

Europeanisation of Rules Granting Rights to Migrating Persons - Temporary Protection Regime in the Czech Republic and Actors Ensuring Implementation

Jana Janderová

University of Pardubice, the Czech Republic, e-mail: jana.janderova@upce.cz¹

Abstract:

Purpose: The paper examines Europeanisation of rules granting rights to migrating persons. The temporary protection regime and both standard rules applicable in the Czech Republic and rules covering specifically migrants from Ukraine after the outbreak of war are studied in order to find the level of compliance with the COUNCIL DIRECTIVE 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Methodology: Through comparative method the European rules and Czech legislation are studied. Further, the paper analyses the practice of regional offices that were vested with powers in application of the statutory laws and their interconnection with the state authorities responsible for unification of approach. More generally, the paper seeks to find the roles of different types of actors on regional, state and European level and their coordination.

Expected findings: The level of harmonisation is not high and more coordination from the EU could be beneficial. Further, it is not certain why the state decided to enact special legal rules for refugees from Ukraine and why it passed the responsibilities for its implementation to regions. The regions often complain about the lack of definition of the competences of the state, regions, and municipalities and uncertainty of the emergency accommodation system regulation. Further, in order to provide better and more effective protection greater interconnection of individual information systems and sharing of this data with local governments would be beneficial.

Academic contribution of the paper: The research shall contribute to administrative science by addressing the practical issues of distribution of roles to different levels – European, state and regional. The practical implementation in the field of migration policy will be studied and shortcomings should be identified.

Key Words: Migration, Harmonisation, Europeanisation, Temporary Protection, Asylum, Rule of Law.

1. INTRODUCTION

The Russian invasion of Ukraine territory on 24th February 2022 triggered a massive flow of refugees to other European countries including the Czech Republic. In response to it the European Commission proposed the activation of the 2001 Temporary Protection Directive² (hereinafter the TP Directive), followed by EU Member States formally adopting it on 4 March 2022³. This step was taken to facilitate safe access of Ukrainian nationals to the EU's territory without needing lengthy individual asylum status determination procedures. "The activation of the TP Directive sends a clear message of a common EU commitment to implement a coordinated response,

¹ JUDr. Jana Janderová, Ph.D. is an assistant professor with University of Pardubice, Faculty of Economics and Administration, Department of Administrative and Social Sciences; Pardubice, the Czech Republic.

² Council Directive 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 2001/55, 20 July 2001, OJ L 212/12. See European Commission, Proposal for a Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, COM(2022) 91 final, 2.3.2022, Brussels.

³ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, OJ L 71/1

avoiding ad hoc/unilateral Member States measures, easing pressures on national asylum systems and ensuring a common level playing field of rights for potential beneficiaries fleeing the war.” (Carrera, p. 1)

Still, the practical implementation was left to the Member States. Theoretical assumptions and premises of a common policy and its practical implementation and concrete results are often different due to a set of unpredictable circumstances of the specific situation which has arisen. “The progressive settlement of substantial national and ethnic groups poses important economic, social and cultural challenges, to which the policies implemented have so far only partially responded.” (Hasanaj, p. 73)

The temporary protection system has been in place in the Czech Republic as in other Member States since March 2022. It allowed Ukrainian refugees to stay, and granted them free access to the Czech labour market, education, and the national health insurance system. The government of the Czech Republic declared a state of emergency on March 4th 2022 to cope with the migration wave. Following the activation of the TP Directive by the Council, the Czech Parliament adopted its own special law - Act No. 65/2022 Coll., on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation troops accompanied by two other laws of successive numbers dealing with social/humanitarian benefits and access to education (hereinafter together as the “Lex Ukraine” only). Over the time the Czech Parliament adopted already four amendments to the Lex Ukraine to change the conditions providing protection and humanitarian benefits to Ukrainian refugees, the last coming into effect partly as of April 1, 2023, and partly as of July 1, 2023.

Due to the last amendment Ukrainian refugees may extend their temporary protection status until March 31, 2024, provided that they have registered themselves online by March 31, 2023. Further, they need to present themselves at the Ministry of the Interior to have the visa tag affixed by September 30, 2023, at the latest. As the law set this duty to register, current data on refugee numbers are available. Since the start of the war in Ukraine until April 1, 2023, the Ministry of Interior has issued a total of 504,107 temporary protections. As of that day 325,742 persons with temporary protection were on the territory of the Czech Republic. Of these people, 68% were of working age, 65% were women, and 35% were men. Among these temporary protection holders, 28% were children and 4% were seniors. About one third of the persons who were granted temporary protection since the outbreak of war have returned to Ukraine. Others ended temporary protection at their own request (5%) or moved to another EU country (1.5%). (Ministry of Interior, 2023) It needs to be stressed that compared to the population of the Czech Republic, which is approximately 10.5 million, these numbers are not insignificant at all, and the public administration authorities faced enormous task of taking care of these people to ensure decent living conditions. For the whole period till the end of March 2023 the main work related to organising the shelters, providing material help, administering the stay and all necessary documents was delegated by the state to the fourteen regions.

The paper examines Europeanisation of rules granting rights to migrating persons. The temporary protection regime and both the general statutory law implementing it in the Czech Republic and special legal rules covering specifically migrants from Ukraine after the outbreak of war (the Lex Ukraine) are studied to find the level of compliance with the TP Directive. Further, some practical issues of distribution of powers and roles among different levels – European, state, and regional are analysed in order to determine whether the division of tasks is consistent with the principles of subsidiarity and effectiveness.

2. METHODOLOGY

The main research question is to determine to which extent rules granting rights to migrating persons namely the temporary protection regime have been Europeanised. The level of harmonisation is studied, as both standard rules applicable in the Czech Republic and rules covering specifically migrants from Ukraine after the outbreak of war are compared in order to find the level of compliance with the COUNCIL DIRECTIVE 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The European TP Directive and Czech legislation - Lex Ukraine together with all its amendments are examined through comparative method. Further, an analysis of the role of regional offices, that were vested with powers in application of the statutory laws, together with the level of their interconnection with the state authorities responsible for unification of approach is carried out. More generally, the paper seeks to find the roles of different types of actors on regional, state and European level and their coordination in the field of migration.

As follows from the above, for the purposes of this qualitative research, several different methods were applied as relevant. First, a comprehensive overview of both the European and Czech rules is carried out through literature review and using normative-analytical method. These rules are studied using comparative method and inductive reasoning. The findings are supported also through data collected from the Czech Republic Ministry of Interior and regional offices. In the conclusion a synthesis of the findings is carried out and shortcomings are identified.

3. EUROPEANISATION OF ADMINISTRATIVE LAW AND HARMONISATION IN ASYLUM AND IMMIGRATION POLICY

European integration has brought about a large-scale phenomenon of public administration outside the nation state and also the convergence of national legal systems. The ongoing political transformation in the EU implies ever more administrative interaction between political levels in order to coordinate, manage and implement policies.

When discussing Europeanisation most scholars think of topics linked to general principles that EU administrative law adopted from national law and to the Europeanization of national administrative law. (Brito Bastos, p. 602) "Europeanisation means the process of building, expanding and institutionalising (in)formal rules, procedures, paradigms, ways of working as well as shared beliefs and norms in the formulation of public policies in the EU and their transfer to the national level." (Nikolić, p. 626) Others see a further potential of EU administrative law, however, they are rather cautious: "Due to the emergence of a comprehensive set of delimiting rules, which are facilitating the indirect administration under 'the union of composite administration', one may argue that EU international administrative law also represents a particular (sub)discipline of EU administrative law. Consequently, this EU international administrative law has a regional character. In similar fashion to the classical understanding of international administrative law, the newly emerging EU international administrative also retains its delusional character. Rather than governing a coherent part of public administration, it has the character of a delimiting norm and serves an auxiliary function with respect to other substantive areas of EU administrative law." (Handrlica, p.116)

However, it is obvious that the more the EU is involved in policy coordination and implementation, the more important become the issues of administrative interaction between the different political levels - as the EU lacks an administrative basis for conducting policy negotiations "supranational" policies independently of Member

States' administrative systems. "The European politico-administrative system needs to be understood as a European multilevel administrative system." (Trondal, p. 74) Thus, it is important to set the powers and distribute them between the levels correctly and secure that they are coordinated and exercised properly at these levels. Further, distribution of powers inside the state considering the role of local self-governing units plays also an important role.

Migration and asylum policy was originally sovereign national policy, with some minimum common standards at the EU level which were enshrined in the Amsterdam Treaty. In 2009, the Stockholm Programme signalled a common, EU policy which the Lisbon Treaty entrenched in a comprehensive legal framework built on solidarity, sharing of responsibility between Member States and its associated financial consequence. (Janderová, p. 2) While at first different actions under EU asylum policy were not systematically integrated into a broader strategic framework, many political actors and stakeholders recognised that, a universal approach is necessary to deal with this sensitive topic. (Poptcheva, 2016) The idea of harmonising the immigration and asylum policy at the EU level sought to deal with asylum policy more strategically by tackling these initiatives from both external and internal perspectives. However, the development of more profound EU cooperation in the field of asylum and migration was drawn by some Member States because of 'venue-shopping' practice. Whereas some of them faced larger migrant inflows and wished to solve the issue on European level, others had no such need. "Indeed, European Union Member States have long been hesitant to Europeanize matters of immigration. Yet in spite of this, in recent years immigration has been increasingly subjected to European integration. This development suggests a major social transformation in itself, a shift away from a national to a post-national framework of immigration politics and immigration policy making. The field of migration and the emergence of a European framework demonstrates that states are changing, but they are not disappearing." (Hadj-Abdou, p. 2)

Furthermore, the struggle to find the right extent to which human rights and the protection of own borders and population are guaranteed have influenced the real content of this policy. "The gradual development of EU immigration and asylum law has been characterized by two related, ongoing tensions: the conflict between EU competence in this field and national sovereignty, and the friction between immigration control and the protection of human rights." (Peers, p. 519) The struggle for the right balance between migration control and the protection of fundamental rights is likely to continue. "This particularly manifested itself in the so-called refugee crisis of 2015, when Member States took divergent approaches as to the best policy to respond to the increased flows of migrants across the Mediterranean (most of them going to successfully claim asylum)." (Peers, p. 528) Thus, as the internal crises of the European project together with the 2015 mass migrations have significantly influenced further harmonisation of the migration policy within the EU, with a number of disputes between EU institutions and Member States – over free movement, visa policy, the enlargement of Schengen, and over the acceptance of refugees and asylum-seekers, (Hampshire, 2016) we may conclude that similar struggles in the process of Europeanisation can be expected in the area of temporary protection.

4. TEMPORARY PROTECTION

Over the past year, various regulations have been adopted to integrate Ukrainian refugees in the Czech Republic, in particular in the area of social security, health insurance and emergency housing. Although Ukrainian nationals have always been one of the most represented group of foreigners, the numbers arriving after the outbreak of the war and later were unprecedented. The Czech Republic adopted the TP directive by a "general" Act No. 221/2003

Coll., on Temporary Protection of Foreigners, effective as of January 1, 2004. However, the government chose not to use this act but rather proposed a specific set of laws intended to help refugees from Ukraine. In the context of the forthcoming EU Council decision, they have started preparing a package of laws called "Lex Ukraine". It is largely an indirect amendment to Act No. 221/2003 Coll., which excludes some of its provisions (process, humanitarian centres, etc.) and allows the application of the Law on the Residence of Foreigners and regulates employment and benefit issues.

This Lex Ukraine consists of three standards. The first regulates the allocation of temporary protection, the legal status of refugees and access to health care, the second law Lex Ukraine - Employment (Act No. 66/2022 Coll.) regulates employment, social security and children's groups, and the third law Lex Ukraine - Education (Act No. 67/2022 Coll.) regulates access to education. The laws were fast-tracked through Parliament, signed by the President and entered into force by publication in the Collection of Laws on March 21, 2022. They were first adopted for a period of one year and were to expire on March 31, 2023. The laws made it possible to issue so-called temporary protection to nationals of Ukraine (or nationals of other states with a long-term residence permit in Ukraine), following Council Decision (EU) 2022/382 of March 4, 2022 establishing temporary protection for displaced persons from Ukraine.

As the laws were passed in the state of emergency no report on compatibility with the EU law and comparative table, which are prepared in due process of drafting new bills, were elaborated. Therefore, it seems appropriate after a year of their operation to return to the question of their compliance with European law and the degree of Europeanisation of national law in this area.

4.1 International law and EU law standards

The status of refugees is set out in the first place in the 1951 UN Convention on the Status of Refugees (referred to as the Geneva Convention in EU law), along with the 1967 protocol to that convention. The refugee protection is further touched by other international human rights treaties, in particular the ECHR, which, according to the European Court of Human Rights, bans the return of a person to a state in which there is a real risk of suffering torture or other inhuman or degrading treatment as set out in Article 3 ECHR. Since the Geneva Convention does not address all situations in which persons might need some form of protection from return to their country of origin, the concept of "temporary protection" (i.e., protection outside the scope of that convention) has been developed. EU law has focused on refugee and subsidiary protection issues. However, there are other forms of protection based on national law and practice that are not harmonized by EU law. Member States may establish and retain such nonharmonized forms of protection provided that there is no confusion with refugee status which has been confirmed by the Court of Justice.⁴

The grounds of the legal regulation under the EU law can be found in Article 67(2) of the Treaty on the Functioning of the European Union (TFEU) which provides that the EU "shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals." More specifically, Article 79(1) TFEU sets out the EU's objectives as regards immigration: "The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and

⁴ Joined Cases C-57/09 and C-101/09 *Bundesrepublik Deutschland v. B and D* EU:C:2010:661; see also Case C-542/13 *Mohamed M'Bodj v Belgian State*, EU:C:2014:2452.

enhanced measures to combat, illegal immigration and trafficking in human beings.” Further, Article 79(2) TFEU provides the EU powers to adopt legislation for these purposes, inter alia on the issues of: (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation. Finally, Article 79(3) TFEU provides that the European Union may agree readmission treaties with third states. At the secondary level the key document is the Council Directive 2004/83/EC of April 29, 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304/12.

Although the harmonisation is gradually increasing, there is still much difference in the way the protection is adopted and carried out by the Member States. “As in other areas, it can be seen that the European Union’s role in this area is steadily increasing, and indeed is governed by a political and legal objective of establishing a “common” policy, with a view to both reducing divergences in national policy and increasing standards of human rights protection. Indeed, increasing the role of the European Union was formally built in to the concept of a first and second phase of asylum legislation. The legislation and the case law of the Court of Justice to date both point clearly in the direction of an increasing level of protection and of harmonization, but the European Union will still clearly fall short of establishing a “uniform” concept of asylum law, even following the implementation of the second-phase legislation.” (Peers, p. 528)

4.2 Temporary Protection Directive

As already described above the directive providing for a ready-made system of EU-wide “temporary protection” in the event of a mass influx of people, is the Council Directive 2001/55/EC of July 20, 2001. It sets up a scheme to deal with mass arrivals in the EU of foreigners who cannot return to their countries, in particular due to war, violence or human rights violations. Therefore, it puts in place immediate temporary protection for these displaced people which shall meet the same minimum standards in all Member States. Moreover, it promotes a balance among the Member States in receiving people. Still, it does not require compulsory distribution of asylum seekers across Member States. Temporary protection is implemented in all Member States by a decision of the Council of the EU confirming a mass influx of displaced people to the EU and stating the groups of people who need protection. The duration is 1 year but it can be extended by up to 2 years and protection may end if the Council deems it safe for people to return to their home country. Member States must ensure that displaced people are willing to come to their country.

The temporary protection must be granted where there are “substantial grounds ... for believing” that the person concerned faces a “real risk” of “serious harm,” which consists of: (1) the death penalty or execution; or (2) torture or other inhuman or degrading treatment or punishment; or (3) a “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict” - Directive 2011/95, Articles 2(f) and 15. While the first two criteria are based on the established case law of the ECHR, the meaning of the third criterion was unclear. The Court of Justice held in a case about Iraqis who feared violent retaliation because they were linked to the American forces then occupying Iraq.⁵ According to the Court “an “individual” threat could include harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place ... reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region,

⁵ Case C-465/07 Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie EU:C:2009:94.

would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive.”

The Implementing Decision (EU) 2022/382 applies to Ukrainian nationals residing in Ukraine before February 24, 2022; stateless persons and nationals of non-EU countries other than Ukraine who benefited from international protection or equivalent national protection in Ukraine before February 24, 2022; and family members of the persons listed above. However, according to the TP directive there are exceptions when the states do not have a duty to provide the temporary protection. These exemptions include people who are suspected of crimes against peace, war crimes, crimes against humanity, serious non-political crimes; acting against the purposes and principles of the United Nations; or create a danger to security in the host Member State.

Member States must give people who are granted temporary protection a residence permit. This permit is valid for the full duration of protection. Those granted temporary protection have the right to suitable accommodation; social welfare, financial support and medical care, access adult education, vocational training and work experience; and right to be employed or self-employed. Children under 18 also enjoy the right to education under the same conditions as nationals of the host Member State. If some members of the same family have been granted temporary protection in different Member States, or if some family members are not yet in the EU, they must have the right to be reunited in the same Member State. These rules are in line with the EU rules on receiving applicants for international protection set out in Directive 2013/33/EU.⁶

The Asylum, Migration and Integration Fund set up under Regulation (EU) No 516/2014 may be used to support the Member States when applying the measures of the TP Directive. In case that the number of displaced people exceeds the reception capacity indicated by Member States, the Council is to take appropriate measures, in particular by recommending additional support for the Member States affected.

4.3 Temporary Protection under Lex Ukraine in the Czech Republic

Temporary protection under the Czech Lex Ukraine will last for one year, and may be automatically extended for a maximum of one year (which has been already adopted). Further extension will be subject to a further decision of the Council.

The Czech legislation extends the group of protected to foreigners with permanent residence in Ukraine who are unable to travel to their country of origin (or previous permanent residence in the case of stateless persons) due to the threat of real danger under Section 179(2) of the Act on the Residence of Foreigners. Foreigners with a special visa (visa for tolerance, D/VS/u) issued before the entry into force of Lex Ukraine are considered as having been granted temporary protection. Of course, the refugees may apply for temporary protection in any EU country (except for Denmark), however the benefits following from the granted TP can only be enjoyed in the country that granted it. Once issued, the visa will entitle the foreigner to travel throughout the Schengen area, as with visa-free travel, for 90 days out of 180. Access to the labour market and other benefits in other EU countries are regulated by the legislation of each Member State. Foreigners, who have been granted temporary protection in another Member State, will not have free access to the labour market in the Czech Republic.

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, pp. 96–116).

As to the procedure, the temporary protection is granted by the Ministry of the Interior or the Police of the Czech Republic (Foreigners Police). The Ministry and the Police are entitled to determine the place of application in order to prevent local congestion. An application is inadmissible if it has already been made by the foreigner in another EU Member State, is not made in person, or is made by an unauthorised person. The need to submit the application in person may be waived for reasons of special interest. If the application is inadmissible, the foreigner is informed of the reason. However, the law does not require written notification and excludes judicial review, as no administrative decision is taken. The application is to be made by a form, which can be filled in online in advance, accompanied by a travel document, if the applicant has one, and a photograph. Upon request, both the Ministry of Interior and the Czech Police can take a photograph. If the person does not have a valid travel document, a new one will be issued free of charge, if the capacity of the office allows it. When granted the temporary protection is indicated to the foreigner by a visa tag in his/her travel document. If the tag cannot be issued on the spot, the granting of the visa will be recorded on or off the travel document with a stamp or by hand. If the application cannot be proceeded on the spot, a certificate of application will be issued to the foreigner. Refugees from Ukraine who obtained a special long-term visa for the purpose of toleration (with the code D/VS/u) before the date of entry into force of Lex Ukraine are considered as temporary protection holders for the purposes of the law. Thus, they have the same access to health services, labour market, etc.

Once the TP is granted in the Czech Republic a change to another type of residence permit is not possible except for family reunification. When the Law on Residence of Foreigners (which is applicable in matters not regulated by the Law on Temporary Protection) is to be applied to the refugees, the institution of temporary protection is viewed as a visa to stay over 90 days for the purpose of toleration. International protection proceedings (asylum proceedings) are suspended for the duration of the temporary protection. The foreigner does not have the status of an applicant of this type of proceedings. In case of existing previous expulsion decision execution of the expulsion sentence is postponed.

Refugees from Ukraine are obliged to report their place of residence in the Czech Republic, they can use the interactive form on the Ministry of Interior website for this purpose. Temporary protection holders are treated as permanent residents and have free access to the labour market. Their employer only has to inform the Labour Office about their employment. They also are eligible for the purposes of support under active employment policy (socially useful jobs, allowance for community service, possibility to pay for retraining and retraining support). However, this type of support is not automatically claimable, it depends on the budget of the Ministry of Labour and Social Affairs. The TP holders are also entitled to unemployment benefit. It is calculated mainly on the average wage, as their previous work activity in the Czech Republic is not assumed, i.e. initially it is about CZK 5,500, after few months it decreases to CZK 4,000), together with a humanitarian benefit of about CZK 9,000 to 10,000 per month. However, the types and levels of social benefits are under permanent change through amendments to the law as described below.

A humanitarian benefit of CZK 5,000 was provided across the board to all newcomers from Ukraine. If the income, social and property conditions of a foreigner with temporary protection do not allow for the provision of basic living needs, the humanitarian benefit may be granted to him/her repeatedly for a maximum of 5 months on the basis of his/her application. The benefit is paid by the Labour Offices in cash or to an account in the Czech Republic; legal representative or a close person act on behalf of the minor alien. Adverse financial and social

circumstances are to be documented with all available documents, however it is sufficient to prove them with an affidavit.

In case of social/material need, all social services are provided free of charge to newcomers from Ukraine (including those that are normally paid for). Refugees from Ukraine must meet the conditions of the law (adverse social situations). These people in need have to prove their poor financial and social circumstances with available documents or their affidavit (thus services are not automatic for all). The extra costs are to be reimbursed to service providers by the state.

Individuals accommodating free of charge newcomers from Ukraine outside official accommodation facilities, are entitled to a solidarity allowance. The allowance is paid to the accommodation providers (not to the refugees) by the Labour Offices and is not be considered as income for the purposes of other laws (on social assistance or material need). However, the law shall change due to its amendment as of July 1, 2023, so that the refugees receive the benefit directly and they will choose how to use it to cover their housing costs.

Refugees from Ukraine were insured by the public health insurance already from the date of entry (if they are issued a residence permit within 30 days of entry, otherwise they are insured for 30 days prior to its issuance). Access to public health insurance applies also to children of Ukrainian parents born in the Czech Republic after February 24, 2022 (for a maximum of 60 days or until temporary protection is processed). The law also applies retroactively to those who received health services before the adoption of the law.

The Lex Ukraine law dealing with education provides for a complex system of children with compulsory school attendance placement in kindergartens and primary schools with regard to capacity, which may result in Ukrainian refugees attending a school in another region. However difficult the situation is due to this massive increase combined with strong population years of children - Czech nationals, the schools coped well through increase in the number of children in the classrooms. As the Czech government preferred strongly the integration of Ukrainian pupils into the Czech system instead of creating specific Ukrainian groups or classes, a special enrolment period was opened for refugees from Ukraine for kindergartens and primary schools for the school year 2022/23, from June 1, 2022 to July 15, 2022. In classes, groups or departments where only refugees from Ukraine are educated, teaching staff from Ukraine is allowed to work without the need to know the Czech language. In the Czech schools depending on the needs of the child, pupil or student, it is possible to partially or fully replace the educational content for the time necessary, regardless of compliance with the framework of the Czech educational program. Thus, it is possible to provide intensive Czech language instruction or assistance with integration into society and psychosocial support to refugees from Ukraine. Headmasters of secondary schools, conservatories and higher vocational schools can also accept and enrol foreigners in the current first year. Otherwise admission to these schools was also simplified. The application deadline was prolonged and the time limit for the entrance examination was increased by 25 %. Furthermore, it was possible to take it in Czech, Ukrainian or English, depending on the language of choice. Proof of prior education may have been replaced by an affidavit both for secondary schools and universities. Universities are allowed to set individual conditions for admission to study without the obligation to publish information well in advance. The rector may decide to exempt a foreigner from the application and study fees. They may also decide to interrupt studies, the period of which will not be counted towards the total period of interruption. These provisions apply not only to refugees but to all citizens of Ukraine. The university may further use funds from other than designated funds for humanitarian purposes related to the situation of foreigners.

The amendment to the Lex Ukraine No 5 brings the most significant changes related to the benefits and shelters which will become effective as of July 1, 2023. The changes are related mainly to Ukrainian refugee's assistance. The humanitarian benefit will be conceived as a contribution for the costs of living needs and newly also for housing. Solidarity allowance remains unchanged until the end of June. Financial assistance related to housing will then be provided to refugees as part of the humanitarian benefit instead of the flat owners. In order to be entitled to the full amount of the countable housing costs, he/she must live under a lease agreement in an apartment that is registered with the Ministry of Labour and Social Affairs. From the first month, the amount will be linked to the cost of living. It will be the same for the first 150 days (5 months). Thereafter, the amount shall be reduced to the subsistence minimum in cases where the recipient of the humanitarian benefit does not try to ensure financial resources of his/her own and at the same time has no obstacles to work. In this way, the government want to motivate Ukrainian refugees more so that they do not remain dependent on state assistance, but actively try to join the labour market. These conditions will not apply to the vulnerable groups. Vulnerable groups include children up to 18 years of age, students, people caring for a child up to 6 years of age, pregnant women, people over 65 years of age, people with disabilities and also people who care for them.

A separate part of the law is devoted to assistance with housing costs. Amounts related to housing needs will now be provided together with the humanitarian benefit in the amount of the housing costs. These exact amounts will be determined by government decree. The full amount of countable housing costs can be obtained if the refugee lives in an apartment that is registered by the owner in the relevant register of the Ministry of Labour and Social Affairs. The government want to support standard forms of housing as much as possible in this way. It is therefore possible to register primarily flats, but it is not possible to register, for example, residential hotels. The owner of the flat where the refugees live will register it by July 1, 2023 at the latest. The foreigner with temporary protection will thus be entitled to the full amount of countable housing costs. However, it is also an important condition that the refugees must have a lease agreement. After that, solidarity households will no longer have to apply for anything; refugees will newly pay their rent and receive state housing assistance in the form of a humanitarian benefit.

5. DISCUSSION

The theory shows that the level of harmonisation of asylum and migration policy is not as high as the EU would prefer, and more coordination from the EU could be beneficial. The divergent views of the Member States on the war conflict and their reactions to it were particularly evident in the area of discussing sanctions against the Russian Federation. While many Eastern and Central European states, affected by the large influx of refugees and driven by the idea of protecting their national security, perceiving the immeasurable merits of Ukraine, which plays the role of a European protective shield and prevents further advances by Russian troops, have advocated a tougher approach, others, more distant or more economically connected to Russia, have prevented or at least hindered such an approach. It is thus in this area that the lack of harmonisation of common European policy has been most apparent. In the protection of refugees, a greater degree of harmonisation could help a more rational redistribution of people between Member States. However, the TP Directive, first activated by a Council decision, has nonetheless proven at least an acceptable level of harmonisation of Member States' approaches to protection.

Persons granted temporary protection in the Czech Republic have access to education, free access to the labour market and the right to additional assistance, for example, in the event of unemployment. They have access to

public health insurance and are entitled to social benefits to enable basic survival. In this respect, it can be stated that the objective of the TP Directive has been fully met.

The state has authorised the regions to address the crises as they are closer to practical solutions. The Regional Assistance Centres for Ukraine (hereinafter the KACPU only) were created (and terminated their work as of April 1, 2023) to concentrate all the necessary administrative activities and provide all sorts of help needed. Citizens of Ukraine were to register there and apply for the temporary protection, which is one of the obligations that all those who come to the Czech Republic from Ukraine now have to fulfil, and set up health insurance. They also got everything they needed for accommodation there. All administrative assistance was provided to incoming Ukrainians on the premises. There were representatives of the Department of Migration and Asylum Policy, health insurance companies, the Foreign Police Service, the fire brigade and an interpreter. There was also a possibility of emergency overnight accommodation and there was a place reserved for temporary accommodation of pets.

These types of help were provided e.g.:

- ✓ provision of basic needs (food packs, medicines, first aid and more),
- ✓ registration and residence permit,
- ✓ arranging transport to the facilities of the Refugee Administration,
- ✓ ensuring access to health care,
- ✓ information from the Labour Office,
- ✓ psychosocial assistance,
- ✓ provision of information,
- ✓ social counselling,
- ✓ children's play area.

The regions have first complained that the state had and that they are overburdened with provision of help. It was not certain why the state decided to enact special legal rules for refugees from Ukraine and why it passed the responsibilities for its implementation to regions. The regions often complain about the lack of definition of the competences of the state, regions and municipalities and uncertainty of the emergency accommodation system regulation. Further, in order to provide better and more effective protection they called for a greater interconnection of individual information systems and sharing of this data with local governments.

However, these issues seem to have solved during the time. Some of them through amendments to the Lex Ukraine. The state took over from the regions on April 1, 2023. The progressive changes in the needs of refugees and also the possibilities of the state to cope with the situation have brought changes to the Lex Ukraine. There have been already four amendments, the following table shows their cause and the resulting content.

Table 1: Amendments to the Lex Ukraine and the reason of their enactment

Number of the law amending Lex Ukraine	Date of effectiveness	Summary of the changes to Lex Ukraine 1
Lex Ukraine 2 Law No. 175/2022 Coll.	June 27, 2022	Grounds for inadmissibility extended.
Lex Ukraine 3 Law No. 198/2022 Coll.	June 30, 2022	The question of the refugee accommodation system through the system of regional and state accommodation facilities is addressed. This enabled the end of the emergency.
Lex Ukraine 4 Law No. 20/2023 Coll.	January 24, 2023	The issue of extending temporary protection for one year until 31 March, 2024 is addressed.

Lex Ukraine 5 Law No. 75/2023 Coll.	April 1, 2023	The latest amendment addresses the setting of social benefits and emergency accommodation. The existing regional assistance centres are being transferred to the administration of the Ministry of the Interior. The change in the social benefits system will come into force on July 1, 2023.
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6. CONCLUSION

The Europeanisation of law is a gradual process, which has encountered many obstacles in the form of unpreparedness or unwillingness of states to adapt their legislation. The Czech Republic has implemented the Temporary Protection Directive by Act No. 221/2003 Coll. However, this Act has never been applied, nor has the Directive been activated by the EU Council. In general, it is not recommended in law to deal with specific situations by means of specific standards; the rules should be general. However, instead of using the existing law in force, the Czech government decided to prepare special legislation in the context of the Russian invasion of Ukraine and the subsequent huge influx of refugees. There were reasonable concerns that the legal requirements under the existing law could not be properly implemented in practice. The set of three laws providing the Czech temporary protection known together as the Lex Ukraine were promulgated in the Collection of Laws on March 21, 2022. They became effective upon their promulgation. As the laws were passed in the state of emergency no report on compatibility with the EU law and comparative table which are prepared in due process of drafting new bills were prepared. It is therefore appropriate to assess, with some time lapse, the extent to which compliance with the minimum European standards set by the Temporary Protection Directive has been achieved.

The above analysis has shown that although the country was not prepared for such a situation, it managed to cope with the influx of refugees thanks to the involvement of regional authorities. Thus, after more than a year of application of the Lex Ukraine we might state that the Czech Republic managed to cope with the mass influx of Ukrainian refugees in a decent way. The Regional Assistance Centres for Ukraine after their first struggle started providing the necessary help and although the regions first complained that they were overburdened and the state was not providing enough support the help of both clerks and volunteers overcame these issues. The amendments to the Lex Ukraine finally tackled both the information lack and transfer of powers. Thus, it can be concluded, that both the specific legislation and the administrative practice have proven to be functioning. The presence of Ukrainian refugees has become something which is not surprising any more. However, let us wish that all the people who were forced to flee will be able to return to their homes soon, even though if they choose to stay, they will be welcome.

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