
TEMPORARY PROTECTION OF UKRAINIAN CITIZENS - SELECTED ISSUES

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Abstract. The mass influx of refugees from Ukraine to Poland, caused by Russia's aggression on February 24, 2022, has resulted in the application of solutions in the field of refugee law on a massive, unprecedented scale. Previously developed Polish regulations regarding the rules for granting protection to this category of people turned out to be insufficient, and the legislator decided to immediately develop new solutions for the protection of refugees from Ukraine, which were included in the Act of March 12, 2022 on assistance to citizens of Ukraine in relation to an armed conflict on the territory of that country. The provisions of this legal act constitute *lex specialis* in relation to the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland. The article defines a general outline of the so-called refugee law, also from a historical perspective, and includes an analysis of Polish regulations in the field of granting temporary protection to Ukrainian citizens in relation to the European Union standards. The correctness of such solutions was also evaluated.

Keywords: refugees; state security; temporary protection; armed conflict; foreigners

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1. Introduction

The war in Ukraine, caused by Russia's aggression on February 24, 2022 (Kozicki, 2022; Mizura, Mitkow, Kozicki, 2023, Rynkun-Werner, Kozicki, Zelkowski, Krzewniak 2023), led to the update of solutions in the field of the so-called refugee law, which seemed to have long been a dead area of legal studies in Poland and Europe. The above-mentioned had an impact on the cross-border dimension of contemporary security (Jurgilewicz, Kozicki et al., 2022; Grega & Nečas, 2022) and various political, social and administrative aspects (Jurgilewicz, Kozicki et al., 2022; Barabash, Beinoravičius & Valčiukas, 2022; Radchenko, Tulush & Leontovych, 2023; Mačiulis, 2023; Adeniran et al., 2023). There were, of course, legal regulations relevant to this subject, both at the level of national and international legislation, including the level of the European Union, but, as emphasized in scientific and public discourse, their imminent application on such a large scale was not expected. The phenomenon of refugees existed, of course, but the group of people affected by this problem was dominated by people from outside Europe, very often motivated to leave their country for economic reasons. However, the situation in this respect changed with Russia's attack on Ukraine and the largest influx of refugees since World War II, mainly to the Republic of Poland. According to data obtained from the United Nations High Commissioner for Refugees, by the end of June 2023, nearly 6 million people fleeing from Ukraine crossed

the borders of this country, seeking protection outside its territory. It is estimated that in May 2022, the number of Ukrainian citizens residing in Poland was approximately 3,37 million people, almost half of whom were children. It was necessary to use previously developed procedures and adapt them to the current situation. The Polish legislator decided, first of all, to adopt special solutions of a *lex specialis* nature, included in the Act of March 12, 2022 on assistance to citizens of Ukraine in relation to an armed conflict on the territory of that country. At the same time, it should be noted that the key national legal act in the field of refugee protection is the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland, and as for European Union solutions in this area, in particular – Council Directive 2001/ 55/EC of July 20, 2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced people and measures supporting the balance of efforts between Member States related to the admission of such people and its consequences (the so-called Temporary Protection Directive).

The purpose of this article is to analyze the legal solutions related to the legalization of the stay of refugees from Ukraine on the territory of Poland and the legal protection guaranteed to them, which are included in the above-mentioned special act, and to confront them with international standards in this area.

2. Refugee protection - basic information

Refugee law is part of international law and refers to the rights and obligations of states towards refugees. The refugee problem has, of course, existed for centuries and is related to escaping from persecution and the need to seek protection outside their country, but it was only in the 20th century that the foundations of international cooperation in this area and the first legal regulations that introduced consistent solutions to these issues were established. It should be noted that the oldest form of protection for a fugitive was political asylum, and this historically shaped institution quickly became part of the generally accepted catalogue of human rights (Hadzińska-Wyrobek, 2015, p. 99).

Refugee law is currently based on customary norms, but also on international legal instruments, both universal and regional ones. It should be noted that the beginning of cooperation in the field of refugee law coincided with the functioning of the League of Nations, and its initiator was the International Committee of the Red Cross (Jaeger, 2001, p. 727). The establishment of such cooperation between countries was the result of the influx of refugees fleeing, among others, from the wars in the Balkans and the Caucasus at that time, the Greek-Turkish conflict, and in particular World War I and the October Revolution (Mikołajczyk, 2004, p.28). Undoubtedly, a breakthrough fact in the history of refugee law was the establishment of the Office of the High Commissioner of the League of Nations for Russian Refugees in 1921, and the scope of its protection was extended in 1926 to other groups of refugees (Wierzbicki, 1993, p.17). At that time, the most important legal act regulating the status of refugees was the Convention Referring to the International Status of Refugees of 1933, but ratified by only eight countries (Wierzbicki, 1993, p. 17). The next most important catalyst for the development of refugee law on the European continent was World War II and the refugee crisis associated with that period. It was then decided on December 14, 1950, based on a resolution of the UN General Assembly, to create the position of UN High Commissioner for Refugees (UNHCR), and this institution has played the most important role in protecting the rights of this particular group of people over the last decades. According to UNHCR data from 2021, the agency reaches out to 82,4 million forcibly displaced people around the world (including refugees, internally displaced people, repatriates and stateless people) (UNHCR, 2022).

Art. 14 of the Universal Declaration of Human Rights was undoubtedly of great importance in terms of legal regulations in the field of refugee law in the period after World War II., according to which in the event of persecution, every person has the right to apply for and use the asylum in other countries. This right cannot be invoked in the event of prosecutions referring to what are essentially non-political crimes (French: *un crime de droit commun*) or activities contrary to the Purposes and Principles of the United Nations (UN, 1948). Although, as we know, this declaration did not have binding force, it was a model for many countries that included similar solutions in their legal systems (Mikołajczyk, 2004, p.30; Szabó, 2023).

The foundation for the protection of people seeking international protection was the Geneva Convention referring to the Status of Refugees of July 28, 1951 (Journal of Laws of 1991, No. 119, items 515 and 517). It should be noted, however, that it does not include the right to seek or be granted asylum within the meaning of refugee status. The Geneva Convention initially covered only Europeans and referred to events causing migration that occurred before January 1, 1951. Only the so-called The New York Protocol of 1967 allowed the application of this document to refugees, regardless of their country of origin (Journal of Laws of 1991, No. 119, item 517). Another document in the field of refugee law developed at the UN that is worth mentioning is the Declaration on Territorial Asylum enacted on December 14, 1967. In art. 1 § 1 it indicates that asylum is granted by the state in the exercise of its sovereignty, and therefore it is the state that sets the conditions on the basis of which it decides to grant or refuse to grant it (Pezacka-Groblewska, 1974, p. 4).

As for the European system of human rights protection in terms of refugee law, the European Convention on Human Rights should be mentioned, which, although it does not contain provisions that directly apply to people seeking international protection of refugee status, nevertheless indirectly it also guarantees to some extent the protection of this particular group of people (Article 3, Art. 8, Art. 13) (Journal of Laws of 1993, No. 61, item 284; Hegedűs, 2022).

In terms of European Union solutions, the above-mentioned Council Directive 2001/55/EC of 20/07/2001 on temporary protection should be mentioned and the Council Directive establishing minimum standards for the reception of asylum seekers (2003/9/EC) (Directive 27.1. 2003, OJ L 2003 No. 31, p. 18), which applies to all foreigners and stateless people, as well as members of their families who submit an application for asylum at the border or territory of a Member State. However, it does not comply with applications for diplomatic or territorial asylum submitted to the representations of Member States.

From the point of view of the considerations in question, it is also important to provide the definition of the concept of “refugee” used both in public discourse and in international and domestic legal solutions. It should be noted that “refugee” itself is a specific form of migration, which is distinguished from other forms of migration primarily by “compulsory migration” (Rugała, 2020, p. 128). Pursuant to Art. 1A point 2 of the above-mentioned Geneva Convention, a refugee is a person who, as a result of events that occurred before January 1, 1951, and as a result of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of their nationality and is unable or, due to these fears, is unwilling to return to that country. However, pursuant to Art. 1 B point a it will refer to events that took place in Europe, and in accordance with point b - in Europe or elsewhere. In 1967, under the New York Protocol, one statement was removed from the content of Art. 1 of the Geneva Convention which is: „as a result of events that occurred before January 1, 1951” and the geographical limitations were waived, although the countries that had previously submitted appropriate declarations, in accordance with Art. 1B point 1a of the Geneva Convention, could continue to apply such restrictions (Mikołajczyk, 2004, p. 22-23). As B. Mikołajczyk rightly emphasizes, the interpretation of the definition presented above is not consistent and varies depending on the region, and refugee phenomena are closely related to the political, economic and social situation of a given area (Mikołajczyk, 2004, p. 22-23).

As for the definition of a refugee adopted on the basis of EU solutions, reference should be made to Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards regarding the qualification of third-country citizens or stateless people as beneficiaries of international protection, consistent status of refugees or people eligible for subsidiary protection and the scope of protection granted (OJ EU L 2022, 337/9). Pursuant to its Art. 2(d) “refugee” means a national of a third country who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to benefit from the protection of that State, or a stateless person who, being, for the same reasons as above, outside the State of their former habitual residence, is unable or, owing to that fear, is unwilling to return to that State and to whom Article 11 does not apply. 12. Moreover, according to point e of this article, “refugee status” means the recognition by a Member State of a third-country national or a stateless person as a refugee. There-

fore, obtaining this status does not happen by virtue of law, even after meeting the above-mentioned conditions specified in the law, but only after an appropriate decision is issued by the national authority. Such decisions are therefore constitutive decisions, because only after receiving the decision on granting refugee status does a foreigner acquire full rights related to this institution (Wieruszewski, 2010, p. 21).

Referring to Polish solutions in the field of refugee protection, it should be noted that currently the most important legal act in this regard is the previously mentioned Act of June 13, 2003 on granting protection to foreigners in the Republic of Poland. It defines the principles, conditions and procedure for granting protection to foreigners in Poland and the authorities competent in these matters, using the achievements of the Convention referring to the status of refugees, drawn up in Geneva on July 28, 1951. In art. 13 of the Act it specifies the conditions for a foreigner to obtain refugee status in the territory of the Republic of Poland. According to its provisions: a foreigner is granted refugee status if, due to a well-founded fear of persecution in the country of origin because of race, religion, nationality, political beliefs or membership in a specific social group, they are unable or unwilling to benefit from the protection of that country. In addition, refugee status is also granted to a minor child of a foreigner who has obtained refugee status in the Republic of Poland, born in this territory.

3. Regulations on temporary protection granted to refugees from Ukraine

In the light of the regulations included in the Act of June 13, 20023 on granting protection to foreigners in the territory of the Republic of Poland, there are currently the following types of protection granted to foreigners:

- asylum;
- refugee status;
- subsidiary protection;
- granting temporary protection.

It should be noted that the Geneva Convention leaves the states-parties considerable freedom in shaping national procedures and does not specify the procedure to be followed in these matters.

As for the asylum, it should be noted that in international terminology this concept is often used interchangeably with the term “refugee status”. However, under Polish law this is unacceptable, especially when the Act on granting protection to foreigners in the territory of the Republic of Poland clearly distinguishes between these two institutions. Asylum, in accordance with the intention of the legislator, is of an exceptional nature, granted when it is justified by an important interest of the Republic of Poland. The possibility of granting it is also based on the constitutional norm (Article 56(1) of the Constitution of the Republic of Poland of 1997). This institution, essentially discretionary in nature, can be used as an aid in special situations when the application of other forms of protection, e.g. refugee status, is for some reason impossible or difficult (Pudzianowska, 2016). The literature on the subject determines that asylum is the shelter granted to a foreigner on the territory of the Polish state, which includes the right to enter and legally stay in this territory and a guarantee of not being expelled to another country. It is worth noting that an asylum seeker obtains the right to settle in Poland, while a person with refugee status only receives a permit to reside in Poland for a fixed period (Tuleja, 2021). Asylum, as a form of protection granted to foreigners in Poland, is provided on the basis of the provisions of the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland to foreigners when it is necessary to ensure their protection and when it is justified by an important interest of the Republic of Poland. Asylum applications are processed by the Head of the Office for Foreigners. The application for asylum may be submitted during a stay on the territory of the Republic of Poland or during a stay abroad. The application is submitted directly to the Head of the Office for Foreigners. The application may also concern other people, in particular the applicant’s spouse or minor children. The applicant’s spouse must give written consent to submit an asylum application on his or her behalf and on behalf of his or her minor child. This consent constitutes a power for the applicant to act on behalf of the above-mentioned people.

Currently, the most widely regulated method of protecting foreigners in the Polish legal system is granting refugee status (MIGRACJE.GOV.PL, 2023). The provisions regarding this issue are included in Chapter 1,

Section II of the Act. As already mentioned in the previous considerations, a foreigner is granted refugee status if, due to a well-founded fear of persecution in the country of origin due to race, religion, nationality, political beliefs or membership in a specific social group, they are unable or unwilling to benefit from the protection of that country (Article 13). Persecution, due to its nature or repetition, must constitute a serious violation of human rights (especially those rights whose repeal is unacceptable) or be an accumulation of various acts or omissions constituting a violation of human rights. It may in particular consist in: the use of physical or mental violence (including sexual violence), the application of legal, administrative, police or judicial measures in a discriminatory or discriminatory manner, the initiation or conduct of criminal proceedings or punishment in a disproportionate or discriminatory manner, the lack of the right to appeal to court, initiating or conducting criminal proceedings or punish due to refusal to do military service during a conflict (if doing military service would constitute a crime), acts directed against people on the basis of their gender or minors (Sieniow, 2010, p. 10- 11).

The fear of persecution must be justified. It is examined individually in the context of an objectively existing state of emergency in the country of origin. The fact of persecution does not have to take place (although it affects the evaluation of the reality of the threat and the credibility of the foreigner), but there must be justified grounds for determining the possibility of persecution. The fear may exist even when the foreigner does not have characteristics that cause persecution (race, religion, nationality, political beliefs or membership in a specific social group), but they are attributed to them by entities committing persecution (Article 14(3)).

A foreigner is refused refugee status if: there is no well-founded fear of persecution in the country of origin, he or she benefits from the protection or assistance of United Nations bodies or agencies other than the United Nations High Commissioner for Refugees, and has the practical and legal possibility of returning to the territory where such protection or assistance is available without threat to his life, personal safety or freedom, there are serious grounds for believing that he or she has committed, incited or otherwise assisted in the commission of a crime against peace, a war crime, a crime against humanity, is guilty of actions contrary to the purposes and principles of the United Nations, has committed a non-political crime before submitting an application for refugee status, is considered by the authorities of the Republic of Poland as having rights and obligations related to having Polish citizenship, has submitted another application for granting refugee status, in which the fear of persecution is based on circumstances deliberately created after the last refusal to grant refugee status (Article 19).

On the other hand, subsidiary protection is a form of protection granted to a foreigner who does not meet the conditions for granting refugee status, but returning to the country of origin may expose them to a real risk of suffering serious harm by imposing the death penalty or execution, torture, inhuman or degrading treatment or punishment or a serious and individualized threat to life or health resulting from the widespread use of violence against the civilian population in a situation of international or internal armed conflict and, due to this risk, is unable or unwilling to benefit from the protection of the country of origin.

The premises and procedure for granting temporary protection to foreigners, which is most important from the point of view of the influx of refugees from Ukraine, are specified in Chapter 3 of the Act of June 13, 20023 on granting protection to foreigners in the Republic of Poland. Pursuant to its Art. 106 section 1, foreigners arriving *en masse* in the Republic of Poland who have abandoned their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights may be granted temporary protection in the territory of the Republic of Poland regardless of whether their arrival was spontaneous or was the result of assistance provided to them by the Republic of Poland or the international community. Temporary protection is granted until the return of foreigners to their previous place of residence is possible, but no longer than for a period of one year (Article 106(2)). However, if after one year the obstacles to the safe return of foreigners to their previous place of residence do not cease, the period of temporary protection is extended by a further 6 months, but not more than twice (Article 106(3)).

Temporary protection is granted under an administrative procedure that is simplified compared to international protection. The European Union uses this procedure when it is justified to assume that the system for granting international protection will not be able to bear the burden of a mass influx of displaced people without negative consequences for the operation of this system, without harm both to these people and to other people seeking protection (cudzoziemcy.gov.pl, 2023). People who constitute the target group that can apply for this type of protection are usually victims of armed conflicts taking place in the territory of their home country. Temporary protection is granted on the basis and within the limits specified in the decision of the Council of the European Union, for the period specified in each decision.

Currently, the EU legal basis for granting temporary protection is the Council Implementing Decision of March 4, 2022, stating the existence of a mass influx of displaced people from Ukraine within the meaning of Art. 5 of Directive 2001/55/EC and resulting in the introduction of temporary protection. It should be noted, however, that the group of people benefiting from temporary protection on the basis of the regulations contained in the Act on granting protection to foreigners in the territory of the Republic of Poland excludes fugitives from war-torn Ukraine who currently benefit from the protection provided for under the provisions of the Act of March 12, 2022 on assistance to citizens of Ukraine in relation to the armed conflict on the territory of this country.

In connection with the above, it should be considered that the group of people benefiting from temporary protection provided for under Art. 106 of the Act of June 13, 20023 on granting protection to foreigners in the territory of the Republic of Poland in relation to the regulations of the above-mentioned Council implementing decision of March 4, 2022, currently constitute:

- 1) foreigners from third countries other than Ukraine and people without citizenship who before February 24, 2022 have benefited from international protection or equivalent national protection in Ukraine, and their family members;
- 2) foreigners from third countries other than Ukraine who prove that they stayed before February 24, 2022 on the territory of Ukraine on the basis of a permanent residence permit and are unable to return to their country or region of origin in safe and permanent conditions, and their family members;
- 3) a minor child of a Ukrainian citizen or a child of his or her spouse who does not have Ukrainian citizenship, and other close relatives of a Ukrainian citizen who does not have such citizenship himself or herself and who lived with him or her before leaving Ukraine.

The provisions of Council Directive 2001/55/EC of 20/07/2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced people and on measures to promote the balance of efforts between Member States related to the admission of such people and its consequences, however, guarantee the following rights: immediate protection, right of residence, right to the labour market, access to housing, access to social assistance, means of support, and in the case of unaccompanied children and adolescents, also the right to legal guardianship and access to education, access to medical care. According to the regulations, necessary assistance in the field of medical care includes at least emergency care and basic treatment of diseases (Patient Ombudsman - Gov.pl Portal, 2023). **Guarantees** regarding the above-mentioned rights were also provided by the Polish legislator under Art. 112- art. 118 of the Act on granting protection to foreigners in the territory of the Republic of Poland.

As mentioned above, citizens of Ukraine, where the war with Russia began on February 24, 2022, were excluded from the group of people covered by temporary protection provided for under the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland. Their legal situation was regulated on the basis of specific provisions contained in the Act on assistance to citizens of Ukraine in relation to an armed conflict on the territory of this country, adopted on March 12, 2022. In the justification for the draft act in question, it was stated that “the proposed act is to be a special act existing next to the applicable legal acts in the area of migration and asylum, in particular the Act of December 12, 2013 on foreigners (Journal of Laws of 2021, item 2354, as amended) and the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland”.

In art. 1 section 1 and 2 of the above-mentioned Act, it defines specific rules for legalizing the stay of citizens of Ukraine who came to the territory of the Republic of Poland from the territory of Ukraine in relation to hostilities taken place in the territory of this country, and citizens of Ukraine holding a Pole's Card who, together with their close family, due to warfare, came to the territory of the Republic of Poland. Whenever the Act mentions a citizen of Ukraine, it also means the spouse of a citizen of Ukraine who does not have Ukrainian citizenship, provided that he or she came to the territory of the Republic of Poland from the territory of Ukraine in relation to hostilities taken place in the territory of this country and is not a Polish citizen or a citizen of another country than the Republic of Poland, a member state of the European Union.

It should be noted that the solution adopted on the basis of the so-called the special act, which excludes from among the people covered by its scope children of Ukrainian citizens who do not themselves have Ukrainian citizenship (they are then covered by temporary protection under the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland). Such provisions may impede the implementation of the instruction set out in the Council Directive on the need to pursue the reunification of families that have left the territory of Ukraine in relation to the armed conflict (Article 15 of Council Directive 2001/55/EC, 2001).

The Act in its art. 2 section 1 stipulates that if a citizen of Ukraine referred to in Art. 1 section 1, arrived legally on the territory of the Republic of Poland in the period from February 24, 2022 to the date specified in the regulations issued on the basis of paragraph 4 and declares the intention to stay in the territory of the Republic of Poland, their stay in this territory is considered legal until March 4, 2024. The stay of a child born in the territory of the Republic of Poland by a mother who is the person referred to in the first sentence, in period concerning the mother, is legal. Moreover, pursuant to section 2 if a citizen of Ukraine holding a Pole's Card, referred to in Art. 1 section 1, left Ukraine in the period from February 24, 2022, and then legally arrived on the territory of the Republic of Poland until the date specified in the regulations issued on the basis of paragraph 4, and declares the intention to stay on the territory of the Republic of Poland, their stay in this territory is considered legal until March 4, 2024. The provisions of the Act shall apply accordingly to members of the close family of a Ukrainian citizen who holds the Pole's Card.

It should be noted that the above-mentioned right is acquired by virtue of law, and therefore without the need to issue a public administration act confirming its existence (Klaus, 2022). This solution has consequences in terms of the lack of any possibility for Ukrainian citizens to appeal against the refusal to recognize them as beneficiaries of temporary protection (interwencjaprawna.pl, 2023).

It is important, to meet the conditions specified in Art. 2, for the arrival on the territory of the Republic of Poland to take place legally, and therefore while maintaining the entry conditions specified in Art. 23 of the Act of December 12, 2013 on foreigners (the obligation to have a valid travel document, a valid visa or another valid document authorizing entry and stay in the territory of the Republic of Poland, if required, or - in the case of transit - a permit to enter another country or residence permit in another country) and Art. 25 of the Act on Foreigners (obligation to justify the purpose and conditions of the planned stay, having financial resources and health insurance), as well as without complying with the entry conditions - on the basis of the consent to entry issued by the commandant of the Border Guard post pursuant to Art. 6 section 5 lit. c Regulation (EU) 2016/399 of the European Parliament and of the Council of 9/03/2016 on the Union Code of principles determining the flow of people across borders (OJ EU L 77, p. 1, as amended; hereinafter referred to as the Schengen Borders Code) (possibility of obtaining consent for entry for humanitarian reasons, state interest or international obligations, despite not meeting the entry conditions). In the context in question, arrival on the territory of the Republic of Poland in violation of the rules for crossing the external borders of the Schengen area (Article 5 of the Schengen Borders Code), as well as crossing the border contrary to the regulations using violence, threats, deceit or in relation to other people (Article 5 of the Schengen Borders Code) should be considered illegal in the discussed context (Art. 264 § 2 of the Penal Code). People who do not meet this condition can apply for international protection based on the provisions of the Act on granting protection to foreigners in the territory of the Republic of Poland (Klaus, 2023).

It should also be noted that in relation to the already mentioned implementing decision of the Council of March 4, 2022, stating the existence of a mass influx of displaced people from Ukraine within the meaning of Art. 5 of Directive 2001/55/EC and resulting in the introduction of temporary protection, the Polish legislator adopted the concept of recognizing Ukrainian citizens whose stay is legal within the meaning of the commented provision as people benefiting from temporary protection within the meaning of Art. 106 section 1 of the Act on granting protection to foreigners in the territory of the Republic of Poland. However, the provisions of the Act on granting protection to foreigners in the territory of the Republic of Poland, regulating the issue of temporary protection of foreigners, were excluded from their application, and they were also granted rights arising from specific provisions included in the Act on assistance to citizens of Ukraine in relation to an armed conflict on the territory of this country, and the inclusion of data of a foreigner was waived in the register of cases for granting temporary protection, and the application of Art. 87 section 1 point 5 of the Act of April 20, 2004 on the promotion of employment and labour market institutions (Journal of Laws of 2022, item 690, as amended), establishing the right to work in Poland for people benefiting from temporary protection in the Republic of Poland, which is the result of granting the right to work in Poland without the need to have a work permit pursuant to Art. 22 section 1 point 1 of the Act on assistance to citizens of Ukraine in relation to an armed conflict on the territory of this country.

Analyzing the procedural issues regarding the legalization of the stay of refugees from Ukraine on the territory of Poland, it should be noted that the Commander-in-Chief of the Border Guard registers the stay of a Ukrainian citizen on the territory of the Republic of Poland in a situation where the entry of the Ukrainian citizen was not registered during the border control by the commanding officer of the Border Guard facility or took place by a border where there is no border control of people crossing the border, which will apply in the event of crossing an internal border within the meaning of Art. 2 point 1 of the Schengen Borders Code, or where no border control is conducted.

The Act on assistance to citizens of Ukraine in relation to an armed conflict in the territory of this country does not provide for the obligatory issuance of any administrative decisions on this subject to people protected under this legal act, constituting a kind of certificate of the legality of stay. It should also be noted that such an obligation results from Art. 8 of Council Directive 2001/55/EC of 20 July 2001. While the above-mentioned Act lacks a clear instruction regarding the issuance of appropriate documents confirming the legality of stay of refugees from Ukraine, it seems permissible to apply the provisions of the Act in this case on granting protection to foreigners in the territory of the Republic of Poland, on the basis of which it is possible to issue an appropriate certificate at the request of the person. This possibility results from Art. 110 section 5, according to which the Head of the Office for Foreigners issues, at his or her request, a certificate confirming the use of temporary protection to a person benefiting from temporary protection. The certificate is valid until the date on which the period for which temporary protection is granted in accordance with the decision of the Council of the European Union referred to in Art. 107 section 1. If this period is extended pursuant to European Union law, the validity period of the certificate shall be appropriately extended by virtue of law. It seems that the issue of appropriate certificates on the legality of the stay of Ukrainians on the territory of Poland, often raised in the public debate, should be directly regulated under *the Act of March 12, 2022 on assistance to citizens of Ukraine in relation to an armed conflict in the territory of this country*.

The new solution adopted in the so-called special act, in relation to the regulations included in the Act on granting protection to foreigners in the territory of the Republic of Poland, is an obligation to assign a PESEL number to the person covered by protection. This disposition results from Art. 4 section 1, according to which a citizen of Ukraine whose stay in the territory of the Republic of Poland is considered legal pursuant to Art. 2 section 1, on the basis of an application submitted to any executive body of the commune in the territory of the Republic of Poland, a PESEL number is assigned. Obtaining a PESEL number enables the beneficiary of the Act to use four specific rights specified in the Act, namely: a) the right to undertake and pursue business activity in Poland on the same terms as Polish citizens, b) the right to family benefits, the 500+ benefit, family care capital, the good start benefit and co-financing the reduction of the parent's fee for the child's stay in the nursery, c) the right to social assistance benefits, d) the right to a one-off cash benefit for means of support and

e) the right to health care services to the extent available to insured people. An application for a PESEL number is generally submitted by the person to whom the number is to be assigned, at the commune office or - if his or her health or disability prevents it - at the place of stay.

A Ukrainian citizen submits an appropriate application for a PESEL number in person at the headquarters of the commune's executive body within 30 days from the date of arrival on the territory of the Republic of Poland. It should be noted that by the amendment of January 13, 2023 (Journal of Laws of 2023, item 185), which took effect on January 28, 2023, the deadline for submitting the application was shortened from 90 days to 30 days. In the same manner and an application for registration of the stay of a Ukrainian citizen on the territory of the Republic of Poland should be submitted within this deadline, in a situation where the entry of the Ukrainian citizen was not registered during the border control by the commanding officer of the Border Guard post or occurred through a border where no border control of people crossing the border is conducted. However, the legislator does not provide for any consequences for failure to comply with the above-mentioned deadline, which is therefore not a strict deadline. The application is submitted in writing, recorded in paper form, with the applicant's handwritten and legible signature, completed by the applicant or by an employee of the commune's executive body based on the data provided by the applicant.

It is worth noting that the legislator does not specify the procedure for submitting the above-mentioned applications or the competent authority in the event of failure to meet the 30-day deadline, therefore it does not differentiate these two situations in any way. Therefore, it seems appropriate to assume that this procedure will take place in accordance with Art. 4 section 1 of the Act on assistance to citizens of Ukraine in relation to an armed conflict on the territory of this country. The view expressed in the literature on the subject also seems to be correct, according to which the submission of an application by a Ukrainian citizen after 30 days from the date of entry into the territory of the Republic of Poland does not affect the possibility of obtaining a PESEL number, because the legislator did not specify the deadline for submitting an application for a PESEL, and indicated the grounds for refusal enumeratively in Art. 4 section 16 so-called special acts (Klaus, 2023). The same conclusion arises in the event of failure to submit the application for registration of residence within the deadline. Certainly, such an omission does not affect the evaluation of its legality. Especially considering the fact that the grounds for recognizing the stay of Ukrainian citizens as illegal are listed exhaustively in Art. 11 section 2 of the Act. The current wording of the Act boil down to the departure of a Ukrainian citizen from the territory of the Republic of Poland for a period exceeding 30 days. It is worth mentioning here that, in accordance with the position of the United Nations High Commissioner for Refugees, it is postulated that visits to Ukraine lasting less than three months should not affect the legal status of individual people and related rights in the host country. Furthermore, UNHCR recommends that for longer trips to Ukraine, host countries temporarily deactivate temporary protection and other types of legal status, rather than canceling it or deregistering people, to avoid administrative burdens and facilitate reapplying for protection, if necessary (UNHCR, 2023). Polish legislator in the so-called Special Act, as mentioned above, provided for a period of 30 days as the period beyond which results in the loss of the status of a beneficiary of temporary protection. As a result of leaving Poland, this status may be re-granted upon re-arrival to Poland from the territory of Ukraine in relation to hostilities taken place in the territory of that country. In order to obtain the status again, you must report to the commune authority no later than within 30 days from the date of entry into the territory of Poland (II SA/GI 90/23 (LEX no. 3577982, 2023)). If the total number of stays outside the territory of Poland exceeds 30 days, but none of them will be longer than 30 days at a time, there will most likely be no loss of rights granted under the Special Act.

It should be noted that the provisions of the Act do not determine the confirmation of the loss of the right of residence by an administrative decision, and verifying the duration of stay of a Ukrainian citizen outside the territory of Poland may be particularly difficult when crossing the internal borders of the Schengen area. It should also be noted that the loss of the right of residence of Ukrainian citizens in the territory of the Republic of Poland granted pursuant to Art. 2 section 1 so-called The Special Act does not prevent the use of the general provisions on temporary protection provided for in Art. 106 et seq. of the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland.

4. Conclusions

Temporary protection of Ukrainian citizens arriving on the territory of the Republic of Poland provided for in the Act of March 12, 2022 on assistance to Ukrainian citizens in relation to an armed conflict on the territory of this country constitutes a *lex specialis* in relation to the regulations contained in the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland, and its adoption was motivated by the unprecedented scale of the influx of refugees fleeing the war from the territory of Ukraine and the need to conduct an efficient process of legalizing the stay of these people on an *ad hoc* legal basis. The Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland itself, in its art. 106 section 4 provides for the possibility of covering specific categories of people benefiting from temporary protection in the Republic of Poland with separate provisions. The specific provisions adopted by the legislator, although mainly implementing international standards, including EU ones, are not free from shortcomings and ambiguities.

In terms of the procedure for legalizing the stay of Ukrainian citizens, attention is drawn to the exclusion from the group of people covered by protection – children of Ukrainian citizens who do not have Ukrainian citizenship on the basis of the so-called special act. As was pointed out in previous considerations, such a solution is not conducive to the provision specified in Art. 15 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced people and on measures to support the balance of efforts between Member States in accepting such people, with its implications for the so-called family reunification. It seems optimal and consistent with EU standards to allow immediate family members to be covered by a uniform protection procedure.

The regulation regarding the so-called special act is also questionable, which does not provide for formal confirmation of providing refugees from Ukraine with temporary protection, in particular as an issued decision. This solution probably results from the desire to reduce the formalities related to the legalization of the stay of refugees from Ukraine to the necessary minimum in view of the massive scale of their inflow into the territory of Poland in a short period of time. However, this solution, as emphasized earlier, makes it impossible to appeal in the event of a refusal to grant temporary protection, which in practice often happened. This possibility was granted in Art. 109 section 2 of the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland, according to which the Head of the Office for Foreigners refuses to take advantage of temporary protection by a decision, which is final. Therefore, no analogous regulations under the so-called special acts should be considered a less favorable solution compared to general provisions.

Another disadvantage is the lack of clear regulations regarding the obligation to issue the so-called special act on documents confirming the legality of stay in the territory of the Republic of Poland, even though such an obligation results directly from the previously mentioned EU standards, although it seems possible to apply appropriate solutions in this respect provided for in the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland. There are also no adopted solutions regarding issuing formal decisions regarding the beneficiary's loss of protection granted by the Act of March 12, 2022 on assistance to citizens of Ukraine in relation to an armed conflict on the territory of that country. It is worth noting that the loss of temporary protection due to temporarily leaving the territory of the country that grants protection is not provided for by Directive 2001/55/EC. Therefore, it should be considered that the condition for the implementation of the above-mentioned directive is the recognition that the resigning of the beneficiary from the temporary protection granted under the so-called special act on the territory of Poland for a period longer than 30 days, allows it to be covered by temporary protection provided for in the provisions of the Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland.

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