

DOI <https://doi.org/10.30525/2592-8813-2023-3-5>

THE SUPRA-NATIONALITY PRINCIPLE IN EU VISA POLICY: THEORETICAL AND APPLIED ASPECTS

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Abstract. The author analyses scientific findings and legal acts related to supranationality in the EU. In particular, the article focuses on the theoretical and applied aspects of the supranationality principle in the EU visa policy. According to the author, supranationality at the EU level is an opportunity for the EU to influence the internal legislative policies of the EU member-countries through relevant bodies authorised to do so. The research methodology used in the paper includes general scientific and special scientific approaches and methods. According to the study's findings, the concept of “supranationality” in the EU visa policy is manifested in the minimum standards established at the EU level regarding the operation of the visa regime. These standards are mandatory for implementation in the policy of each individual EU member-country, with the possibility of their adjustment based on conditions for maintaining the required minimum.

Key words: supranationality, European integration, visa policy, European Union, Europe, Ukraine.

Introduction. The EU is now a unique interstate association that has no analogues in the modern world. Its uniqueness is ensured by the features of authority organisation in the EU, which is based on the establishment and functioning of the EU supranational institutional system that guarantees the solution to the most important tasks of the European integration process, the implementation of consistent and effective EU policy (Sakhniuk, 2017, p. 197). The elements of subnational, national, interstate, and supranational regulation are inextricably linked in the EU, highlighting its distinguishing features and implying the flexibility of approaches to the application of supranationality as a practical tool for the development of integration based on the values of respect for human rights (Falalieieva, 2018, p. 93). Today, it is safe to say that the EU is an exclusive supranational integration entity that plays a significant role in today's international environment (Kraievska, 2011, p. 143). In this context, the shared visa policy of the European Union and its member-countries is a clear example. At the same time, since Ukraine has already been designated as a candidate country for the EU, it is especially relevant to examine the issue of supranational visa policy through the example of granting visa-free status to Ukrainian citizens.

The purpose of this study is to examine the theoretical and applied aspects of the supranationality principle in the EU visa policy.

The research objectives are to examine the essence of supranationality as a legal category and demonstrate the features of the concept of «supranationality» in the EU visa policy.

Materials and methods. Foreign and domestic scientific literature covers a wide range of topics related to supranationality and the EU visa policy. In the literature, however, these issues are usually studied separately. In particular, scientists analyse supranationality within the framework of the EU institutional system or in the context of the European law in general. It is worth noting N. Honcharuk's (2005) study, which analyses the effect of integration processes on the formation of national identities in European societies. It is also worth mentioning V. Sakhniuk's work (2017), which examines the manifestation of supranationality in the functioning of the EU institutional system. K. Polat's article (2006) is devoted to the issue of supranationality in the EU immigration policy, and many other researchers highlight specific aspects of the principle of supranationality in the EU policy. In general,

a substantial amount of the research focuses on specific aspects of supranationality as a legal phenomenon (Sikorska, 2011; Denysov & Falalieieva, 2018; Vyshniakov, 2014 etc).

The research methodology is based on a system of general scientific and specific approaches and methods. In particular, the dialectical method was used to investigate the legal content of the concept of «supranationality», and the historical method revealed the regularities of its formation and development. The generalisation of the study's results allowed to conclude about the theoretically applied aspect of supranationality in the EU policy on the visa regime.

The results and discussion. Semantically the Latin prefix «supra», used in complex words, should be translated not only as «beyond» but also as «above» being the opposite to the prefix «sub», which means «under» or «lower». Therefore, supranationality involves that something occurs above nations, and sometimes above countries, or that its significance is recognised by all people (for example, concepts, values, etc.) (Ruszkowski, 2006, p. 187).

However, in practice, the term «supranationality» is typically associated with relationships between countries rather than between nations. It is usually used to denote an authority that spans several countries. In this sense, any international organization in which countries cooperate may be called supranational. Consequently, the term «supranationality» is used to describe international organizations in which some authority was transferred from member-countries to a supranational body (Mamadouh, 1998).

The concept of supranationality gained special relevance after the Second World War due to the formation and conceptualization of integration processes in Europe. Those processes are related to globalization and, when combined, result in the emergence and approval of new mechanisms of coordination, consolidation of efforts and interests, and cooperation among sovereign countries (Falalieieva, 2018, p. 97).

As a doctrinal term «supranationality» started to be used widely from the beginning of the 20-th century. Later, the concept of «supranational order» came to be established as the highest essence of law, returning to «*ius gentium*». Supranational elements can be found in postwar literature devoted to the activities of the European Communities and the European Union. During this time Western Europe underwent a period of deep transformation, in which established models of political power were radically revised, resulting in a «new type of state form, a supranational-country». Then the question arose: «Did the Communities establish a new, «post-national» political system in which national government authorities were destined to concede?» (Rosamond, 2000, p. 10).

The concept of «supranationality» was first enshrined as a legal term in European law in the Treaty establishing the European Coal and Steel Community, signed in Paris in April 1951 by France, Germany, Italy, and the Benelux countries after lengthy negotiations. The following was stated in Article 9 of this document: «The members of the High Authority shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with the supranational character of their duties. Each Member State undertakes to respect this supranational character and not to seek to influence the members of the High Authority in the performance of their tasks» (Traité instituant la Communauté Européenne du Charbon et de l'Acier, 1951). This treaty established the institutions that became the precursors of the European Community's corresponding structures, and whose activities had an already growing supranational character. However, no definition of this concept can be found in the mentioned document.

According to L. Hrytsaienko, the supranationality of the EU should be understood as the member-countries' renunciation of some of their sovereign rights in certain areas for the benefit of this integration entity's institutions. This determines a higher level of supranational power than national power since its implementation is independent of the directives of the organization's member-countries, and

regulatory legal acts take precedence over domestic ones (Hrytsaienko, 2010, p. 7). W. Denysov and L. Falalieieva, connecting its appearance with European integration, believe that this neologism was introduced into scientific circulation due to the federalist course of European political and legal thought, being its conceptual basis (Denysov, & Falalieieva, 2018, p. 215).

Most commonly, supranational law manifests itself in integration processes, where it coexists with integration law, forming some sort of symbiosis. The interaction between supranational and integration law appears to be mutual partial coverage, which is demonstrated by the fact that in the areas where these two legal phenomena coincide, a regime of supranational integration law occurs. At the same time, the integration element manifests itself as the purpose, object, and method of legal regulation while the supranational element is the power competence, even if provided from the outside and limited (Vyshniakov, 2014, p. 121).

The core of supranationalism is member-countries' contractual transfer (always freely chosen, but not always a one-time act) of a part of their sovereign rights in certain areas, that are traditionally considered to be the parts of their internal competence, to an integration association. The essence of supranationalism can be discovered not only in the scope of explicitly transferred sovereign powers, but also in how actively and effectively the provided opportunities are used, which can be tracked both during the formation of the integration association's position, decision-making, and in the process of its implementation using various means and methods, flexible mechanisms and procedures (Falalieieva, 2018, p. 94).

In the system of institutions of the European Coal and Steel Community, the central role from the very beginning was assigned to the Supreme Board, established as an executive body. The Supreme Board's decisions were mandatory on the country institutions of the association's six member-countries. The establishment of the High Management in the system of the European Coal and Steel Community, endowed with real broad supranational powers, was a significant step towards European economic integration, a breakthrough in traditional ideas about the functional structure of international organisations. At the same time, in opposition to the Supreme Board, the Council of Ministers was established, which limited supranational trends in the development of integration processes.

On August 10, 1952, J. Monet ceremoniously inaugurated the institutions of the European Coal and Steel Community in Luxembourg, the first «European capital». During the transition period (until 1958), a customs union was established, and a single customs tariff for third-countries was implemented by lowering customs tariffs. Between 1954 and 1961, labour mobility was introduced (Kudriachenko, 2010).

Finally, in 1957, two agreements were signed in Rome, establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom), as well as their associated institutes. The first agreement also provided the establishment of the European Social Fund (ESF) and the European Investment Bank (EIB). The supranational nature of the EU was supposed to emerge gradually: decisions were to be adopted unanimously at first, then by a qualified majority of votes.

By the decade of the three communities' existence, it was decided to unite their functional bodies to save resources, which resulted in the signing of the Treaty on the merger of the three communities in Rome on April 8, 1965 (the establishment of a single Council and a single Commission of the three Communities under the name «Commission of the European Communities»). The joint commission began functioning on July 11, 1967, resulting in the actual unification of all three communities into a single structure named the European Community. Gradually, a common internal market was formed within the Community, and beginning in 1968, customs duties in inter-country trade were eliminated, and the free labour movement was permitted (Kudriachenko, 2010).

At the Fontainebleau summit in June 1984, the heads of the European Community's member-countries decided to put into practice the formation of citizens' sense of common European identity. For

this purpose, symbols of a united Europe such as the flag, the national anthem, and even a collective holiday – «Europe Day» – were established. Residents of the Schengen Agreement member-countries began to benefit from the visa-free regime (Sikorska, 2011, p. 330). In 1986, in response to the need for further economic integration, the Single European Act was approved to expand the subject competence of the EU. As a result, this organization's supranational nature has strengthened. In particular, the European Parliament (former Assembly) received new legislative powers, and the European Commission's powers were extended (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172).

In 1992, the Treaty on the European Union was signed (Treaty on European Union, 1992). The preparatory work was complicated by differences in member-countries' positions, particularly on issues of collective foreign and security policy, criteria for member-countries' readiness to introduce a single currency, and the generalisation of the majoritarian principle. However, an agreement between opposing viewpoints eventually allowed all new provisions to be incorporated into a single document (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172). It was logical since supranationalism is intended to fill relevant gaps due to presuming the same understanding of the essence of its forms and content by countries and its basis on the unity of practice of implementation (Falalieieva, 2018, p. 98). Supranational organizations should elaborate policies and rules that bind together the countries (Polat, 2006, p. 71).

As N. Honcharuk points out, the peculiarity of the manifestation of supranational identity is that the phenomenon of supranationality of the EU citizens occurs while preserving the national sovereignty of the EU member-countries and the national identity of their citizens. This situation creates several contradictions: on the one hand, there are countries and cultures, and the cultural, linguistic, and other characteristics of the EU member-countries are preserved; on the other hand, citizens' sense of belonging to the European Union is gradually emerging, and their supranational identity is being formed (Honcharuk, 2005, p. 67). While performing their functional powers, the EU institutions should not interfere in the internal affairs of the sovereign countries that are members of it; however, the governing bodies of the EU are gradually expanding their competence, which leads to the limitation of the EU members' sovereignty and the strengthening of supranational tendencies on the path of European integration. Due to the functioning of the supranational system of the EU institutions, the amount of sovereign competence is realized, which implementation is necessary for achieving shared objectives (Sakhniuk, 2017, p. 199).

Supranationality is formed when each member-country delegates some of its sovereign powers to the integration association, which is then implemented through a multilateral supranational mechanism. At the same time, supranational institutions do not acquire sovereignty; instead, they are dependent on the scope and nature of the granted competence, demonstrating the interdependence of supranationality and national sovereignty (Falalieieva, 2018, p. 100). Unlike membership in international organizations, membership in integrated associations, particularly the European Union, limits countries' sovereign rights by transferring some of their rights to the integrated association. Transferring their rights in such a case cannot be interpreted as a loss of their sovereign identity, as only the country can be recognized as the bearer of sovereignty. After all, this means only the country's voluntary transfer of some elements of its internal competence to international institutions and the simultaneous implementation of national and supranational jurisdiction on its territory, the scope and proportions of which are also determined by the volume of material/jurisdictional powers of supranational institutions required for regulation and the basis for the administration of specific spheres of activity (Denysov, & Falalieieva, 2018, p. 230).

It is worth noting that, in accordance with the Treaty on European Union, a regional association with a new, deeper level of political and economic integration was created. The document demarcated the socio-economic sector dominated by the Community and its supranational bodies. According to the Venice Commission of the Council of Europe's conclusions on the form of the EU system

in 1994, this entity «remains an international organization of a supranational nature» (Anufriev, & Kisilevych-Chornoivan, 2018, p. 172). Since 1997, the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, and some related acts have continued expanding the competence of the EU (Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 1997). Asylum, employment policy, visa and migration policies, and other issues were added to the EU's list of responsibilities.

For example, the Schengen Agreement (Regulation (EU) 2016/399) reflected member-country disagreements over the scope of immigration policy and the possibility of supranationalism, which resulted in several positive developments toward a collective migration policy, including a harmonized visa policy. Member-countries have committed to act following relevant Union law, including the European Union's Charter of Fundamental Rights, the Geneva Convention relating to the Status of Refugees, signed on July 28, 1951 in Geneva, and obligations concerning access to international protection, particularly the principle of non-refoulement.

Finally, Regulation 2018/1806 (Regulation (EU) 2018/1806) established generalised minimum standards for the visa-free regime at the EU level. This document provides for complete harmonization in terms of third-country and its nationals who need a visa to cross the external borders of the Member States and those nationals who are exempt from this requirement. The determination of which third-country, citizens of which are subject to or exempt from the visa requirement, must be based on a weighted assessment of each individual case against various criteria. Such determination should be carried out regularly and may result in legislative proposals to amend Annex I of this Regulation, which lists the third-countries whose nationals must have a visa when crossing the external borders of the member-countries, and Annex II of this Regulation, which lists the third-countries whose nationals are exempt from the visa requirement when crossing the external borders of the member-countries for a stay of no more than 90 days and in any 180 days, notwithstanding the existence of country-specific amendments to these Annexes in specific circumstances. However, taking into account the case law of the European Union's Court of Justice, this Regulation should not preclude the application of international agreements concluded by the European Community before the entry into force of Regulation (EC) No. 539/2001, which result in the need for a derogation from the collective visa policy. Furthermore, Article 6 of the Regulation states that: first, a member state may provide for exceptions to or exemptions from the visa requirement for the following categories of people: a) holders of diplomatic, official, or special passports; b) civilian members of air and sea crews while performing official duties; c) civilian members of the sea crew who landed and have a seafarer's identity document issued by International Labour Organisation Conventions No. 108 of May 13, 1958, or No. 185 of June 19, 2003, or the International Maritime Organisation Convention on the Simplification of International Maritime Services of April 9, 1965; d) crew and members of emergency or rescue missions in the event of a disaster or accident; e) the civilian crew on vessels sailing in international internal waters; f) holders of travel documents issued by inter-governmental international organizations in which at least one member-country, or by other subjects recognized as subjects of international law by the relevant member-country, to officials of these organizations or institutions; second, the member state may exempt citizens from the visa requirement in the following cases: a) school pupils who are nationals of a third-country listed in Annex I, are residing now in a third-country listed in Annex II or Switzerland and Liechtenstein, and are traveling on a school excursion with a group of school pupils, accompanied by a teacher from the school; b) persons recognized as refugees and stateless persons if the third-country in which they reside and received their travel documents is one of the third-countries listed in Annex II; c) members of the armed forces traveling on NATO or Partnership for Peace com-

pany, as well as holders of the identification documents and movement orders specified in the Agreement between the Parties to the North Atlantic Treaty relating to the Status of their Armed Forces of June 19, 1951; d) Without prejudice to the requirements arising from the Council of Europe's European Convention on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, recognized as refugees and stateless persons and other persons not having the nationality of any country residing in the United Kingdom or Ireland and holding a travel document issued by the United Kingdom or Ireland and recognized by the Member State concerned; third, a member-country may make exceptions to the visa exemption for individuals who engage in paid activities during their stay (Regulation (EU) 2018/1806). Thereby, the supranational character of the EU visa policy has some exceptions.

As expected, the flexibility of the supranational principle resulted in some differences in visa policies among the EU member-countries and Ukrainian citizens. Ireland, for example, reserved the right to an independent visa policy during its EU integration, and thus the visa-free regime would not apply to this member-country (Regulation (EU) 2018/1806); this is why the visa-free regime between Ukraine and the EU did not allow Ukrainian citizens to travel to Ireland. However, as is well known, on the second day of Russia's full-scale war against Ukraine, Irish authorities cancelled the visa regime in solidarity with Ukrainians. Thus, Ukrainian citizens have been granted visa-free entry into this country as an emergency measure. Following the Council of Europe's Temporary Protection Directive (COUNCIL DIRECTIVE 2001/55/EC), Ireland accepts Ukrainians who have been forced to flee their country due to the war, allowing Ukrainian citizens to cross the border with any identity documents (internal passports, birth certificates, passports whose validity has expired, ID cards, and so on). (Embassy of Ukraine in Ireland).

Conclusion. The concept of «supranationality» at the EU level means the ability of the EU to influence the internal legislative policies of the EU member-countries through relevant bodies authorized for this purpose. Supranationality appears primarily as the result of member-states contractually transferring parts of their sovereign powers in one or more areas to the integration association to ensure certain harmonization.

The impact of the supranationality principle on the EU visa policy can generally be considered positive, mainly because the various instruments have been unified to some extent by establishing minimum standards from which the EU member-countries cannot deviate, despite that these are only minimum standards. After all, the EU member-countries are free to make some adjustments under the EU legislation without violating these general minimum standards. Therefore, despite the supranational nature of the EU visa policy, some differences in visa policy regarding the implementation of visa-free status for Ukrainian citizens can still be traced back to some EU member-countries.

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