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Fakulty of law

Diploma thesis on a topic

**Actual problems of Ukrainian, Russian and Belorussian refugees.**

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## Introduction.

### **Introduction and Background:**

The Institute for the Protection of the Rights of Refugees occupies an important place in public international law. According to statistics from the Office of the United Nations High Commissioner, in 2022 the number of asylum seekers in the member states of the European Union exceeded 1,000,000. The largest percentage of persons had citizenship of Ukraine and Russia.

The relevance of this issue is due to the fact that in the light of the armed invasion of the Russian Federation on the territory of Ukraine, as well as the introduction of “partial” mobilization in Russia, as well as unstable political and humanitarian situations in the Post-soviet area. The theoretical and practical significance of the appeal of individuals in order to obtain refugee status, in the opinion the author, is one of the legitimate ways to protect the rights and interests of applicants.

### **Significance of the Study :**

Although the institution for the protection of the rights of refugees is a dynamically developing institution, there are still many unresolved issues in international and national legal practice regarding the implementation and enforcement of decisions of competent international and national bodies in the field of population migration.

For example, 1) how can one apply for refugee status if the applicant does not have valid identification documents; 2) how to avoid discrimination when applying for refugee status; 3) whether holders of temporary or subsidiary protection are refugees.

### **The objective of the Research and Research Questions :**

The main purpose of the study is a comprehensive comparative legal study of the legal nature and content of the protection of the rights of refugees in the UNHCR and the EU and an analysis of current issues on this issue. To achieve this goal, the following tasks were defined:

- Consider the features of refugee status and compare it with the status of a holder of temporary and subsidiary protection;
- Consider the features of forced migration of Ukrainian citizens after February 24, 2022;
- Consider actual problems of providing refugee status, temporary and additional protection to citizens of the Republic of Belarus;

- Consider the New Belarus passport case;
- Consider the features of the legal status of Russian refugees who left the territory of the Russian Federation after February 24, 2022.

The object of the study is the practical activities of the UNHCR and the EU member states in protecting the rights of refugees.

**Methodology:**

The methodological basis of the study was such research methods as: special legal, which reveals the whole essence of existing documents, norms and regulations that relate to the topic of protecting the rights of refugees and human rights, comparative legal, which will manifest itself when comparing the status of protection of human rights from arbitrariness of the state or an emergency situation in the state of his citizenship or permanent residence, historical and other methods of generalizing scientific material and practical experience.

**Source base:**

The documentary basis for the study was international legal acts that directly or indirectly regulate the practical activities of UNHCR in the field of protecting the rights of refugees, including: the UN Charter of 1945, the Universal Declaration of Human Rights of 1948, the International Covenants on Human Rights of 1966, the Charter of the Office of the Supreme United Nations Commissioner for Refugees of 1950, the Geneva Convention relating to the Status of Refugees of 1951, the Additional Protocol relating to the Status of Refugees of 1967, etc. The work also used the provisions of national laws of EU member states regulating the protection of the rights of refugees in these states.

Also, the assistance in writing the work was also provided by the works of prominent scientists, such as: Weiner M., Munz R., Tetourová, E., Volek, D., Obračajová, B., Baldwin David A., ect.

## Chapter I. Refugee status and related protection statuses of foreign citizens.

There are the following types of international protection in international law: granting refugee status and asylum, temporary protection and subsidiary protection.<sup>1</sup> This raises the question: are these types of human rights protection identical or different?

During the migration crisis caused by the invasion of the armed forces of the Russian Federation into the territory of Ukraine in 2022, there are many, even the majority of victims of these events who received protection on the territory of the Czech Republic<sup>2</sup>, identify themselves as refugees, although this is not entirely correct.

The purpose of this chapter is to analyze refugee status, temporary protection and subsidiary protection, and to differentiate these terms and statuses.

### I.1. Legal regulation of granting refugee status.

From the point of view of the history of international law and international relations, the phenomenon of refugee and the provision of a certain kind of protection has existed for a long time. For example, on the territory of Ancient Judea there were so-called cities of refuge for persons who were guilty of committing blood feud and feared counter revenge.<sup>3</sup> Indeed, in ancient times, as evidenced by the above fact, the most common basis for protection by the proto-states of that period was a threat to the life and health of the applicant.

Indeed, this procedure for granting asylum lasted quite a long time and depended solely on the will of the sovereign<sup>4</sup> or, later, from the rules and regulations of national law.<sup>5</sup> However, the urgent need to regulate this status - refugee status - arose during the Second World War,<sup>6</sup> when

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<sup>1</sup> UN High Commissioner for Refugees (UNHCR), Note on Temporary Protection in a Broader Context, 1 January 1994, available at: <https://www.refworld.org/docid/3ae6b32514.html> [accessed 10 October 2023]

<sup>2</sup> “V Česku pracuje sto tisíc běženců z Ukrajiny. Často pod hranicí chudoby.” Accepted on: <https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-v-cesku-pracuje-sto-tisic-bezencu-z-ukrajiny-casto-pod-hranici-chudoby-225886>

<sup>3</sup> Wright, Christopher JH, and Marcel V. Măcelaru. “The Refugee Crisis – A Shared Human Condition: An Old Testament Perspective.” *Transformation*, vol. 35, no. 2, 2018, pp. 91–101. JSTOR, <https://www.jstor.org/stable/90025310>. Accessed 9 Oct. 2023.

<sup>4</sup> Jaeger G. On the history of the international protection of refugees. *International Review of the Red Cross*. Vol. 83 No 843. 2001

<sup>5</sup> Jaeger G. On the history of the international protection of refugees. *International Review of the Red Cross*. Vol. 83 No 843. 2001

<sup>6</sup> REFUGEES. The Holocaust Encyclopedia. Accepted on: <https://encyclopedia.ushmm.org/content/en/article/refugees>

many ethnic groups, such as Jews and Gypsies for example,<sup>7</sup> or participants in political associations, for example, communist or aimed at establishing democracy in Germany during the reign of the National Socialists, or Italy during the reign of the fascists led by Benito Mussolini, as well as associations whose main goal was the de-occupation of their states.<sup>8</sup> At that time, there was not a single international treaty that would highlight the criteria, procedure, and obligations to provide protection to the above-mentioned categories of citizens.<sup>9</sup> Moreover, there have been numerous cases when, during, as an option, a cruise to other states of the European continent and Latin American states, there was a physical opportunity to request refugee status, in most cases refusals were provided.<sup>10</sup>

Only six years after the end of the Second World War, that is, in 1951, the Geneva Convention to the Status of Refugees was issued.<sup>11</sup>

The question arises, what does the term “refugee” mean? In English, the term "refugee" literally means "refugee". That is, a person who refuses protection from the state of nationality or his permanent residence. In Czech, the term “refugee” is translated as “bezenec”, that is, one who has left the territory of the state of his nationality or his permanent place of residence. That is, a refugee is a person who left the territory of the state of his nationality due to refusal of protection from his state. But, according to the author, this definition is not self-sufficient.

In the article “Public Health Aspects of Migrant Health: A Review of the Evidence on Health Status for Refugees and Asylum Seekers in the European Region” by Bradby H., the term “refugee” is defined as persons who have not made a voluntary choice to leave their country due to a threat to their life, health or freedom], but cannot return back to the territory of this state.<sup>12</sup>

Currently, there is a universal document that has the function of regulating the procedure for granting refugee status, guaranteeing fundamental rights to these applicants. This document is the Geneva Convention relating to the Status of Refugees of 1951.<sup>13</sup> In the opinion of the author,

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<sup>7</sup> REFUGEES. The Holocaust Encyclopedia. Accepted on: <https://encyclopedia.ushmm.org/content/en/article/refugees>

<sup>8</sup> REFUGEES. The Holocaust Encyclopedia.

<sup>9</sup> Peter Gatrell. Forced Migration during the Second World War: An Introduction. University of Manchester. Accepted on: <https://www.gale.com/intl/essays/peter-gatrell-forced-migration-second-world-war-introduction>

<sup>10</sup> Peter Gatrell. Forced Migration during the Second World War: An Introduction. University of Manchester.

<sup>11</sup> Jaeger G. On the history of the international protection of refugees. International Review of the Red Cross. Vol. 83 No 843. 2001

<sup>12</sup> Bradby H, Humphris R, Newall D, Phillimore J. Public Health Aspects of Migrant Health: A Review of the Evidence on Health Status for Refugees and Asylum Seekers in the European Region. Copenhagen: WHO Regional Office for Europe; 2015. PMID: 27536765.

<sup>13</sup> UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis, 1990, available at: <https://www.refworld.org/docid/53e1dd114.html> [accessed 10 October 2023]

this document cannot be considered comprehensive without the 1967 Protocol relating to the Status of Refugees. The main role of this Protocol will be explained below.

Article 1 of this convention provides the legal definition of the term "refugee".<sup>14</sup> Having considered the provisions of this article, it can come to the conclusion that a refugee is a person who, as a result of events that occurred before January 1, 1951, as a result of well-founded fears for his life, health, as well as the danger of persecution on the basis of race, nationality, religion convictions, political opinions, is outside the territory of the state of his nationality or permanent residence and is unable or unwilling to enjoy the protection of the above state.<sup>15</sup> According to the author, this definition is comprehensive and accurate at the same time, since it reveals the essence of this status, the purpose of its existence (protection of the life, health and freedom of applicants falling under the criteria of this status), and also reveals the criteria necessary for a person to have the right to be called a refugee. Such criteria include:

1) Events that occurred before January 1, 1951. These include war crimes and crimes against peace and humanity of the Nazi regime of Adolf Hitler in Germany and the fascist regime of Benito Mussolini in Italy.<sup>16</sup> However, the question arises whether it is possible to apply for refugee status, for example, in today's time, if the criteria specified in Article 1 of the Geneva Convention relating to the Status of Refugees 1951 are met. Yes, this is possible, since the provisions of Article 1 of the Additional Protocol relating to the Status of Refugees of 1967 omit the words "As a result of events occurring before 1 January 1951..." and the words "... as a result of similar events."<sup>17</sup>;

1) Well-founded fear of persecution. This means that the applicant must prove this fact,<sup>18</sup> at the same time, the applicant enjoys freedom of evidence when deciding the case for granting or not granting refugee status.<sup>19</sup>

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<sup>14</sup> UN High Commissioner for Refugees (UNHCR), *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary* by Dr. Paul Weis, 1990, available at: <https://www.refworld.org/docid/53e1dd114.html> [accessed 10 October 2023]

<sup>15</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 10 October 2023]

<sup>16</sup> UNHCR - Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, February 2019. Available on: <https://www.asylumlawdatabase.eu/en/content/unhcr-handbook-and-guidelines-procedures-and-criteria-determining-refugee-status-under-1951>

<sup>17</sup> Protocol relating to the Status of Refugees. Adopted 16 December 1966. By the General Assembly in resolution 2198 (XXI). Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>

<sup>18</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979. Available on: <https://www.unhcr.org/media/2-legal-framework-annex-14-unhcrs-handbook-procedures-and-criteria-determining-refugee-status>

<sup>19</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967

2) Persecution based on race, nationality, religious beliefs, political opinions, etc. This means that for general criminal offenses, especially for crimes against peace and humanity,<sup>20</sup> the right to be granted refugee status is lost.<sup>21</sup>

3) Is located outside the state of his citizenship or permanent residence. However, it is possible to obtain a certain degree of protection in the territory of the embassy of a certain state, but this cannot constitute refugee status.<sup>22</sup>

4) Refuses protection from the state of his citizenship or permanent residence.

If analyze the practice of the member states of the European Union, then persons who have received refugee status in the procedure established by law become holders of a permanent residence permit in the territory of the state,<sup>23</sup> approved this status. This means that these persons have the right to free access to the labor market, education, medical care equal to that of citizens of the country of residence, entrepreneurial activity, and other rights.<sup>24</sup>

The author in his work mentioned the fact that the main sources regulating the issue of refugee status, all guarantees to these individuals, as well as the procedure for granting such status, are regulated by two international legal documents - the Geneva Convention relating to the Status of Refugees 1951 and the Additional Protocol relating to the Status of Refugees of 1967. This raises the question, is there a body or organization that regulates all current issues of refugee and asylum? The UN body regulating the protection of this category of persons is UNHCR.<sup>25</sup>

UNHCR's mandate is determined by the UNHCR Statutes of 1950.<sup>26</sup> The UN refugee body was initially given a three-year mandate to help European refugees, which had previously been two years.<sup>27</sup> Since representations in different parts of the world have taken place and continue, and refugee crises have become a constant phenomenon in recent years, the body has had to fulfill its mandate always after several years of reconstruction. Finally, in 2003, the UN General

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<sup>20</sup> UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951:

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis, 1990, available at: <https://www.refworld.org/docid/53e1dd114.html> [accessed 10 October 2023]

<sup>22</sup> How to Obtain Protection From a U.S. Embassy or Consulate. *Although a U.S. embassy or consulate cannot process applications for asylum or refugee status, they may be able to offer other forms of protection.* By Amien Kacou. Acceptable on: <https://www.nolo.com/legal-encyclopedia/how-obtain-protection-us-embassy-consulate.html>

<sup>23</sup> Tetourová, E., Volek, D., Obračajová, B., Kuta, M., Šamová, M. Migrace, azyl a uprchlictví v EU. Srovnávací studie č. 3.178 Datum: září 2015. aktualizace květen 2016

<sup>24</sup> Tetourová, E., Volek, D., Obračajová, B., Kuta, M., Šamová, M.

<sup>25</sup> Handbook on protection of stateless persons

<sup>26</sup> Manly, M. (2014). UNHCR's mandate and activities to address statelessness. In A. Edwards & L. Van Waas (Eds.), *Nationality and Statelessness under International Law* (pp. 88-115). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139506007.005

<sup>27</sup> History of UNHCR. UNHCR global website. Acceptable on: <https://www.unhcr.org/about-unhcr/overview/history-unhcr>



Assembly extended the Organization's mandate indefinitely, "until the refugee problem is resolved."<sup>28</sup>

The main activities and main tasks of UNHCR are: resolving current issues related to the displacement of persons in the event of an unstable humanitarian situation, armed conflicts, natural disasters, issues of reducing statelessness, as well as monitoring the current situation on the above aspects.<sup>29</sup> The activities of UNHCR are controlled by the UN General Assembly and the UN Economic and Social Council (ECOSOC).<sup>30</sup>

Based on all of the above, refugee status provides a wide range of rights and guarantees, and is also strictly regulated by international law. However, not every applicant is eligible for this status and the processing time for the application ranges from three months to several years. But, nevertheless, there are alternative methods of protection.

## I.2. Temporary and subsidiary protection and their comparison with refugee status.

In the practice of international law, there are situations when a person who needs protection from a third state or group of states, but does not fall under the criteria for granting refugee status. Such situations usually include armed conflicts, natural disasters, humanitarian disasters or crises, epidemics and other situations,<sup>31</sup> that may arise in the life of a certain category of people. There are situations when the state of citizenship or permanent residence of persons who need protection or assistance in the situations mentioned above cannot or does not want to provide adequate support for a certain number of reasons. Such reasons include the physical impossibility of providing proper assistance or the reluctance of the state itself to solve the problems mentioned earlier.<sup>32</sup> In this case, the use of an additional protection mechanism is permitted. Nevertheless, the question arises as to what is meant by the term “subsidiary protection” and how this procedure is regulated.

There is no precise clear definition of the term “subsidiary protection” as such. Nevertheless, there is one that regulates the difference in the types of international protection at the level of the European Union. In Directive 2011/95/EU of the European Parliament and of the

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<sup>28</sup> Governance and Oversight. UNHCR global website. Accessible on: <https://www.unhcr.org/about-unhcr/overview/history-unhcr>

<sup>29</sup> Manly, M. (2014).

<sup>30</sup> Manly, M. (2014).

<sup>31</sup> Enhancing protection for civilians in armed conflict and other situations of violence. ICRC, Second edition, November 2012. pp. 10, 42. Accessible on: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0956.pdf>

<sup>32</sup> Enhancing protection for civilians in armed conflict and other situations of violence.

Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, the fact that the status of additional protection means that you have the right to receive additional protection status.<sup>33</sup> It is logical to assume that based on this definition, additional protection is the right to receive additional protection. Of course, this definition is not complete, but there is another definition of a Person entitled to additional protection. Having considered the provision of this directive, it can be established that a person with additional protection status is a person who does not have the criteria for applying for refugee status, but, nevertheless, returning to the States of his citizenship or permanent residence may entail serious risks to the health of this person, his life or freedom, as well as he cannot or does not wish to apply for the protection of the State of his citizenship or permanent place of residence.<sup>34</sup>

In this case, it is necessary to refer to practice on issues of granting refugee status and asylum. A well-known law office based in France, PRAVO.FR, suggests that persons who have been denied refugee status or who cannot qualify for such status will be entitled to apply for subsidiary protection.<sup>35</sup> In turn, additional protection is divided into two types - subsidiary protection and temporary protection.<sup>36</sup>

In international law, as noted earlier, there is no clear document of a universal nature that would regulate the procedure and basis for the provision of subsidiary protection.<sup>37</sup> However, in the legislation of the European Union there is Article 15 Directive 2011/95/EU.<sup>38</sup> This document states that the basis for additional protection may be the threat of execution of the death penalty for the applicant in the territory of the country of his citizenship or permanent residence, the threat

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<sup>33</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Acceptable on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095>

<sup>34</sup> Directive 2011/95/EU.

<sup>35</sup> Mobilization in the Russian Federation: political asylum in France. (Мобилизация в РФ: политическое убежище во Франции). Acceptable on: <https://pravo.fr/mobilizaciya-v-rossii-politicheskoe-ubezhishe-vo-francii/>

<sup>36</sup> For citizens of Ukraine under temporary protection. (Для граждан Украины под временной защитой). Acceptable on: <https://pravo.fr/dlya-grazhdan-ukrainy-pod-vremennoi-zashitoi/>

<sup>37</sup> Recognized refugees or beneficiaries of subsidiary protection. UNHCR Austria - Help for refugees and asylum-seekers. Acceptable on: <https://help.unhcr.org/austria/rights-and-obligations/recognized-refugees-or-beneficiaries-of-subsubsidiary-protection/>

<sup>38</sup> Subsidiary protection. Migration and Home Affairs. Acceptable on: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/subsidiary-protection\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/subsidiary-protection_en)

of torture, as well as other circumstances, including armed conflicts, which may threaten the life and health of the applicant.<sup>39</sup>

However, from the point of view of national law, which is a reflection of the implementation of already existing norms of international law, that is, a reflection of the implementation of one or another norm of Public International Law, including international refugee law, there are regulations governing the procedure for submitting refugee status, which reflect issues of providing additional protection. For example, in the Czech Republic there is a law: Czech Republic: Act No. 325/1999 Coll. on Asylum. This legal act establishes that a person has the right to apply for additional protection in cases of threat of execution of a death sentence, torture, other threats to life, and also, interestingly, in the case of the person having no other citizenship, that is, the person is a stateless person.<sup>40</sup>

Another mechanism for providing additional protection to a person in the event of a violation of his rights or a threat of violation of human rights may be temporary protection - that is, the provision of temporary protection by the state. As additional (subsidiary) protection, temporary protection is provided in cases where a person's request for protection due to the danger of being returned to the territory of his citizenship or permanent place of residence is not related to the provisions of the Geneva Convention relating to the Status of Refugees of 1951.<sup>41</sup>

One of the grounds for granting temporary protection may be armed conflicts, periodic violations of human rights, natural disasters and other circumstances established by the legislation of the states of application, which (circumstances) do not allow the applicant to return to the territory of the country of his citizenship or permanent residence.<sup>42</sup>

As noted earlier, this type of protection is regulated by Council Directive 2001/55/EC<sup>43</sup> and national legislation.<sup>44</sup> One example would be the publication on the territory of the Czech Republic of a law allowing provision of temporary protection to categories of applicants who are

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<sup>39</sup> Directive 2011/95/EU

<sup>40</sup> Czech Republic: Act No. 325/1999 Coll. on Asylum [Czech Republic], 11 November 1999, Available at: <https://www.refworld.org/docid/4a7a97bfc33.html> [accessed 17 October 2023]

<sup>41</sup> Edwards A. Temporary protection, derogation and the 1951 Refugee convention. Acceptable on: [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/1687379/Edwards.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0005/1687379/Edwards.pdf)

<sup>42</sup> Temporary Protection Hungary. This annex on temporary protection complements and should be read together with the AIDA Country Report on Hungary. p.3. Acceptable on: [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-HU\\_Temporary-Protection\\_2022.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-HU_Temporary-Protection_2022.pdf)

<sup>43</sup> Temporary protection. Migration and Home Affairs. Acceptable on: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

<sup>44</sup> National legislation implementing the EU Temporary Protection Directive in selected EU Member States (August 2022 update). FRA - Promoting and protecting your fundamental rights across the EU. Acceptable on: <http://fra.europa.eu/en/publication/2022/national-legislation-implementing-eu-temporary-protection-directive-selected-eu>

citizens of Ukraine or victims of the armed invasion of the Russian Federation on the territory of Ukraine, which is called Lex Ukraine. According to this law, all of the above-mentioned persons who suffered from an armed conflict on the territory of Ukraine have the right to apply for additional protection in the territory of the Czech Republic<sup>45</sup> Another example of the provision of temporary protection can be the practice of providing a document called “protezione speciale”<sup>46</sup> on the territory of the Italian Republic. According to this practice, persons who do not have a reason to submit can request this document regardless of the grounds.<sup>47</sup>

It is also necessary to explore questions of the naturalization of persons who have been granted subsidiary protection, temporary protection or refugee status. Renowned legal scholar Fatima Khan believes that a person with refugee status has the right to naturalize in the State where he was granted refugee status. However, based on the conclusions of the scientist's scientific works, there is no guarantee of granting citizenship, as well as the success of neutralization, since this phenomenon is not a priority in matters of protecting the right of refugees.<sup>48</sup> Persons who had been granted refugee status receive a permanent residence permit or an equivalent document in the host state,<sup>49</sup> that is, in the state that approved the application. This means that a person, after a certain amount of time (minimum two years), has the right, subject to successful integration into society, to apply for citizenship.<sup>50</sup> It should be noted that when a person with refugee status obtains citizenship, this status is lost.<sup>51</sup>

In the case of temporary or subsidiary protection, the naturalization process looks different depending on the legislation of the states that granted this status. In some cases, the usual naturalization procedure is allowed, that is, 10 years of waiting for citizenship and passing an integration exam.<sup>52</sup> In some cases, naturalization is not allowed at all, that is, a person who has received either temporary protection status or subsidiary protection status is obliged to leave the

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<sup>45</sup> Czech Republic – Amendment to Lex Ukraine Tightens Temporary Protection Conditions. Accessible on: <https://kpmg.com/xx/en/home/insights/2022/08/flash-alert-2022-155.html>

<sup>46</sup> Permesso di soggiorno per protezione speciale, come è cambiato dopo il “Decreto Cutro”?. Accessible on: <https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/3235/Permesso-di-soggiorno-per-protezione-speciale-come-e-cambiato-dopo-il-Decreto-Cutro>

<sup>47</sup> Permesso di soggiorno per protezione speciale, come è cambiato dopo il “Decreto Cutro”?

<sup>48</sup> Khan, Fatima, and Reuven (Ruvy) Ziegler, 'Refugee Naturalization and Integration', in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law*, Oxford Handbooks (2021; online edn, Oxford Academic, 9 June 2021). Accessible on: <https://doi.org/10.1093/law/9780198848639.003.0059>

<sup>49</sup> Recognized refugees or beneficiaries of subsidiary protection. UNHCR Austria - Help for refugees and asylum-seekers. Accessible on: <https://help.unhcr.org/austria/rights-and-obligations/recognized-refugees-or-beneficiaries-of-subsidiary-protection/>

<sup>50</sup> Kibreab, Gaim. “Citizenship Rights and Repatriation of Refugees.” *The International Migration Review*, vol. 37, no. 1, 2003, pp. 24–73. JSTOR, <http://www.jstor.org/stable/30037818>. Accessed 19 Oct. 2023.

<sup>51</sup> Kibreab, Gaim.

<sup>52</sup> Information on temporary protection in Austria. ISBN 978-92-9487-708-6. doi: 10.2847/436738 BZ-07-22-391-EN-N. European Union Agency for Asylum (EUAA), 2022

territory of a given state if the circumstances that served as the basis for granting the above statuses cease.<sup>53</sup>

Thus, refugee status and temporary and subsidiary protection have significant differences. In the first case, the person must strictly comply with the criteria for granting the specified status, which are enshrined in Article 1 of the Geneva Convention relating to the Status of Refugees of 1951, and in the second case, with the norms of national legislation or judicial practice. If refugee status is granted, the applicant receives a permanent residence permit, and in the case of temporary or subsidiary protection, a temporary residence permit. Subsidiary protection status is also available to those who need protection from statelessness. If refugee status is granted, the right to naturalization is allowed and guaranteed, but in other cases this guarantee is absent.

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<sup>53</sup> Information on temporary protection in Austria.

## Chapter II. Features of the protection of victims of the Russian invasion of the territory of Ukraine.

As noted earlier, armed conflicts and humanitarian crises can give rise to a massive outflow of population to the territory of neighboring states or other territories that are able to accept applicants.<sup>54</sup> Based on history, states located on the territory of the European continent have experienced three migration crises,<sup>55</sup> including mass migration of citizens and permanently residing foreign citizens as well as stateless persons of the former Yugoslavia,<sup>56</sup> migration crisis of citizens of the states of Central Asia and the Middle East, which occurred as a result of the transition period, political crisis and civil confrontation, which occurred with the use of armed forces of the warring parties.<sup>57</sup> The most famous and most relevant today is the massive influx of citizens and residents of Ukraine, which occurred as a result of the armed invasion of the Russian Federation on the territory of the above-mentioned state.

The author of this study proposes to consider the situation related to the migration crisis of Ukrainian citizens on the territory of the member states of the European Union in the field of protecting the rights of refugees. One of the main questions of this chapter is the following: can victims of the armed conflict on the territory of Ukraine be classified as refugees, from the point of view of the 1951 Geneva Convention relating to the Status of Refugees in the classical interpretation of the provisions of the above-mentioned document.

### II.1. What status can citizens and residents of Ukraine claim in various states?

From the point of view of public international law, a separate international treaty regulating the legal status of persons who were forced to leave the territory of Ukraine in connection with the Armed Invasion of the Armed Forces of the Russian Federation in 2022, As of the end of 2023,

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<sup>54</sup> Humanitarian Law, Human Rights and Refugee Law – Three Pillars. INTERNATIONAL COMMITTEE OF THE RED CROSS. This text is reproduced here with the kind permission of the International Association of Refugee Law Judges, Netherlands. 23-04-2005 Statement. Acceptable on: <https://www.icrc.org/en/doc/resources/documents/statement/6t7g86.htm#:~:text=International%20humanitarian%20law%20offers%20refugees,from%20the%20effects%20of%20hostilities>.

<sup>55</sup> EU migration and asylum policy. THE EUROPEAN COUNCIL. Acceptable on: <https://www.consilium.europa.eu/en/policies/eu-migration-policy/>

<sup>56</sup> Where we work – UNHCR South Eastern Europe. Acceptable on: [https://www.unhcr.org/see/where-we-work#:~:text=Since%201991%2C%20as%20a%20result,Bosnia%20and%20Herzegovina%20\(BiH\)](https://www.unhcr.org/see/where-we-work#:~:text=Since%201991%2C%20as%20a%20result,Bosnia%20and%20Herzegovina%20(BiH)).

<sup>57</sup> New rules governing migration crisis and force majeure situations. THE EUROPEAN COUNCIL. Acceptable on: <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-migration-asylum-reform-pact/migration-crisis/>

beginning of 2024, does not exist.<sup>58</sup> Therefore, this issue is regulated by national law. However, in the usual sense of the word poor, citizens of Ukraine who have left the territory of their State of citizenship, as well as permanent residents of this state, are not refugees in the sense of the 1951 Geneva Convention relating to the Status of Refugees.<sup>59</sup>

For example, citizens of Ukraine are allowed to reside in the Republic of Kyrgyzstan, provided that they renew their temporary registration every six months and receive a work permit.<sup>60</sup> Georgia, in turn, in 2023, based on its legal tradition of a loyal attitude towards citizens arriving from other states, provided the opportunity for citizens of Ukraine to live in the territory of the above-mentioned state of the Caucasus region without issuing any visas or other documents permitting residence on the territory of Georgia or stay for two years.<sup>61</sup> Before the armed confrontation between the Gaza Strip and Palestine with militants of illegal armed groups such as Hamas, the State of Israel provided Ukrainian citizens with the opportunity to undergo an emergency repatriation procedure, provided they were of Jewish origin.<sup>62</sup> It is worth noting that this process could take no more than one week.

Above, it was discussed examples of features of the national legislation of Georgia, Kyrgyzstan and Israel, which are directly related to the stay of Ukrainian citizens on the territory of the above-mentioned states. There is a directive in the European Union that regulates temporary protection issues.<sup>63</sup> Directive on the temporary protection of citizen victims (Council Directive 2001/55/EC of 20 July 2001 on minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance between Member States' efforts to receive such persons and responsibilities for their consequences)<sup>64</sup> of armed conflict and other emergency situations that do not allow them to return to the country of their citizenship or permanent residence, was adopted in 2001.

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<sup>58</sup> 10 Facts About Refugees. UNHCR. Acceptable on: <https://www.unhcr.org/neu/104815-10-facts-about-refugees-2.html>

<sup>59</sup> 10 Facts About Refugees. UNHCR.

<sup>60</sup> Registration of foreign citizens and persons without citizenship. Acceptable on: [https://grs.gov.kg/ru/subord/drnags/information\\_for\\_foreigners/](https://grs.gov.kg/ru/subord/drnags/information_for_foreigners/)

<sup>61</sup> Georgia extends visa-free stay for Ukrainians; details. Visit Ukraine today. Acceptable on: <https://visitukraine.today/blog/1541/gruziya-prodovzila-termin-bezvizovogo-perebuвання-ukrainciv-detali>

<sup>62</sup> Repatriation (Aliyah). Embassy of Israel in Stockholm. Acceptable on: [https://embassies.gov.il/stockholm-en/ConsularServices/Pages/Repatriation-\(Aliyah\).aspx](https://embassies.gov.il/stockholm-en/ConsularServices/Pages/Repatriation-(Aliyah).aspx)

<sup>63</sup> Migration management: Welcoming refugees from Ukraine. Migration and Home Affairs. European Commission. Acceptable on: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/migration-management-welcoming-refugees-ukraine\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migration-management/migration-management-welcoming-refugees-ukraine_en)

<sup>64</sup> Temporary protection. Migration and Home Affairs. European Commission. Acceptable on: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

This regulatory legal act contains the following principles for providing temporary protection:<sup>65</sup>

1. Reduction of bureaucratic procedures that are directly related to the provision of temporary protection to citizens and residents of Ukraine. That is, a person who has Ukrainian citizenship or a permit for permanent or temporary residence on the territory of Ukraine or is married to a citizen or resident of Ukraine, and was also on the territory of Ukraine at the time of February 24, 2022, has the right to receive temporary protection on the territory of the participating states European Union.<sup>66</sup>

2. Possibility of simplified transportation of your personal belongings. this means that the import of personal belongings into the European Union is not subject to any fees or duties. But only if these are personal items, and not things intended for sale and export.<sup>67</sup>

3. Simplified procedure for crossing the border. This principle involves minimizing any formalities when crossing the border of a member state of the European Union, as well as setting the time of checkpoints.

4. Other principles.

Next, it should be revealed the purpose of this paragraph, namely to answer the question of refugees from Ukraine as refugees from the point of view of public international law. The 1951 Geneva Convention relating to the Status of Refugees in Article 1 outlines the following criteria for granting refugee status by a state party to this international treaty.<sup>68</sup> These criteria include:<sup>69</sup>

Events that occurred before January 1, 1951 or actions identical to such events;

1. there is a well-founded fear of persecution or a threat to life and health;
2. grounds for persecution or threat to life and health; political beliefs; attitude to any race, nationality, or religious group;

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<sup>65</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212, 7.8.2001, p. 12–23 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV). Document 32001L0055. Accessible on: <http://data.europa.eu/eli/dir/2001/55/oj>

<sup>66</sup> Informace pro ukrajinské občany na území ČR v návaznosti na ruskou agresi na Ukrajině. Ministerstvo vnitra České republiky. Accessible on: <https://www.mvcr.cz/clanek/informace-pro-obcany-ukrajiny.aspx>

<sup>67</sup> Council Directive 2001/55/EC

<sup>68</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>

<sup>69</sup> UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis, 1990, available at: <https://www.refworld.org/docid/53e1dd114.html>



3. Staying outside the country of your citizenship or permanent residence;

4. inability or unwillingness to benefit from the protection of the country of one's citizenship or permanent residence.

It should be noted that in order to obtain refugee status, full compliance with these criteria is necessary, that is, all these criteria must take place in the applicant's case together at once.<sup>70</sup> But it is necessary to answer the question of whether citizens of Ukraine who have temporary protection are refugees from the point of view of popular public law and their assessment of the criteria that were listed above. There are no events that occurred before January 1, 1951 or identical to them in Ukraine. According to research by the organization Freedom House, as of 2021, Ukraine is a state with a hybrid regime,<sup>71</sup> that is, there are problems with democratic institutions, but Ukraine has already passed the status of a country of the not free world. This means the situation involving migrants from Ukraine does not meet the above criterion. Well-founded fear of persecution. During the reign of President Petro Poroshenko, there was the case of Anatoly Shariy, against whom more than seven criminal cases were initiated on the territory of Ukraine, and the Spanish Ministry of Internal Affairs established that these cases were politically motivated, which means that the applicant has the right to receive refugee status in the territory of this state.<sup>72</sup> And in the case of migrants from Ukraine, there cannot be persecution, except in cases of persecution in the occupied territories, since, as noted by international human rights organizations, including the UN Human Rights Council, democratic institutions operate in Ukraine.<sup>73</sup> Based on this, the fact of unlawful persecution can be appealed. Relationships to a specific political group, ethnic, racial and religious association also cannot be grounds for persecution since, according to the provisions of the Constitution of Ukraine, in Ukraine there is discrimination against persons on the basis of race, nationality and religious beliefs.<sup>74</sup> Before the full-scale invasion and as a consequence of the martial law of Ukraine, there was no ban on the participation of certain parties, except those that advocated forcibly changing the constitutional system and also carried the prohibited ideology according to Ukraine's evidence of communism or fascism. That is, in this

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<sup>70</sup> Tetourová, E., Volek, D., Obračajová, B., Kuta, M., Šamová, M. Migrace, azyl a uprchlost v EU. Srovnávací studie č. 3.178 Datum: září 2015. aktualizace květen 2016

<sup>71</sup> Expanding Freedom and Democracy. Freedom house. Acceptable on: <https://freedomhouse.org/>

<sup>72</sup> Gálvez, J. J. (11 October 2022). "Misterio resuelto: el bloguero Anatoli Sharii sigue en España, según concluye el juez tras darle por huido a Italia". El País (in Spanish). Acceptable on: <https://elpais.com/espana/2022-10-11/misterio-resuelto-el-bloguero-anatoli-sharii-sigue-en-espana-segun-concluye-el-juez-tras-darle-por-huido-a-italia.html>

<sup>73</sup> The Office of the High Commissioner for Human Rights. Acceptable on: <https://www.ohchr.org/en/countries/ukraine>

<sup>74</sup> CONSTITUTION OF UKRAINE. Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996. Acceptable on: <https://rm.coe.int/constitution-of-ukraine/168071f58b>

sense, there is no basis for persecution. The possibility of using the protection of the country of the state of Ukraine is also allowed.<sup>75</sup>

That is, having considered the above criteria, it can be concluded that citizens of Ukraine cannot be refugees due to an armed conflict on the territory of the state and citizenship or permanent residence, and also cannot receive this status, since they do not meet these criteria, which are already specified in several conventions on the status of a refugee of 1951. These persons are holders of temporary protection status, which is regulated by the Temporary Protection Directive and the national laws of the member states of the European Union.<sup>76</sup>

Next, it should be considered what rights citizens and residents of Ukraine with temporary protection status in the European Union have.

## II.2. Fundamental rights of citizens and residents of Ukraine who have refugee status, temporary and additional protection.

In the previous Paragraph, the main issues that relate to the protection of the rights of persons who are citizens or residents of Ukraine who were forced to leave the territory of this state in connection with the armed conflict caused by the Invasion of the Russian Federation on the territory of this state, as well as the main documents of national law using the example of the Czech Republic and regional law using the example of the European Union, which regulates the provision of temporary protection or tolerated stay of citizens and residents of Ukraine. In this paragraph, it should be considered, what fundamental rights the above-mentioned categories of persons have, as well as how these rights are implemented in practice.

But before considering this issue, it is necessary to clarify the meaning of the term “fundamental rights”. From the point of view of the meaning of the Charter of fundamental rights of the European Union 2012/C 326/02, fundamental human rights are the basic guarantees of the Protection of the values of human life, health, human dignity based on the rule of law of the European Union and the member states of the European Union.<sup>77</sup> That is, based on the meaning of the above-mentioned Charter, fundamental rights can be synonymous with the meaning of the terms “guarantees” and “values”. From the point of view of other branches of law, the term

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<sup>75</sup> CONSTITUTION OF UKRAINE.

<sup>76</sup> Temporary protection. Migration and Home Affairs. European Commission. Accessible on: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

<sup>77</sup> Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012, p. 391–407 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). OJ C 326, 26.10.2012, p. 391–407 (GA). Document 12012P/TXT. EUR-lex. Accessible on: [http://data.europa.eu/eli/treaty/char\\_2012/oj](http://data.europa.eu/eli/treaty/char_2012/oj)

“guarantees” is closest to the term “fundamental rights”, since these rights are closely related to the state’s obligation to provide and protect them.

From the point of view of the position of the Office of the UN High Commissioner for Human Rights, fundamental rights are those rights that a person has received by virtue of his existence. that is, if he is competent, not convicted of a crime of an ordinary nature, where the preventive measure is imprisonment and detention, then he may have all the lists of rights that are guaranteed by national legal acts and international law.<sup>78</sup>

Well-known scientist in the field of human rights protection Fátima Monteiro Pacheco, Fundamental rights are a set of rights that are recognized and guaranteed by regulations and other documents with legal force that exceed their own material constitutive force.<sup>79</sup>

Thus, fundamental human rights are a set of rights that are granted to a Person based on his actual existence. Depending on the category, this list may change but in the direction of expansion. The main list can be filled with the rights of holders of temporary protection on the territory of quite a few states, which will be discussed further using the example of citizens and residents of Ukraine who were forced to leave the territory of their state due to the armed invasion of the armed forces of the Russian Federation.

As for the practical part of the implementation of fundamental rights in relation to citizens and residents of Ukraine who were forced to leave the territories of their named state due to the armed invasion of the Russian Federation on the territory of Ukraine, the legislation of the member states of the European Union regarding their implementation (fundamental rights) tends to differ significantly , that is, Council Directive 2001/55/EC of 20 July 2001 is the basis for resolving this issue.<sup>80</sup> To address this issue, the author needed to use the legal acts of the Czech Republic, in particular, Lex Ukraine, as well as information obtained through interviews with a citizen of Ukraine who arrived from the Donetsk region of Ukraine in the territory of the Czech Republic of

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<sup>78</sup> What are human rights? The Office of the High Commissioner for Human Rights. Acceptble on: <https://www.ohchr.org/en/what-are-human-rights>

<sup>79</sup>Fátima Monteiro Pacheco (Instituto Superior de Contabilidade e Administração do Porto (ISCAP), Portugal) and Dora Resende Alves (Universidade Portucalense Infante D. Henrique, Portugal). The New Paths of Fundamental Rights in the 21st Century: Globalization and Knowledge in a Digital Age as a Proposal. Source Title: Constitutional Knowledge and Its Impact on Citizenship Exercise in a Networked Society. Copyright: © 2019. Pages: 26. DOI: 10.4018/978-1-5225-8350-9.ch001

<sup>80</sup> National legislation implementing the EU Temporary Protection Directive in selected EU Member States (August 2022 update). FRA - Promoting and protecting your fundamental rights across the EU. Acceptable on: <http://fra.europa.eu/en/publication/2022/national-legislation-implementing-eu-temporary-protection-directive-selected-eu>

the armed conflict caused by the invasion of the armed forces of the Russian Federation 2022 of the year.

If it was considered the provisions of Council Directive 2001/55/EC of 20 July 2001, then this directive guarantees the following rights of the above-mentioned category of applicants. Such rights may include: simplified crossing of the border of member states of the European Union, the right to simplified execution of documents allowing stay in the territory of the above-mentioned subjects of international law, as well as the possibility of duty-free import of things and other types of property, but only for personal use, other.<sup>81</sup>

The regulations of the Member States of the European Union in matters of implementation of this Directive are in favor of an expansive interpretation. That is, if it considered the provisions of three legal acts: Act on measures in the field of education in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, 67/2022 (Zákon o opatřeních v oblasti školství v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, 67/2022), Act on measures in the field of employment and social security in connection with the armed conflict on the territory of Ukraine caused by the invasion of the troops of the Russian Federation, 66/2022 (Zákon o opatřeních v oblasti zaměstnanosti a oblasti sociálního zabezpečení v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, 66/2022), Act on certain measures in connection with the armed conflict in the territory of Ukraine caused by the invasion of the troops of the Russian Federation, 65/2022 (Zákon o některých opatřeních v souvislosti s ozbrojeným konfliktem na území Ukrajiny vyvolaným invazí vojsk Ruské federace, 65/2022),<sup>82</sup> covers such areas of life as employment, Social Security, health insurance, choice of place of residence, others.<sup>83</sup>

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<sup>81</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Accessible on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095>

<sup>82</sup> Sbírka zákonů a Sbírka mezinárodních smluv. Ministerstvo vnitra České republiky. Accessible on: [https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=65/2022&typeLaw=zakon&what=Cislo\\_zakona\\_smlouvy](https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=65/2022&typeLaw=zakon&what=Cislo_zakona_smlouvy)

<sup>83</sup> Czech Republic: "Lex Ukraine" law package enters into force. European Website on Integration. The European Commission. Accessible on: [https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force\\_en](https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force_en)

Of course, Lex Ukraine has undergone significant changes for the past 19 months.<sup>84</sup> however, as of November 2023, persons who have received temporary protection status in the Czech Republic have the following rights:<sup>85</sup>

1. the right to free access to the labor market, that is, citizens and residents of Ukraine who left the Territory of this state as a result of an armed invasion, have the right to employment in Czech companies or with individuals who are residents of the Czech Republic, on an application basis. In the case of tolerant residence, this employment procedure does not apply, that is, there is a permitting procedure for occupying a particular vacancy.<sup>86</sup>

2. The right to receive benefits, which today is paid only to those applicants who do not have any income in the Czech Republic or other countries.

3. The right to receive temporary housing, which is supervised by KACPU,<sup>87</sup> and is valid until the applicant is offered housing on a reimbursable basis.

4. the right to receive education.

5. Other rights established by the legislation of the Czech Republic.

Having interviewed a citizen of Ukraine who came from the Donetsk region to the Czech Republic and who received temporary protection status as a victim of the Armed Conflict on the territory of Ukraine, to this day, since he is a student, he has in the list of his rights free insurance services in medical institutions of the Czech Republic, free access to the labor market, but at the moment no one guarantees him obtaining residential premises in the Czech Republic. The interviewee received the documents necessary to stay in the Czech Republic within one day. At one time, in Germany, the period for receiving documents in the Federal Republic of Germany was at least three weeks.

Thus, in relation to citizens of Ukraine Despite the fact that they do not have refugee status, according to the 1951 Geneva Convention relating to the Status of Refugees, citizens of Ukraine

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<sup>84</sup> Czech Republic: "Lex Ukraine" law package enters into force. European Website on Integration. The European Commission. Acceptable on: [https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force\\_en](https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force_en)

<sup>85</sup> Sbírka zákonů a Sbírka mezinárodních smluv. Ministerstvo vnitra České republiky. Acceptable on: [https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=65/2022&typeLaw=zakon&what=Cislo\\_zakona\\_smlouvy](https://aplikace.mvcr.cz/sbirka-zakonu/SearchResult.aspx?q=65/2022&typeLaw=zakon&what=Cislo_zakona_smlouvy)

<sup>86</sup> Czech Republic: "Lex Ukraine" law package enters into force. European Website on Integration. The European Commission. Acceptable on: [https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force\\_en](https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force_en)

<sup>87</sup> Krajské asistenční centrum pomoci Ukrajině KACPU. Oficiální webový portál pro cizince, kteří žijí nebo chtějí žít v České republice. Acceptable on: <https://frs.gov.cz/navstivte-krajske-asistencni-centrum-pomoci-kacpu/>

have a wide range of rights on the territory of the member state of the European Union. Of course, naturalization under temporary protection is not provided for under temporary protection,<sup>88</sup> but, as an option, if a person wishes to stay after an armed conflict or an emergency situation that is located on the territory of the state and citizenship or permanent residence, he has the right to formalize another type of stay in the territory of a member state of the European Union or leave a third country to submit documents for registration visas at a consulate of a Member State of the European Union.<sup>89</sup>

As noted earlier, the issue of termination of temporary or additional protection status is established within the framework of national or EU legislation. There are various reasons for the termination of this status, and its list is open. In this regard, information has leaked to the media, which states that male citizens of Ukraine are subject to exhibition on the territory of Ukraine to fulfill their military duty, and that the status of temporary protection should be terminated. The next paragraph answers the question about the probability of occurrence of this event.

### II.3. The issue of extradition of Ukrainian citizens who evade military conscription for mobilization.

Information has appeared in the media that citizens of Ukraine who are liable for military service under the legislation of Ukraine, as well as those who are subject to conscription, from the member states of the European Union, where these citizens arrive, are preparing to extradite them to the territory of Ukraine.<sup>90</sup> A logical question arises as to whether this is possible from the point of view of the norms of international law.

It should be noted that the extradition procedure is regulated by a separate agreement between the States that signed it and implemented it into the national legal system.<sup>91</sup> Ukraine has such agreements, for example, with the Polish Republic, the Republic of Azerbaijan, the Republic of Estonia, and other states.<sup>92</sup> That is, the issue of mutual extradition of persons suspected of

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<sup>88</sup> Temporary protection. Migration and Home Affairs. Acceptable on: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

<sup>89</sup> Long-term residence. The Ministry of the Interior of the Czech Republic. Acceptable on: <https://www.mvcr.cz/mvcren/article/third-country-nationals-long-term-residence.aspx>

<sup>90</sup> The issue of extradition of Ukrainian citizens who evade military conscription for mobilization. Visit Ukraine Today. Acceptable on: <https://visitukraine.today/blog/2534/extradition-of-ukrainians-from-abroad-who-can-be-returned-to-the-homeland-and-how>

<sup>91</sup> "Part IV. Extradition Procedure." *The American Journal of International Law*, vol. 29, 1935, pp. 158–213. JSTOR, <https://doi.org/10.2307/2213621>.

<sup>92</sup> Extraditions between Germany and Ukraine. Schlun & Elseven Rechtsanwälte PartG mbB. Acceptable on: <https://se-legal.de/services/lawyer-for-extradition-proceedings/extraditions-between-germany-and-ukraine/?lang=en>

committing a criminal offense is carried out on the basis of the norms of national law of the States that have signed an agreement on mutual extradition of persons suspected of committing a criminal offense, as well as based on an assessment of the information provided by the State that sent the request.<sup>93</sup>

Article 336 of the Criminal Code of Ukraine states that evasion of conscription during a special situation, based on the interpretation, it can be understood that a special situation means martial law or a state of emergency, is punishable by imprisonment for a period of 3 to 5 years.<sup>94</sup> However, as the practice of the Supreme Court of Ukraine shows, before bringing to criminal responsibility a person who violated a mobilization order, it is necessary to establish the fact that the person really could not appear at the military commissariat of Ukraine or the territorial recruitment center of the municipality of Ukraine. There is no clear list of grounds that can serve as confirmation that a person did not appear at the military commissariat of Ukraine or the territorial recruitment center without a valid reason.<sup>95</sup> This means that the validity of the reason is established by the court or the Ministry of Internal Affairs of Ukraine or directly by the military commissariat on their own conviction, as well as by explaining to the citizen about the reasons for his absence.

To carry out the extradition procedure, the following actions must be taken: the State must send a request for the extradition of a person who is suspected of committing a criminal offense, but for this it is necessary to open a criminal case against a legal fact that may be a crime, or against a person who is accused of committing a criminal offense;<sup>96</sup> further, the State that received a request to bring him to criminal responsibility and the execution of punishment for committing a criminal offense must itself analyze all the information provided to determine whether there will be any illegal acts against the extradited person, as well as the sufficiency of evidence provided by

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<sup>93</sup> Bedi, D. S., and S. D. Bedi. "LAW AND PRACTICE OF EXTRADITION WITHIN THE COMMONWEALTH COUNTRIES." *Journal of the Indian Law Institute*, vol. 19, no. 4, 1977, pp. 419–37. JSTOR, <http://www.jstor.org/stable/43950498>.

<sup>94</sup> Criminal Code of the Republic of Ukraine (English Version) CRIMINAL CODE OF UKRAINE (This Code enters into force on September 1, 2001). Acceptable on: [https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en\\_html/Ukraine\\_Criminal\\_Code\\_as\\_of\\_2010\\_EN.pdf](https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf)

<sup>95</sup> СУДОВА ПРАКТИКА Якщо відсутні дані про вручення повістки чи про фіксування відмови в її отриманні, то відсутні й дані про доведеність винуватості в ухиленні від призову за мобілізацією. Acceptable on: <https://lexinform.com.ua/sudova-praktyka/yakshho-vidsutni-dani-pro-vruchennya-povistky-chy-pro-fiksuvannya-vidmovy-v-yiyi-otrymanni-to-vidsutni-j-dani-pro-dovedenist-vynuvatosti-v-uhylenni-vid-pryzovu-za-mobilizatsiyeyu/>

<sup>96</sup> Bedi, D. S., and S. D. Bedi. "LAW AND PRACTICE OF EXTRADITION WITHIN THE COMMONWEALTH COUNTRIES."

the state; further, the state can offer an alternative to serving the punishment of a person in the territory of this State to whom the request was sent.<sup>97</sup>

At the moment, there is no mechanism for issuing conscripts or evaders from mobilization or military conscription. Moreover, from the point of view of the practice of international law, as well as the national Criminal law of States, there are no cases of extradition of persons subject to conscription for military service on mobilization or conscription, as well as against persons against whom criminal proceedings have been initiated. That is, the state has not yet extradited the above-mentioned persons.

Thus, at the moment there are no legal or precedent grounds for the extradition of Ukrainian citizens to the territory of Ukraine who are subject to military conscription for mobilization or who evade military conscription for mobilization.

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<sup>97</sup> “Part IV. Extradition Procedure.” *The American Journal of International Law*, vol. 29, 1935, pp. 158–213. JSTOR, <https://doi.org/10.2307/2213621>.



### Chapter III. International protection of citizens of the Republic of Belarus.

The full-scale Invasion of Ukraine by the Armed Forces of the Russian Federation on February 24, 2022 directly affected the Republic of Belarus. It should be noted that Belarus is an accomplice to the Invasion of the armed forces of the Russian Federation on the territory of Ukraine, since the state provided its territory for the Russian Federation to commit an act of aggression against Ukraine.<sup>98</sup> However, a lot of controversy arises regarding the responsibility of the Republic of Belarus in committing this crime. Alexander Lukashenko actually lost the presidential election in 2020, which means that his actions, namely debt obligations, orders and decrees, as well as other forms of rule-making and the exercise of his power, are illegitimate.<sup>99</sup>

As a result of the falsification of the presidential elections of the Republic of Belarus in 2020, one of the largest protests in Europe against election fraud broke out. The protests were peaceful in nature, that is, the Belarusian opposition lacked a force element.<sup>100</sup> Unfortunately, the protest was defeated, and ended in mass repression, which the European community did not see in 1989. The Republic of Belarus is the leader in Europe in terms of the number of political prisoners per capita.

Of course, it is quite dangerous to express one's political position in the Republic of Belarus, which differs from the "party line", however, in 2022, when the constitutional referendum took place in the Republic of Belarus, at which a new legal body was formed - the All-Belarusian People's Assembly,<sup>101</sup> the people of the Republic of Belarus organized a mass anti-war rally, that is, declared their anti-war the position, Thanks to which, perhaps, the Republic of Belarus fully entered the war on the side of the Russian Federation.<sup>102</sup> Alexander Lukashenko did not send his Armed Forces to participate in the armed conflict in Ukraine on the side of the Russian Federation. However, the Kalinousky Regiment, consisting of citizens of the Republic of Belarus, as well as ethnic Belarusians abroad, takes part in the ranks of the Ukrainian armed forces.<sup>103</sup> There is also

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<sup>98</sup> Klysiński, Kamil, Żochowski, Piotr. The reluctant co-aggressor. Minsk's complicity in the war against Ukraine. Centre for Eastern Studies (OSW). Acceptable on: <https://www.osw.waw.pl/en/publikacje/osw-commentary/2023-02-10/reluctant-co-aggressor-minsk-complicity-war-against-ukraine>

<sup>99</sup> Ilyash, Igor. Lukashenka is repopulating Belarus with pro-government citizens. Open Democracy. Acceptable on: <https://www.opendemocracy.net/en/odr/belarus-alexander-lukashenka-rebuilt-2020-protests-donbas/>

<sup>100</sup> Belarusians Protest against the War. Belarus Watch #22. Ukraine World International. Acceptable on: <https://ukraineworld.org/en/articles/belarus/belarus-watch-22>

<sup>101</sup> Ilyash, Igor. Lukashenka is repopulating Belarus with pro-government citizens.

<sup>102</sup> Klysiński, Kamil, Żochowski, Piotr. The reluctant co-aggressor. Minsk's complicity in the war against Ukraine.

<sup>103</sup> Meet the Belarusian Regiment Fighting for Ukraine. Foreign Policy Magazine. Acceptable on: <https://foreignpolicy.com/2023/02/20/russia-war-ukraine-belarus-kastus-kalinouski-regiment-soldiers-fighting/>

the so-called “rail war” or acts of “rail partisans”, thanks to which the railway communication between the Russian Federation and Ukraine was destroyed, which contributed to the liberation of the northern regions of Ukraine.<sup>104</sup>

In connection with this, and also due to the fact that, according to the author, as well as a number of experts, the Republic of Belarus is de-facto state-sattelite of the Russian Federation,<sup>105</sup> as well as due to the presence of repression, many citizens of the first state need protection in neighboring states.

The purpose of this chapter is to analyze the existing mechanisms for international protection of Citizens and residents of the Republic of Belarus, as well as to consider the case of the passport of the new Belarus.

### III.1. Features of international protection of citizens of the Republic of Belarus.

Citizens of the Republic of Belarus, as well as residents of Belarus who were forced to leave the territory of their state due to current political and military events, can be divided into the following categories: those who enjoy international protection, and those who are on the territory of neighboring states on other grounds, such as studying, working, family reunification, doing business, as well as within the framework of a visa-free stay.<sup>106</sup>

A striking example of visa-free states for citizens of the Republic of Belarus that could receive actual protection, since legal protection is problematic, are Georgia and Ukraine.<sup>107</sup>

On the territory of Ukraine, citizens of the Republic of Belarus have the right to legally stay for 90 days from the date of entry. This means that Ukraine can become a state of temporary residence for citizens and residents of the Republic of Belarus. However, there was a period from February 24 to May 2022, when citizens of the Republic of Belarus, when submitting documents to legalize their stay through a temporary or permanent residence permit, their documents were

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<sup>104</sup> Kłysiński, Kamil, Żochowski, Piotr. The reluctant co-aggressor. Minsk’s complicity in the war against Ukraine. Centre for Eastern Studies (OSW).

<sup>105</sup> “How Russia occupied Belarus without a single shot and what consequences it caused for regional security”. People’s Embassies of Belarus. Acceptable on: <https://belarusabroad.org/en/2022/04/how-russia-occupied-belarus-without-a-single-shot-and-what-consequences-it-caused-for-regional-security/>

<sup>106</sup> Petrakova Yuliya. Belarus in the Eurasian Migration System: The Challenges of the Last Decade and Their Consequences. Central and Eastern European Migration Review Received: 17 June 2021, Accepted: 20 June 2022 Vol. 11, No. 1, 2022, pp. 125–144 doi: 10.54667/ceemr.2022.05.

<sup>107</sup> BELARUS PASSPORT DASHBOARD. Passport index. Acceptable on: <https://www.passportindex.org/passport/belarus/>

simply not accepted.<sup>108</sup> Unlike citizens of the Russian Federation, citizens of Belarus today have the right to apply for a temporary or permanent residence permit, on an equal basis with other citizens of third countries who arrived in Ukraine.<sup>109</sup>

On the territory of Georgia, citizens of the Republic of Belarus, along with citizens of the post-Soviet space and also some states of the European Union, have the right to stay without issuing any permits, namely long-term visas and residence permits, for one year.<sup>110</sup> The extension occurs through entry and exit from the territory of a given state, as a rule, to Turkey, since Russia, Armenia, Azerbaijan, as well as other member states of the Commonwealth of Independent States, have an agreement with the Republic of Belarus on legal assistance within the framework of the "Convention on legal assistance and legal relations in civil, family and criminal cases" (Concluded in Chisinau on 10/07/2002).<sup>111</sup> Under the 2002 Chisinau Convention, the State Party is obliged to extradite, at the request of a contracting party, its citizen if he is accused or convicted in a criminal case. This raises the risk of expulsion or extradition of a person in a criminal case for political reasons. Georgia and Ukraine are not state parties to this international treaty.

If it was considered the states of the European Union, can provide one pattern. In almost all EU states, citizens of the Republic of Belarus have the opportunity to obtain a Temporary Residence Permit. However, the exception is the Czech Republic, which requires a national visa to obtain a residence permit, which is issued at the state consulate; however, the Czech Republic on February 25, 2022 suspended the issuance of visas for citizens of the Russian Federation and the Republic of Belarus, but in turn, citizens Russian Federation and citizens of the Republic of Belarus have the opportunity to obtain a residence permit on the territory of the Czech Republic and extend it.<sup>112</sup> In addition, it is allowed to issue visas and other permits to participants in the "civil society" program, which allows for the issuance of a study, work, or entrepreneurial visa for citizens of the Russian Federation and the Republic of Belarus, if they are activists and fighters against the dictatorship of Vladimir Putin and the dictatorship of Alexander Lukashenko.<sup>113</sup>

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<sup>108</sup> Issuance of temporary residence permit. State migration service of Ukraine. Accessible on: <https://dmsu.gov.ua/en-home.html>

<sup>109</sup> Issuance of temporary residence permit. State migration service of Ukraine.

<sup>110</sup> BELARUS PASSPORT DASHBOARD. Passport index.

<sup>111</sup> Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, adopted in Minsk on 22 January 1993 (The Minsk Convention). UNHCR. Accessible on: <https://www.unhcr.org/media/convention-legal-aid-and-legal-relations-civil-family-and-criminal-cases-adopted-minsk-22>

<sup>112</sup> Limited Visa Services for Russian and Belorussian Citizens. Ministry of Foreign Affairs of the Czech Republic. Accessible on: [https://www.mzv.cz/jnp/en/information\\_for aliens/news/limited\\_visa\\_services\\_for\\_russian\\_and.html](https://www.mzv.cz/jnp/en/information_for aliens/news/limited_visa_services_for_russian_and.html)

<sup>113</sup> Program Občanská společnost. Ministry of Foreign Affairs of the Czech Republic. Accessible on: [https://www.mzv.cz/jnp/cz/informace\\_pro\\_cizince/pobytova\\_opravneni\\_k\\_pobytu\\_nad\\_90\\_dnu/program\\_obcanska\\_spolecnost/index.html](https://www.mzv.cz/jnp/cz/informace_pro_cizince/pobytova_opravneni_k_pobytu_nad_90_dnu/program_obcanska_spolecnost/index.html)

However, due to the bureaucratic nature of this process, Activists choose other countries for their protection.

The European Parliament resolution on further repression against the people of Belarus, in particular the cases of Andrzej Poczobut and Ales Bialiatski (2023/2573(RSP)).<sup>114</sup> The purpose of this resolution is to provide all measures of protection to citizens and residents of the Republic of Belarus, who are at risk of persecution for political reasons by the said state, as well as to build relations with Belarus after the reign of Alexander Lukashenko and the formation of democracy through democratic reforms on the territory of Belarus.<sup>115</sup>

The most loyal state for citizens of the Republic of Belarus on issues of humanitarian protection of citizens of Belarus and residents of this state is the Polish Republic. The Polish Republic offers the opportunity to obtain a humanitarian visa for citizens of the Republic of Belarus, as well as obtaining humanitarian protection already on the territory of Poland if they have a tourist visa, which Poland currently issues. When applying for a humanitarian visa, which is one of the types of temporary protection for citizens of the Republic of Belarus, an interview is held, where the circumstances of the applicant's case are clarified, the presence or absence of a risk of return, although this type of visa allows the return of the territory of Belarus without cancellation of this document. In addition, temporary protection on the territory of Poland is provided for citizens of the Republic of Belarus who legally stayed in the territory of Ukraine until February 24, 2022.<sup>116</sup>

The Republic of Lithuania provides asylum to citizens of the Republic of Belarus or residents of the Republic of Belarus, if the circumstances of the applicant's case comply with the norms of the Geneva Convention relating to the Status of Refugees of 1951.<sup>117</sup> Despite the fact that it is quite difficult for citizens of the Republic of Belarus to obtain a visa to the Lithuanian Republic due to current political and military events, it is nevertheless possible to obtain a residence permit for temporary or permanent residence if there is a fact of legal stay in the territory of Lithuania. This document can serve as a Schengen visa. When filling out an application for a

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<sup>114</sup> European Parliament resolution of 15 March 2023 on further repression against the people of Belarus, in particular the cases of Andrzej Poczobut and Ales Bialiatski (2023/2573(RSP)). The European Parliament. Accessible on: [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0075\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0075_EN.html)

<sup>115</sup> European Parliament resolution of 15 March 2023 on further repression against the people of Belarus, in particular the cases of Andrzej Poczobut and Ales Bialiatski (2023/2573(RSP)).

<sup>116</sup> New temporary residence permit for Belarusians holding humanitarian visas. Gov.pl. Office for Foreigners. Accessible on: <https://www.gov.pl/web/udsc-en/new-temporary-residence-permit-for-belarusians-holding-humanitarian-visas>

<sup>117</sup> How to apply for asylum. UNHCR Lithuania - Help for refugees and asylum-seekers. Accessible on: <https://help.unhcr.org/lithuania/how-to-apply-for-asylum-in-lithuania/how-to-apply-for-asylum/>

residence permit, citizens of the Republic of Belarus go through a kind of analysis, which occurs by answering questions related to the ownership of the Crimean Peninsula, the Armed invasion of the territory of Ukraine by the Armed Forces of the Russian Federation, as well as the presence of relatives or close people involved in illegal armed groups affiliated with the Russian Federation, and the armed forces of the Russian Federation. This is necessary to ensure the security and sovereignty of Lithuania.<sup>118</sup>

As noted earlier, one of the ways to ensure international protection for citizens and residents of the Republic of Belarus is refugee status. As it was noted in previous chapters, in order to obtain refugee status, if we consider the case of Belarus, it will be necessary to prove the fact that the applicant has a well-founded fear of persecution based on nationality, which can be tracked by the detention of Pole Card holders in the Republic of Belarus, or by fact political beliefs.<sup>119</sup> Naturally, all the circumstances of the case must be proven. Evidence may include protocols on administrative detentions. Depending on the circumstances, for example, the use of the national symbols of the Republic of Belarus (white-red-white flag), or a protocol of arrest or detention for participation in protests or rallies against the current regime in Belarus, other circumstances.<sup>120</sup>

The complexity of this status lies in the fact that the process is quite lengthy. For example, in Lithuania, an application for granting or not granting refugee status takes 6 months. If a person has rented or owned residential premises, then the person has the right to stay, as well as the right to move freely within the territory of the state of application, and if the person does not have residential premises rented or owned, then he is kept in the camp of the applicants for provision refugee status.<sup>121</sup>

In this case, at the time of consideration of his application for refugee status, the applicant is paid a benefit established by the state. For example, in the Federal Republic of Germany, the average benefit for the country is about 800 euros per month.<sup>122</sup> In Latvia, the benefit amount is

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<sup>118</sup> Інфармацыя для грамадзян Беларусі (абноўлена). MIGRIS. Electronic migration services. Acceptable on: <https://www.migracija.lt/en/kita4>

<sup>119</sup> Nikolayenko, O. (2023). Gender and repression in an autocracy: findings from Belarus. *European Journal of Politics and Gender* (published online ahead of print 2023). Retrieved Nov 29, 2023, from <https://doi.org/10.1332/25151088Y2023D000000011>

<sup>120</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection. Under the 1951 Convention and the 1967 Protocol relating to the status of refugees. Acceptable on: <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf>

<sup>121</sup> Інфармацыя для грамадзян Беларусі (абноўлена). MIGRIS.

<sup>122</sup> Social benefits. Federal Office for Migration and Refugees. Acceptable on: <https://www.germany4ukraine.de/hilfeportal-en/labour-and-social-affairs/social-benefits>

about minimum 3 euros per day. However, the applicant is prohibited from working until a decision is made to grant or not grant refugee status.<sup>123</sup>

According to the author, applications for protection of citizens and residents of the Republic of Belarus, unfortunately, are widespread, and refugee status, as can be seen in the practice of national legislation, is considered for quite a long time, so applicants use the mechanism for providing temporary protection.<sup>124</sup>

When considering the issue of providing temporary protection for citizens of the Republic of Belarus, the analysis should be divided into two categories: those who are victims of the regime of Alexander Lukashenko, and those who are victims of the armed invasion of the armed forces of the Russian Federation into the territory of Ukraine.

As noted in the previous paragraphs, the international document regulating the provision of temporary protection in the European Union is the Temporary Protection Directive (2001/55/EC of July 20, 2001).<sup>125</sup> Thus, on the territory of any EU member state, a citizen or resident of the Republic of Belarus has the right to apply for additional protection, citing the fact that in the Republic of Belarus there is a difficult humanitarian situation associated with massive violations of human rights, mass repressions, and also the fact that the applicant will be in danger return to the Republic of Belarus due to the fact of his political opinions or other circumstances that may justify why he deserves additional protection.<sup>126</sup> The advantage of this legal mechanism is that the processing time for an application for temporary protection is on average 30 days, such as in the Czech Republic. Temporary protection is usually provided for a period not exceeding 1 year. There is also the possibility of extending this type of protection.

The second category that may be granted temporary protection are victims of the Armed Invasion of the Russian Federation on the territory of Ukraine. This issue, for example, in the Czech Republic is regulated by the Collection of Laws called Lex Ukraine.<sup>127</sup> The composition of this Collection of Laws was indicated earlier, namely in the second chapter of this study. Citizens

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<sup>123</sup> Informatīvais materiāls tapis projekta "Atbalsta pasākumi starptautiskās aizsardzības personām" ietvaros. Projektu Patvēruma, migrācijas un integrācijas fonda ietvaros īsteno biedrība "Patvērums "Drošā māja"". Projektu līdzfinansē Eiropas Savienība. Granta līgums Nr. PMIF/9/2016/1/03. Acceptable on: [https://www.km.gov.lv/sites/km/files/media\\_file/drosamaja-buklets-en-a41.pdf](https://www.km.gov.lv/sites/km/files/media_file/drosamaja-buklets-en-a41.pdf)

<sup>124</sup> Інфармацыя для грамадзян Беларусі (абноўлена). MIGRIS.

<sup>125</sup> Council Directive 2001/55/EC

<sup>126</sup> International Protection. The Ministry of the Interior of the Czech Republic. Acceptable on: <https://www.mvcr.cz/mvcren/article/entry-stay-permanent-residence-and-international-protection-in-the-czech-republic-international-protection.aspx>

<sup>127</sup> Czech Republic: "Lex Ukraine" law package enters into force. European Website on Integration. The European Commission. Acceptable on: [https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force\\_en](https://ec.europa.eu/migrant-integration/library-document/czech-republic-lex-ukraine-law-package-enters-force_en)

of the Republic of Belarus who have a residence permit on the territory of Ukraine, have temporary or additional protection on the territory of Ukraine, are family members of a citizen of Ukraine who was forced to leave the territory of this state after February 24, 2022, as well as he, before the above date, was on the territory of Ukraine on legal grounds, on the territory of the member states of the European Union On an equal basis with citizens of Ukraine.

Thus, the phenomenon of international protection of citizens and residents of the Republic of Belarus can be divided into two types: refugee status, if the person meets the criteria of the 1951 Geneva Convention relating to the Status of Refugees, and the holder of temporary or subsidiary protection. In turn, holders of additional or temporary protection are divided into the following types: Victims of the armed invasion of the Russian Federation troops into the territory of Ukraine, as well as Victims of the political crisis and humanitarian situation in the Republic of Belarus.

Unfortunately, as noted above, citizens of the Republic of Belarus, who actively expressed their political disagreement with the course of the regime of Alexander Lukashenko here, to this day cannot return to the territory of the Republic of Belarus due to the fact that they will be imprisoned for expressing their political will in fact.<sup>128</sup> Moreover, these citizens cannot issue a passport outside the Republic of Belarus, that is, consular offices, since there is a decree by Alexander Lukashenko that prohibits the registration of foreign passports, as well as travel documents of citizens of the Republic of Belarus.

The next paragraph will be devoted to one of the ways to solve this issue.

### III.2. New Belarus passport case. Prospects for international recognition of the document.

In 2023, the Democratic opposition was represented by the Joint Transitional Cabinet of the Republic of Belarus as well as the Coordination Council of the Republic of Belarus, and the elected President of the Republic of Belarus Svetlana Tikhanovskaya, in response to restrictive measures by the member states of the European Union regarding citizens of the Republic of Belarus, as well as in connection with the fact that the Legislation of the Republic of Belarus prohibits the issuance of a passport of a Citizen of the Republic of Belarus through the consular offices of this state from August 2023, a draft passport of the new Belarus was published.<sup>129</sup>

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<sup>128</sup> Benakis Theodoros. A passport for the thousands of Belarusian exiles in Europe?. November 1, 2023. European Interest. Accessible on: <https://www.europeaninterest.eu/a-passport-for-the-thousands-of-belarusian-exiles-in-europe/>

<sup>129</sup> Benakis Theodoros.

According to the author, this project is very interesting because, despite the fact that this case is not new, since there were cases of issuing alternative passports in the territory of Lithuania, Latvia and Estonia in the period from 1939 to 1991, when the governments in exile of these states acted, since these territories were under the control of the USSR and were actually deprived of sovereignty.<sup>130</sup> Another example would be the issuance of a passport for a Tibetan citizen (aka Green Book), which is issued on behalf of the Dalai Lama, who is the leader of the region. All of these documents were recognized as citizenship or travel documents, but not all states recognized them as such. Hence, the difficulty arises in recognizing any new document, including the passport of the new Belarus. This is the recognition of this document as a document identifying the identity and citizenship of the holder, as well as in general a document with which one can cross one or another border of a certain state. In this case, it is necessary to use diplomatic mechanisms, since the issue of recognition of a particular fact associated with a state or people not having their own state depends on the will of the entry states.

However, the brightest and most, in the author's opinion, relevant and necessary project at that time was the Nansen passport, which was issued to Armenian refugees who suffered from the Armenian genocide on the territory of the then Ottoman Empire in 1915, as well as to refugees from the Russian Empire who were forced to leave territory of a given state due to the Civil War and Revolution on the territory of the Russian Empire.<sup>131</sup> The Nansen passport was issued by the League of Nations, an international organization which was the prototype of the United Nations organization at that time; the High Commissioner at that time of this organization was the Norwegian scientist and researcher Fridtjof Nansen.<sup>132</sup>

Currently, there is a standard that relates to the issuance or production of identity documents for traveling abroad, as well as the procedure for their issuance. Doc 9303 Machine Readable Travel Documents, developed in 2005 by the International Civil Aviation Organization - ICAO, provides guidance regarding the development and issuance of identity and citizenship documents for travel abroad, as well as travel documents.<sup>133</sup> It should be borne in mind that this document is advisory, therefore, the issue of recognition, entry, issuance of visas and residence

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<sup>130</sup> Mälksoo (2000). Professor Uluots, the Estonian Government in Exile and the Continuity of the Republic of Estonia in International Law. *Nordic Journal of International Law* 69, 3, 289-316, Available From: Brill <https://doi.org/10.1163/15718100020296305>

<sup>131</sup> Bell, Daniel, and Leon Dennen. "The System of Governments in Exile." *The Annals of the American Academy of Political and Social Science*, vol. 232, 1944, pp. 134-47. JSTOR, <http://www.jstor.org/stable/1023346>.

<sup>132</sup> Bengel, Kacey. "Understanding the Nansen Passport: A System of Manipulation." *Indiana Journal of Global Legal Studies*, vol. 29 no. 1, 2022, p. 217-231. Project MUSE [muse.jhu.edu/article/849815](https://muse.jhu.edu/article/849815).

<sup>133</sup> Doc 9303. Machine Readable Travel Documents Part 3: Specifications Common to all MRTDs Eighth Edition, 2021. ICAO. Accessible on: [https://www.icao.int/publications/Documents/9303\\_p3\\_cons\\_en.pdf](https://www.icao.int/publications/Documents/9303_p3_cons_en.pdf)



permits remains the sovereign competence of the receiving state. As stated in the description of the New Belarus passport project, this document will comply with all ICAO standards.<sup>134</sup>

Another important point, and as it may turn out to be a problem, is the code issued to each state by ICAO. The Republic of Belarus has this code - BLR.<sup>135</sup> This code is unique and can only be used in official passports and travel documents of the Republic of Belarus. The passport of the new Belarus is not one of these. Therefore, one of the solutions to the problem could be either borrowing a code from a third state, of course, in agreement with it, or registering a new code with ICAO.<sup>136</sup> According to the author, the most acceptable from a humanitarian point of view is the first option, since the creation of an alternative code in the Civil Aviation Organization may cause protest from, in this case, the Republic of Belarus.

One of the conclusions of this paragraph should be the following: since negotiations are already underway on the recognition and issuance of passports of the new Belarus at the European Parliament,<sup>137</sup> and there is also an active discussion about it, there is a future recognition of the document as a travel document, as well as a document certifying the citizenship of the holder. Perhaps in the near future, this document will become the only one that trusts the citizenship of the owner.

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<sup>134</sup> Milde Michael. *International Air Law and ICAO*. Eleven International Publishing, 2008. ISBN 9789462746770 | 3th edition | 450 pages

<sup>135</sup> Doc 9303.

<sup>136</sup> Huang, J. *Aviation Safety Through the Rule of Law: ICAO's Mechanisms and Practices*. 2009. Instituut voor Publiekrecht, Faculty of Law, Leiden University. Alphen aan den Rijn: Kluwer Law International. ISBN 9789041131157.

<sup>137</sup> Sviatlana Tsikhanouskaya to MEPs: support Belarusians' European aspirations. European Parliament. Acceptable on: <https://www.europarl.europa.eu/news/en/press-room/20230911IPR04918/sviatlana-tsikhanouskaya-to-meps-support-belarusians-european-aspirations>

## Chapter IV. Features of international protection of citizens of the Russian Federation.

The issue of providing refugee status as well as other types of international protection for citizens of the Russian Federation became acute and also became of the greatest relevance after the start of a full-scale invasion of the Armed Forces of the Russian Federation into the territory of Ukraine. Indeed, from a historical point of view, there were quite a lot of aggressive wars, and there were also those people who voluntarily refused to take part in these wars, and there were also those people who openly protested against the policies of the authorities of their state.<sup>138</sup>

In general, it could be considered two categories, as well as two ways to protect citizens of the Russian Federation who opposed the regime of Vladimir Putin, as well as against the policy of the current government in the Russian Federation in fact, upon the fact of the armed invasion of the Russian Federation on the territory of Ukraine, as well as those who voluntarily refused take part in an armed conflict on the territory of Ukraine.<sup>139</sup>

The objectives of this chapter are to consider the issue of protecting persons who in some way protested against the armed Invasion of the Armed Forces of the Russian Federation on the territory of Ukraine, as well as those who refused to take part on the territory of Ukraine.

### 1. Features of the protection of citizens and residents of Russia with an anti-war position.

After February 24, 2022, the political situation in the Russian Federation changed quite dramatically. For the first time, the Russian Federation committed an aggressive war, which was recognized by the world community, for the first time in the Russian Federation, political articles appeared that relate to the spread of fakes about the Armed Forces of the Russian Federation, discrediting the Armed Forces of the Russian Federation, later, in September 2022, criminal liability for voluntary surrender to captivity, defection to the enemy during special military operations, and a number of other criminal and administrative articles.<sup>140</sup> If it considered the statistics of detentions and criminal prosecutions from the point of view of the anti-war position

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<sup>138</sup> Guttman, Allen. "Protest against the War in Vietnam." *The Annals of the American Academy of Political and Social Science*, vol. 382, 1969, pp. 56–63. JSTOR. Acceptable on: <http://www.jstor.org/stable/1037114>.

<sup>139</sup> Russia: 20,000 activists subject to heavy reprisals as Russia continues to crack down on anti-war movement at home. Amnesty International. Acceptable on: <https://www.amnesty.org/en/latest/news/2023/07/russia-20000-activists-subject-to-heavy-reprisals-as-russia-continues-to-crack-down-on-anti-war-movement-at-home/>

<sup>140</sup> Anti-war criminal cases. Criminal repression for anti-war stance in Russia. Acceptable on: <https://repression.info/en/articles>

of citizens, then, according to the human rights organization OVD-info, more than 20,000 citizens of the Russian Federation were subjected to detention and (or) criminal prosecution for expressing an anti-war position.<sup>141</sup>

Among the famous people who were subject to criminal punishment for expressing an anti-war position are Alexei Navalny, Ilya Yashin, and Aleksandra Skochenko.<sup>142</sup> All of them are serving long sentences in places of deprivation of liberty, only because they fulfilled their constitutional right, which is regulated by Article 29 of the Constitution of the Russian Federation.<sup>143</sup>

In general, if we consider the issue of political persecution, as well as the threat of being repressed for non-support or expression of dissatisfaction on any political issue, if criminal or administrative liability is provided for this, then in this case the possibility of guidance of the Geneva Convention relating to the Status of Refugees of 1951 is allowed.<sup>144</sup> That is, it is necessary to analyze whether these citizens meet the criteria for granting refugee status. To do this, it is necessary to analyze the following: where these citizens are located, they must be located on the territory of the state of application for refugee status, it is necessary to meet the criteria for events that occurred before 1951 and similar ones, it is also necessary to prove the fact or facts that the person faces persecution in the country his citizenship based on political convictions, as well as prove the impossibility or absence of using the protection of the state of his citizenship.<sup>145</sup>

But problems arise, the most important of which is how to get to the state of application for refugee status, this is the first problem, since currently for citizens of the Russian Federation, in order to enter the territory of, for example, a member state of the European Union, it is necessary to have a visa, but at present, this issue is very difficult.<sup>146</sup> Of course, there are opportunities to obtain a humanitarian visa, but this process takes some time. One way out may be to request the

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<sup>141</sup> 19747 detained at anti-war protests after 24th of February. 844 Criminal cases against anti-war dissidents. Acceptable on: [https://en.ovdinfo.org/?\\_gl=1\\*c9zhlo\\*\\_ga\\*OTc2MjIyMzQ5LjE3MDI5MjAzMDc.\\*\\_ga\\_J7DH9NKJ0R\\*MTcwMjk yMDMwNy4xLjAuMTcwMjkyMDMxMC41Ny4wLjA](https://en.ovdinfo.org/?_gl=1*c9zhlo*_ga*OTc2MjIyMzQ5LjE3MDI5MjAzMDc.*_ga_J7DH9NKJ0R*MTcwMjk yMDMwNy4xLjAuMTcwMjkyMDMxMC41Ny4wLjA).

<sup>142</sup> PACE's General Rapporteur for political prisoners strongly condemns Alexei Navalny's recent sentencing. Council of Europe. Acceptable on: <https://www.coe.int/en/web/portal/-/pace-s-general-rapporteur-for-political-prisoners-strongly-condemns-alexei-navalny-s-recent-sentencing>

<sup>143</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). RUSSIAN FEDERATION CONSTITUTION. Strasbourg, 4 February 2021 Opinion No. 992 / 2020 CDL-REF(2021)010 Or. Engl. Translation provided by the Constitutional Court. Council of Europe. Acceptable on: <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>

<sup>144</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection. Under the 1951 Convention and the 1967 Protocol relating to the status of refugees. Acceptable on: <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfcdc47.pdf>

<sup>145</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection.

<sup>146</sup> What is the European Commission's role in visa policy implementation? Migration and Home Affairs. European Commission. Acceptable on: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy_en)

provision of refugee reports at the border of the applicant's country of entry. For example, somebody can request refugee status on the border of Finland, Estonia, Latvia or Lithuania. This will also resolve the issue of the Dublin Regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013) on the issue of granting refugee status to persons arriving from third countries into the territory of the European Union.<sup>147</sup>

The question also arises of providing evidence that the applicant has a well-founded risk of persecution for political reasons.<sup>148</sup> There is no uniform standard for analyzing evidence and requesting it. An ideal option would be to obtain a certificate of the absence or presence of criminal prosecution, but in this case the most valuable thing is lost - time, since this document is completed within one month. Another proof may be served as information published in the media. But the problem here is that not all information is published, that is, there are publications only in relation to famous and recognizable persons. Another way to prove your arguments is to testify to the inspector who is considering the case of granting or not granting refugee status. This type of evidence is one of the ideal ones, but it is extremely difficult to verify the applicant's words, so the applicant may be a person who has bad intentions towards the state of the petition.

The next problem may be the registration of a criminal case against a person who actively opposes the current policy of the state, under a non-political article. Many states in the post-Soviet space practice persecution of persons who are actively involved in political activities and are oppositionists to the current regime or are too active, and there is a risk that the Ministry of Internal Affairs may find narcotic substances in their possession.<sup>149</sup> In almost all countries of the world this crime is such, and is also prosecuted within the framework of national legislation. From a bureaucratic point of view, this poses a problem since there is no or minimal opportunity to prove that the applicant is being persecuted for political reasons.<sup>150</sup>

On February 16, 2024, Russian political prisoner Alexei Navalny passed away. Indeed, Alexey Navalny stayed in Germany in 2020, but decided to return to the territory of the Russian Federation on his own. When crossing the border of the Russian Federation, Alexei Navalny was

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<sup>147</sup> REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Acceptable on: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:en:PDF>

<sup>148</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection.

<sup>149</sup> Review of the Narcotic Drugs Situation in Tajikistan. UNODC. Acceptable on: <https://www.unodc.org/rpanc/en/Sub-programme-4/drug-review-tajikistan.html>

<sup>150</sup> Prosecution of drug-related offences. EMCDDA 2000 selected issue. In EMCDDA 2000 Annual report on the state of the drugs problem in the European Union. Acceptable on: [sel00\\_2en\\_69424.pdf](#)

taken into custody. The question arises whether Alexei Navalny could have received refugee status on political grounds on the territory of the Federal Republic of Germany. Yes, he could, because it was established that this citizen, upon returning to the territory of the Russian Federation, is in danger of imprisonment and, as a result, deprivation of life. Unfortunately, Alexei Navalny's reputation, as well as his fame, would have played a greater role than in relation to other political activists.<sup>151</sup>

In the Muslim regions of the Russian Federation, which is absolutely illegal, and the state recognizes this fact - the fact of the existence of the phenomenon that will be described below - slavery, as well as the forcible detention of adult females in the parental home.<sup>152</sup> Moreover, young girls who left home without parental permission while of age in the republics of the North Caucasus are returned to their parents and/or put on the wanted list. Usually such girls are detained at airports; for example, in 2023, there was a case of detention of a girl from the Chechen Republic who tried to leave Russia after being beaten by her father. Of course, this crime is a criminal offense (assault), but the Russian Federation cannot do anything about it.<sup>153</sup>

In all two situations, the question arises whether it is possible to obtain a refugee or temporary protection, as well as another type of international protection, in the above cases. According to the author, these persons, if they apply for international protection, will have the right to obtain refugee status, since, in the first case, there are grounds for persecution for political reasons, however, it is necessary to prove this circumstance, and if this is not possible, they can use the principle of non-deportation (the principle of non-refoulement),<sup>154</sup> since there is a criminal prosecution in violation of procedural law. In the second case, there is inaction of the state, as well as a well-founded risk to the health of the female victim or victims based on gender, which is directly the basis for granting refugee status.<sup>155</sup> And in both cases, there are an inability or unwillingness to use the protection of the state of one's citizenship.

If it looked at the statistics on granting refugee status to applicants from the Russian Federation, we can conclude that it is extremely difficult to obtain this status in the member states

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<sup>151</sup> What we know about Alexei Navalny's death in Arctic prison. By Lucy Papachristou. Reuters. Accessible on: <https://www.reuters.com/world/europe/alexei-navalnys-death-what-do-we-know-2024-02-18/>

<sup>152</sup> Escape from family is a way to survive for North-Caucasian domestic violence victims Accessible on: <https://eng.kavkaz-uzel.eu/articles/62739>. Rfdrfpcrbq Eptk/ ^ https^||eng/kavkaz-uzel/eu|articles|62739

<sup>153</sup> Woman Fleeing Domestic Violence Missing After Being Forcibly Returned To Chechnya. Radio Free Europe/Radio Liberty. Accessible on: <https://www.rferl.org/a/chechnya-fleeing-domestic-violence-returned/32460892.html>

<sup>154</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection.

<sup>155</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection.

of the European Union.<sup>156</sup> If the applicant is not on the territory of the Russian Federation, for example, a foreign agent, a candidate in the presidential election, or he has no political activity at all, then it is extremely difficult for such an applicant to obtain refugee status on the territory of the member states of the European Union. In 2023, an applicant from the Russian Federation applied for refugee status in the territory of the French Republic, but was refused. The refusal was motivated by the fact that the applicant “insufficient experience in opposition activities,”<sup>157</sup> although the applicant himself was quite young, and he was threatened with criminal prosecution on the territory of the Russian Federation.

The practice is completely different in the United States of America. In general, the procedure for submitting refugee status in the United States of America is regulated by 101(a)(42) of the Immigration and Nationality Act (INA).<sup>158</sup> From the point of view of the theory of state and law, in the United States of America the application of case law is allowed,<sup>159</sup> as well as an expanded interpretation of a particular rule based on court decisions, as well as in favor of applicants. In this federal state, it is possible to obtain refugee status if a person has crossed the border between the United States and Mexico.<sup>160</sup> From a human rights monitoring perspective, Mexico is a democratic state. However, this is not an obstacle to the applicant’s application for refugee status in the United States of America.

Thus, citizens of the Russian Federation who have well-founded fears of persecution based on their political beliefs, including for expressing an anti-war position, have the right to obtain refugee status in the states party to the Geneva Convention relating to the Status of Refugees of 1951. However, this phenomenon in relation to citizens of the Russian Federation is so new, after 1991, that these states have no idea how to work with these applicants. On the other hand, persons who are denied refugee status have the right to obtain subsidiary or temporary protection status, or other residence status not related to international protection.

Next, it should be considered the issue of granting refugee status or other international protection to persons who are citizens of the Russian Federation, in case of risk of them being

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<sup>156</sup> From Russia with an asylum application. The number of Russian asylum seekers in Europe has barely increased after the Ukraine war began. Here’s why. Editor in chief — Kirill Martynov. Novaya Gazeta Europe. Acceptable on: <https://novayagazeta.eu/articles/2023/07/26/from-russia-with-an-asylum-application-en>

<sup>157</sup> Франция не предоставила убежище отказавшемуся воевать в Украине российскому офицеру, бежавшему в Казахстан. Радио Азаттык. Acceptable on: <https://rus.azattyq.org/a/32534338.html>

<sup>158</sup> Refugees. USCIS.gov. An official website of the U.S. Department of Homeland Security. Acceptable on: <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees>

<sup>159</sup> US Case Law. US Law, Case Law, Codes, Statutes & Regulations. Acceptable on: <https://law.justia.com/cases/>

<sup>160</sup> U.S.-Mexico Border Program. International Refugee Assistance Project. Acceptable on: <https://refugeerights.org/home/us-mexico-border-program>

recognized as part of partial mobilization on the territory of the Russian Federation, in the event that persons refuse to participate in the Russian-Ukrainian war.

## 2. Features of the protection of persons who are at risk of being sent to a combat zone for mobilization.

According to the provisions of the Constitution of the Russian Federation, defense of the fatherland is the sacred duty of every citizen of the Russian Federation. Of course, the duty to defend their state is the duty of citizens of any state where they live or have citizenship.<sup>161</sup> However, it is necessary to interpret the fact that, according to the position of the Plenum of the Constitutional Court of the Russian Federation on July 6, 1999 N 10-P,<sup>162</sup> the protection of the fatherland should be understood as the fact of an armed invasion of the Armed Forces of a foreign state into the territory of the Russian Federation within its generally recognized borders. The generally recognized borders of the Russian Federation are the borders as of 1991. Also, the protection of the fatherland should be understood as protection from attempts to forcibly change the constitutional system of the Russian Federation or the creation of conditions of disaster or social instability.<sup>163</sup>

According to Article 4 of the Federal Law “On mobilization preparation and mobilization in the Russian Federation” dated February 26, 1997 N 31-FZ, the official who makes the decision on mobilization is the President of the Russian Federation.<sup>164</sup>

Mobilization on the territory of the Russian Federation is introduced in the event of aggression on the territory of a given state, as noted above, as well as in the case of an immediate threat of aggression against the territory of a given state.<sup>165</sup> In the Russian Federation, mobilization had the status of partial, although in fact this type of mobilization was universal, since it affected all regions of the Russian Federation.

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<sup>161</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). RUSSIAN FEDERATION CONSTITUTION. Strasbourg, 4 February 2021 Opinion No. 992 / 2020 CDL-REF(2021)010 Or. Engl. Translation provided by the Constitutional Court, Council of Europe. Acceptable on: <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>

<sup>162</sup> Legal framework and practice regarding “partial” mobilization in the Russian Federation. December 2022. Internal legal note. Acceptable on: [1675684903-Mobilization-in-Russia-2022-ENG-ECRE-ELENA.pdf](https://www.legal-ecre.eu/1675684903-Mobilization-in-Russia-2022-ENG-ECRE-ELENA.pdf)

<sup>163</sup> Legal framework and practice regarding “partial” mobilization in the Russian Federation

<sup>164</sup> Federal Law “On mobilization preparation and mobilization in the Russian Federation” dated February 26, 1997 N 31-FZ. Acceptable on: <https://lawyer-great.ru/en/zakon-o-mobilizacionnoi-podgotovke-putin-prizval-rossiyan-na-voennoe-sbory/>

<sup>165</sup> Legal framework and practice regarding “partial” mobilization in the Russian Federation.

A natural human right is the right to life.<sup>166</sup> Therefore, among those who were threatened with mobilization or those who received a summons to appear at the military commissariat, they considered all options for non-participation in this armed conflict in Ukraine. Many of them decided to leave the territory of the Russian Federation.<sup>167</sup> Moreover, the Constitution of the Russian Federation guarantees every person the right to life, and also prohibits the adoption of laws that in any way worsen the living conditions of citizens.<sup>168</sup>

The purpose of this paragraph will be to consider the possibility of providing international protection to citizens of the Russian Federation who are forced to leave the territory of the Russian Federation due to the threat of their mobilization.

It is necessary to answer the question whether there are any legal guarantees or legal possibilities for obtaining any international protection for persons who voluntarily refuse to take part in mobilization, as well as sending them to the territory of Ukraine. On the one hand, a citizen, if he refused to take part in an armed conflict that is aggressive in nature, then he can be imagined as expressing his political position or committing an action of a political nature.<sup>169</sup> In the event that it is established that the applicant has tried all legal remedies on the territory of the Russian Federation, but has been denied such protection, or there is a significant risk that the person will be subject to torture by the state or some specific criminal group, but the state fails to act on this issue, the applicant has the right to benefit from the provisions of the 1951 Geneva Convention relating to the Status of Refugees.<sup>170</sup> However, there is a risk, and the risk is quite high, that the applicant will be denied refugee status, and, in turn, the person will be sent to the territory of the Russian Federation.<sup>171</sup>

On the other hand, there is Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, which regulates the standards of international protection in the territory of member states of the European Union.<sup>172</sup> According to the provisions of this document,

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<sup>166</sup> Paul EF, Miller, Jr FD, Paul J, eds. Introduction. In: *Natural Rights Liberalism from Locke to Nozick*. Vol 22. *Social Philosophy and Policy*. Cambridge: Cambridge University Press; 2004:vii-xv. doi:10.1017/CBO9780511599712.001

<sup>167</sup> What Does Russia's 'Partial Mobilization' Mean? Center for Strategic and International Studies. Available on: <https://www.csis.org/analysis/what-does-russias-partial-mobilization-mean>

<sup>168</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). RUSSIAN FEDERATION CONSTITUTION

<sup>169</sup> 4.2. Persons who evaded or deserted military service. European Asylum Support Office (EASO). Available on: <https://euaa.europa.eu/country-guidance-syria-2023/42-persons-who-evaded-or-deserted-military-service>

<sup>170</sup> Handbook on procedures and criteria for determining refugee status and guidelines on international protection. Under the 1951 Convention and the 1967 Protocol relating to the status of refugees. Available on: <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfdcc47.pdf>

<sup>171</sup> The Dutch Asylum Policy for Russian Draft Evaders. *Verfassungsblog*. Available on: <https://verfassungsblog.de/the-dutch-asylum-policy-for-russian-draft-evaders/>

<sup>172</sup> 4.2. Persons who evaded or deserted military service. European Asylum Support Office (EASO). Available on: <https://euaa.europa.eu/country-guidance-syria-2023/42-persons-who-evaded-or-deserted-military-service>



in case of evasion of military conscription upon mobilization, the following aspect must be considered, which relates to the basis for evading service in the armed forces of the state of one's citizenship during mobilization. The following details are considered:<sup>173</sup> what legal consequences arise for persons who voluntarily refused to take part in an armed conflict; whether the person refused to understand participation in the gunpowder conflict, based on the convictions of the applicants, since the refusal to participate in the armed conflict itself, as well as the punishment for refusal to participate, are not grounds for granting international protection; It is also necessary to analyze the human rights situation in the territory of the applicant's state of citizenship, as well as what punishment is imposed for evading conscription for mobilization, whether guarantees of a fair trial will be provided in relation to the applicant, and also on the basis of which the applicant was called up to the armed forces of the Russian Federation, that is does he have any medical contraindications?

Unfortunately, if we look at the statistics on granting refugee status or other international protection to persons who are citizens of the Russian Federation liable for military service, we can see that as of 2023, for example, 3,500 applications for refugee status or other international protection were filed in the Federal Republic of Germany to the above-mentioned persons, but only 90 applications were approved.<sup>174</sup>

There was also a case when citizens who applied for refugee status or other international protection at the airport of the Republic of Korea, and while waiting for a response on the provision or non-provision of this type of protection, were forced to live actually on the territory of the airport, and they lived for about 1 year.<sup>175</sup>

In conclusion, it is necessary to answer the question whether it is possible to obtain refugee status or another type of international protection for persons who voluntarily refuse to take part in an armed conflict on the territory of Ukraine. The answer is unequivocal, yes, it is possible only if the person proves the fact that he is avoiding participation in the Armed Conflict on the territory of Ukraine because of his political convictions, and also if the applicant proves that he may be subject to arrest or torture on the territory of the Russian Federation . Of course, this procedure is not easy (granting refugee status or international protection), you may need to contact higher authorities, but there is still hope. An example of this is the legislation of the Federal Republic of

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<sup>173</sup> Directive 2011/95/EU

<sup>174</sup> The Dutch Asylum Policy for Russian Draft Evaders. Verfassungsblog. Acceptable on: <https://verfassungsblog.de/the-dutch-asylum-policy-for-russian-draft-evaders/>

<sup>175</sup> Korean government maintains Russian draft evaders not refugees. Justice Ministry to appeal court ruling backing consideration as refugees. By Kim Arin. Published: March 1, 2023 - 14:51. Acceptable on: <https://www.koreaherald.com/view.php?ud=20230301000113>

Germany and France, which made it possible for applicants threatened with mobilization on the territory of the Russian Federation to apply for refugee status or international protection.<sup>176</sup>

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<sup>176</sup> Russians who refused to fight in Ukraine are eligible for political asylum in France. LE MONDE. Accessible on: [https://www.lemonde.fr/en/france/article/2023/07/23/russians-who-refused-to-fight-in-ukraine-are-eligible-for-political-asylum-in-france\\_6063599\\_7.html](https://www.lemonde.fr/en/france/article/2023/07/23/russians-who-refused-to-fight-in-ukraine-are-eligible-for-political-asylum-in-france_6063599_7.html)

## Conclusion.

And so, in this study, an analysis was made of the current legal situation, as well as current problems related to the legal situation and issues of legalization of refugees and other victims of the Armed Invasion of the Armed Forces of the Russian Federation on the territory of Ukraine in 2022. In no case, this study was of any nature aimed at humiliating any nationality or state, but, on the contrary, pointed to the problems of the states of study and the states of citizenship of the applicants, with the aim of improving the quality of life of applicants for refugee status or other types of international protection , for example, temporary protection.

The following problems that were discovered during the study should be highlighted:

1. lack of legislation of EU member states as well as a legal decision regarding citizens of Ukraine and residents of this state who have the status of additional protection or temporary protection, in matters of their further legalization after the end of the armed conflict. From a political point of view, unfortunately, the armed conflict on the territory of Ukraine is highly likely to be long-lasting, therefore, as the author might assume, the issue of further legalization of citizens of Ukraine and residents of Ukraine who have received temporary status or additional protection is not urgent.

2. the difficulty of obtaining a visa or the length of the process of obtaining a visa to enter the state of intended asylum or international protection. This may be due to the fact that there may also be a military threat from the territory of Belarus, so visa applications are considered quite carefully. Also, the sanctions imposed against the Republic of Belarus are not selective.

3. for citizens of the Russian Federation, the absence of any case law, as well as issues regulated by any regulatory act that relates to international protection or the provision of refugee status to persons who voluntarily refuse to take part in the Armed Conflict on the territory of Ukraine.

These were the main problems faced by applicants applying for refugee status or temporary protection, as well as other types of international protection.

As a solution to the above problems, the following can be proposed:

1. the introduction of a regulatory legal act that makes it possible to switch from a temporary protection visa. It was issued to citizens and residents of Ukraine who have suffered

from an armed conflict on the territory of a given state to a different type of visa, depending on the purpose of their stay in the state that granted this status.

2. in relation to citizens of the Republic of Belarus who suffered from repression by the regime of Alexander Lukashenko, the Author believes that it is necessary to open a green card for persons who have received a conclusion from the consul of the state where a citizen of the Republic of Belarus wishes to obtain refugee status or temporary protection, with the condition that this conclusion will be issued within a maximum of one working day, since the issue of preserving life and freedom cannot require delay.

3. for citizens of the Russian Federation who apply for refugee status or other international protection due to the fact that they have a threat of being sent to the Russian-Ukrainian front against their will, it is possible to allow the opportunity to declare their political position on the fact of the Armed Conflict on the territory of Ukraine , as well as the possibility of declaring the ownership of the occupied territories of Ukraine either to the Ministry of Internal Affairs, or at a notary, or at the consulate of the state where the applicant wants to receive refugee status or other international protection.

In this way and in this way, in the opinion of the author, there will be at least the slightest chance to improve legislation in the field of refugee law, international humanitarian law, as well as international human rights law.

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