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ORGANIZATIONAL AND LEGAL MECHANISM FOR ENSURING EU MIGRATION SECURITY

ОРГАНІЗАЦІЙНО-ПРАВОВИЙ МЕХАНІЗМ ЗАБЕЗПЕЧЕННЯ МІГРАЦІЙНОЇ БЕЗПЕКИ ЄС

Introduction. *Modern security threats are becoming more and more widespread in the world, intensifying within the borders of the European Union. Migration is increasingly viewed through the prism of security in a particular country or even in the entire region, such as, for instance, European Union.*

Problem. *Ukraine's European integration aspirations make it necessary to study the common immigration policy of the European Union through the prism of the organizational and legal mechanism for ensuring security in this area.*

The aim *of the study is to define the common immigration policy of the European Union through the prism of the organizational and legal mechanism for ensuring security in this area, as well as formulating proposals for its improvement.*

Methods. *The methods of legal analysis, historical, and systemic analysis are applied.*

Results. *The creation of the Schengen area with a common external border and no internal borders necessitated the adoption of EU supranational legislation, in particular to guarantee the security of this area. Since the Tampere Program in 1999, all five-year development plans have emphasized the security dimensions of migration. The Frontex*

Вступ. *Сучасні безпекові загрози набувають дедалі більшого розповсюдження у світі, інтенсифікуючись у межах Європейського Союзу. Міграція все частіше розглядається крізь призму безпеки в певній країні або навіть у цілому регіоні.*

Проблема. *Євроінтеграційні прагнення України зумовлюють необхідність вивчення спільної імміграційної політики Європейського Союзу крізь призму організаційно-правового механізму забезпечення безпеки в цій сфері.*

Метою *дослідження є визначення спільної імміграційної політики Європейського Союзу крізь призму організаційно-правового механізму забезпечення безпеки в цій сфері, а також формулювання пропозицій щодо її удосконалення.*

Методи. *Застосовано методи юридичного аналізу, історичний, системного аналізу.*

Результати. *Створення Шенгенського простору зі спільним зовнішнім кордоном і без внутрішніх кордонів спричинило необхідність прийняття наднаціонального законодавства ЄС, зокрема для гарантування безпеки цього простору. Починаючи з програми, прийнятої в Тампере у 1999 р., усі п'ятирічні плани розвитку наголошували на безпекових вимірах міграції. На вико-*

agency was created to fulfill the goals of the EU's common immigration policy and to strengthen the protection of the EU's external border. The introduction of data collection systems contributes to the identification of persons and early warning and prevention of threats.

Conclusions. In order to strategically reduce the risks associated with migration, it is important to strengthen the protection of the external border of the EU, intensify the control of the influx of citizens of third countries, and ensure an adequate integration policy. In particular, it is necessary to improve tools for data collection and processing, develop and implement new technologies for detecting illegal migrants, ensuring security at external and internal borders; improve integration policy. Only a comprehensive approach to improving the organizational and legal mechanism for ensuring migration security will help to cope with modern challenges and threats that may cause migration flows to the EU.

Keywords: security, migration, EU common immigration policy; Frontex, European Union.

нання цілей спільної імміграційної політики ЄС та з метою посилення охорони зовнішнього кордону ЄС створено агентство «Фронтекс». Запровадження систем збору даних сприяють ідентифікації осіб та ранньому попередженню й запобіганню загрозам.

Висновки. Для стратегічного зменшення ризиків, пов'язаних з міграцією, важливим є посилення охорони зовнішнього кордону ЄС, інтенсифікація контролю припливу громадян третіх країн, забезпечення адекватної інтеграційної політики. Зокрема необхідно удосконалювати інструменти для збору та обробки даних, розвивати й впроваджувати нові технології для виявлення нелегальних мігрантів, забезпечення безпеки на зовнішніх і внутрішніх кордонах; покращувати інтеграційну політику. Тільки комплексний підхід до удосконалення організаційно-правового механізму забезпечення безпеки міграції допоможе впоратись з сучасними викликами та загрозами, які можуть спричиняти міграційні потоки до ЄС.

Ключові слова: безпека, міграція, спільна імміграційна політика ЄС; Фронтекс, Європейський Союз.

Introduction. Due to its transnational nature, growing dynamics and impact on various spheres of life, migration is increasingly perceived as a phenomenon that poses a serious challenge to the usual paradigm of confidence and order, i.e. national, public, and personal security [1]. In addition, migration can lead to security threats, including terrorism, human trafficking and other forms of crimes.

In the modern world, migration can also be a method of conducting hybrid wars, which, as O. Kresin points out, are extremely attractive due to its effectiveness under the conditions of insignificant costs and reputational losses [2]. In addition, the problems of the diversification of migration flows, their use for the purpose of weakening and destabilizing a country or region, causing unrest and dissatisfaction of the local population with the support of the security situation, as well as the so-called instrumentalization of migration [3] are becoming increasingly widespread in the world, which are intensifying within of the European Union.

Solving problems related to the security aspects of migration requires a comprehensive approach and cooperation between countries and regions of the world, which should be aimed at guaranteeing national, public and personal security.

Problem. Ukraine's European integration aspirations make it necessary to study the common immigration policy of the European Union through the prism of the organizational and legal mechanism for ensuring security in this area, which makes a detailed analysis of this issue relevant.

Analysis of recent research and publications. Problems of organizational and legal provision of security aspects of the migration policy of the European Union were considered by domestic and foreign scientists. Thus, among domestic scientists, O. Malynovska [1] studied the issue of the relationship between migration and security; V. Filippova, I. Lopushynskyi, and R. Plyusch [4] studied the consequences of the modern migration policy of the European Union; V. Nikiforenko and A. Vikhtiuk [5] analyzed the issue of strengthening the protection and defense of the state border in conditions of a mass influx of migrants; Y. Tchaikovsky [6] focused attention on the problems of international migration and internal security of the state. The relationship between migration and security in the European Union is also considered by a number of foreign scientists, such as: J. Esteveins [7], M. Weiner [8], S. Ferreira [9], S. Leonard, K. Kaunert [10] and others. However, Ukraine's obtaining the status of a candidate for membership in the European Union necessitates further analisis and in-depth research of the organizational and legal provision of security aspects of the migration policy of the European Union.

The aim of the research is to determine the common immigration policy of the European Union through the prism of the organizational and legal mechanism for ensuring security in this area, as well as formulating proposals for its improvement.

Methods. The leading method of researching the organizational and legal mechanism for ensuring the security of the migration policy of the European Union became the method of legal analysis, due to which the common immigration policy of the European Union was investigated through the prism of the organizational and legal mechanism for ensuring security in this area. The primary and secondary legislation of the European Union in the field of migration is also analyzed. Based on the results of the legal analysis, it was analized how the EU counters security challenges in the migration field, which institutions and agencies are involved in this field, and the functioning of systems for collecting information about migrants in the European Union was examined in detail.

In order to study the stages of development of the legislation of the European Union in the field of ensuring the security of migration processes, the historical method was used in the study, which made it possible to understand the differences in the legal regulation of the security aspects of the common immigration policy of the EU in different periods of time, and their influence on the current state of EU legislation.

Through a system analysis, the organizational and legal security of the European Union's migration policy as a system was analyzed and suggestions for its improvement were proposed.

Results. *Legal regulation of security aspects of migration policy of the European Union.*

Research on migration as a security threat was conducted at the end of the 20th century, which was due, on the one hand, to the collapse of the bipolar system of international relations and a change in the perception of the nature of security threats. On the other hand, migration has become a factor of security due to the increase in the number and diversity of foreign ethnic groups of immigrants in once relatively homogeneous (ethnically) countries [11]. M. Weiner was one of the first researchers who considered migration through the prism of security, stressing that migration affects both internal stability and international security [8].

Within the European Union, the legal regulation of security measures and control over the migration of people at the supranational level began with the signing of the Schengen Agreement of 1985 and the Schengen Convention of 1990, which laid the foundation for the functioning of the Schengen area without internal borders between the participating states and introduced a single external border.

The Dublin Convention of 1990, which defines the state responsible for examining requests for asylum submitted in one of the member states of the European Community, contributed to the creation of a supranational asylum system in the European Union.

After the adoption of the Schengen Agreement and the Dublin Convention, the European Union thought about the connection between immigration, terrorism, international crime and border control [12]. Since then, border control had to correspond not only to the interests of the member states, but also to the interests of the European Union, and the security of the EU member states depended on the security of the European Union as a whole as an area without internal borders and with a single external border.

The next important stage in the development of the legal regulation of the security aspects of the migration policy of the European Union was the signing of the Maastricht Treaty in 1992, which, inter alia, established provisions on intergovernmental cooperation on asylum issues, combating illegal immigration, organized crime and terrorism.

Subsequently, the Treaty of Amsterdam, 1997 was adopted and the area of freedom, security and justice was created, which strengthened the security dimension of the migration policy of the European Union. And although at this stage migration legislation and policy depended mostly on the EU member states, the EU, which was given new powers regarding border control, the visa system, asylum, the fight against illegal immigration, and human trafficking, began to play an increasingly important role in this aspect.

Having gained competence in the migration field, the European Union has been planning the development of a common immigration policy since 1999 in the form of five-year plans containing security provisions for the regulation of migration processes. Five-year plans determine strategic

directions, set priorities, establish approximate deadlines for the implementation of goals and are generally acts of soft law.

The first five-year program is the program adopted in Tampere (Finland) in 1999 [13]. It is focused on four directions and defines priorities for the development of both external and internal dimensions of the migration policy of the Union in order to ensure the security of the integration entity. Its main directions are: cooperation with the countries of origin of migrants; common European asylum system; fair treatment of citizens of third countries; management of migration flows. The program was an important and promising step towards the creation of a liberal and open common immigration policy of the European Union, but the direction changed after the terrorist attacks in New York on September 11, 2001, in Madrid in March 2004, and in London in May 2005 [14].

The Hague Program of 2004 [15] established the provision that coordination and coherence between the internal and external dimensions of migration policy are becoming increasingly important in the security sphere. The program became more restrictive and established increased security standards in the immigration sphere [16]. As F. Dulivet notes in this regard, «The Hague program was aimed at strengthening security at the external borders and unifying the internal space without borders» [17].

The Stockholm Program of 2009 [18] assumed that the European Union needs to ensure the further development of policies in the field of integrated management of external borders and visa policy in order to facilitate the access of citizens of third countries to the EU and at the same time ensure the safety of its own EU citizens. In particular, it contained the following areas: citizens' rights; justice; internal security (eg counter-terrorism, law enforcement and disaster relief); external border management and visa policy; migration and asylum (including integration); external dimensions of freedom, security and justice.

The deepening of the external dimension of the EU's migration policy, which was prescribed in the Stockholm Program, revealed the interdependence of the countries of origin of migrants, the transit of migrants, and the countries receiving migrants. Therefore, in today's globalized world, due to the trend towards diversification and rapid changes in the structure of migration flows, the EU has introduced multi-level migration management, including national, supranational and international dimensions.

Consequently, the first decade of the EU's common immigration policy focused on creating a basic EU policy on border control and combating illegal immigration in order to secure the European Union against the threats that existed at that time.

The entry into force of the Treaty of Lisbon in 2009 led to the definition of the competence of the European Union in the field of immigration, which is shared between the member states and the European Union and is common. The Treaty of Lisbon establishes the principle of mutual cooperation between EU countries in matters of migration and asylum, in particular in matters of control of the EU's external borders

and the fight against illegal migration. The treaty also establishes rules for granting international protection.

Since then, the security aspects of migration have played an increasingly important role, especially due to the European migration crisis of 2015, which threatened the stability and security of the entire European Union. According to various estimates, the events in the Middle East led to the fact that 1 million people were on their way to the European Union, of which almost 4 thousand did not reach their destination and died in the Mediterranean Sea [19].

The reaction to these challenges was the adoption of a five-year program aimed at fulfilling the goals and objectives of the common immigration policy of the European Union, namely the European Agenda on Migration 2015 [20], which defines four main areas. They need immediate action: reducing incentives for illegal migration, strengthening asylum policies, saving lives and securing external borders, and new policies on legal migration.

In 2020, to replace the European Agenda on Migration, the Commission presented the New Pact on Migration and Asylum, the main elements of which were:

• cooperation with third countries on migration and development in order to reduce migration movements;

• rapid procedures at the border and return in order to quickly distinguish between those who are subject to international protection and those who cannot benefit from international protection;

• strengthened division of responsibility within the EU for people in need of protection [21].

At the same time, a new phenomenon appears aimed at destabilizing the European Union - the *instrumentalization* of migration. In particular, in 2021, the Belarusian authorities organized a migration crisis on the external border of the European Union, in particular with Poland, Lithuania and Latvia. The reaction of the world community to such actions was the adoption of a joint statement of the UN Security Council on November 12, 2021, which condemned «the organized instrumentalization of people whose lives and well-being have been endangered by Belarus for political purposes in order to destabilize neighboring countries and the external border of the European Union and divert attention from its own escalating human rights abuses. This tactic is unacceptable and requires a strong international response and cooperation to hold Belarus accountable».

On November 23, 2021, in response to the funded instrumentalization of migrants at the EU's external border, a Joint Communication was published, which stated that «illegal crossings of the EU's external borders from Belarus are an everyday reality. It was initiated and organized by the Lukashenko regime, which lured people to the border in collaboration with migrant smugglers and criminal networks. This practice contradicts universal human values and the values of the EU» [22].

In addition, the return to power of the Taliban in Afghanistan in 2021, as well as the Russian Federation's full-scale war against Ukraine, which began on February 24, 2022, led to the largest number of forced displacements since World War II. This has put the EU's ability to respond to new and unpredictable circumstances in the migration field to the test.

The EU's reaction to the war against Ukraine was the activation of the Directive on temporary protection, which was the first time in the entire history of the EU. Therefore, according to Art. 5 of the Directive recognized the reality of a «mass flow» of forced migrants from Ukraine, who were collectively granted the status of temporary protection [23]. This allowed forced migrants to settle in any EU member state without putting undue pressure on border countries, unlike the Dublin Asylum System, which requires asylum applications to be processed in the first safe country of crossing. However, Poland received the largest number of forced migrants from Ukraine, but the status of temporary protection provided an opportunity for a proportional settlement of forced migrants in the European Union.

This status made it possible to work in EU member states from the moment of arrival. As a source of labor in many EU countries, Ukrainians are overcoming the phenomenon of population aging, which has occurred in the European Union today. Therefore, employment, payment of taxes in the EU and increased purchasing power strengthen the economy of the Union, and therefore the activation of the Temporary Protection Directive helped to overcome the mass influx of forced migrants to the EU.

In addition, in order to guarantee safe migration, it is also important to effectively integrate those who have already arrived in the European Union, that will contribute to solving the demographic issues of the receiving country, improving the economic situation, as well as overcoming the problems of the lack of labor resources. However, the current realities of the integration of migrants in the EU demonstrate certain problems, in particular, the education systems of the EU member states have difficulties with the children of immigrants in the context of access to education; obtaining higher education in the EU accelerates the integration process. However, skilled migrants face barriers in accessing work in their specialty [24].

Organizational mechanism for ensuring migration security in the European Union.

To ensure security in the European Union, inter alia, increasing the level of border security, reducing illegal migration and strengthening the fight against terrorism special agencies have been created, such as *European Border and Coast Guard Agency (hereinafter Frontex),* which coordinates the work with various countries of the European Union and provides security at the borders.

Therefore, Frontex is an agency of the European Union, created to coordinate and support the protection of the external borders of the EU, the main purpose of which is to ensure the security of the EU by controlling

entry and exit from/to the territory of the EU, preventing illegal migration, trafficking in people, as well as fight against terrorism. Frontex coordinates cooperation between national EU border protection authorities and ensures compliance with European standards in this field. The agency contributes to the improvement of technical equipment and infrastructure at the borders of the EU, supports the development of joint operational actions [25], contributes to the management of migration flows, ensures the coordination of actions regarding the adoption of informed decisions on entry and residence in the EU, and also provides support for the reintegration of persons who are in the territory of the EU illegally.

One of the important tasks of Frontex is rescue operations at sea. People often face danger when trying to cross the EU sea border, especially if they are crossing illegally. Many people die or are in danger. Frontex works with national border services to ensure security at the EU's maritime borders. The agency coordinates operations involving the search and rescue of people in distress at sea. Frontex rescue operations are carried out with the help of special ships and aircraft. In the event of a crisis situation at sea, Frontex representatives react quickly and establish contact with all parties that can help in the rescue operation.

Frontex cooperates with Ukraine to ensure control of the common border between Ukraine and the EU and to prevent illegal migration. One of the ways Frontex cooperates with Ukraine is providing technical assistance and support in the field of border security. Frontex provides Ukrainian border services with a variety of technical assistance, including equipment for border control and personnel training. Frontex also cooperates with Ukraine in the sphere of fighting against human trafficking and organized crime related to migration. The agency assists Ukrainian law enforcement agencies in conducting joint operations to combat cross-border crime.

Since the beginning of the full-scale invasion of the russian federation into Ukraine, Frontex has been supporting both Ukraine and EU member states facing large migration flows. The agency has activated a crisis response mechanism and created a dedicated 24/7 response team. Through this mechanism, Frontex regularly informs Member States and EU institutions about the situation at border crossing points and monitors forced migrant flows to support EU institutions' awareness of border control activities, including facilitation of border crossings, and evacuation corridors. In addition, Frontex provided hundreds of permanent corps officers and equipment to support security at Ukrainian borders. The agency had about 500 permanent corps officers working along the EU's eastern border [26]. In general, Frontex plays an important role in ensuring security at the EU's external borders.

Along with that, as Y. Tchaikovsky notes, increased control at the border of the European Union, strict visa policy, the use of modern measures of identification of persons, the collection and intensive, simplified exchange of personal data are necessary measures in the modern world [6].

Therefore, in order to effectively manage migration processes, protect citizens, fight crime and ensure the security of the external borders of the European Union, authorities within the European Union exchange information through large-scale *IT*-systems.

Implementation of data collection systems, in particular the Schengen Information System (*SIS*), which is used to consult or create alerts on wanted or missing persons and objects; The Visa Information System (*VIS*), which is used to exchange visa information between members of the Schengen Agreement; The European dactyloscopic data collection system for asylum seekers (*Eurodac*), the European surveillance system (*Eurosur*) turned the Schengen area into a «dense surveillance and control network aimed at identification of persons and early warning and prevention of threats» [27].

Therefore, the *Schengen Information System* is a computer system created by the countries of the Schengen area for the exchange of information on the movement of persons across their borders. The Schengen Information System is a key tool for ensuring security and fighting crime, as it allows participating countries to exchange data on individuals who may pose a threat to EU public security. The system has information on visa permits, residence permits, suspicious persons, stolen and lost passports, etc. Participating countries can request information about a person. Participating countries are obliged to comply with the rules of use of the system, as well as to protect the confidentiality of the data they enter into the system. The Schengen Information System is an important tool for ensuring the security of the Schengen area, as it enables participating countries to exchange information on suspicious persons and criminals. This helps to prevent crimes, reduce the number of illegal border crossings and increase the level of security in the Schengen area.

The *Visa Information System* is a database created by the European Union to improve the process of issuing visas. It was introduced in 2004 and ensures the exchange of information between EU member states and non-EU member states. The system stores information about visa applicants, including their biometric data (photographs and fingerprints), as well as data on their stay and visa history in the EU. Information in the system is available to consular offices of EU countries and other countries that have access to the system. The EU visa information system allows you to effectively control entry to EU countries and prevent illegal migration. In addition, it helps to reduce the time of issuing visas and facilitates the process of verifying applicants' data.

The *European Asylum Dactyloscopy Database* (Eurodac) is a system created by the European Union to store and share data on suspected illegal migrants and applicants for international protection. This system was introduced in 2003 and acts as a mechanism of cooperation between EU countries in the field of collection, storage and exchange of biometric data. The *Eurodac* system stores the fingerprints of applicants for international protection, as well as those who cross EU borders illegally.

This data can be used to check whether a person is already in the database of another EU country, as well as to identify those who try to enter the EU again using different identification data. Access to the information contained in the Eurodac system is limited and available only to certain persons who have the right to do so in accordance with EU legislation. This ensures the protection of personal data of applicants for international protection and other persons who may be entered into the database.

The *European surveillance system* (Eurosur) was created to maintain security at the external borders of the European Union and to combat illegal migration, human trafficking and smuggling. Eurosur was introduced in 2013 to ensure a more efficient exchange of information between the national authorities of the EU member states that carry out controls at the external borders. The system is based on modern technologies such as satellite images, radar, drones and unmanned aerial and marine vehicles. Eurosur's target groups include national border guards, customs, police, military and other stakeholders. The system allows rapid exchange of information between these bodies and coordination of joint operations. One of the main advantages of Eurosur is the possibility of early notification of potential threats at the borders of the EU, which allows for more effective control and a more successful fight against illegal migration and other criminal activities at the borders of the EU.

In addition, two *IT*-systems are currently under development in the EU. This is the *Entry-Exit System*, which will record crossings of the external borders of the European Union by citizens of third countries; and the *European Travel Information and Authorization System* (*ETIAS* system), which will carry out preliminary checks on visa-free travelers entering the Schengen area [28].

The *Entry-Exit System* is a computer system that provides automated control of the entry and exit of persons from the member states of the European Union. According to plans, the system should be implemented in all EU member states by 2027. The main goal of the system is to increase security in the EU and combat illegal migration by identifying and tracking the movement of persons crossing the EU's external borders. With the help of this system, when crossing the external border of the EU, information about citizens entering the EU will be collected, including their biometric data and information about visa status. Data on the date of entry and the planned date of departure from the EU will also be collected. This information will make it possible to monitor the stay of citizens in the EU and ensure a more effective fight against illegal migration. In addition, the *Entry-Exit System* is not a system that collects data on all citizens crossing the EU border. This will only apply to third-country nationals entering the EU for short-term or long-term stays. Citizens of EU member states, as well as citizens of countries with which the EU has a visa-free regime, will not be subject to mandatory data collection in the *Entry-Exit System*.

The new *ETIAS* electronic system was developed by the European Commission to ensure security and simplify the entry of third-country

nationals into the Schengen area. The *ETIAS* system will have travel information and criminal background checks for all third-country nationals planning to enter Schengen countries. Citizens of countries that do not require a visa to travel to the Schengen area will also need to obtain an entry permit through the *ETIAS* system. This system will check information about each applicant, including their name, date of birth, passport details, travel history, criminal and medical history. The purpose of its introduction is to protect European countries from possible threats to security and terrorism. The *ETIAS* system will become mandatory for all third-country nationals from the end of 2023. The *ETIAS* registration fee will be €7 and will be valid for three years or until the applicant's passport expires.

Therefore, the collection of data on persons coming to the EU is important for understanding migration flows and defining migrant policies. Such data help ensure the security of the European Union and control migration flows, enable the authorities to detect and stop illegal migration, combat terrorism and other forms of crime, and prevent the movement of weapons and drugs across the border, which will strengthen security in the EU.

Conclusions. In order to ensure safe migration, the European Union adopts acts of primary and secondary law at the supranational level, which provide for procedures and rules for accepting migrants and refugees, combating illegal migration and human trafficking, etc. Therefore, in order to strategically reduce the risks associated with migration to the EU, it is necessary to strengthen the protection of the external border of the European Union, intensify the control of the influx of citizens of third countries, and ensure an adequate integration policy.

In order to improve the organizational mechanism for ensuring migration safety in the European Union, it is necessary to continue to establish closer cooperation between the Member States in order to exchange information and coordinate efforts to ensure safe migration, which can be implemented by developing joint mechanisms for collecting and exchanging information, including databases and other tools. The EU institutions must constantly improve the tools for collecting and processing data in order to ensure a better control of the migration situation.

In addition, in order to ensure effective control of its borders, the European Union needs to continue to develop new technologies to detect illegal migrants and ensure security at external and internal borders.

Given that the competence in the field of integration belongs to the EU member states, where at the supranational level the Union can only adopt acts of a recommendatory nature, the EU member states need to improve the social integration of migrants in order to ensure the safety of both migrants and the host society.

Therefore, only a comprehensive approach to improving the organizational and legal mechanism of the common immigration policy of the European Union will help to cope with modern challenges and threats that can cause migration flows to the EU.

Further prospects for the research of the subject may be the study of the practice of the EU Court in the field of ensuring the security of the common immigration policy of the EU; analysis of personal data protection in systems for collecting information about persons heading to the EU; studying the experience of countering the instrumentalization of migration, etc.

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