

МІЖНАРОДНЕ ПРАВО

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*Frantceva O.,
PhD student at the Department of
European Union Law Yaroslav Mudryi
National Law University
ORCID: 0009-0006-2527-7585*

LEGAL SECURITY OF THE RIGHTS OF PERSONS WITHOUT CITIZENSHIP IN THE EU

The article focuses on the issues of determining the legal nature of the legal status of stateless persons. Today, determining the specifics of the legal status of stateless persons is one of the most important and acute issues in terms of further development of international legal relations in general, as well as in the context of the development of doctrines on the legal status of individuals in the science of international law. An in-depth analysis and definition of the content of the legal and social status of foreigners and stateless persons makes it possible to clarify their place and role in society and the state as members, the specifics of their legal status and citizenship of another state, the content and characteristics that explain their right to work in accordance with applicable national and international laws, and the legal means of observing and ensuring this right. Statelessness arises for a number of reasons, including unresolved issues of state succession, contradictions between different national citizenship laws, lack of birth registration, and even discriminatory laws. Stateless persons can be considered together with the concept of "foreigners". Some scholars believe that the concept of "foreigner" also includes stateless persons.

Ключові слова: *stateless person, stateless person, legal status, rights, obligations, legal regime, guarantees.*

Problem statement. Today, the number of displaced persons is steadily increasing. Not many scientific works have been devoted to the legal status of stateless persons, and it is still quite difficult to determine the law applicable to such persons, especially when it comes to various civil law disputes in the absence of a permanent place of residence. The law of the state that has

the closest connection with the legal relationship is applied, but this has to be done every time. Thus, this causes certain difficulties in the legal regulation of the legal status of stateless persons.

Analysis of the latest research and publications. The issues of protection of human and civil rights and freedoms, as well as the legal status of for-

eigners and stateless persons, have received attention from scholars. In contrast to the generalized theory, the issue of the legal status of foreigners and stateless persons in the field of law has not been sufficiently developed. Certain aspects of this issue have been considered by such scholars as V. Averyanov, O. Andrunevych, O. Bachun, V. Bigun, V. Galunko, O. Hulak, J. Kistanova, V. Koval, V. Kolpakov, S. Konstantinov, O. Svitlychnyi, S. Oliynyk, I. Pasailuk, and S. Poznyakov. However, this topic still requires a thorough study.

Task statement. The purpose of the study is to analyze the peculiarities of the legal status of stateless persons and its legal support in EU.

Presentation of the main material. The current Treaty on European Union (TEU) and the Treaty on the Functioning of the EU (TFEU) do not contain a legally enforceable list of fundamental human rights. In general, it is worth noting that historically the EU was not created to protect human rights.

Gradually, two independent systems of human rights protection began to emerge in Europe - within the Council of Europe and the European Communities. At the same time, the system of protection created in the Communities was fragmented. In the early stages of its existence, it covered mainly economic rights. The dominant ideology was that of the "market man".

The further development of European integration, its extension to the political sphere, as well as the sphere of justice and home affairs, was accompanied by the emergence of further decisions of the courts of the Member States in which they refused to recognize the primacy of Community law over domestic constitutional legislation on human

rights and freedoms. This prompted Member States and Community bodies to pay more attention to the protection of human rights. A number of documents have been adopted that attempt to define fundamental human rights and freedoms within the European Communities. They include the European Social Charter of 1961, the Declaration of Fundamental Rights and Freedoms of 1989, the Charter of Fundamental Social Rights of Workers of 1989, etc.

The adoption of the Single European Act of 1986 was important for the recognition of human rights as a component of the law of the European Communities. Its preamble referred to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR) [1] as the basis for supporting democracy.

The EU recognizes the 1950 European Convention, but is not a party to it, and therefore the Convention does not form part of EU law. Although the Union does not claim to be the leading human rights organization in Europe, there is some competition between the Council of Europe and the EU. The EU Court of Justice opposed accession to the European Convention without amending the constituent documents on European integration associations. One of the important reasons for this position was that such accession would involve borrowing norms without taking into account the specifics of the EU and its law. Another reason was the absence in the 1950 European Convention of a detailed catalog of social, economic and cultural rights contained in another Council of Europe document, the European Social Charter of 1961,

revised in 1996. On the other hand, the Court did not want to subordinate its jurisdiction to the European Court of Human Rights. Since EU citizens can apply to the EU courts and the European Convention of 1950 to protect their rights, the problem arises as to whose decision will take precedence in the event of a conflict.

These issues were resolved to some extent with the signing of the Lisbon Treaties and the EU Charter of Fundamental Rights as amended in 2007. In general, the EU legal framework provides for different means of regulatory support for EU citizens, foreign nationals and stateless persons equated to them. Speaking of EU citizens, they certainly have a wider range of rights and obligations, legitimate interests, and a different level of guarantees for the realization of their legal status.

The legal regulation of the situation of third-country nationals, i.e. those who are not citizens of EU member states, and stateless persons equated to them is more complex than that of EU citizens. Currently, differentiated regulation of the status of certain groups of foreigners is applied depending on certain features, in particular, the purpose and duration of their stay in the EU. At the same time, the key principle of the legal status of both foreigners and stateless persons in EU law is the principle of non-discrimination on the basis of nationality. This principle is the basis of all the main legal acts regulating the legal status of these categories of individuals.

The main normative document that defines the specifics of the legal status of third-country nationals and stateless persons in the law of the Eu-

ropean Union is the EU Charter of Fundamental Rights of 2000 [2]. It provides for general rights guaranteed to everyone under the jurisdiction of the EU: the right to respect for dignity (Article 2), the right to life (Article 3), the prohibition of torture (Article 4), the prohibition of slavery and forced labor (Article 5), the right to liberty and security (Article 6), etc.

EU secondary legislation (mainly in the form of directives) establishes the specifics of the legal status of certain categories of third-country nationals and stateless persons equated to them. Among the acts of secondary EU law, it is worth highlighting the Council Directive 2009/50 on the conditions of entry and residence of third-country nationals for the purpose of securing highly skilled employment of 25.05.2009 [3]; Directive 2014/36 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers of 13.12.2014 [4]; Directive 2014/66 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of intra-company transfers of 15.05.2014 [5]; Directive 2016/801 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of research, education, training, volunteer service, student exchange schemes or educational projects of 11.05.2016 [6], etc.

In order to ensure effective regulation of migration flows, fair treatment of third-country nationals legally staying in the territory of the Member States, prevention of illegal migration and human trafficking within the EU,

the Common Immigration Policy (Article 79 TFEU) is implemented, which is enshrined in a number of EU secondary legislation. The purpose of these acts is to unify the national legislation of the Member States in the field of migration, which is aimed at ensuring the same status of such persons in all EU Member States.

The broadest range of rights is granted to foreigners who have been legally residing in the EU on a permanent basis, i.e. for five or more consecutive years, and have obtained the appropriate status. The most important regulatory act governing their situation is Directive 2003/109/EC on the status of third-country nationals who are long-term residents of 25.11.2003.

They have a wide range of rights granted to EU citizens, with the exception of political rights. In particular, third-country nationals permanently residing in the EU have the right to free movement within the territories of the Member States and to reside under the conditions established for EU citizens. They are also guaranteed the right to health care, education, work, social protection, association in public organizations, family reunification, etc. At the same time, discrimination on the basis of citizenship between EU citizens and this category of foreigners is prohibited.

As regards foreigners wishing to work in the EU, Directive 2011/98 of the European Parliament and of the Council on a common procedure for applying for a single permit for third-country nationals to reside and work in the territory of the Member States and on a common list of rights of third-country nationals lawfully residing in the Member States of 13.12.2011 was adopted. This regulation introduced

uniform procedural requirements and defined a catalog of rights of third-country nationals to be ensured in all EU Member States. Its purpose is to help ensure the uniform development of the EU labor market, which is still one of the most difficult tasks in the Union, and to prevent the so-called "labor shopping" when a person tries to get a job in a country with less burdensome requirements and more attractive working and living conditions.

In order to ensure equal treatment of third-country nationals and stateless persons who cannot properly exercise their rights under constitutional guarantees in their countries of origin, the EU is developing a Common Asylum, Subsidiary and Temporary Protection Policy (Article 78 TFEU). Its purpose is to introduce common rules on their legal status in all EU Member States, based on the full and comprehensive application of the 1951 Geneva Convention and its Protocol, and which aim to ensure fair and humane treatment of persons seeking international protection, to harmonize the asylum system in the EU and reduce differences in the legislative approaches of Member States to asylum, and to strengthen practical cooperation between competent national authorities within and outside the EU.

Substantive EU asylum law regulates relations related to the process of granting international protection in the EU Member States and determining the status of a person who has received such protection. It is based on Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as persons in need of international protection, on the unified status of refugees and persons in need

of subsidiary protection and on the content of the protection granted of 13.12.2011; Directive 2013/32/EU on common procedures for granting and withdrawing international protection of 26.06.2013; Directive 2013/33/EU on standards for the reception of asylum seekers of 26.06.2013.

EU institutional asylum law covers the rules that define the competence of EU institutions whose activities are related to the rights of asylum seekers, refugees and other persons granted international protection, as well as the criteria and mechanisms by which the state responsible for providing such protection is determined. It covers the following most important regulations: Regulation 604/2013 laying down the criteria and mechanisms for recognizing the Member State responsible for examining a request for international protection submitted by third-country nationals or stateless persons in one of the Member States, dated 26.06.2013 Regulation 603/2013 introducing Eurodak for fingerprint matching for the effective implementation of Regulation 604/2013 and on requests for comparison with Eurodak of data from law enforcement authorities of the Member States and Europol for law enforcement purposes, amending Regulation 1077/2011 establishing a European Agency for Operational Management and Large-scale IT Systems in the field of freedom, security and justice of 26. 06.2013 and Regulation 439/2010 establishing the European Asylum Office of 19.05.2010.

The specificity of legal regulation of the status of third-country nationals in need of international protection is due to the fact that the asylum area is covered by the joint competence of the

EU and its Member States. Having a higher legal force than national legislation, the rules of Union law provide only basic standards on refugee issues. At the same time, it is the Member States that bear the primary responsibility for ensuring the rights of refugees: asylum seekers and refugees are granted asylum status by the competent authorities of the Member States, and their rights and freedoms are exercised through national institutions. Member States retain broad legislative powers in the field of asylum and are not currently ready to transfer all their sovereign powers in the field of refugee protection to the supranational level, a politically sensitive area that affects the functions and prerogatives of a modern state.

By adhering to a common migration policy, EU member states share the responsibility for the dignified reception of asylum seekers, ensuring that they are treated fairly and their cases are examined according to uniform standards. This ensures that no matter which member state an asylum seeker applies to, the result will be the same.

Unified standards, procedures for granting protection, cooperation of member states in the issue of asylum and protection of migrants are regulated by the common European Asylum System (hereinafter - EAS), established in 1999, when the European Council committed itself to working on the creation of this system based on the full and inclusive application of the Geneva Convention relating to the Protection of Refugees of 1951 [7, para. 10-27]. The objective of the EUSR was to expand and regulate migrant protection measures, in particular: to create a common asylum status for third-

country nationals, valid in all EU states; a common subsidiary protection status for third-country nationals who are in need of international protection without obtaining asylum in the EU; to create a common system of temporary protection for displaced persons in case of massive influx; to create common procedures for granting and withdrawing asylum or subsidiary protection status; to establish standards for the conditions of reception of displaced persons who seek asylum in the EU. Currently, the system is regulated by five legislative instruments and one agency, such as:

- Directive 2013/32 on asylum procedures, which establishes a coherent system to ensure effective and fair decision-making on applications for international protection by establishing clear rules for registration and submission of applications, deadlines for processing applications, granting the right to free legal aid to the applicant and ensuring the right to appeal against the decision in court.

- Directive 2013/33 on admission conditions, which aims to ensure uniform standards of admission conditions throughout the EU. In particular, the Directive provides applicants with access to housing, food, clothing, medical care, education for minors and access to work, pays special attention to vulnerable persons, especially unaccompanied minors and victims of torture, and contains rules on the detention of asylum seekers and considers alternatives to detention with full respect for fundamental rights.

- The Qualification Directive 2011/95 sets out the criteria for applicants for refugee status or subsidiary protection status and establishes the rights granted to persons granted one of

these statuses. They include the right to a residence permit, travel document, access to work, access to education, social security, healthcare, access to housing, access to integration facilities, as well as special provisions for children and vulnerable persons. The Directive allows EU countries to introduce or maintain more favorable standards than those set out in its provisions.

- The Dublin III Regulation of 2013, which strengthens the protection of asylum seekers during the procedure for establishing the state responsible for the case and clarifies the rules governing relations between states. It establishes a system for early detection of problems in national asylum or reception systems and addressing the root causes before they develop into a full-fledged crisis.

- EURODAC Regulation 2013 - the EU fingerprint database. The Regulation maintains the designation of a Member State as responsible under the Dublin Regulation and allows law enforcement authorities to access the database in strictly limited circumstances for the purpose of preventing or detecting persons who have crossed the border illegally.

- The European Union Asylum Agency, which replaced the European Asylum Support Office on January 19, 2022, is responsible for improving the functioning of the EASO by providing enhanced operational and technical assistance to Member States and increasing consistency in the assessment of international protection applications.

Having analyzed the above-mentioned regulations, four statuses of persons displaced to the EU and granted international legal protection can be distinguished within the framework of

the SESP: asylum seekers; refugees; persons granted subsidiary protection; and persons granted temporary protection.

The status of an asylum seeker, in accordance with EU law, in particular the Qualification Directive 2011/95, is not defined as a separate status of persons applying for international legal protection, but rather as a transitional stage between the status of a non-EU citizen or stateless person applying for international legal protection and the moment of obtaining refugee or complementary protection status. "Asylum" is defined by law as a legal permit to remain in the EU as a refugee, which confers certain rights and benefits, but not every asylum seeker is finally recognized as a refugee, and every refugee first acquires the status of an asylum seeker [9, p. 49]. However, although the status of an asylum seeker is not distinguished into a separate category, EU legislation clearly separates them from other persons in need of protection. In general,

asylum seekers enjoy the same list of rights as the above-mentioned persons under international legal protection, but this list is somewhat limited, in particular, asylum seekers have the right to stay exclusively in the territory of the country in which their case for refugee status or subsidiary protection is being considered.

Conclusions. It should be noted that the system of legal regulation of the rights of stateless persons in the European Union is quite complex and extensive. Based on numerous legal documents, it regulates various aspects of the mechanism of legal protection of stateless persons. It is also worth noting that stateless persons are equated with third-country nationals under EU law. An important point for the further development of European legislation in the field of statelessness is the definition and separation of the legal status of stateless persons as a special subject of international legal relations.

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ORCID: 0009-0006-2527-7585

Правове забезпечення прав осіб без громадянства в ЄС

У статті розглядається одне з найактуальніших теоретичних і практичних питань науки міжнародного права – питання визначення правової природи правового статусу осіб без громадянства за законодавством ЄС. На сьогодні визначення особливостей правового статусу осіб без громадянства є одним із найважливіших і гострих питань як з погляду подальшого розвитку міжнародних правовідносин загалом, так і в контексті розвитку доктрин правового статусу фізичних осіб в науці міжнародного права. Питанням визначення правового статусу осіб без громадянства присвячено дуже мало наукових праць. Крім того, досить складно визначити право, що застосовується щодо таких осіб, а також передбачити механізми захисту прав і законних інтересів осіб без громадянства.

Поглиблений аналіз та визначення змісту правового та соціального статусу іноземців та осіб без громадянства дає змогу з'ясувати їх місце та роль у державі та суспільстві як його членів, особливості правового статусу та громадянства іншої держави, зміст і характеристики, які пояснюють їхнє право на працю відповідно до чинного національного та міжнародного законодавства, а також правові засоби дотримання та забезпечення норм цього права. Відмічається, що на осіб без громадянства поширюватиметься лише законодавство держави, де така особа перебуває. Водночас визначення місцезнаходження особи без громадянства є досить складним процесом.

Безгромадянство виникає з низки причин, включаючи розв'язання питання правонаступництва держави, протиріччя між різними національними законами про громадянство, відсутність реєстрації народження та навіть дискримінаційні закони. Безгромадянство також спостерігається серед нещодавно прибулих дітей-біженців, народжених по дорозі батьків до Європи, народження яких не було зареєстровано, а також серед тих, хто не може отримати громадянство через протиріччя або дискримінацію, що містяться в національних законах про громадянство. Безгромадянство

також можна знайти серед тих, хто десятиліттями живе в одній країні або навіть народився там.

Звернута увага, що осіб без громадянства можна розглядати разом із поняттям «іноземці». Деякі вчені вважають, що поняття «іноземець» включає також осіб без громадянства. Деякі вчені вважають, що термін «іноземець» включає також осіб без громадянства. Інші вчені вважають, що поняття «іноземець» охоплює лише громадян іноземних держав.

Ключові слова: апатрид, особа без громадянства, правовий статус, права, обов'язки, правовий режим, гарантії.