

ТРИВАЛІСТЬ ШЛЮБУ ЯК УМОВА ОТРИМАННЯ ДОЗВОЛІВ НА ІМІГРАЦІЮ В УКРАЇНІ: ЛОГІКА БОРотьБИ З ШАХРАЙСТВОМ, ВИНЯТКИ В УМОВАХ ВІЙНИ ТА ПРИНЦИП ПРОПОРЦІЙНОСТІ ЗГІДНО ІЗ СТАТТЕЮ 8 ЄКПЛ

MARRIAGE DURATION AS A CONDITION FOR IMMIGRATION PERMITS IN UKRAINE: ANTI- FRAUD LOGIC, WARTIME EXCEPTIONS, AND PROPORTIONALITY UNDER ARTICLE 8 ECHR

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Отримано: 15.05.2026. Затверджено: 21.08.2026. Опубліковано: 31.08.2026.

АНОТАЦІЯ

У статті здійснено комплексне доктринальне та порівняльно-правове дослідження п. 1 ч. 3 ст. 4 Закону України «Про імміграцію» № 2491-III від 07.06.2001, яке обумовлює право іноземного подружжя громадянина України на дозвіл на імміграцію поза квотою за наявності шлюбу понад два роки. Проаналізовано законодавчу логіку та антифактивне обґрунтування цієї норми, а також вісім обставин, за яких факт шлюбу не визнається підставою для надання дозволу, кодифікованих ст. 4-1, запровадженою Законом № 3180-IX від 29.06.2023, що набрав чинності 20.10.2023. Центральним науковим результатом є виявлення внутрішньої законодавчої колізії правила двох років: Законом № 3897-IX від 20.08.2024 запроваджено принципово нове виключення, а саме надання дозволу

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подружжю загиблих громадян України, які були військовослужбовцями Збройних Сил, Служби безпеки, Національної гвардії, Державної прикордонної служби, Управління державної охорони, Держспецв'язку, Держспецтрансслужби, правоохоронних органів спеціального призначення та розвідувальних органів України, незалежно від тривалості шлюбу, за умови звернення у період воєнного стану або протягом шести місяців після його припинення. Законом № 4502-IX від 18.06.2025 виключення поширено на подружжя загиблих іноземців та осіб без громадянства, які служили у ЗСУ за контрактом або надавали бойову допомогу українським підрозділам у районах ведення бойових дій. Здійснено порівняльний аналіз із Директивою Ради ЄС 2003/86/ЄС та законодавством Німеччини, Польщі й Франції. Встановлено, що серед досліджуваних правопорядків Україна є єдиною, яка прив'язує право подружжя на дозвіл до тривалості шлюбу, тоді як Директива ЄС і зазначені держави-члени застосовують строк законного перебування спонсора як підставу строку очікування. Зроблено висновок про невідповідність регулювання вимогам пропорційності за ст. 8 Конвенції про захист прав людини і запропоновано чотири цільові законодавчі зміни для усунення виявлених структурних дефектів. **Ключові слова:** дозвіл на імміграцію; фіктивний шлюб; Закон № 3180-IX; Директива ЄС 2003/86/ЄС; воз'єднання сімей; ЄКПЛ.

ABSTRACT

This article presents a doctrinal and comparative analysis of Article 4(3)(1) of the Law of Ukraine "On Immigration" No. 2491-III of June 7, 2001, which conditions the right of the foreign spouse of a Ukrainian citizen to an immigration permit outside the quota upon a marriage exceeding two years. The legislative logic and anti-fraud rationale of this provision are examined, together with the eight circumstances under which the fact of being in a marriage is not recognised as a ground for granting a permit, codified in Article 4-1, introduced by Law No. 3180-IX of June 29, 2023, in force from October 20, 2023. The central scholarly finding is an internal legislative conflict within the two-year rule: Law No. 3897-IX of August 20, 2024 introduced an exception whereby a permit is granted to the spouse of a deceased Ukrainian citizen who was a servicemember of the Armed Forces, the Security Service, the National Guard, the State Border Guard Service, the Administration of State Guard, the State Service of Special Communications, the State Special Transport Service, specialised law enforcement agencies, or intelligence agencies of Ukraine, regardless of the duration of the marriage, provided the application is filed during martial law or within six months of its termination. Law No. 4502-IX of June 18, 2025 extended this exception to the spouses of deceased foreign nationals and stateless persons who served in the Armed Forces of Ukraine under contract or provided combat assistance to Ukrainian units in areas of active hostilities. A comparative analysis against Council Directive 2003/86/EC and the legislation of Germany, Poland, and France shows that Ukraine is the only jurisdiction examined that ties spousal permit eligibility to the duration of the marriage, whereas the Directive and those member states apply the duration of the sponsor's lawful residence as the basis for the waiting period. The article concludes that the existing regulation is inconsistent with the proportionality requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and proposes four legislative amendments to address the identified structural deficiencies. **Keywords:** immigration permit; fictitious marriage; Law No. 3180-IX; EU Directive 2003/86/EC; family reunification; ECHR.

I. INTRODUCTION

Article 4(3)(1) of the Law of Ukraine “On Immigration” No. 2491-III of June 7, 2001 (hereinafter — the Immigration Law) grants an immigration permit outside the quota to one of the spouses, if the other spouse, with whom they have been married for more than two years, is a citizen of Ukraine, as well as to children and parents of citizens of Ukraine¹. This durational requirement has been a fixture of Ukrainian immigration law since the statute’s original adoption and reflects the legislature’s long-standing concern with fictitious marriages; sham unions entered into solely to expedite immigration legalization. The State Migration Service of Ukraine (SMSU) officially identifies sham marriages as one of the most prevalent methods of immigration fraud².

Law No. 3180-IX of June 29, 2023 “On Amendments to the Law of Ukraine On Immigration Regarding Improving the Conditions and Procedure for Immigration to Ukraine of Foreigners and Stateless Persons,” which entered into force on October 20, 2023³, introduced two key innovations to the immigration permit framework: a new Article 4-1 codifying eight specific circumstances under which the fact of being in a marriage is not recognised as a ground for granting a permit, and investigative interview procedures, including by videoconference. Subsequently, Law No. 3897-IX of August 20, 2024 introduced paragraph 1-1 to Part 3 of Article 4, granting an immigration permit to the foreign spouse of a deceased Ukrainian military servicemember regardless of the duration of the marriage at the time of death, provided the application is filed during martial law or within six months of its termination.

The cumulative effect of these successive legislative acts creates an internal legislative conflict within the two-year rule: a rule premised on marriage duration as a necessary fraud-verification mechanism has been rendered dispensable by the legislature in a category of cases where the underlying fraud risk is demonstrably absent. This structural inconsistency

¹ Про імміграцію: Закон України від 07.06.2001 № 2491-III. URL: <https://zakon.rada.gov.ua/laws/show/2491-14#Text>

² Державна міграційна служба України (2021). Фіктивні шлюби з іноземцями: протиправність та негативні наслідки для громадян України. URL: <https://dmsu.gov.ua/news/dms/9207.html>

³ Про внесення змін до Закону України «Про імміграцію» щодо вдосконалення умов і порядку імміграції в Україну іноземців та осіб без громадянства: Закон України від 29.06.2023 № 3180-IX. URL: <https://zakon.rada.gov.ua/go/3180-20#Text>

has not received dedicated scholarly analysis in Ukrainian legal literature, despite its immediate consequences for the foreign spouses of fallen servicemembers and its broader implications for Ukraine's EU accession commitments under Chapter 24 of the enlargement *acquis*.

Ukrainian scholarship on immigration law has expanded noticeably since 2014, driven by the security crisis and the subsequent acceleration of Ukraine's European integration agenda. T. Drakokhrust produced a systematic doctrinal analysis of the administrative and legal foundations of Ukraine's state migration policy in her monograph published by the West Ukrainian National University in 2020, which remains the most comprehensive single-author treatment of the subject in Ukrainian legal literature¹. O. Malynovska of the National Institute for Strategic Studies has examined the development of EU migration policy and its relevance for Ukraine across two major works: a 2014 analytical report tracing the formation of the common EU migration framework and Ukraine's cooperation with the Union in this field, and a 2018 monograph of 472 pages providing a comprehensive account of migration policy in global and Ukrainian context, including Ukraine's legislative alignment with EU standards². O. Poznyak, Head of the Migration Research Sector at the Ptoukha Institute for Demography and Quality of Life Research of the NAS of Ukraine, has analyzed the shortcomings of Ukraine's current migration policy and the acute need for labor immigration as a structural response to wartime demographic losses, presenting his findings through the joint research platform of the Institute and the All-Ukrainian Association of International Employment Companies in 2025³.

The specific question examined in this article, namely how the two-year marriage rule interacts with EU accession standards and with the successive wartime exceptions introduced in 2024 and 2025, has not received dedicated treatment in Ukrainian legal scholarship. Commentary by practitioners is available but remains largely descriptive. In European

¹ Дракохруст Т. В. (2020). Правове забезпечення державної міграційної політики України: монографія. Тернопіль, ТНЕУ. 416 с.

² Малиновська О. (2014). Міграційна політика Європейського Союзу: виклики та уроки для України, Київ: НІСД, 48 с.; Малиновська О. А. (2018). Міграційна політика: глобальний контекст та українські реалії: монографія. К.: НІСД. 472 с. URL: https://niss.gov.ua/sites/default/files/2019-05/Migration_Politic_Print-fin-3178a.pdf

³ Позняк О. (2025). Реалізація міграційної політики: оцінка та висновки. URL: <https://ampua.org/realizaciya-migracynoi-politiki-oc/>

comparative scholarship, K. Groenendijk examined the legal foundations of family reunification under EU Community law, analyzing how Directive 2003/86/EC establishes a rights-based framework while leaving member states significant optional discretion in its application¹. D. Thym developed a systematic account of how Article 8 of the European Convention on Human Rights governs the interaction between human rights protection and national immigration law, identifying the criteria that guide proportionality review in individual cases and the conditions under which immigration restrictions may constitute a violation of the right to private and family life². The analytical frameworks developed in these two contributions provide the doctrinal basis for assessing Ukraine's marital immigration rule in the context of its EU accession obligations. The present article addresses the gap in Ukrainian scholarship by providing the first analytical treatment of the two-year rule's internal legislative conflict and its compatibility with EU and ECHR standards.

II. PURPOSE AND METHODOLOGY

The article pursues six objectives. It reconstructs the legislative logic and anti-fraud rationale underlying the two-year marriage requirement in Ukrainian immigration law. It analyzes the eight circumstances under which the fact of being in a marriage is not recognized as a ground for granting an immigration permit, as codified in Article 4-1 of the Immigration Law, and considers their implications for the rights of applicants in wartime conditions. It examines the successive wartime exceptions introduced by Law No. 3897-IX of August 20, 2024, and further extended by Law No. 4502-IX of June 18, 2025, and identifies the internal legislative conflict these exceptions create within the existing statutory scheme. It compares Ukraine's two-year rule against Council Directive 2003/86/EC on the right to family reunification and the corresponding domestic legislation of Germany, Poland, and France. It assesses the compatibility of the current regulation with the proportionality requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Finally, it

¹ Groenendijk K. (2006). Family Reunification as a Right Under Community Law. *European Journal of Migration and Law*. Vol. 8. pp. 215–230. URL: <https://doi.org/10.1163/157181606777975003>

² Thym D. (2008). Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularise Illegal Stay? *International and Comparative Law Quarterly*. Vol. 57. pp. 87–112. URL: <https://dx.doi.org/10.1017/S0020589308000043>

formulates four legislative proposals to resolve the conflicts and deficiencies identified in the course of the analysis.

The article draws on three methods of legal research. The doctrinal method is used to establish the textual meaning and legislative history of the relevant provisions of the Immigration Law and the Law on the Legal Status of Foreigners and Stateless Persons, tracing how the two-year marriage requirement has evolved through successive amendments and how its relationship to the Article 4-1 anti-fraud framework was altered by Laws No. 3897-IX and No. 4502-IX. The comparative method is applied to measure Ukraine's rule against Council Directive 2003/86/EC on the right to family reunification and the domestic legislation of Germany, Poland, and France, with the aim of identifying the structural divergence between Ukraine's marriage-duration model and the sponsor-residence model adopted by the Directive and those member states. The systematic method is used to examine the internal coherence of the statutory scheme as a whole, identifying the conflict that arises from the coexistence of a categorical durational bar and an exception that operates without any minimum marriage requirement.

Primary sources are the consolidated legislative texts published in the Verkhovna Rada legislative database at zakon.rada.gov.ua, official guidance and procedural materials of the State Migration Service of Ukraine, and EU legislative instruments retrieved from EUR-Lex, the official database of European Union law. Secondary sources consist of Ukrainian legal scholarship on migration policy and administrative law and European comparative scholarship on the Family Reunification Directive and on Article 8 of the European Convention on Human Rights in immigration cases.

III. DESCRIPTION OF THE OBTAINED RESULTS

The two-year marriage requirement was present in the Immigration Law from the date of its original enactment. The Law of Ukraine "On Immigration" No. 2491-III of June 7, 2001 established a structured, category-based mechanism for granting immigration permits to foreign nationals, replacing the ad hoc arrangements that had governed foreign nationals' permanent residence in Ukraine since independence. Under Article 4(3) (1) of the statute as originally enacted, a foreign spouse of a Ukrainian citizen became eligible for an immigration permit outside the quota upon

the completion of two years of registered marriage¹. This threshold was carried through every subsequent amendment to the statute without modification. The Immigration Law was amended nine times between 2001 and 2023, including by Law No. 5459-VI of October 16, 2012, which amended provisions governing the powers of executive bodies, application procedure, and grounds for revocation, and by Law No. 693-IX of June 16, 2020, which added a new non-quota category. In none of these amendments did the legislature alter the durational requirement in Article 4(3)(1).

Two policy rationales underlie the rule, neither of which the legislature formally articulated. The first is a temporal filter: genuine marital relationships persist over time, whereas arrangements entered into purely for immigration purposes are more likely to dissolve or be exposed once the permit is obtained. This rationale is reflected in the DMSU's official guidance, which identifies fictitious marriages as one of the most prevalent methods of immigration fraud². The second is a doctrinal inference from the rule's procedural structure: the two-year period corresponds to the duration of a temporary residence permit, which suggests a legislative intent to use the temporary-permit phase as an observation window during which migration authorities can assess whether the marriage is being genuinely lived before granting permanent status.

Practitioners have identified a structural gap arising from the rule's interaction with Article 4(2)(6) of the Immigration Law, which applies the same two-year marriage requirement to the spouse of a person who already holds a Ukrainian immigration permit, that is, a foreign national with permanent resident status. The result is an unaddressed limbo: a foreign national who marries a Ukrainian permanent resident cannot obtain any form of residence permit, temporary or permanent, for up to two years. This gap has no foundation in the anti-fraud rationale and is irreconcilable with the right to family life.

¹ Про імміграцію: Закон України від 07.06.2001 № 2491-III. URL: <https://zakon.rada.gov.ua/laws/show/2491-14#Text>

² Державна міграційна служба України (2021). Фіктивні шлюби з іноземцями: проти-правність та негативні наслідки для громадян України. URL: <https://dmsu.gov.ua/news/dms/9207.html>

Statutory Circumstances of Fictitious Marriage

Prior to Law No. 3180-IX, Ukrainian immigration law contained no statutory definition of fictitious marriage and no codified criteria for its detection by administrative bodies. Under Article 40(2) of the Family Code of Ukraine¹, a marriage is fictitious if concluded by a woman and a man, or one of them, without the intention of creating a family and acquiring the rights and obligations of spouses. A finding of fictitious character was, and remains, a judicial function: only a court may declare a marriage invalid on grounds of fictitious character, and the administrative body had no statutory basis to treat a suspected fictitious marriage as a ground for refusal until a final court decision existed.

Law No. 3180-IX introduced a new Article 4-1, titled “Circumstances under which the fact of being in a marriage with a citizen of Ukraine or an immigrant is not recognized as a ground for granting an immigration permit”². The article establishes eight such circumstances. The first is that one of the spouses received material compensation in exchange for free consent to the marriage, except where such compensation is mandatory under the law of the foreign state in which the marriage was concluded. The second is that the spouses do not live together and are not connected by a common household. The third is that the spouses had not met or communicated prior to the conclusion of the marriage. The fourth is that the spouses do not communicate in a language understandable to both. The fifth is that one of the spouses was previously in a marriage with a citizen of Ukraine or an immigrant that was not recognized as a ground for granting an immigration permit. The sixth is that each of the spouses lacks information about the other’s personal data, including date and place of birth, place of residence, education, place of work, profession, religion, close relatives, and lifestyle preferences. The seventh is refusal of the applicant to have their spouse personally present during submission of the application. The eighth is refusal of either spouse to provide written consent to undergo an interview.

¹ Сімейний кодекс України: Закон України від 10.01.2002 № 2947-III. URL: <https://zakon.rada.gov.ua/laws/show/2947-14>.

² Про внесення змін до Закону України «Про імміграцію» щодо вдосконалення умов і порядку імміграції в Україну іноземців та осіб без громадянства: Закон України від 29.06.2023 № 3180-IX. URL: <https://zakon.rada.gov.ua/go/3180-20#Text>

Article 4-1 also establishes the investigative procedures available to the SMSU when grounds exist to suspect one or more of these circumstances. These include interviews with both spouses, conducted in person or by videoconference for applicants who submitted their application through a diplomatic mission abroad or who departed Ukraine after filing domestically, questioning of third parties who may hold relevant information, and requests to other state authorities for information concerning the presence or absence of grounds for refusal.

Three of these circumstances raise rights concerns that are particularly acute in wartime. Circumstance 2, requiring proof of common household, may place spouses separated by military mobilisation or forced evacuation in an impossible position through no fault of their own. Circumstance 7, requiring the spouse's personal presence at the application, cannot be satisfied when the Ukrainian citizen is deployed in a combat zone. Circumstance 3, penalising the absence of pre-marriage meeting or communication, may disadvantage couples who met through digital means, a category that no provision of Ukrainian family law treats as less legitimate than in-person acquaintance. These concerns bear directly on the legislative conflict examined in the following section.

Wartime Exception to Two-Year Rule and Internal Legislative Conflict They Create

Article 4(3) of the Immigration Law was supplemented with a new paragraph 1-1 by Law No. 3897-IX of August 20, 2024¹. This paragraph grants an immigration permit outside the quota to one of the spouses if the other spouse is a deceased or died citizen of Ukraine who was a servicemember or employee of the Armed Forces of Ukraine, other military formations established in accordance with Ukrainian law, the Security Service of Ukraine, the State Service of Special Communications and Information Protection of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, the Administration of State Guard of Ukraine, the State Special Transport Service, specialized law enforcement agencies, or the intelligence agencies of Ukraine, regardless of the duration

¹ Про внесення змін до деяких законів України щодо правового статусу іноземців та осіб без громадянства, які беруть участь у захисті територіальної цілісності та недоторканості України: Закон України від 20.08.2024 № 3897-IX. URL: <https://zakon.rada.gov.ua/laws/show/3897-20#Text>

of the marriage valid at the time of death, provided the application is submitted during the period of martial law or within six months of the day of its termination or cancellation.

This provision produces an internal legislative conflict within the two-year rule. The rule rests on the premise that two years of marriage constitutes a necessary minimum for verifying genuine marital intent. The exception introduced by Law No. 3897-IX grants identical immigration benefits with no minimum marriage duration whatsoever. The legislature's reasoning is apparent: the servicemember's death removes the fraud risk, because a deceased Ukrainian citizen cannot be a complicit sponsor of a fictitious immigration scheme. That reasoning is coherent, but it carries an important implication. It reveals that the two-year threshold is not an absolute mechanism for establishing objective marital facts. It is a fraud-proxy that targets a specific pattern requiring a living, complicit Ukrainian citizen sponsor. The exception is accordingly a legislative acknowledgment that the rule is over-inclusive: it withholds benefits from some genuinely married couples while being directed at a fraud pattern that, in the deceased-servicemember scenario, cannot arise.

Law No. 4502-IX of June 18, 2025 further extended the exception by adding two new paragraphs to Article 4(3) of the Immigration Law¹. The first new paragraph covers the foreign spouse of a deceased foreign national or stateless person who served under contract in the Armed Forces of Ukraine, the State Special Transport Service, or the National Guard of Ukraine. The second covers the foreign spouse of a deceased foreign national or stateless person who, during the period of martial law, provided combat assistance to Ukrainian units while directly present in areas of active hostilities. The second category includes foreign volunteers who served in the International Legion of Territorial Defence of Ukraine, the foreign volunteer unit created on February 27, 2022 by order of President Zelenskyy, whose fighters have come from dozens of countries across Europe, North America, and elsewhere².

¹ Про внесення змін до деяких законів України щодо забезпечення реалізації права на набуття та збереження громадянства України: Закон України від 18.06.2025 № 4502-IX. URL: <https://zakon.rada.gov.ua/laws/show/4502-20#Text>

² President of Ukraine (2022). Appeal to foreign citizens to help Ukraine in fighting against Russia's aggression. URL: <https://www.president.gov.ua/en/news/zvernennya-do-gromadyan-inozemnih-derzhav-yaki-pragnut-dopom-73213>

The exception, in its original and extended forms, constitutes a legislative acknowledgment that the two-year threshold is not indispensable to preventing immigration fraud in all circumstances. That acknowledgment creates a normative obligation, arising both from the proportionality requirements of Article 8 ECHR and from Ukraine's EU accession commitments, to reconsider the categorical bar for all cases where the specific fraud pattern the rule is designed to address is demonstrably absent.

Comparative Analysis: EU Directive 2003/86/EC and Selected Member States

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification¹ establishes the EU framework applicable to third-country nationals legally residing in member states who wish to be joined by family members. Although Ukraine, as an EU accession candidate, is not yet bound by the Directive, compliance with it is a key benchmark under Chapter 24 of the EU enlargement acquis. The Directive does not in itself require any waiting period before family members may join a sponsor. Article 8 makes this waiting period optional: member states may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years before family members may join him or her. A separate derogation permits a period of up to three years, measured from submission of the application to issue of the residence permit, for states whose legislation on family reunification, as in force on the date the Directive was adopted, already took into account reception capacity.

The structural difference from Ukraine's rule is that the Directive's optional waiting period is measured against the duration of the sponsor's lawful residence in the host country, not against the duration of the marriage. The EU framework asks whether the sponsor is sufficiently established in the receiving state. Ukraine's rule asks whether the marriage has existed long enough to be presumptively genuine. These are distinct policy questions that produce different legal outcomes for the same couples.

The Court of Justice of the EU addressed the compatibility of Article 8's optional waiting period with fundamental rights in Case C-540/03 (European

¹ EUR-Lex (2003). Council Directive 2003/86/EC of September 22, 2003 on the right to family reunification. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0086>

Parliament v. Council, judgment of 27 June 2006, ECLI:EU:C:2006:429)¹. The Parliament had argued that Article 8, together with other optional provisions of the Directive, was incompatible with the right to family life and the principle of non-discrimination. The Court dismissed the challenge and held that the Directive is compatible with fundamental rights. In doing so, it confirmed that even where member states exercise the optional discretion Article 8 grants them, they remain bound by Article 17 of the Directive, which requires them to take due account of the nature and solidity of the person's family relationships, the duration of residence in the member state, and the existence of family, cultural, and social ties with the country of origin. The 2014 Commission Guidance on Directive 2003/86/EC² restated this obligation, noting that Article 17 requires a comprehensive assessment of all relevant factors in each individual case. A categorical waiting period applied without any individual assessment of family circumstances is therefore incompatible with this requirement, and Ukraine's two-year rule, as currently framed, does not permit such assessment at all for marriages that have not yet reached the two-year threshold.

A comparison of Ukraine's two-year rule against three EU member states and the Directive itself reveals a consistent structural divergence. In none of the compared EU jurisdictions does spousal immigration permit eligibility depend on the duration of the marriage. All three member states apply a sponsor-residence model, in which eligibility turns on whether the sponsor has sufficiently established lawful residence in the host state, not on how long the marriage has existed.

In Germany, spousal reunification is governed by §30 of the Residence Act (*Aufenthaltsgesetz*). There is no minimum marriage duration. The principal requirements are that both spouses be at least 18 years old, that the sponsor hold a qualifying residence title, that the household have sufficient financial means without recourse to public benefits, and that the joining spouse demonstrate basic German language proficiency at level A1 of the Common European Framework. The A1 requirement is waived as a

¹ EUR-Lex (2006). Court of Justice of the EU. Case C-540/03, *European Parliament v. Council of the European Union*. Judgment of June 27, 2006. ECLI:EU:C:2006:429. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62003CJ0540>

² EUR-Lex (2014). Guidance for Application of Directive 2003/86/EC on the Right to Family Reunification. April 3, 2014. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0210>.

matter of statute for spouses of Blue Card holders and holders of the skilled worker residence permits under §§18a, 18b, and 18d of the Residence Act, as amended in December 2022. A separate hardship exception permits waiver of the language requirement where learning German before entry is impossible or unreasonable due to illness, disability, or unavailability of courses¹.

In Poland, spousal family reunification is governed by Chapter 8, Section V of the Act of December 12, 2013, on Foreigners. No minimum marriage duration applies. The marriage must be genuine, duly documented, and recognized under Polish law. The sponsor must hold one of the following residence titles: a permanent residence permit, a long-term EU resident permit, refugee or subsidiary protection status, or consecutive temporary residence permits for a cumulative period of at least two years with the last permit valid for at least one year. The family relationship and genuine character of the marriage must be substantiated by documentary evidence².

In France, spousal family reunification falls under the regroupement familial procedure governed by the Code of Entry and Residence of Foreigners and of the Right to Asylum. No minimum marriage duration applies. The sponsor must have resided legally in France for a minimum of 18 months before submitting the application, must hold a residence permit valid for at least 12 months, and must demonstrate sufficient financial resources and adequate housing. Algerian nationals benefit from a reduced residence requirement of 12 months under the Franco-Algerian Agreement of 1968. Recognized refugees may apply through a distinct procedure without the 18-month residency requirement, provided the application is submitted within three months of receiving refugee status³.

The structural pattern across all three jurisdictions is uniform: spousal permit eligibility is conditioned on the sponsor's establishment in the host country, measured in months of lawful residence, not on the age of the marriage. Ukraine stands apart from this model in a way that is analytically

¹ Bundesministerium der Justiz und für Verbraucherschutz (2004). Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet 1) (Aufenthaltsgesetz – AufenthG). URL: https://www.gesetze-im-internet.de/aufenthg_2004/_30.html

² O cudzoziemcach: Ustawa z dnia 12 grudnia 2013 r. Dz. U. 2013 poz. 1650. URL: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf>

³ OFII. Le regroupement familial. Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA). URL: <https://www.ofii.fr/vos-demarches/regroupement-familial/>

significant for EU accession purposes. The EU Directive's Article 8 waiting period, which is itself optional for member states and which no member state is required to impose, is measured against the sponsor's residence. Ukraine's mandatory two-year bar is measured against the marriage's duration. These are not simply different durations of the same type of requirement. They reflect different theories of what immigration law is seeking to verify: whether the sponsor is settled, or whether the marriage is genuine. The EU framework has chosen the former question; Ukraine has chosen the latter; and the wartime exceptions created by Laws No. 3897-IX and No. 4502-IX demonstrate that even Ukrainian law has implicitly recognized the limits of the marriage-duration theory in circumstances where it produces unjust results.

The ECHR Dimension: Article 8 and the Right to Family Life

Ukraine ratified the European Convention on Human Rights on July 17, 1997, which entered into force for Ukraine on September 11 of that year¹. Article 8 ECHR guarantees the right to respect for private and family life. Any interference must be in accordance with the law, pursue a legitimate aim, and be necessary in a democratic society. The ECtHR has consistently affirmed that states retain the right, as a matter of well-established international law, to control the entry and residence of foreigners, the formula established in *Moustaquim v. Belgium* (Application No. 12313/86, judgment of February 18, 1991), the first case in which the Court held that deportation of a foreign national could violate Article 8. As Thym has shown in his comparative analysis of Strasbourg immigration case law², any restriction affecting established family life must be subject to proportionality review and individualized assessment of the couple's circumstances.

The two-year rule raises three proportionality concerns. It applies as a categorical bar without any individual assessment: no immigration status is available regardless of how well-documented a marriage may be, which is structurally incapable of satisfying the case-by-case requirement under Article 8. It creates up to two years during which a foreign spouse who

¹ European Convention on Human Rights. Council of Europe, November 4, 1950. URL: https://www.echr.coe.int/documents/d/echr/convention_ENG

² Thym D. (2008). Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularise Illegal Stay? *International and Comparative Law Quarterly*. Vol. 57. pp. 87–112. URL: <https://dx.doi.org/10.1017/S0020589308000043>

has lawfully entered Ukraine and established family life has no pathway to long-term residence, producing family separation or unlawful overstay as ordinary legal consequences. And it places identically situated genuine marriages in unequal positions depending solely on whether the Ukrainian spouse is alive or deceased, a distinction with no basis in the anti-fraud rationale.

The Article 4-1 framework of eight circumstances, introduced by Law No. 3180-IX, moves toward individualized assessment and is more consistent with Article 8 than a pure temporal bar. Its structural limitation is directional: it equips the SMSU to deny permits on evidence of fraud but provides no mechanism to approve early on evidence of genuine marital life. If the SMSU can conduct individual interviews and investigations when fraud is suspected, there is no principled basis for refusing equivalent assessment when the question is approval rather than denial.

Four Structural Defects and Proposed Legislative Amendments

The foregoing analysis reveals four structural defects in the current legal framework.

The first concerns the internal contradiction between the anti-fraud premise and the wartime exception. The waiver of the two-year threshold for the deceased-servicemember scenario acknowledges, implicitly but unavoidably, that the rule is over-inclusive: it withholds immigration benefits from genuinely married couples while targeting a fraud pattern that cannot arise in the bereavement context. The logical remedy is to add a subparagraph to Article 4(3)(1) of the Immigration Law permitting the SMSU to grant an immigration permit before the two-year mark where the applicant demonstrates genuine marital life by clear and convincing evidence, comprising joint registered address, documented shared financial life, evidence of pre-marriage acquaintance, and absence of all eight circumstances under Article 4-1. This preserves the anti-fraud purpose of the existing rule while removing its application to couples for whom the underlying fraud risk is absent.

The second defect is the absence of any proportionality review for under-two-year marriages. Ukrainian immigration law equips the SMSU to deny a permit at any point on evidence of fraud but provides no corresponding mechanism to approve early on evidence of genuine marital life. The asymmetry is incompatible with the proportionality requirements of

Article 8 ECHR. The appropriate remedy is a general proportionality clause in the Immigration Law, modeled on Article 17 of Directive 2003/86/EC, requiring the SMSU to take account of the nature and solidity of the family relationship, the duration of the applicant's lawful residence in Ukraine, family and cultural ties, and the best interests of any minor children.

The third defect affects the foreign spouse of a person who already holds a Ukrainian immigration permit. Article 4(2)(6) of the Immigration Law applies the same two-year marriage requirement to this category. While the Law on the Legal Status of Foreigners and Stateless Persons already provides a statutory basis for a temporary residence permit in this scenario, the path to a permanent immigration permit remains blocked for two years regardless of the genuineness of the marriage. The appropriate remedy is an amendment to Article 4 of the Law on the Legal Status of Foreigners and Stateless Persons¹ explicitly granting permanent immigration permit eligibility to the foreign spouse of an existing immigrant regardless of the duration of the marriage, subject to Article 4-1 verification.

The fourth defect is structural misalignment with EU Directive 2003/86/EC. Ukraine's accession process under Chapter 24 requires progressive harmonization with the EU *acquis*. The Directive's sponsor-residence model and Ukraine's marriage-duration model are structurally different, and the Chapter 24 screening process will require Ukraine to justify this divergence. The appropriate remedy is an additional eligibility pathway in Article 4(3) of the Immigration Law: an immigration permit should be available to the foreign spouse of a Ukrainian citizen who has maintained lawful residence in Ukraine for at least two years, regardless of the marriage's duration, subject to Article 4-1 verification. This introduces the Directive's model as an alternative to the existing rule rather than a replacement for it.

IV. CONCLUSIONS

This article has identified and analyzed a structural contradiction within Ukraine's marital immigration framework that has not previously received dedicated scholarly attention. Law No. 3180-IX of June 29, 2023 introduced the eight-circumstances framework of Article 4-1, tightening the evidentiary basis for detecting fictitious marriages. Law No. 3897-IX

¹ Про правовий статус іноземців та осіб без громадянства: Закон України від 22.09.2011 № 3773-VI. URL: <https://zakon.rada.gov.ua/laws/show/3773-17#Text>

of August 20, 2024 introduced paragraph 1¹ of Article 4(3), granting an immigration permit to the foreign spouse of a deceased Ukrainian military servicemember regardless of the duration of the marriage at the time of death. Law No. 4502-IX of June 18, 2025 extended this exception to the spouses of deceased foreign nationals who served in Ukraine's defense forces or provided combat assistance in areas of active hostilities.

The coexistence of the two-year categorical bar and the wartime exception discloses an internal legislative conflict. A rule premised on marriage duration as a fraud-prevention mechanism has been rendered dispensable by the legislature in the category of cases where the anti-fraud rationale is most obviously inapplicable. This constitutes a legislative acknowledgment that the rule is over-inclusive, and it creates a normative obligation, arising from both Article 8 ECHR proportionality requirements and Ukraine's EU accession commitments, to reconsider the categorical bar for all cases where the fraud pattern the rule targets is demonstrably absent.

The comparative analysis confirms that Ukraine's rule is more restrictive than EU Directive 2003/86/EC and more restrictive than the spousal immigration regimes of Germany, Poland, and France, all of which condition eligibility on the sponsor's lawful residence rather than the marriage's duration. As Ukraine proceeds with EU accession negotiations, harmonizing its marital immigration framework with the Directive's sponsor-residence model is both legally required and strategically sound: it would expand legal pathways for family reunification, a demographic priority under Ukraine's Strategy for Demographic Development until 2040, while aligning domestic law with a framework the EU has validated as compatible with fundamental rights.

The four legislative amendments proposed in Section 5.6 address the identified structural defects while preserving the anti-fraud objectives of existing law and advancing Ukraine's Article 8 ECHR compliance and EU accession agenda. Further work on the empirical application of the Article 4-1 circumstances by the SMSU, and on the procedural rights of applicants in spousal immigration proceedings, would complement the doctrinal analysis offered here.

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