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Differences in the Implementation of Labor Rights of Refugees and Migrants in Europe

Różnice w realizacji praw pracowniczych uchodźców i migrantów w Europie

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Abstract

The purpose of this article is to explore the differences that exist between the exercise of the right to work by refugees and migrant workers under EU law, and to examine the existing differences between these categories under international law. The leading method of research used in the article is the method of comparison. It was used to analyze the differences in the legal regulation and implementation of the right to work by refugees and migrant workers in the EU. The article analyzes the peculiarities of the definition and legal regulation of the terms refugee and migrant worker. The author defines the classification of types of migration and proves the conclusion that economic motives are the most frequent reason for migration. At the same time, the author argues that refugees and labor migrants are different concepts in terms of labor legislation. Therefore, they have different legal status and, accordingly, different frameworks for exercising their rights. Besides, the author as an example considered Polish legislation, which regulates both the issues of labor migration and realization of labor rights of refugees, especially in the context of war in Ukraine, which is also reflected in the results of work and conclusions to the article. The materials obtained as a result of the study can be used in law-making activities to improve the national labor legislation of Ukraine on the example of the considered legal acts, as well as taking into account the European vector of development of Ukraine.

Key words: labor law, refugees, migrant workers, right to work, labor relations, third country nationals

Słowa kluczowe: prawo pracy, uchodźcy, pracownicy migrujący, prawo do pracy, relacje w pracy, obywatele krajów trzecich

1. Introduction

It is worth noting that the movement of people around the world is a phenomenon that has been with us for a long time and has probably existed throughout human history. There are even states in the world whose populations consist entirely of migrants (e.g. the United States, Canada, Australia). Migration processes around the world have now assumed incredible proportions, requiring increasing attention to this phenomenon by international legal regulation. The reasons for the increase in migration are many, but among the main ones are historical developments, globalisation, integration and active international cooperation. It is worth highlighting that migrants have different objectives, depending on which type of migration is distinguished. This can be classified according to its causes: political (political events, discrimination on various grounds, etc.); military (evacuation, military

events); social (marriage, health, etc.); environmental (technogenic and natural disasters); economic (employment, search for higher income, etc.); other (ethical, religious, etc.).
Labour migration is economically motivated. For example, *The 2030 Agenda for Sustainable Development* recognized well-governed labour migration can contribute to sustainable development for countries of origin, transit and destination, and can provide benefits and opportunities for migrant workers and their families by balancing labour supply and demand, helping develop and transfer skills at all levels, contributing to social protection systems, fostering innovation and enriching communities both culturally and socially (ROAF, 2021). As noted by Ukrainian academics S. Fomishyn, A. Rybchuk and A. Rumiantseva (2011) environmental and economic reasons are the most common today. Similar views are held by researchers such as B. Dmytruk and N. Svetlova (2016), who point out that the current era of economic reforms in the global economy is dominated by migration, as evidenced by the dominance of economic factors as the main causes of migration. It can therefore be argued that labour migration is now a very widespread phenomenon. The relevance of the theoretical understanding of the problem of refugees is also indicated by the fact that in recent years it has been actively discussed, both from the rostrum of the United Nations and in other international organizations.
Moreover, the search for more effective ways to protect forced migrants and provide them with practical assistance continues. Undoubtedly, the scientific development of the problem of refugees is relevant and Ukraine, which is of great importance to it, both socially and politically. This problem was especially pronounced in connection with the armed aggression of the Russian Federation in Ukraine and the encroachment on its sovereignty and territorial integrity. The widespread violation by Russian troops of the laws and customs of war, as well as fundamental human rights, has forced a large number of Ukrainian citizens to save their lives on EU territory. In addition, they are forced to exercise their fundamental rights, including the right to work, on the territory of their host countries. The EU has a broad legal regulation of the peculiarities of labor of legal labor migrants, but the situation in Ukraine was the impetus for organizing labor and refugees, in particular from Ukraine. In addition, most of the known works on the problems of refugees and internally displaced persons are mainly focused on the study of general economic, social, cultural, psychological and other aspects, rather than on the study and consideration of the legislative and political mechanism for regulating the problems of refugees and internally displaced persons.
At the same time, the topic of refugees' exercise of the right to work is often insufficiently studied, especially now that European legislation is changing under the influence of the current situation in the world. Researchers also rarely compare the rights of labor migrants and refugees to work and the specifics of employment. All this in aggregate and a number of other objective reasons caused the necessity to study the problem of refugees and their influence on the socio-political situation in the EU as an object of analysis within the cognitive possibilities of political science, as well as the study of their labor rights and the limits of their realization.

2. Methodological Framework

Methods of research is a system of general scientific, philosophical and special methods, the use of which provides the reliability of the results, achieving the formulated goals and objectives of the study. The main method that the author applied during the study is the method of comparison. It was used in all paragraphs of the article, namely for the analysis of differences in the legal regulation and implementation of the right to work by refugees and migrant workers. Also the comparative method was applied in the analysis of the relevant EU legislation in these issues. In addition, the author used the comparative method in the context of considering relevant issues using the example of Polish law. The use of the comparative method made it possible to identify how the same topical issues are regulated differently by the participants in international relations and which ways are the most advantageous. In addition, the comparative method was used by the author in analyzing the concepts of labor migrant and refugee and their use in different norms.
The formal-legal method was applied at all stages of the analysis of legislation. It was used when considering the legal regulation of the peculiarities of the concept of refugee and labor migrant, as well as the regulation of protection of these categories of persons in the acts of international law. In addition, the use of this method allowed to analyze the normative-legal content of international legal documents adopted in the framework of international organizations, the European Union and the national legislation of the countries of the world under study. Thus, the use of the formal-legal method enabled the author to study the regulation of labor legal relations and certain aspects of protection of the right to work in the EU law and the Polish legislation.

The systematic method that the author applied during the research provided an opportunity to generalize and systematize scattered information about the labor rights of refugees and migrant workers. In addition, the application of the systematic method provided an opportunity to classify labor migration according to the reasons for its implementation:

- political (political events, discrimination on various grounds, etc.);
- military (evacuation, military events);
- social (marriage, health status, etc.);
- environmental (technogenic and natural disasters);

- economic (employment, search for higher income, etc.);
- others (ethical, religious, etc.).

Also on the basis of the systematic method the author distinguished two constituent elements: the labor activity itself (or paid activity), i.e. the fact of employment of an individual; moving to the territory of another state, i.e. compulsory employment abroad. The author also applied the method of analysis and synthesis. Its application provided an effective analysis of the framework of realization of the right to work by refugees and migrant workers under EU and Polish law. In addition, the method of analysis and synthesis was used to identify the differences between the categories under study. Thus, based on this method, the author came to the conclusion that migrant workers and refugees differ significantly in the following categories: the reason for arrival in the host country; legal status; protection by international law; and legal procedures for moving.

Therefore, at the EU level there are legal acts that help distinguish these two categories in accordance with universal international law and ensure (as far as possible) by such persons the realization of the right to work. Also in the course of research the author applied methods of scientific cognition, which were used to study the features and signs of migration, labor migration, as well as the peculiarities of these phenomena. The results of scientific-cognitive activity with the use of the above method provided the need to clarify the existing differences between the two categories of persons under consideration in the context of the right to work.

3. Results

3.1. Theoretical and legal approaches to the concepts of labor migrant and refugee

The concept of labour migration itself is defined as the process of moving citizens to the territory of another state for the purpose of working and exercising their labour rights and interests (Volosko, 2016; Galkin et al., 2020). The UK research team J. Simon, N. Kiss and A. Łaszewska (2015) noted that labour migrants are considered as such if they look for work or are employed in the host country or have previously looked for work or worked, but have not continued working in the host country. However, it should be noted that in all the above definitions, two constituent elements are used by scholars as the defining criterion of labour migration:

1) the labour activity itself (or paid activity), i.e. the fact of an individual's employment;
2) moving to the territory of another state, i.e. compulsory employment abroad (Sardak et al., 2021).

If we turn to the instruments of international law governing this concept, we should note the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN General Assembly, 1990), which stipulates that the term migrant worker should be used in relation to persons who would be engaged, are engaged or have been engaged in gainful employment in a State of which they are not nationals. The provisions of Art. 2 of the Convention 1990 define categories of migrant workers: seasonal worker; frontier worker; seafarer; salaried worker; relocated worker; project worker; worker employed on a fixed coastal installation; non-salaried worker.

In International Labor Organisation (1949) Convention No. 97 on Migrant Workers, article 11 defines the term migrant worker as a person who migrates from one country to another for the express purpose of employment and applies to any person who has the status of a migrant worker by law The provisions of ILO Convention No. 97 do not apply to frontier workers, professionals, seamen and entertainers who have entered for short periods. Comparing these two definitions, it should be noted that despite the different wording, they are quite similar. Nevertheless, the definition in the ILO Convention has a certain feature that distinguishes it from the 1990 Convention.

The ILO Convention says: *recognized by law as a migrant worker, that is, in this case there is a reference to the legislation of the receiving state*. On this basis, we can conclude that the ILO Convention applies to those foreign workers who are legally present in the territory of the receiving State. By contrast, the provisions of the Convention 1990 apply to all migrant workers. In this aspect it can be argued that the provisions of the Convention 1990 have a wider scope, which is a positive feature in the aspect of human rights protection. Ukrainian researcher O. Triukhan (2015), referring to the work of English scholar P. Stoker, notes that it is appropriate to distinguish five categories of foreign workers, among them: settlers, contract workers, skilled professionals, irregular labour migrants and asylum seekers/refugees.

Therefore, the author suggests that refugees should be classified as a sub-category of migrant workers. Of course, this view is valid, as refugees can also exercise their right to work. However, the author of this article believes that refugees and migrant workers should still be separated, if only because they have different legal statuses. A refugee has the right to work just like any other person and can exercise that right. However, the difference lies in the foreigner's original reason for coming to the territory of the host state (Britchenko et al., 2020). Whereas a migrant worker initially comes to a foreign country in search of work (as indicated above - employment is the main factor that characterises a migrant worker), a refugee arrives in the same country because of the threats that await him in his country of origin and only after some time can he find employment. Thus, we argue that these are two different categories, although they may share a common set of labour rights.

Considering the features of the concept of refugee, we note that if we turn to international law, we should pay attention to the UN Convention Relating to the Status of Refugees (UN General Assembly, 1951), which defines a refugee as a person who, due to well-founded fear of becoming a victim of persecution for on the grounds of race, religion, citizenship, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to enjoy the protection of that country or is unwilling to enjoy such protection as a result of such fear; or, having no particular nationality and being outside the country of his/her former residence as a result of such events, is unable or unwilling to return to it as a result of such fear. In the International Protocol relating to the Status of Refugees (UN General Assembly, 1966), the concept of refugee is detailed on the basis of time. These documents are the main ones that internationally define the term refugee and enshrine the rights and status of refugees.

According to Art. 1(2)(A) of the Convention Relating to the Status of Refugees (UN General Assembly, 1951), the basic condition for qualifying as a refugee is a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion. This condition comes into play if the person has already crossed the border, i.e. is outside of his state of origin. Most often refugees appear as a result of military conflicts (both international and domestic). The phenomenon of refugees is determined primarily by a forced and undesirable for a citizen change of place (country) of his residence. the concept of refugee includes two criteria:

1) a positive criterion, i.e. a set of attributes, in the presence of which a person can be recognized as a refugee;
2) a negative criterion, i.e. a set of characteristics, in the presence of which a person cannot be recognized as a refugee or loses his/her refugee status (Bezpalova, 2017; Lytvynenko et al., 2022).

Refugees in the territory of the country of their stay on an equal basis with other categories of the population (citizens of the state of stay, foreigners, stateless persons) enjoy all human rights, which are universal and enshrined at the international level, including the right to work. By virtue of this, they can exercise their own rights through employment in the state of residence.

At the same time, they do not become migrant workers. Guaranteeing the respect and protection of these human rights is both a way to solve the problem of refugees and a way to prevent its occurrence Thus, let us summarize that labor rights of refugees and migrant workers, although they originate from a single inalienable right to work, but they are realized in different ways. It is connected with the difference in their legal statuses and peculiarities of legislation of the receiving country.

3.2. Legal regulation of the rights of migrant workers in the EU

The competence of the European Union with regard to internal labor migration expanded with the adoption of the Amsterdam Agreement in 1999 in the direction of developing a policy on labor migrants from third countries. Although the EU's founding treaties are intended to regulate various aspects arising in the creation, operation and functioning of the Union and its citizens, a separate provision concerning third-country nationals is contained in Art. 15 of the EU Charter of Fundamental Rights. Its provisions presuppose those migrant workers who have received a work permit should be provided with the same working conditions as EU citizen workers. The provisions of Art. 45 of the Charter suggest that freedom of movement and residence may be granted to workers who are third-country nationals but are in the EU legally (*Consolidated versions…,* 2012).

The basis of the legal regulation of migrant labor is laid down in secondary legal acts of the EU, which include Regulations, Directives, and Decisions. Third-country nationals are not subject to the freedoms enjoyed by EU citizens. Ukrainian researcher O. Darmoris (2010) notes that the current directives mainly regulate the status of long-term residents, the right to family reunification, and the right to study. However, most issues, in particular the question of entry, obtaining residence permits and employment of migrant workers from third countries, legal regulation of labor of workers under fixed-term employment contracts, self-employed workers is determined by the discretion of each member state. The specific features of the employment of migrant workers are reflected in EU instruments such as:

- Directive 2003/109/EU on the status of third-country nationals who are long-term residents (Council of the EU, 2003a);
- Commission Decision of 8 July 1985 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries (The Commission of the European Communities, 1985);
- Council Directive 2003/86/EU of 22 September 2003 on the right to family reunification (Council of the EU, 2003b);
- Council Directive 2009/50/EU of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Council of the EU, 2009);
- Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment (Council of the EU, 1994);

- Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (European Parliament & Council of the EU, 2011b);
- Recommendation No. 151 concerning Migrant Workers (International Labour Organization, 1975), etc.
- In addition, there are a number of legal acts that regulate specific issues of the employment relationship, for example:
- Directive 2014/36/EU of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (European Parliament & Council of the EU, 2014a) – about seasonal workers;
- Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (European Parliament & Council of the EU, 2014b) in some aspects of intra-corporate transfer;
- Directive (EU) 2017/2397 of 12 December 2017 on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC, 2017 about recognition of professional qualifications in inland navigation and repealing (European Parliament & Council of the EU, 2017);
- Council Directive 2009/50/EU of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Council of the EU, 2009), etc.

The author proposes to pay attention to some of the most important of these legal acts. Among these acts is Directive 2014/36 (European Parliament & Council of the EU, 2014a) on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers. This Directive aims to regulate a separate category of migrant workers from third countries. According to it, seasonal workers have the right to legally stay in the EU for five to nine months (depending on the legislation of a Member State) and carry out seasonal activities, while maintaining their main place of residence in the territory of a third country.

The Directive, among other things, establishes a list of rights that migrant workers are entitled to. The Directive also regulates the issue of the employment contract to be concluded with the worker and establishes mandatory aspects to be covered. In our opinion, the adoption of the Directive regulating the specifics of employment of seasonal workers is an important step, because this category of workers should be subject to separate regulation, taking into account the peculiarities inherent in seasonal work, in particular, the time of its performance. It is also worth paying attention to the fact that migrant workers from third countries, who work officially in the EU for a long time, can obtain the status of long-term resident. The relevant issue is regulated by the Directive 2003/109/EU (Council of the EU, 2003a) on the status of third-country nationals residing on a long-term basis since 2003 and according to its provisions a migrant worker from a third country legally residing permanently in the territory of an EU member state for 5 years is entitled to obtain long-term resident status.

Such residence must be legal and continuous in order to show that the person is rooted in the EU member state concerned. The directive also stipulates that in order to obtain long-term resident status, a third-country national will have to prove that he or she has sufficient resources and health insurance so as not to create a burden on the member state. When member states assess the availability of stable and regular resources, they may take into account factors such as contributions to the pension system or meeting tax obligations. According to the author, the right of labor migrants to family reunification is also important. This is generally regulated at the universal international legal level and is an inalienable right. Accordingly, the EU could not ignore such an important issue and in 2003 adopted the Council Directive 2003/86/EU (European Parliament & Council of the EU, 2003) on the right to family reunification.

The Directive notes that family reunification is a necessary means to make family life possible. It contributes to the creation of socio-cultural stability, which facilitates the integration of third-country nationals in the Member States and also promotes economic and social cohesion. Measures concerning family reunification must be taken in accordance with the obligation to protect the family and respect family life enshrined in many international legal instruments. The Directive stresses the need to establish a system of procedural rules governing the application process for family reunification and the entry and residence of family members.

The relevant procedures must be effective and manageable in relation to the normal workload of the administrative authorities of the Member States, as well as transparent and fair in order to provide the persons concerned with an adequate level of legal security. Thus, by adopting the relevant Directive, the EU has tried not only to regulate family reunification, but also to lay the foundation for the harmonization of legislation of member states in this area, as well as to regulate the procedural issues involved. In general, the issue of family relations is also important in the context of the rights of EU workers. Such regulation is conditioned by international legal standards on the protection of family relations and family reunification, as well as necessary for a normal family life of migrant workers.

Therefore, it can be argued that the EU has regulated at the legislative level a number of issues that relate to certain aspects of the employment of third-country nationals. In more detail, the issue of labor migration between EU

member states and third countries is regulated at the bilateral level by concluding separate agreements on labor and social issues. We consider bilateral cooperation to be one of the most effective because it takes into account the interests of both parties and the specific problems that need to be solved between the two parties, focusing on the current state of their relations. In our opinion, bilateral cooperation between EU member states and third countries on labor migration will expand, given that the issue of labor migration belongs to the competence of EU member states and the high efficiency of bilateral legal regulation.

As an example, let us consider the legal regulation of the issue of labor rights of migrants in the legislation of Poland. This state was not chosen randomly, as today Poland is one of the countries that received a huge number of refugees and Ukraine, and before that many labor migrants went there. Therefore, its example in the regulation of third-party employment will be most relevant. In recent years, Poland has seen rapid economic growth, which leads to a deepening of the labor market's need for labor, both for low-skilled jobs and employment in areas such as science, IT, construction, etc. That is, in those sectors that need highly qualified specialists. Poland is attractive for employment of citizens of third countries (especially Ukrainians and Belarusians) for a number of reasons. Among the visible reasons are, firstly, quite close territorial location. Secondly, the similarity of the language, which does not cause such difficulties for labor migrants as employment in other EU member states.

According to Art. 37 of the Constitution of the Republic of Poland (National Assembly of the Republic of Poland, 1997): *Everyone under the authority of the Polish State shall enjoy the freedoms and rights guaranteed by the Constitution. Exceptions to this principle with respect to foreigners shall be defined by law*. That is, decisions on any issues of the rights and obligations of foreigners are not regulated by constitutional norms, but are referred to the sphere of regulation of individual normative legal acts.

The foundations of the regulation of legal relations with foreigners are laid by the Act on foreigners (Polish Parliament, 2013). The law establishes the principles and conditions governing the entry, transit, residence and departure from the territory of the Republic of Poland of foreigners, as well as the procedure and authorities competent in these matters. Among other things, the law defines a number of features concerning the employment of foreigners, in particular: the peculiarities of obtaining permits, the right to legally carry out business activities, the regulation of the employment of temporary workers and highly qualified workers. It can be summarized that this law establishes the basis for the regulation of the stay of foreigners in Poland, paying significant attention to migrant workers.

The main law regulating the principles related to the performance and performance of work by foreigners in the Republic of Poland is the Employment Promotion and Labor Market Institutions Law 2004 (hereinafter referred to as the Polish Act 2004) (Polish Parliament, 2004). According to Art. 2 of the Polish Act, 2004, its provisions apply to Polish citizens and foreigners. At the same time, the relevant article clearly defines the categories of foreigners covered by the law. They are:

- nationals of other EU Member States;
- nationals of states with which the EU has concluded agreements on freedom of movement;
- persons with refugee status in the Republic of Poland;
- persons who have officially applied for refugee status, but failed to obtain it for objective reasons; persons with residence permits in the Republic of Poland;
- persons granted the status of family member of a foreigner; persons enjoying temporary protection regime in the Republic of Poland;
- foreign persons who are family members of Polish citizens; foreign persons who are granted (Polish Parliament, 2004).

For the purposes of the law, any person who does not have Polish citizenship is considered a foreigner. In other words, the concept of foreigner includes not only citizens of third countries, but also citizens of other EU member states (Polish Parliament, 2004). However, in our case it is the regulation of labor of third-country nationals that is of interest. Nevertheless, taking into account the fact that the law regulates the specifics of employment of foreigners, and by foreigners we mean both persons who are EU citizens and citizens of third countries, it can be stated that the Polish Law, 2004 actually equalized the conditions for employment of EU citizens and citizens from third countries. However, an important condition for the legality of employment of a migrant worker from a third country is the availability of a work permit. These facts confirm the principle expressed in the provisions of Polish law, according to which the work performed by a foreigner is legal only if the foreigner is legally present in the Republic of Poland.

However, as of January 1, 2018, a law of amending the Act of 20 July 2017 to amend Act on promotion of employment and on labour market institutions and some other acts (Polish Parliament, 2017) and some other laws entered into force. The main purpose of the changes was to implement Directive 2014/36/EU (European Parliament & Council of the EU, 2014a) on conditions for the entry and stay of third country nationals for the purpose of employment as seasonal workers from 2014. The changes are also aimed at counteracting the abuses that occur, to better manage labor migration, as well as to improve labor standards for foreigners. In particular, the provisions on work permits were changed and a new type of work permit was introduced for seasonal work performed by foreigners.

It should also be noted that in 2018 the Polish law provided for simplified conditions of employment for certain categories of migrant workers. As noted in the Decree of the Ministry of Family, Labor and Social Policy (2018) amending the regulation on the definition of cases in which a work permit for a foreigner is issued regardless of the detailed conditions for issuing a work permit to a foreigner from 2018, the list of positions for which the foreigner does not need to wait for confirmation that they are not applied for by local workers is established. The simplification applies to 38 groups of occupations. These include electricians, engineers, construction professions, IT specialists, doctors, nurses, road workers, bus and truck drivers, social workers and a number of other professions.

In general, having analyzed the specifics of Polish legislation in the context of employment of third-country nationals, one can state that unlike EU law, which clearly distinguishes the specifics of employment of EU citizens and non-EU citizens, Polish national legislation equates both citizens of other EU member states and labor migrants from third countries with foreigners The main condition for them is legality of stay in the country and permission for employment. The introduction of softening for certain categories of workers also becomes an important advantage, guaranteeing for labor migrants from third countries a simplified procedure of employment and a higher level of income than in the state of their citizenship.

3.3. Ensuring and protecting the labor rights of refugees in the EU and on the territory of individual EU member states

Along with the regulation of labor rights of foreign workers, EU legislation also contains norms that regulate obtaining refugee status, including the exercise by such persons of their labor rights. It is worth highlighting a number of normative legal acts that are aimed at protecting the rights of refugees, among its:

- Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (European Parliament & Council of the EU, 2013a);
- Council Directive No.2001/55/EU 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 (Council of the EU, 2001);
- Directive No. 2003/86/EU of September 22 on the right to family reunification (Council of the EU, 2003b);
- Directive No. 2011/95/EU from December 13, 2011 on the qualification standards and status of third-country nationals and stateless persons as recipients of international protection, the uniform status of refugees or persons entitled to subsidiary protection, as well as the content of the protection granted (new edition) (European Parliament & Council of the EU, 2011a);
- Directive No. 2013/32/EU of June 29, 2013 on general procedures for granting and revoking international protection (new edition) (European Parliament & Council of the EU, 2013b) and other.

Therefore, by analogy with the legal regulation of labor rights of migrants, the EU defines the general directions and establishes the peculiarities of the regulation of labor rights of refugees. But the legislation of member states contains basic norms concerning refugees and they differ from country to country. In applications for refugee status, the applicant must bear the burden of establishing the truthfulness of his or her allegations and the accuracy of the facts on which his or her application is based. Very often the applicant is unable to back up his or her claim with documentary or other evidence, and cases in which the applicant can produce any evidence in support of his or her claim are the exception rather than the rule, since in most cases, a person fleeing persecution, moving to a country of asylum in a difficult situation often exists without any documentation.

Both the applicant and the decision-maker are directly involved in determining the truthfulness of the evidence submitted by the applicant pertaining to the application and making an appropriate fact-based decision, since the latter's obligation is to establish and evaluate the facts presented on the application. This is achieved to a large extent by the fact that the decision-maker is familiar with the objective situation in the applicant's country of origin, is aware of the relevant publicly known issues, and directs the applicant to provide the necessary information, and this is accordingly confirmed and substantiated alleged facts (Kukhtyk & Derkachenko, 2018).

Earlier, the author considered Poland as an example of labor regulation and protection of the rights of migrant workers. In this paragraph we also propose to consider Poland, but in the context of its legal regulation of protection of labor rights of refugees. First of all, it is worth mentioning the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland (Polish Parliament, 2003). This law contains articles which establish the principles, conditions and procedure for granting protection to foreigners on the territory of the Republic of Poland. In addition, this law specifies the state authorities which have powers in the matters of refugee protection. According to Art. 3 of this law, a foreigner can receive one of the following forms of protection in Poland: refugee status; asylum; tolerated stay permit; temporary protection.

However, in the context of protecting the rights of refugees, among which is the right to work, amendments to Polish legislation adopted in connection with Russia's armed aggression against Ukraine deserve special attention. Thus, in March 2022, the Law of Poland on Assistance to Citizens of Ukraine in Connection with the Armed

Conflict on the Territory of that State (Polish Parliament, 2022) was adopted. The provisions of this law apply specifically to refugees who are citizens of Ukraine. Nevertheless, we should pay attention to it, because its adoption shows the relevance of refugee protection in the specific situation in the world. The relevant Act defines, among other things, a detailed framework for legalizing the stay of Ukrainian citizens (as well as their men/wives who do not have Ukrainian citizenship) who arrived in Poland due to military actions on the territory of that state. We are also talking about persons with the Pole Card, who, together with their closest relatives, arrived in the territory of Poland because of those actions. In the context of protecting the labor rights of refugees, it is worth noting that the Act provides access to the labor market.

The law provides a clear procedure for employment of citizens of Ukraine. Thus, an employer intending to employ a Ukrainian must, within 14 days, log on to the official state portal (praca.gov.pl.) and find there the relevant Employment Center and inform it that he/she has employed a foreigner. Citizens of Ukraine will be able to take advantage of the services provided in the Polish labor market. In particular, they can apply to Employment Centers, Professional Counseling Centers, and take advantage of courses - on equal terms with Polish citizens. In addition, Ukrainian citizens can engage in business activities on the same principles as Polish citizens - the condition is to obtain a personal number PESEL. The PESEL is a numerical mark of eleven digits that identifies an individual. It includes the date of birth, serial number, gender designation and a control digit. The analogue of this code in Ukraine is the individual taxpayer number (Polish Parliament, 2022).

So, it can be argued that Poland has generally regulated the protection of the rights of refugees in accordance with the requirements of international law, and has taken many steps to meet the needs of Ukrainian refugees and protect their rights, in particular the right to work, because it is one of the fundamental human rights.

3.4. Difference in the exercise of the right to work by refugees and migrant workers

Despite the fact that both labor migrants and refugees have the same inalienable human rights and have the right to realize their right to work, they have different legal statuses, which affect such realization. First of all it should be noted that a labor migrant makes a decision to change the country of residence in order to improve economic conditions. He is not forced to flee from some disaster, he moves to a country where he can be provided with higher wages, which he can send back home. At the same time, a foreign worker usually completes all the formalities of moving from one country to another and obtains the necessary permits required in the host country. In addition, migrant workers mostly try to use legal procedures to exercise their rights.

Refugees, in turn, are people forced to leave their country because of an obvious threat to their lives and health. That is, they are not seeking to improve their economic conditions, but are trying to ensure a basic human right – the right to life. Refugees receive assistance and provision from the host state. Employment is not their main purpose of arrival in a foreign country, unlike labor migrants. But at the same time, regardless of the reasons for his arrival, he can also get a job. In this case, unlike a labor migrant, employment will not be their main purpose of stay in the receiving state, but it can be realized by a refugee.

Under international law, the state has an obligation to offer protection to a refugee, but there is no such obligation with respect to a migrant. This distinction is important because when we call a refugee a migrant, we incorrectly assume that he is simply seeking economic advantage rather than being forced to leave in order to flee conflict or persecution. Thus, it can be argued that migrant workers and refugees exercise their right to work in different ways. Due to the existing differences between these categories, the EU and the Member States regulate the issue of their implementation of labor rights in different ways.

4. Discussion

General theoretical features of the implementation of the rights of migrant workers in her work studies O. Triukhan (2015). She notes that the causes of labor migration can be various factors: political, religious, national, environmental and others. However, most scholars recognize the economic origin of labor migration and attribute it to the following factors: significant differences in working conditions, wages, living standards, business conditions, lack of quality jobs, lack of proper incentives to work, etc. It is also worth paying attention to J. Simon, N. Kiss and A. Łaszewska (2015), who study ILO and peculiarities of its legal norms in the context of protection of rights of labor migrants. They also focus on the peculiarities of the definition of a labor migrant, noting that labor migrants are persons who are seeking work or are employed in the host country, or who have previously sought work or are employed but are unable to continue working and remain resident in the host country regardless of their documents. To estimate how many migrants are labor migrants, some use legal status, some use motivation, and others use total employment.

In the issue of refugee status assessment, the opinion of O. Bezpalova (2017), who in her article focuses attention on the fact that an effective mechanism for ensuring the rights of refugees must be developed at the international level, which should include a range of subjects authorized to take measures to create conditions for refugees to realize the rights granted to them (including control and oversight functions). She also analyzes the relevant

international instruments and legislation of individual states and identifies the characteristic features of the mechanism to ensure the rights of refugees.
Interesting conclusions about the specifics of the regulation of the rights of migrant workers from third countries in the EU are in the work of O. Darmoris (2010). She emphasizes that the EU legislation in the field of working conditions covers a wide range of issues - from working hours to the legal regulation of the work of part-time workers and fixed-term employment contracts. A characteristic feature of this institution is that most of the directives governing these or other issues of working conditions were formed as a result of the activities of the European social partners (legal regulation of part-time workers, fixed-term employment contracts, leave for parents with children, working hours for seafarers on ships).
An in-depth analysis of the peculiarities of the protection of individual rights of refugees. The authors considered the preconditions for the emergence of advocacy, immigration, their theoretical sources and practical principles. The scientific work reflects the main provisions of legal systems on legal activities related to the rights of refugees and internally displaced persons. In addition, the authors analyzed the norms of national and international law, their interaction in solving the problems of refugees and internally displaced persons (Kukhtyk & Derkachenko, 2018; Galkin et al., 2021).
Certain aspects of the legal regulation of the labor rights of migrants and refugees have been raised in their works by such researchers: B. Dmytruk and N. Svetlova (2016), S. Fomishyn, A. Rybchuk and A. Rumiantseva (2011), Ya. Volosko (2016), and other. Despite the fact that the issue of labor rights of refugees, as well as migrant workers, has been raised many times in the scientific literature and is sufficiently studied, however, recent events in the world related to the armed aggression of the Russian Federation have caused an increase in the number of refugees, which, as a consequence, has caused a new interest in the study of this topic. In addition, we believe that it is important to thoroughly understand the differences between the implementation of labor rights of refugees and migrant workers, as they have different legal status and their regulation of their employment is different.

5. Conclusion

Therefore, we can conclude that labor migration has accompanied people at all stages of the development of mankind. Migration can be classified according to its causes: political (political events, discrimination on various grounds, etc.); military (evacuation, military events); social (marriage, health, etc.); environmental (technogenic and natural disasters); economic (employment, search for higher income, etc.); others (ethical, religious, etc.). International labor migration is economically motivated. To interpret its essence, it is necessary to distinguish two constituent elements: the labor activity itself (or paid activity), i.e. the fact of an individual's employment; moving to the territory of another state, i.e. compulsory employment abroad. It is external labor migration that it is reasonable to define as the movement of persons across the border of one or more countries on a permanent or temporary basis for the purpose of employment. International labor migration can be divided by the purpose of crossing the border into two types: labor migration as the primary purpose and as a derivative one.
In the first case it is classical labor migration, when a person crosses the border of another country for the purpose of employment. In the second case, regarding international labor migration as a derivative goal, it can be traced in the movement of refugees and migrants whose move was caused by reasons other than employment (for example, military events, political system, persecution, low level of economic development of the state, low standard of living of the population, etc.), but having made the move to a foreign country, the person tries to find a job. Accordingly, such persons have different legal status in accordance with the norms of international law and the legislation of the receiving state.
Having analyzed the concept of migrant worker in the international legal acts of the universal and regional level, it can be argued that its definition has acquired a positive transformation, which in general serves as evidence of positive trends in the regulation of the rights of migrant workers at the international level. As for the sources of legal regulation of labor migration of third-country nationals in the EU, it is regulated by the acts of secondary legislation of the EU, which provides a general basis for the observance of the rights of foreign workers, but to a greater extent is still revealed in the provisions of the member states. For the most part, the legal acts in force in the Union regulate long-term resident status, the right to family reunification, non-discrimination, and intra-corporate transfer. Third-country nationals have the right to employment in the territory of EU member states, in particular, it lies in the need to obtain special permits. The establishment of special procedures is related to the EU protection of jobs for its own citizens.
In general, the issue of migration policy and labor migration is one of the main institutions in EU law, the regulation of which has been established for a long time. EU refugee law has been influenced by international refugee law, as well as by practical problems that have arisen in the course of EU development due to the large number of such persons. Existing legal norms regulate the procedures for accepting, protecting and integrating refugees into society, as well as their enjoyment of human rights. As in the case of migrant workers, EU regulations lay down only the basis for regulating refugee status, while member states expand and develop these norms in their national laws. We have seen this in both cases in Poland. Labor migrants and refugees differ significantly in the following

categories: the reason for arrival in the host country; legal status; protection by norms of international law; and legal procedures for moving. Therefore, at the EU level there are legal acts which help to distinguish these two categories in accordance with universal international law and to ensure (as far as possible) by such persons the exercise of the right to work.

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