

University Doctoral (PhD) Dissertation Summary

EU Migration Laws and Policies and Protection of Migrant Workers from a Developing Country's Perspective: Lessons and Recommendations for Viet Nam.

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Abstract

This dissertation analyzes EU and ASEAN migration laws and policies on the protection of migrant workers, with a focus on drawing lessons for Vietnam as a labor-sending country. The results reveal significant contrasts between the EU and ASEAN models of migrant labour governance. In the EU, a binding and enforceable legal framework, supported by supranational institutions and judicial mechanisms, ensures consistent protection of migrant workers' rights, including access to social security and trade union participation, even for third-country nationals. ASEAN, in contrast, relies mainly on soft law instruments and consensus-based cooperation, lacks regional enforcement and monitoring mechanisms, and delegates responsibility for migrant worker protection to national laws and bilateral agreements, producing fragmented and uneven outcomes across member states. The analysis shows that the effectiveness of regional migration governance depends not only on legal standards but also on transparent monitoring, accountability, and enforcement systems. Drawing on the EU experience, the study highlights key lessons for Vietnam: strengthening domestic legal protections for migrant workers, enhancing regional and bilateral cooperation within ASEAN, and aligning domestic law more closely with international labour standards. These findings contribute to migration law scholarship by providing a developing-country perspective on regional governance and offering evidence-based recommendations to improve the protection of migrant workers.

Keywords: migrant, workers, EU, ASEAN, labour, ICMRW

1.1. Introduction

This dissertation examines EU migration laws and policies concerning the protection of migrant workers, with a particular focus on lessons and policy recommendations for Vietnam from the perspective of a developing labour-sending country. Through a comparative legal analysis of the European Union and ASEAN, the study evaluates how regional integration models influence the protection of migrant workers' rights, including social security, labour standards, and trade union rights. The findings show that the EU has developed a relatively comprehensive and enforceable legal framework that grants migrant workers—both EU and third-country nationals—broad protection and access to social rights, whereas ASEAN relies mainly on soft law, consensus-based instruments, and bilateral agreements, resulting in weaker and inconsistent protection, particularly for low-skilled and irregular migrant workers.

Based on EU experience, the dissertation argues that regional legal harmonisation, enforceable standards, and active cooperation are crucial for effective migrant worker protection. It recommends that Vietnam strengthen its legal framework by enhancing regional cooperation, improving domestic labour and trade union laws, and progressing toward accession to the ICRMW, while also ensuring better protection mechanisms for Vietnamese workers abroad. Overall, the dissertation contributes to migration law scholarship by providing a developing-country perspective on regional migration governance and offering practical, policy-oriented recommendations for improving the protection of migrant workers in Vietnam and ASEAN. Why the Balance Matters? The balance between migration control and rights-based protection in both the European Union (EU) and ASEAN is important because it determines whether migration serves as a driver of economic development or a source of inequality and vulnerability.

In the EU, overly strict migration control can undermine the Union's human rights commitments and create informal labor markets that expose migrant workers to exploitation. Thus, achieving balance ensures that migration governance remains orderly, fair, and humane, consistent with the EU's legal and moral framework. In ASEAN, where migration is essentially intraregional and temporary, the balance is even more delicate. Strengthening rights-based protection within ASEAN's migration governance promotes regional solidarity, sustainable development, and human security, aligning with the ASEAN Community Vision 2025.

1.2. Research question

My research questions are the following: (i) What are the fundamental rights of irregular migrant workers in the receiving country (ii) what are the equal rights of migrant workers compare to native workers in ASEAN and EU; (iii) What are the benefits in migrant protection policies between EU and ASEAN? (iv) What are the legal provisions of migrant workers from developing countries like Vietnam, and the reasons why their rights need to be respected and protected? This analysis positions ASEAN as a representative of developing countries, characterized by notable labor movements, and contrasts it with the EU to formulate informed recommendations for Vietnam regarding migration protection.

1.3. Research methodology

The comparative method is primarily used to analyze the rules, regulations, and trends of each region; the issues in migration management as well as the labor union policies of the countries. In data collection in qualitative research, I use interview with couple persons who Vietnamese living and working in Hungary (including student graduation and people migrate to Hungary). In addition, I conducted a survey with nearly 50 people about their job and life satisfaction in Hungary. The survey is explained in chapter IV.

1.4. Discussion

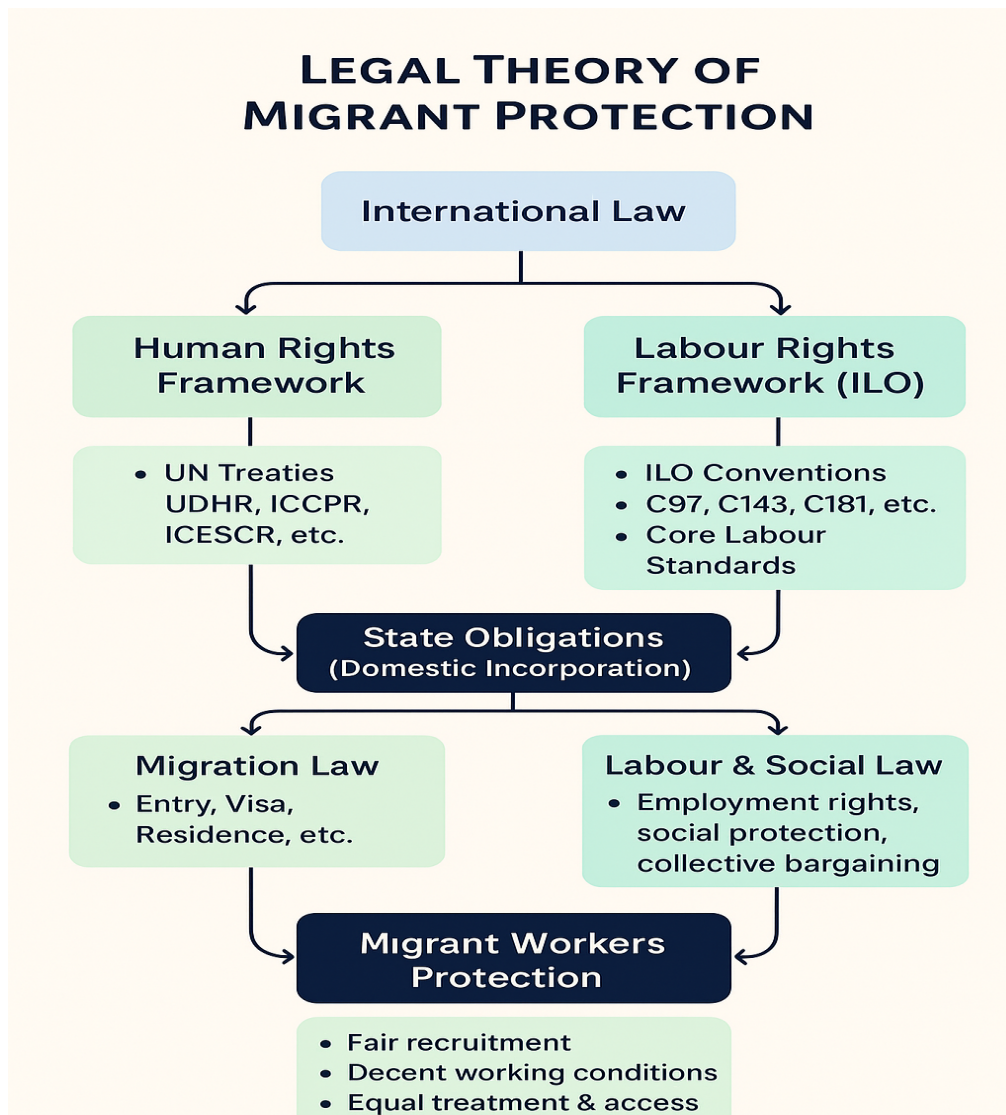
1.4.1. Legal theory

The protection of migrant workers is conceptualized as a multi-level legal framework anchored in international law. At the apex of this framework, international human rights treaties and International Labour Organization (ILO) conventions establish binding normative standards that define the minimum scope of rights and protections afforded to migrant workers. This framework rests on two complementary normative pillars. The human rights framework articulates universal principles of human dignity, equality, and non-discrimination, as codified in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In parallel, the labour rights framework, developed under the ILO, operationalizes these principles within the employment context by prescribing standards on decent work, fair recruitment, and social protection, notably through ILO Conventions Nos. 97, 143, and 181, together with the core labour standards.

Ratification of these instruments generates binding obligations for States to internalize international norms through domestic legal incorporation¹. This process entails the systematic translation of international commitments into national legal and policy frameworks, particularly within migration, labour, and social protection regimes. At the implementation level, migration law governs admission, residence, and legal status, while labour and social law secure employment rights, collective representation, and access to social welfare for migrant workers.

The effectiveness of migrant worker protection depends on the coherence and interaction of these legal layers. Where international norms are meaningfully incorporated and enforced at the national level, migrant workers benefit from fair recruitment mechanisms, decent working conditions, and equal treatment in the enjoyment of rights and services. Accordingly, this theoretical framework underscores that migrant worker protection is not the product of a single legal regime but the outcome of an integrated, multi-tiered system in which international law, State obligations, and domestic regulation collectively function to safeguard dignity and substantive equality.

¹ Dana Zartner, "Internalization of International Law," in *Oxford Research Encyclopedia of International Studies* (2010).



1.4.2. Comparison between EU and ASEAN legal policy

a. The EU approach to migrant worker protection: the case of Hungary

The European Union adopts a **hard law approach** to the protection of migrants and migrant workers through a system of **binding directives and regulations** that are legally enforceable across all Member States. These legal instruments establish minimum standards relating to the right to equal treatment and non-discrimination, the right to fair and just working conditions, the right to social security and social protection, the right to freedom of association and collective bargaining, and the right to effective judicial protection, thereby reducing disparities in national implementation. A key feature of the EU system is the role of the Court of Justice of the European Union (CJEU), which provides a robust enforcement mechanism by allowing individuals, including migrant workers, to invoke EU law directly

before national courts². This judicial oversight ensures legal certainty, uniform interpretation, and effective protection of rights. The overarching objective of the EU in developing a comprehensive migration management system is to create a coordinated, efficient, and fair framework that safeguards migrants' rights and safety, promotes integration into host societies, and enhances cooperation among Member States in areas such as border management and legal migration pathways.

In recent years, Hungary has introduced significant legal adjustments to address labour shortages in sectors such as manufacturing, construction, and agriculture, resulting in an expanded reliance on **third-country migrant workers**. Despite its politically cautious stance on migration, Hungary remains legally bound by EU directives and regulations governing employment conditions³, equal treatment, social security coordination, and access to trade union rights. Recent developments in Hungarian labour and migration law provide a concrete illustration of how the EU's hard law framework shapes national regulation of third-country workers, even in Member States with restrictive migration policies.

Hungary's legal framework governing the entry, residence, and employment of third-country nationals has evolved through three distinct legislative phases, reflecting shifting policy priorities in response to labour market needs, migration control, and EU legal obligations.

Act II of 2007 on the Entry and Residence of Third-Country Nationals (Harmtv.)⁴ constituted the original comprehensive legal framework regulating the entry, residence, and employment of third-country nationals in Hungary. The law adopted a generalised residence-based approach, treating labour migration primarily as an aspect of immigration control. While Harmtv. provided the legal basis for work-related residence permits, it did not yet reflect a differentiated labour migration strategy and offered limited categorisation of migrant workers. Protection of third-country workers' rights was largely indirect and dependent on general labour law rather than migration-specific safeguards. This framework corresponded to Hungary's early post-accession period, during which migration policy remained cautious and restrictive.

² R. Daniel Kelemen, "The Court of Justice of the European Union in the Twenty-First Century," *Law & Contemp. Probs.* 79 (2016): 117.

³ Mark Dawson and Elise Muir, "Hungary and the Indirect Protection of EU Fundamental Rights and the Rule of Law," *German Law Journal* 14, no. 10 (2013): 1959–79.

⁴ Accessed on 2026.01.10 at <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Act%20II%20of%202007%20on%20the%20Entry%20and%20Stay%20of%20Third-Country%20Nationals%20Hungary.pdf>.

Act on the Admission and Right of Residence of Third-Country Nationals (Btátv⁵) represented a transitional legislative phase, refining and restructuring the regulation of third-country nationals while maintaining a strong emphasis on state control over admission and residence. Compared to Harmtv., Btátv. introduced more detailed administrative procedures and permit categories, particularly in relation to employment-based residence. However, labour migration continued to be treated as temporary and conditional, with limited pathways to long-term residence or integration. Although Btátv. responded to emerging labour shortages, it remained primarily migration-control-oriented rather than rights-based. Importantly, during this phase, Hungary's obligations under EU labour and social law increasingly constrained national discretion, ensuring minimum standards of equal treatment for legally employed third-country workers.

Act on the General Rules on the Entry and Residence of Third-Country Nationals (Hrmtv) constitutes the current and most recent legislative framework, marking a significant shift toward a highly differentiated and restrictive labour migration regime. It introduces specific categories for third-country and guest workers, with residence permits closely tied to particular employers, sectors, and time limits. The Hrmtv. explicitly limits long-term settlement prospects and family reunification for certain categories of workers, reflecting a policy preference for temporary labour migration without integration. Nevertheless, despite its restrictive migration control logic, employment relationships under the Hrmtv. remain subject to binding EU labour law standards, including equal treatment, occupational safety, and social security coordination. This dual structure highlights the continuing influence of EU hard law in safeguarding minimum labour protections even within a nationally restrictive migration regime.

Under the new legislative framework, Hungary introduced a more differentiated system for third-country employment, including guest worker permits tied to specific employers and sectors, stricter residence conditions, and limited pathways to long-term settlement. However, despite these restrictive features, the employment relationship of third-country workers remains subject to EU-derived labour law standards, including equal treatment in working conditions, occupational safety, and access to statutory social security schemes. Hungarian employers are therefore legally obliged to comply with EU labour directives, and national courts must interpret domestic legislation in conformity with EU law. The coexistence of restrictive migration control under the Hrmtv and mandatory compliance

⁵ Accessed on 2026.01.10 at <https://kormanyhivatalok.hu/sites/default/files/2024-05/tajekoztato-a-harmadik-orszagbeli-allampolgarok-foglalkoztatasanak-engedelyezesrol.pdf>.

with EU labour standards demonstrates the dual structure of the EU migration governance system: while Member States retain discretion over admission and residence, their autonomy is constrained by binding EU labour and social protection norms. Consequently, third-country workers in Hungary, although subject to strict residence regimes, continue to benefit from a legally enforceable baseline of labour protection⁶. This case confirms that supranational legal obligations and judicial oversight at the EU level can effectively limit national discretion⁷ and enhance migrant worker protection, even where domestic migration policy prioritizes control over integration.

b. The ASEAN approach to migrant worker protection: the case of Vietnam

In contrast, ASEAN primarily relies on **soft law instruments** in the field of migrant worker protection, including declarations, consensus documents, and action plans. These instruments represent **non-binding political commitments** and depend largely on the goodwill of Member States and their voluntary incorporation into domestic legal systems. ASEAN migration governance: reliance on bilateral agreements and absence of a common legal framework: Unlike the European Union, ASEAN has not developed a common, binding legal framework governing labour migration nor established a regime of free movement of workers within the region. Instead, ASEAN member states predominantly rely on bilateral labour agreements and memoranda of understanding (MOUs) between labour-sending and labour-receiving countries. These bilateral instruments regulate recruitment procedures, working conditions, and repatriation mechanisms, but their scope and effectiveness vary significantly depending on the negotiating power and political priorities of the contracting states. The absence of a regional legal framework means that migrant worker protection in ASEAN remains fragmented and uneven, lacking minimum harmonised standards comparable to those found in the EU. Moreover, ASEAN's foundational principles of sovereignty, non-interference, and consensus-based decision-making limit the development of supranational rules or enforcement mechanisms. As a result, ASEAN instruments on migrant workers, including regional declarations and consensuses, function primarily as soft law, offering political guidance rather than legally enforceable rights. The lack of intra-regional free movement further reinforces a system in which migrant workers are treated as temporary and expendable labour rather than as rights-bearing participants in regional integration.

⁶ Vladimir Bogoeski and Zane Rasnača, *Report on the Social Security Rights of Short-Term Third-Country National Migrant Workers*, no. 2023.04 (Report, 2023).

⁷ Joana Mendes, *EU Executive Discretion and the Limits of Law* (Oxford University Press, 2019).

Trade union rights and collective bargaining mechanisms also differ substantially across ASEAN member states and remain largely restricted for migrant workers⁸. In many labour-receiving countries in the region, migrant workers face legal or practical barriers to joining trade unions, forming representative organisations, or engaging in collective bargaining. Even where national laws formally recognise freedom of association, restrictions related to nationality, employment status, or sectoral exclusions often prevent migrant workers from exercising these rights effectively. Unlike the EU, where trade union rights are embedded within a broader framework of labour law harmonisation and judicial protection, ASEAN lacks a regional mechanism to ensure compliance with international labour standards related to freedom of association. Consequently, collective bargaining remains weak or inaccessible for migrant workers, particularly those in low-skilled, informal, or temporary employment. This situation exacerbates power imbalances between employers and migrant workers and undermines access to remedies for labour rights violations.

Despite operating within the constraints of the ASEAN framework, Vietnam has made notable progress in recent years in strengthening the legal protection of migrant workers through specific legislative, institutional, and policy actions rather than merely declaratory commitments. First, Vietnam has undertaken substantial legislative reform with the adoption and implementation of the Law on Vietnamese Guest Workers (revised), which strengthens state oversight over labour recruitment enterprises, tightens licensing requirements, and enhances sanctions against illegal brokerage and excessive recruitment fees. These reforms directly address long-standing structural risks faced by Vietnamese migrant workers prior to departure. Second, Vietnam has introduced clearer contractual and transparency requirements, obliging recruitment agencies to provide standardized employment contracts, disclose working conditions, wages, and social insurance arrangements, and ensure access to pre-departure training. These measures aim to reduce information asymmetries and prevent deceptive recruitment practices, which are among the most common sources of migrant worker exploitation. Third, Vietnam has expanded its institutional protection mechanisms abroad by strengthening the role of diplomatic missions and labour attachés in major destination countries. These institutions increasingly serve as contact points for dispute resolution, emergency assistance, and coordination with host-country authorities, thereby enhancing practical access to remedies for migrant workers facing rights violations. Fourth, Vietnam has actively pursued and updated bilateral labour agreements and memoranda of

⁸ Thazin Khaing Moe, “Analysis of the Main Legal Challenges of Labour Migration in the European Union and in the ASEAN” (Debreceni Egyetem (Hungary), 2022).

understanding with key labour-receiving countries. Recent agreements place greater emphasis on employer responsibility, wage protection, occupational safety, and mechanisms for handling labour disputes. While these agreements remain limited in enforceability, they reflect a shift toward a more rights-conscious approach in Vietnam’s labour migration policy. Finally, Vietnam has demonstrated growing alignment with international labour standards through broader labour law reforms, including recognition of workers’ representative organisations and incremental improvements in collective labour relations⁹. Although migrant workers still face constraints in exercising collective bargaining rights abroad, these reforms signal an evolving normative orientation toward rights-based labour governance.

While these measures represent tangible progress, the analysis indicates that they remain largely fragmented, bilateral, and dependent on domestic enforcement capacity. Without accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Vietnam lacks a comprehensive, binding international framework that guarantees equal treatment, access to remedies, and protection regardless of migration status. Accession would consolidate Vietnam’s existing reforms, strengthen accountability vis-à-vis destination countries, and elevate migrant worker protection from a policy objective to a legally enforceable rights-based commitment.

1.4.3. The comparison

Criteria	European Union (EU)	ASEAN	Suggestions / Implications for Vietnam
Model of regional integration	Supranational integration with legally transferred competences	Intergovernmental, sovereignty-based cooperation	Advocate within ASEAN for gradual institutionalisation of labour migration governance
Legal nature of framework	Binding hard law (directives, regulations)	Soft law (declarations, consensuses)	Support development of binding regional or quasi-binding labour standards
Freedom of movement	Free movement for EU citizens; regulated mobility for third-	No regional free movement of labour	Improve legal pathways and portability of rights for Vietnamese migrant

⁹ Ronald C. Brown, “ASEAN: Harmonizing Labor Standards for Global Integration,” *UCLA Pac. Basin LJ* 33 (2016): 27.

Criteria	European Union (EU)	ASEAN	Suggestions / Implications for Vietnam
	country nationals		workers
Protection of third-country workers	Minimum standards guaranteed under EU law	Dependent on national laws and bilateral agreements	Codify minimum protection standards in domestic law applicable abroad
Enforcement mechanisms	Strong judicial enforcement via national courts and CJEU	No regional enforcement or judicial body	Strengthen domestic enforcement and explore regional monitoring mechanisms
Judicial remedies	Direct access to courts for rights enforcement	No regional remedies	Enhance access to remedies through embassies and labour attachés
Trade union rights	Freedom of association and collective bargaining protected	Migrant union rights restricted or uneven	Expand recognition of migrant workers' collective rights in law and practice
Collective bargaining	Institutionalised and enforceable	Limited, especially for low-skilled migrants	Promote collective representation mechanisms for migrant workers
Regional Coordination	High degree of harmonisation and cooperation	Fragmented; reliance on bilateral MOUs	Improve coherence and enforceability of bilateral labour agreements
Monitoring and accountability	Formal monitoring and reporting mechanisms	Largely absent	Establish transparent monitoring systems for labour migration
Policy orientation	Rights-based and integration-oriented	Labour-market-oriented and temporary	Shift toward a rights-based approach in migration governance

Criteria	European Union (EU)	ASEAN	Suggestions / Implications for Vietnam
Overall effectiveness	Relatively consistent protection	Uneven and uncertain protection	Use EU experience to guide incremental reforms
International commitments	Alignment with UN and ILO standards	Limited regional incorporation	Accede to the ICRMW to strengthen binding protection

1.5. Result

After comparing the EU and ASEAN, I found that the ASEAN region still has limitations in protecting the rights of migrant workers. With the analysis and experience of the EU, ASEAN can consider policies for low-skilled workers instead of focusing only on high-skilled workers. Due to the combination of the proactive integration of European countries and the attempts to safeguard the rights of migrant workers, EU and non-EU workers have almost identical opportunities and benefits. I propose that non-European workers should be granted the same rights as European workers, with the exception of special rights such as the right to unrestricted movement with the same identity card or active labor market policies for youth. The ASEAN Consensus on the Protection of the Rights of Migrant Workers and Their Families is the primary protocol for safeguarding ASEAN people. Unfortunately, the consensus cannot tie the members together. ASEAN countries should establish a legal framework to ensure the basic rights of migrant workers, especially in protecting the basic rights of illegal workers. Vietnam needs to focus on two branches: improving the legal framework at the regional level by showing its move to join the ICRMW convention; and improving the Trade Union Law in allowing foreign workers the right to participate as well as the basic rights to trade union activities.



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List of publications related to the dissertation

Articles, studies (3)

1. **Nguyen, T. A.**: Movement protection: opportunity to improve Vietnam migration law.
Lex ET Scientia International Journal. 31 (1), 93-99, 2024. ISSN: 2066-1886.
2. **Nguyen, T. A.**: Legal Analysis of EU Policies: why Labour Migration Status as a Binary.
Fiat Justisia: Jurnal Ilmu Hukum. 17 (2), 167-178, 2023. ISSN: 1978-5186.
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Recommendations for Vietnam.
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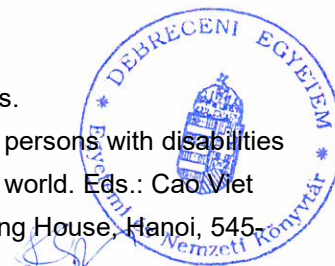
List of other publications

Articles, studies (1)

4. Trinh, H. Y., **Nguyen, T. A.**: Viet Nam.
In: *Encyclopedia of Ocean Law and Policy in Asia-Pacific*. Ed.: Seokwoo Lee, Brill, [S.I.], 517-570, 2022. ISBN: 9789004506299

Conference presentations (2)

5. **Nguyen, T. A.**: Active access to employment for employees with disabilities.
In: *The International Conference Proceedings : Ensuring the rights of persons with disabilities in the sustainable development of Vietnam and other countries of the world*. Eds.: Cao Viet Hieu, Tuong Duy Kien, Vu Cong Giao, et al, Social Sciences Publishing House, Hanoi, 545-549, 2023. ISBN: 9789639970113





6. **Nguyen, T. A.**: Status of social security of older migrant workers: a comparative study between EU and ASEAN.

In: European Union Policies International Thematic Conference : Book of Abstracts. Ed.: Kiss Rebeka, Doktoranduszok Országos Szövetsége, Budapest, 56, 2022. ISBN: 9786156457080

**By the directives of HAS Committee on Legal and Political Sciences:
Publications in periodicals level „C”: 1, related to the dissertation: 1.**

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