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## PROBLEMS OF THE IMPLEMENTATION OF THE RIGHTS OF REFUGEES AND RESETTLES ON THE TERRITORY OF UKRAINE

*The article defines the problem of the rights of refugees and displaced on the territory of Ukraine. The equity of this article is based on the gaps in the legislation at the expense of realization of these rights. Also, the author mentions the legislative framework and the base at the expense of achieving that loss of refugee status. Also, it there is a list of rights and liberties that can be used by citizens who have a special status in the society.*

**Key words:** rights, refugees, resettles, immigration, «country-donor», «social immigration».

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*Проблеми реалізації прав біженців і переселенців на території України*

*У статті визначаються проблеми реалізації прав біженців та переселенців на території України. Актуальність обраної теми полягає в тому, що національне законодавство містить прогалини в сферах регулювання окреслених прав. Розкрито підстави щодо здобуття та втрати статусу біженця і переселенця; обсяг прав та свобод, якими можуть користуватися громадяни, що мають особливий статус у суспільстві.*

**Ключові слова:** права, біженці, переселенці, інтеграція, «країна-донор», «соціальна інтеграція».

**Н. В. Пильгун, В. Г. Спири́н**

*Проблемы реализации прав беженцев и переселенцев на территории Украины*

*В статье определяются проблемы реализации прав беженцев и переселенцев на территории Украины. Актуальность выбранной темы заключается в том, что национальное законодательство имеет пробелы в сферах регулирования указанных прав. Раскрыты основания, касающиеся получения и потери статуса беженца и переселенца, перечень прав и свобод, которыми могут пользоваться граждане, имеющие специальный статус в обществе.*

**Ключевые слова:** права, беженцы, переселенцы, интеграция, «страна-донор», «социальная интеграция».

**Problem definition.** The problem of the implementation of the rights of refugees and resettles is very actual according to the present situation in Ukraine. It is suitable not just for Ukraine, where unannounced war is held, but for the countries of the Europe, where some of the most powerful countries in the world are faced with the invasion of the refugees and potential emigrants. Moreover, in the year 2002 Ukraine joined the United Nations Convention of 1951 and the Protocol of the 1967.

According to the legislative act of Ukraine «About refugees and people, who need an extra or a temporary help» from 08.07.2011 № 3671-VI Ukraine gives a help to the foreign citizens and the individuals with no citizenship, which is needed, by the way of: giving a status of refugee; giving a status of a person who needs a temporary help; and giving a status of a group which is in need of help [7, p. 1].

Due to the Law, as a refugee can be defined a person who is not a citizen of Ukraine and because

of reasonable danger of being a victim due to racial, religion, national factors and appurtenance of one of the social groups or being a member of some of the political organization, who is found in another country and can't use its rights and the protection of the country where this person has a citizenship or not using this because of the fear of usage of the rights and liberties. Moreover, the reason can be in a misgiving of returning to the home-country, being abroad, due to already mentioned apprehensiveness.

Defining the individuals, who need a temporary or extra protection was stated that a person, who needs an extra protection it is a individual who is not a refugee according to the Convention of the refugee status dated 1951 and to the Protocol about the status of refugees 1967 and to the already mentioned Law. Such a category of individuals needs protection because of the obstacles which made them coming to Ukraine or to stay in Ukraine due to the danger to their lives, freedoms or security in a country they live, because of the fear of being the victim of tortures, and the sources which suppress the dignity of a person in a situation of a local or a world conflict or in a situation of a frequent violation of the rights and liberties in a country he or she were before

**Direct Materials.** Individuals, who need a temporary protection it is foreigners and people without citizenship who were made to find their shelter in Ukraine because of external aggression, foreign occupation, civil war, conflicts according to the ethnic thoughts, natural and manmade disasters or some more obstacles which disrupt the order on the territory of the country this people live in.

According to the points of the Law of Ukraine: «About refugees and individuals who need and extra or a temporary protection» a foreigner can make an application to be defined as a refugee to the sophisticated department of the migration service. We have to admit, that by the process of the official recognition of a refugee status or a status of a person who needs a temporary or an extra protection, the circle of rights and duties extremely getting bigger.

The legal status of such a category of people is defined by the 14th article of the Law of Ukraine

«About refugees and individuals who need and extra or a temporary protection»:

Individuals who are defined as a refugee or as a person who needs an extra protection has the same rights and liberties and the same duties as the citizens of Ukraine except obstacles which are stated by the Constitution and by the Laws of Ukraine and also, by the worldwide agreements, which are legally approved by the Verkhovna Rada of Ukraine;

People, who are accepted as a refugees in Ukraine can be defined by such a category just in case they lived in the territory of Ukraine by the day of gaining them such a status;

Individuals are defined as a category which needs an extra protection just in case of a legal full-time living on the territory of Ukraine.

Individuals who are defined as a refugee or as a person who needs an extra protection, have the same rights with the citizens of Ukraine for:

Movement and for a free choice to the place to live in and for no limits to leave the country, except cases when it is forbidden by the law;

Employment and education;

Starting your own business, which is not forbidden by the law;

Healthcare, medical help and a medical insurance;

Having a vocation;

Freedom in outlook and religion;

Making individual or group written applications to the organs of government, local departments and to the people who work there;

Having, using and doing whatever individual decide with it's property, the results of its intellectual or art work;

Making an appeal to a court according to the work of state authorities, local governments and people who work there;

Making an application to defend their rights to the Ombudsman;

A free legal help in an stated order.

So, the person, who is defined as a refugee or an individual, who needs an extra protection has as much rights as the citizens of Ukraine. A person, who is defined as a refugee or who needs an extra protection has a right to get a money refund, a

pension or some more types of social help in an order, which is put by the government. Also, such a category of people have a right to get a temporary shelter to live. Moreover, individuals, who are defined as a refugee or people, who need an extra protection can use some more rights which are pointed in a Constitution of Ukraine and Laws.

**Problem definition.** But if we are talking about rights we have to admit that there were no rights without duties. So the individual who is defined as a refugee or a person who needs an extra protection has to:

Notify during ten working days a central executive organ, which implements the politics of the government in a sphere of rights of refugees and individuals who need an extra protection about changing a surname, the members of the family, a temporary place of living, gaining the citizenship of Ukraine or some another country and getting a shelter or a permission to go for a long living to the other country;

Withdraw from the account and sign a new one with the central executive organ which implements governmental politics according to the refugee and the people who need an extra protection, when we are talking about the new place of living or living in a new one and going to some of the districts the power of that executive spreads for;

Pass an annual registration in a terms which are put by the central executive organ which implements the governmental politics according to the refugee and the individuals who need an extra protection, for the place they live in. An order of that registration is defined by the central executive organ which implements the governmental politics according to the refugee and the individuals who need an extra protection.

Nowadays, government and its citizens are faced with problems of refugees and resettles in Ukraine. Unfortunately, most of the problems are still not solved. There are much more important questions for immigrants who are looking for a job abroad. For example, both by the interests of a government or immigrants should be implemented a special program for making an insurance to prevent risks of migration. Because, according to the statistics, the majority of abroad-workers is not successful and

return home with no profit but with big debts and with a poor health. Moreover, such problems as trading people and sexual exploitation are very topical and need to be solved by the government.

According to the 92th state of the Constitution of Ukraine, everything which is referred to the regulating of migration processes is defined just by the Ukrainian laws. That is why for regulating and protecting rights of Ukrainian immigrants should be created a law according to the law status of citizens who are working abroad. Such a law has to define the duties of people, who go abroad to work, governmental guarantees of their rights and their responsibility for proving of rights and liberties of that category of citizens. Also, in a Law should be included requirements for negotiation of a government in getting a job and should be established a responsibility of negotiators and defined a role of governmental organs in a proses of employment citizens abroad. Some points which need an attention should be related to the sources of insurance of migrates including an order of a pension insurance and an insurance of a worktime and adding working time abroad to an equal working term in Ukraine. This legislative act should be combined, because working migration is a very complicated question which is connected with different aspects of living in a society [2, p. 38-42].

Annexation of Crimea and events on the East of Ukraine caused the massive resettling of the people inside our state. Therefore, according to the official sources, by the beginning of the year 2016 there were more than 1million refugees were put into account. It is truly hard for understanding, because the quantity is very impressive. In the same moment it is so thrilling that there is no tendency of refusing the number of such people, because even that people who were furiously supporting «republics» nowadays are faced with the helium of the «republican life» with high prices, the scare of goods, unemployment, etc., leave that problematical territories of Ukraine in a search of better life. Defiantly, because of such situation, which is assembled on the territory of Ukraine, we can define some problems, which are hampering

the process of the involving refugees to the peaceful life, namely:

1. Inconsistence of a majority of legislative acts which regalements rights and liberties of refugees. The main law, «About providing rights and liberties of resettled people» which should have become determining in proving the politics of a government according to the resettles, was assigned just on the 22th of November 2014, eight month after the antiterrorist operation began. But before assigning this Law, there were a unit of resolutions of the Cabinet of the Ministers of Ukraine (Resolutions № 505, № 509, № 531 dated 01.10.2014, № 595 from 07.11.2014, № 79 from 04.04.2015 etc.), which implement the rights of resettles, giving tem financial help, renovating social payments and pensions etc. Unfortunately, some parts of the Law and resolutions of the Cabinet of the Ministers of Ukraine can be completely controversial (even terminological), and there existed misdeeds can cause much restrictions for the resettles. For instance, according to the point 4 of the Law, the ground of being getting into account as a resettle is having a registration on a place of living on the territory of a conflict, which the person was made to leave, on the other hand, resolution of the Cabinet of Ministers of Ukraine № 509, which regulates taking into account resettles, doesn't have any points like a registration on a place of living on the territory of a conflict, which the person was made to leave. But in the majority of cases organs of a social protection deny in such situations of taking resettles into account. There is a special question which includes problems of taking into account students who were resettled from the regions where the antiterrorist operation is held, and got a new place of registration (registered by the dormitories with a new placement). Even if on the beginning of the antiterrorist operation place of their registration was on that region, after changing of a registration in a passport board, such people in most cases got a refusal in a taking into account as a resettle.

We have to admit that the majority of the differences which have an influence on implementing the rights of the resettles should be eliminated by the resolution № 2166, which was

assigned as a main on a first listening and is being prepared for the second one [3, p. 68].

2. In fact, simple inability of realizing equal rights resettles because of denying sophisticated laws and resolutions. One of the main problems of the resettles is still accommodation. According to the first part of the ninth article of the Law of Ukraine «About implementation of rights and liberties of the resettles», a resettle has its right for a temporary accommodation, providing the organs of local and legislative government (in case if the individual would pay the utilities) during the period of six month from the moment the person was taken into an account. But there is no any such order of getting an accommodation in usage like it is decelerated. In real life, in most cases, the resettles get a refusal because of the ostensibly absence of it. One more complicated question is compensation (a refund) of the cost of the destroyed accommodation. According to the nineteenth article of the Law «About the fights against the terrorism» (relying on this Law the antiterrorism operation has started on the west of Ukraine), refunds of the property were provided to be paid by the government, but there were no such law assigned by the government.

3. Limitation of the rights of the resettles by an application of the workers of the legislative power not just legislative acts but oral or written instruction of the heads of the local Ministries and departments. Unfortunately, the system of legislative organs despite the politics of decentralization is still very centralized. It can cause that central legislative organs can «use» every legislative act in the way they want. After that on a local level, workers of the governmental organs often use such directions and even prefer the letters with explanations from the central legislative organs. Moreover, such recommendations often conflict with each other or with other legislative acts. For example, the resolution of the Cabinet of Ministers of Ukraine dated from 01.10.2014 № 509 doesn't contain any remind about the term of validity of the certificate of the registration of the individuals who were resettled from the temporary occupied territory of Ukraine and the regions of conduction of Antiterrorist operation. But

according to the letter which was sent to the heads of the structural departments of the social protection by the Minister of the social politics of Ukraine dated from 16.04.2015 № 5632/0/14-15/081, the term of validity can be extended for 6 months by linking a point about continuing the term on the back side of the document. This letter is used by the organs of the social protection and employee organs though it doesn't contain any procedure of extending the term of the document which can rely on the other legislative act. Moreover, without extending the term of the reference, the resettles can't get any financial aid.

One more very important and controversial question is a problem in a sphere of regulating migrating process and giving a shelter for protection refugees. In solving such kind of a problem, Ukraine is guided by the international obligations, humanistic principles and the level of the society and economical potential. Work according to the help of the refugees which needs a comprehensive approach and coordinated actions of organs of legislative power. That is why, the problem of refugees belongs to the global problems and solving such type of problems can be just in case of international cooperating.

The Ukrainian Legislation according to the refugees and individuals who need a temporary or an extra protection is up to the requirements, but it is still not enough for solving the most of specific problems. All this problems can't be solved just though the assertion to the OON Convention 1951 about the status of refugees, because this document doesn't combine all the types of persecutions which can make people to find a shelter abroad.

On a regional level, in a borders of the European Union, were made some recommendations according to the common approaches for solving such problems which are realizing by the countries-members and countries from that region. Separately, neighboring countries which are members or just on the way of getting that status, added to their Legislative some points of regulating the rights of the refugees, the victims of the military conflicts and massive violation of rights, for example giving a shelter of the citizens of Former Yugoslavia.

National adding's to the conventional requirements of the majority of the European countries are giving an opportunity to provide a shelter on their own territory in a extended way than it is decelerated in a Constitution, for example if we are talking about a refugee who is in danger of a death penalty, tortures, inhuman attitude or attitude which diminishes human dignity. Also, the shelter can be given according to the humanistic thoughts which can be treated widely. Such approach helps to put into a control people who don't have a status of a refugee, but who can't be deported from the country, which guides the principles of democracy and respect of human rights. One more legal issue is harmonization the regulations of the Ukrainian Legislative to adjust some aspects with the Legislative according the refugees. We are talking about employment and accommodative legislations, an order of calculating and payment of pensions, other social payments. Actually in general acts there are no limits for spreading them to that a category of citizens, the problem is in the absence of mechanisms of improving such regulations in life.

O. Honcharenko admits that Ukrainian Legislation according to the refugees is not perfect and has some weaknesses. She claims that such type of problems as refugees an resettles is quite new for Ukraine and moreover, there were no else law base in USSR which would have helped in making our own Legislation. So, she admits that: «significant drawback contains the article according to the legislative regulation of the rights of refugees from the moment of withdrawal of its identity card which is the key of getting the decision according to the status of a refugee. Also, there is no significant document to appeal according to that decision. In fact, all the time, which is not declaimed by the law, a refugee exist on the territory of Ukraine illegally, that is why refugees don't have any documents which can prove their legal status. This remark was about the Law of Ukraine «About refugees» dated from 2001, but with producing a new Law «About refugees and individuals who need a temporary or an extra protection» in 2011 the situation didn't get better in functional aspects.

Y. Havrushko thinks that there is no unity in legislation according to understanding and application terms like «immigrant», «emigrant», «a looker for a shelter», «immigrant out of law», «forced resettle» and «temporary protection for refugees» [6, p. 12].

One more disadvantage of the Ukrainian Legislation could be a fact that in the seventeenth article of the Convention of the refugee status and fifteenth article of the Ukrainian Law «About refugees and individuals who need an extra or a temporary protection» which declares that refugees have the same rights as citizens of Ukraine in employment law, but such points were not reflected in the Law «About employment of the population» (we are talking about eighth article which is about a right of citizens for employment) nor in the Resolution of the Cabinet of Ministers № 322 dated from eighth of April 2009 «About confirmation the order of issuance, extension or annulment of permissions for using the labor of foreign and individuals with now citizenship». It allows officials to give their interpretation according to the legislation 2014-2015 and use some articles in their own discretion and such process doesn't guarantee that all the interests and rights of the refugees will be considered.

According to the abovementioned we can prove that there are some measures that should be adopted on this stage of the state system and law-making to perfect the legislation in Ukraine like ensuring accountability of the organizers of illegal transporting of people through the borders; improving the coordination of forces of different departments, local governments; straitening the border control, especially on the West of the country, intensification of the control for staying foreigners in a country, creating a special informational system, which would have accumulated the data according to the foreigners from the moment they made an application for getting a visa for entering the territory of Ukraine; the development of the international cooperation to prevent illegal migration; actions according to creating the united informational base where would be kept the information about unscrupulous migrants who can cause a harmful influence for the

society; and to create an opened statistics according to the refugees and existed problems.

One of the main objectives for our country is making broadens of places of keeping illegal immigrants and also, the system of their deportation. Nowadays, there is no such experience in such questions mainly because the luck of financing for solving abovementioned problems. It can cause the catastrophically bad conditions of keeping the accused in unsuitable premises and even without a proper nutrition, sanitary-hygienical conditions, medical help, etc. And also, to the circulation of the illegal immigrants inside the country because they not are being deported, try to intercept the border again and again. In fact, governmental costs for repeated detention, custody and inspection are close to be the same with the costs for deporting illegal migrants.

**Conclusion.** According to the abovementioned, we can make a conclusion that our officials have to study the experience from the other countries of making some programs of protecting the rights of refugees and use it in implementation such experience in a struggle against the organizations of the illegal transporting people through the borders, and some mechanisms to improve Ukrainian legislation according to the refugees and resettles to the international standards.

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