

THE ROLE OF ADMINISTRATIVE LAW PRINCIPLES IN ENSURING THE EUROPEAN UNION'S MIGRATION POLICY

Polina MALESH

LL.M.,

PhD student

Trnava University

Trnava, Slovakia;

Assistant

Uzhhorod National University

Uzhhorod, Ukraine

Without resorting to a detailed analysis of the very essence of the principles of administrative law and the generalization of leading doctrinal concepts, we can start with the fact that the principles of administrative legal regulation serve as the fundamental ideas on which the development and functioning of administrative law and all its institutions, the system of administrative legal relations, the implementation of rights, freedoms and legitimate interests of their participants, the law-making and law-enforcement activities of public authorities are based¹.

Within the framework of this study, it is appropriate to focus on the principles of proportionality and non-discrimination. The choice of the principles of proportionality and non-discrimination as the main analytical categories in this study is due to their special system-forming significance for the law of the European Union and administrative law in general, as well as their direct involvement in the mechanisms of formation and implementation of migration policy. The principle of proportionality acts as a key tool for limiting the discretion of public administration, ensuring the necessary balance between public interests related to the control of migration processes and the individual rights of persons subject to migration and asylum procedures, in particular in matters of access to the territory, administrative detention, expedited consideration of applications and return.

It is in the field of migration policy that the principle of proportionality acquires increased practical importance, since most decisions are made in conditions of increased administrative expediency, crisis management and limited judicial control.

¹ Hurzhii, T. O., & Bodrov, Yu. V. (2023). Poniattia ta sutnist pryntsyypiv administratyvno-pravovoho rehuliuвання [Concept and essence of principles of administrative-legal regulation]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriya: Pravo*, 79(2). <https://doi.org/10.24144/2307-3322.2023.79.2.6>

At the same time, the principle of non-discrimination is a basic guarantee of equality in the application of law and plays a decisive role in the context of differentiated legal regimes for different categories of migrants and asylum seekers, which was especially clearly manifested in connection with the activation of the temporary protection mechanism for persons displaced from Ukraine and the parallel application of stricter procedures to other groups.

The analysis of these two principles allows us to identify whether the general principles of administrative law retain the function of real legal restrictions on public authorities, or undergo functional rethinking in the interests of the efficiency of migration management, which makes them the most representative for assessing modern transformations of the migration policy of the European Union.

In the doctrine of European Union law and the established case-law of the Court of Justice of the EU, the principles of proportionality and non-discrimination belong to the group of general principles of law that serve as normative guidelines and at the same time legal constraints for the activities of the EU institutions and the public administration of the Member States.

The Court of Justice of the EU has consistently applied this principle in cases related to migration and asylum, in particular when assessing administrative detention, restrictions on freedom of movement, access to procedures or reduction of procedural guarantees.

For example, in the *Fedesa case*, the Court of Justice of the EU first systematically formulated the classic proportionality test, which later became generally accepted in EU law². The Court noted that EU legislative or administrative measures are lawful only if they are suitable for achieving a legitimate aim and do not go beyond what is necessary to achieve it. Although the case did not concern migration, it established a universal standard for assessing public intervention, which the Court subsequently applied in the migration and asylum context, in particular when reviewing the lawfulness of restrictions on the rights of asylum seekers. The significance of this case lies in the fact that proportionality is recognised as a criterion that can be verified not as a political one, but as a legally verifiable one.

In *Kadi I*, the Court of Justice confirmed that general principles of EU law and fundamental rights take precedence even in areas related to security and international obligations³. The Court recognised that measures aimed at achieving legitimate objectives (including the fight against terrorism) cannot be applied without respecting the principle of proportionality and procedural guarantees. Although the case does not formally concern migration, its significance for EU migration policy is fundamental: it demonstrates that even

² Court of Justice of the European Union. (1990). *Case C-331/88* (para. 13). <https://curia.europa.eu/juris/showPdf.jsf?docid=96352>

³ Court of Justice of the European Union. (2008). *Joined cases C-402/05 P and C-415/05 P* (para. 360). <https://curia.europa.eu/juris/document/document.jsf?docid=67611>

in “exceptional” or crisis contexts (which is also typical of migration crises), administrative measures are not exempt from review of compliance with general principles of law.

Another case, the *Kadzoev case*, has direct relevance for migration law, as it concerned the maximum duration of administrative detention of a person for the purpose of return⁴. The CJEU ruled that detention cannot last longer than is objectively necessary to achieve the purpose of return and that the complexity of the procedure alone cannot justify prolonged deprivation of liberty. The Court stressed that the principle of proportionality requires a real and individual analysis of the situation of each person. This case is key for the assessment of modern migration instruments that provide for the extended use of detention or border procedures.

The principle of non-discrimination, in turn, is enshrined in both EU primary law and the Charter of Fundamental Rights, and provides for the prohibition of unjustified differences in treatment of persons in comparable situations, provided that there is no objective and proportionate justification for such a distinction.

It has also found its reflection in a number of decisions of the Court of Justice of the EU. Thus, in the *Jawo case*, the Court of Justice of the EU considered the relationship between the principle of non-discrimination and the standards of treatment of asylum seekers in different Member States⁵. The Court recognized that formally the same application of the Dublin rules may lead to indirect discrimination if the reception conditions in a particular Member State reach a level that threatens human dignity. This decision is important for the analysis of differentiated protection regimes, as it demonstrates that the principle of non-discrimination requires substantive, not formal, equality, which is especially relevant in the context of different approaches to Ukrainian refugees and other categories of persons.

The application of basic administrative and legal principles in the field of migration policy of the European Union becomes more complicated every time the Union switches to crisis or accelerated response regimes. Such tools are intended to ensure the efficiency of administrative decisions, but at the same time they change the way in which traditional principles – proportionality, non-discrimination, legal certainty – manifest themselves in law enforcement. This is not about their formal restriction or direct violation, but rather about changing their functional content, that is, about a different logic of using the principles in crisis conditions.

A typical example is the temporary protection mechanism activated by the EU in 2022 for persons displaced from Ukraine. At the level of formal

⁴ Court of Justice of the European Union. (2010). *Case C-357/09 PPU* (para. 42). <https://curia.europa.eu/juris/document/document.jsf?docid=72526>

⁵ Court of Justice of the European Union. (2019). *Case C-163/17* (para. 83). <https://curia.europa.eu/juris/document/document.jsf?docid=21180>

assessment, this mechanism fully complies with the requirements of the proportionality principle: it was aimed at quickly and effectively ensuring a minimum standard of rights and reducing the excessive burden on national asylum procedures. This approach was justified by the urgency of the situation, the scale of displacement and the need to prevent the paralysis of national administrative systems.

At the same time, the use of this instrument created a new dimension for the assessment of the principle of non-discrimination. The *de facto* existence of several international protection regimes in parallel – for Ukrainian displaced persons, on the one hand, and other asylum seekers in objectively similar conditions of forced migration, on the other – raised the question of the limits of permissible differentiation. In particular, can administrative efficiency and speed of response justify different amounts of rights and guarantees for people in comparable situations? Is such differentiation consistent with the substantive content of non-discrimination, which requires not only equality in form but also equality in result?

At the same time, the analysis of the practical application of the Temporary Protection Directive⁶ demonstrates that the objectivity of the protection granted to Ukrainian displaced persons cannot be considered in isolation from the broader context of the EU's treatment of migrants from the Global South. A number of studies highlight that Ukrainians have received an unprecedentedly favourable regime of access to territory, the labour market and social rights, while other groups fleeing similar persecution or situations of armed conflict face systemic barriers, including stricter border procedures, pushbacks and limited access to international protection⁷. Such differences cannot be explained solely by administrative or logistical considerations: they accordingly raise the question of hidden selectivity in the Union's practice, where formal equality of norms does not guarantee *de facto* equality of application.

The key problem with the Temporary Protection Directive lies in its very design, in particular in the excessively vague concept of “mass influx”. The wording of the Directive provides that the temporary protection regime can be activated only in the event of a “mass influx of displaced persons who cannot return to their country of origin”. However, neither the scope nor the criteria for such a “mass influx” are defined.

⁶ Council of the European Union. (2001). Directive 2001/55/EC 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 (Temporary Protection Directive). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0055>

⁷ Musyimi, J. (2023). Human rights for all? Europe's temporary protection directive (TPD), response and discrimination towards migrants from the Global South [Master's thesis, University of Minnesota]. University Digital Conservancy. <https://hdl.handle.net/11299/254831>

Such vagueness is not neutral. It actually creates space for a selective approach to which groups of migrants are considered to be eligible for temporary protection. Studies show that the EU has repeatedly faced the displacement of significant groups of people in previous decades – Syrians, Afghans, Iraqis – but has never activated the Directive. This suggests that the issue is not that there was no “mass influx”, but that the Directive allows for an extremely narrow or broad interpretation of this criterion, depending on the political context and the level of solidarity between Member States. Accordingly, the temporary protection mechanism, conceived as a rapid response tool, can turn into a differentiated response tool.

Moreover, this lack of foreseeability raises questions about the availability of temporary protection for future groups of displaced persons. If the definition of a “mass influx” depends on political will rather than legal parameters, there is a risk that persons who will need similar protection in the future may not receive it due to different political dynamics or a lack of consensus between Member States.

An additional consequence of the vagueness of the criteria of the Temporary Protection Directive is that its application does not always correlate with the actual level of vulnerability of the persons granted protection. Due to the lack of clear parameters of a “mass influx” and the absence of a mechanism for verifying the individual need for international protection, temporary protection is granted to the entire mass of Ukrainian citizens, regardless of whether they have been in an active hostilities zone or under immediate threat. For example, citizens from regions that have not experienced hostilities (such as the Transcarpathian region) have full access to temporary protection on the same terms as residents of Kharkiv or Mariupol. The result is a political and legal paradox: the temporary protection mechanism actually covers groups that do not fall under the classic definitions of refugees under the Geneva Convention, but leaves out of the scope of protection other persons from countries of the Global South, who often have a much higher degree of danger and need for asylum.

This imbalance is not accidental, but stems from the design of the Directive itself, which builds protection not around individual vulnerability but around the geographical and political category of “mass displacement”, allowing for coverage only on the basis of nationality or territorial origin, rather than on the basis of persecution or a real risk of harm. In practice, this means that individuals who fall under the classic refugee criteria – for example, Syrians, Afghans or Eritreans – do not receive a similar level of access to protection, despite the much higher intensity of the threats they face. This demonstrates that the Directive’s normative uncertainty not only allows for, but also reproduces, systemic inequalities in access to international protection.

Conclusions. The analysis conducted allows us to assert that the transformation of the migration policy of the European Union, caused by the mass displacement of persons as a result of the Russian armed aggression against Ukraine, significantly affects the content and practical functioning of key principles of administrative law. Although the principles of proportionality and non-discrimination formally retain the status of general principles of EU law and remain legally binding control criteria, their real role in regulating migration processes has undergone a certain functional rethinking.

In summary, we can conclude that the principles of proportionality and non-discrimination remain key to the rule of law of the European Union, but their practical application in the field of migration shows signs of transformation associated with the politicization of migration management and the search for tools for rapid response to crisis situations. Further development of EU migration policy requires ensuring a balance between the efficiency of administrative procedures and preserving the essential content of the general principles of law, because not only the legal stability of the Union, but also the level of protection of the fundamental rights of those who apply to the EU for international protection depends on this.