in different Member States can invoke Regulations (EC) No. 883/2004[151] and No 987/2009[152].

[150] ibid [125].
[151] Regulation (EC) No 883/2004 on the coordination of social security [2004]; OJ L 166.
[152] Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284.

According to Art. 1 of Regulation (EC) 1231/2010[153], the above-mentioned regulations apply to third-country nationals if they are legally residing on the territory of a Member State and are in a situation that does not exclusively affect a single Member State.

The term "legal residence" within the meaning of the regulation means that third-country nationals reside properly in the territory of a Member State. The ECJ also found that, in determining legal residence, it is irrelevant that third country nationals maintain the habitual centre of their interests in a third country.

However, the application of Regulations (EC) No. 883/2004 and 987/2009 to TCN as such must under no circumstances entitle these persons to enter, reside or perform work in a member state. This means that third-country nationals must be legally residents in the territory of a Member State and consequently must be entitled to reside temporarily or permanently. If this is the case, third-country nationals are entitled to equal treatment within the meaning of Regulation 883/2004, so that A1 certificates can be issued for them, even if they are only allowed to work temporarily in one Member State.

It is clear from the judgment that third-country nationals who are temporarily staying in different Member States and work there for an employer based in a Member State can rely on Regulations 883/2004 and 987/2009. To do this, they must have a valid visa or work permit in advance, which confirms that they are lawfully residing in the territory and that they are lawfully working there.

In this regard EU Regulation 1231/2010 has broaden the possibility to make the application of the previous regulations to third country nationals and their family members who were not yet covered by them solely regarding their nationality. It stated that these persons are legally residents in the territory of an EU Member State and are in a situation, which is not confined in all respects within a single Member State.

The Advocate General Wahl, who was presenting an opinion of 27 September 2018 declared that the third country nationals who do not have a work or residence permit, could not be considered as legally residents in the EU, and thus are not allowed to acquire the protection of the European social security regulations.[154] His opinion was based on Article 1 of Regulation (EU) No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No

[153]Regulation (EU) No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality; OJ L 344.

[154] Opinion of Advocate General Wahl delivered on 27 September 2018(1), Case C-477/17; Raad van bestuur van de Sociale Verzekeringsbank v D. Balandin, I. Lukashenko, Holiday on Ice Services BV.

987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality. He suggested that TCNs may not invoke (Title II of) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, in case when they work in more than one MS for an employer who is established in the Netherlands but have not get a residence permit based on EU or national law.

What is interesting is that in the CJEU judgment of 24 January 2019, the Court has not considered the opinion of the Advocate General. Instead, the CJEU has ruled that the term legally resident could be defined variously in the different language versions of the Regulation. Therefore, it has to be interpreted according to the specific aim that is pursued by Regulation 1231/2010. In principle, as option to extend the EU social security regulations to third country nationals who often 'stay' on the territory of one of the EU Member States and that is not complying with permanent stay. Although, the point of legal stay and work of TCN on the territory of one of the member states is essential due to the Court for the determination, is whether nationals continue to reside outside the EU to decide if third country workers may invoke the EU social security Regulations. It is the only requirement, which determines if the principle of equal treatment, which is laid down in many EU immigration directives, can be honoured.[155]

This ruling was a significant in linking between EU social security Regulations and immigration legislation of EU. This is practically an answer why third-country nationals should have an opportunity to use social security benefits protection if they legally stay, and work in Member State.

[155] ibid [125], Judgement of the court (First Chamber), 24 January 2019.

Conclusions

Third Country Nationals employment in the European Union is quite broad and vast topic that brings many discussions and requires lots of legislative work. European migration policy was developing and improving through the long way. Modern state introduces third country nationals with many possibilities to perform their potential, knowledge, and importance for EU as the workers – competent and qualitative labour force. In return, European Union provides them with possibility to access more developed, active, sustained, stable and reliable labour market, where they can enjoy social security rights, equal treatment, and other benefits.

All the Directions and Regulations on the status of third country nationals in the EU are big achievements on the way to best possible migration policy regarding employment of such people. These include long-stay visa policy, including the establishment of rules on administrative and judicial procedures for visa refusal cases; general conditions of entry for all types of immigration; integration of TCNs into society; conceptual understanding of the family reunification. Effective legal regulation of all areas of immigration policy at the Union level is a way to create a common European migration space, which is to form a legal framework and methods of law enforcement that will ensure strict observance of human rights, balanced and effective regulation of migration flows, prevention of conflict, the stability of the economic situation at the supranational level.

Moreover, on the issues of hired labour at the EU level, legal provisions on certain aspects of individual labour relations are already in force today. For example, freedom of movement for workers within the EU; equal treatment and non-discrimination in the field of labour and employment; atypical forms of employment; protection of workers in the context of restructuring and insolvency of enterprises etc. In addition, EU legislation on informing and advising workers, their participation in enterprise management, as well as on the activities of European production councils mediate collective labour relations at EU level.

Nevertheless, as it is shown in the analysis, in particular Chapters 2 and 5, there are still some areas that require following improvements such as balanced and defined policy regarding granting of social security rights, equal treatment, access to other benefits which EU citizens already enjoy. Those advantages are significant for all the listed in work categories of TCN as it is in principle quite sensitive group of people, who looks forward to having their rights protected during the residence in EU Member States.

On the beginning of this thesis, main research question was laid down, namely: May be the European Union legal framework consider as such that promotes high-quality employment and integration of third country nationals in the EU labour market? What is significant to mention, is that European Union truly doing its best to be an attractive place for incoming foreign work force. There are still particular issues remaining to be solved or reconsidered, although the main objective is that TCNs, who legally reside and work on the territory of European Member States, should have the closest possible access to those rights and benefits as the EU nationals, and any discrimination should be prevented or banned in their regard.

Nowadays, Europe is in direct need of highly qualified, young workers due to the rapid increase in the aging population, the low birth rate, and other social issues. The appropriate tools for attracting such persons are abovementioned visas and residence permits that are provided by Union and for example, in particular the Blue-card. In 2017, the European Commission took the initiative to reform the Blue Card system. In particular, the Commission proposes to increase the rights of migrant workers by introducing a permit for free movement throughout the EU, restricting national authorities in regulating the stay of third-country nationals and the procedure for reunifying their families, and bringing national systems to attract highly qualified professionals. This and other grounds for work and stay in the European Union like Single Permit, Long-term residents, Posted workers Directives together with residence permits for students and researchers who are also subjects to the European labour market and are potential full-fledged labour force, represent good and well-balanced ground of EU law and legislation to grant qualitative opportunity for TCNs in regard of employment.

Concluding, this work may answer the research question as follows, that European Union is one of the most attractive destinations for third-country nationals, here those people are secured with solid legal framework that guaranties a high working and living standards not only for them but also for their family members. Moreover, as noted, this is a two-way advantage as Member States get its benefits from highly skilled workers who contribute to the economical and prospective grows of the Union, since there are particular inner issues as aging population or social problems, or own intra-Union migration of MSs' nationals. In this regard, TCN provides their competitive and high-qualified abilities to benefit and contribute to MS economic growth and to Union in particular.

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