

UDC 342.726

Natalia Kaminska – Doctor of Law,
Professor, Professor of the National
Academy of Internal Affairs;

Iryna Miroshnichenko – Researcher
of the National Academy of Internal
Affairs

LEGAL PRINCIPLES PROTECTING THE RIGHTS OF REFUGEES: CURRENT STATE AND PERSPECTIVE DEVELOPMENT

The article reveals the important issues of protecting refugees both theoretical and practical, the necessity of legal support the refugees, analyzes the current state legislation of protection refugees. The most acute problems of protection refugees in Ukraine were singled out and suggested the specific measures to overcome them.

Keywords: legal status; refugees; migration; protection; assimilation; human rights; racism; economic migrants; international legal documents.

The current trends of global socio-political development set a number of important scientific issues both theoretical and practical. One of the main issues is to determine the results and analysis of the phenomenon of international migration, radical solution of the problems which are at the epicentre of international relations. Existing problems of international migration appear largely due to modern trends of development of the institutions protecting the rights of refugees. Today none of the continents of the world is not exist without problems of refugees caused by the military and civil conflicts, systematic and massive violations of human rights, and economic problems of states, which often lead to domestic political instability.

The analysis of recent researches and publications. The researchers noted that such international events to resolve the refugee problems do not completely resolve all these matters. At a time when some are calling for the strengthening of cooperation

and coordination of agencies which provide emergent assistance, others point to the gaps in international law-making and are calling for the development of new standards. But, all agree upon the fact that this problem is multilateral and global. Therefore, any approach to its analysis and any decision should be comprehensive and take into account all the aspects, from the causes of mass escape to the development of appropriate responses to different situations that arise in connection with the problem of refugees – from submission emergency and continuous first aid measures to repatriation promotion.

The situation with the refugees is a classic example of the interdependence of the international community's members. It clearly shows how the problems of one country can directly affect the other countries. The important aspect of refugees' protection problem is the ignorance of their minimal rights. During a search of asylum, many people faced the restrictive measures that deprive them from access to secure areas. In some cases, persons seeking asylum and refugees are detained or forcibly returned to areas where their live and where their liberty and security are threatened. Some of them are attacked by the armed groups or recruited into the armed forces where they are forced to fight at a definite side of a civil conflict. The persons seeking asylum and refugees are also victims of brutal racism detection.

It should be noted that the legal institution of asylum is originated as a customary law and provided asylum to refugees persecuted in their country as well as from other states. The states adopted bilateral contracts of extradition the refugees and fugitives. Before the 20th century the problem of refugees was not considered as international legal problem. This problem was considered as a matter of domestic law. At the beginning of the 20th century due to a notable increase of the quantity of those who looks for shelter, as well as the strengthening the respect for human rights, the problem of refugees has been regarded as worldwide one, which can be solved only at the international level [1, p. 55].

The term «efugees» appeared after the II World War. However, the constant growth of local and global armed conflicts has led to the need not only to the detailed regulation of the legal status

of refugees, but also to the creation of the international organizations at the profile structures [2, p. 101].

The issue of refugees at the global scale remains a priority for the United Nations' Organization. Under its auspices in 1951 states adopted the Refugee Convention, which is the main international legal document regulating the legal status of specified categories of persons and protecting their fundamental rights and freedoms. In 1967 the protocol of refugees' status was developed. Its appearance gave a new force to the Convention, extending its scope. It should be noted that after the World War II more precise criteria for determining a «refugee» status was formulated. Thus, in the Refugee Convention, which was adopted in 06.28.1951 by the General Assembly of United Nations, the term «refugee» defines a person who:

1) is considered a refugee in accordance with the Agreements from 12.5.1926 and 06.30.1928, the Conventions from 10.28.1933 and 02.10.1938, the Protocol from 09.14.1939, the Refugee status in the international organization;

2) as a result of events occurring before 01.01.1951, they fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion; or not having a nationality and being outside the country of his/her former habitual residence as a result of such action [3].

Turning to the data, at the time of the creation of the United Nations High Commissioner for Refugees (UNHCR), there were about 1 mln. of refugees, but now their number has grown to about 17,5 million, in addition, there are 25 million people which are internally displaced. Previously, most of the refugees were Europeans; today refugees mainly come from Asia and Africa. Unlike the past events the current refugee flows increasingly take the form of mass (not individual) get-away. At present time 80 of refugees are women and children. The causes of mass exit were also different. Today there are natural disasters, environmental disasters and extreme poverty. As a result, many types of current refugees are not covered by the definition from Refugee Convention. It includes persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion [4, p. 123].

High Commissioner of the United Nations of Refugees Sadako Ogata said that «attitude to the problem of refugees should be the test for the commitment of the governments and peoples in protection of human rights». For this purpose a number of international legal documents have been created. These are such documents as:

1) universal international agreements which define the legal status of refugees and protection of their rights (Refugee Convention in 1951, the Protocol relating to the Status of Refugees in 1967, the Constitution of the International Organization of Migration in 1989);

2) regional international treaties and conventions which declare the legal protection of refugees in particular regions (Cartagena Declaration of Refugees in 1984, the 4th Convention of Lomey in 1989 etc.);

3) international agreements which define certain set of refugees rights' protection (Hague Agreement of sailors refugees in 1957, the Agreement of the abolition of visas for refugees in 1959, the European Agreement on transfer of responsibility for refugees in 1980, the Dublin Convention in 1990, etc.);

4) international treaties which actions were extended to refugees (Universal Copyright Convention 1952, ILO equality of citizens and foreigners and stateless persons in the field of social security in 1962, etc.);

5) international agreements which contain special provisions protecting the rights of refugees (Geneva Convention of the protection civilians during the war in 1949, the European Convention of Extradition in 1957, the Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1968, the Schengen Agreement in 1985, the Schengen Convention in 1990, etc.);

6) international treaties of a general nature which are related to refugees (Universal Declaration of Human Rights in 1948, the Convention of the declaration of missing dead in 1950, the UN Convention of the Law of the Sea in 1982, the Convention of search and rescue at sea in 1979, the Pact of Civil and Political Rights in 1966, the Pact of Economic, Social and Cultural Rights in 1966, etc.);

7) Agreement and Declaration of Asylum (UN Declaration of Territorial Asylum in 1967, the Havana Convention of Asylum in 1928, Convention of Territorial Asylum of Karakas in 1954, etc.);

8) international agreements which define the legal status of stateless persons (the Convention of the Status of Stateless Persons in 1951, the Convention of the Reduction of Statelessness in 1961);

9) bilateral agreements which govern the legal status of refugees (Agreement between Austria and France of the accommodation of refugees in 1974, the Treaty between Austria and Hungary of extradition in 1976, the agreement between South Africa and Mozambique on non-aggression and good neighbourliness in 1984, agreement between Afghanistan and Pakistan of the voluntary return of refugees 1988, etc.).

A refugee cannot always have a legal basis for further social adaptation. This often leads to the fact that an individual who received a «refugee» status is still looking for a better life at the territory of other countries. To avoid such a situation the states which provide shelter should at first create support programs or conditions which would guarantee access to such programs. The main aim of this process is to ensure the police of the state participation in the integration of refugees, provision of the establishment of responsible relations between refugees and the state, which give them legal protection.

The important role is given to self-determination and self-sufficiency of refugees and the actions to support refugees by society and state. There is another equally important issue concerning the definition of a refugee as a person, because today most countries claim that about 10–20 % of refugees are economic migrants. From a human rights perspective, this situation causes the great concern. It is not always possible to make a clear difference between a refugee and an economic migrant. You can say that when it comes to danger of life and freedom, the position of the person in danger of death due to starvation is not very different from that of another person in danger of arbitrary execution because of his/her political belief.

Even without taking into account these considerations. the fact that regardless of whether that person is a refugee or an economic migrant, a citizen or noncitizen, or he/she leaves their country because of persecution, armed conflict, threats to his/her life or

subject poverty remains, this person has a minimum necessary rights and is entitled to the minimum standards of required treatment. Also the tendency not to open the territory for asylum applicants is growing. Some governments provided the influx of people; asylum seekers, economic migrants and illegal aliens have introduced restrictive measures that would prevent the entry into their territory.

These measures include installation of difficult or onerous conditions for obtaining visas to citizens of some countries and fines on airlines that carry foreigners without documents. Sometimes this inhumane practice takes such forms as the forced return of persons seeking asylum to the country of origin, where there is a threat to their life, liberty and security. There are the facts that the vehicles of persons seeking asylum who are trying to go ashore in certain areas forced to turn back to sea where these individuals die of starvation or become easy prey for pirates and sharks.

Another example of ill-treatment is physical violence, detention of persons seeking asylum for extended periods without legal justification, harsh interrogation procedures. The government also cannot provide the adequate protection of refugees and persons seeking asylum and as a result they find themselves in danger of becoming a victim of physical violence generated by racism and xenophobia [5, p. 135].

In this case the additional protection of refugees should be used. It is also can be defined as the protection is granted by the states on the basis of documents which are not included into the system of protection established by the Convention of the Status of Refugees in 1951, to persons who are close to the refugees in their status but does not have that status because they do not meet the criteria set out in the Convention. Such protection may be based on documents concerning human rights or on more general humanitarian principles provided for the protection of those who flee to other countries due to large-scale violence. Actually, it is the protection mechanisms resulting from enhanced commitments on the principle of non-refoulement which liabilities exceed the amount provided by the Convention on the Status of Refugees in 1951.

As for Ukraine, currently established and functioning legal system of protection of persons seeking asylum is adopted in order to

meet modern international standards [6–7]. Ukraine has the law of refugees and persons in need of additional or temporary shelter which defines the legal terms governing the procedure of the consideration of applications, of recognition as a refugee or a person in need of additional protection, the decision of applications, the recognition as a refugee or a person which requires additional-term protection and appeal those decisions [8]. This law expanded opportunities for asylums for constant or temporary shelter. However, after a long period of reorganization process the institute that deals with issues related the refugees – State Migration Service of Ukraine was created.

Despite the positive achievements in the field of administrative and legal refugee status in Ukraine, there are many problems associated with their further integration into society. Thus, despite the drawn Ukrainian commitment for the access to the Convention of the Status of Refugees of 1951 the current legislation of Ukraine does not contain provisions of the integration of refugees, the competence of control and supervision of the integration the refugees is not attributed to any public authority. In the process of analysis of the norms of national legislation which defines administrative and legal status of persons recognized as refugees it can be concluded that most of them apply only to the process of recognition as a refugee. The law of Ukraine do not have such rules as to continue of their further integration. The lack of legal regulation of Ukraine's integration of persons recognized as refugees' leads to violations of their rights and freedoms by the Ukrainian authorities what, as a result, negatively affects the international image of Ukraine. According to the current Ukrainian legal system refugees cannot fulfil their international obligations as the law does not provide them with effective mechanisms to ensure their rights and freedoms [7, p. 540].

Working out the numerous problems in the area of legal protection of refugees, we can say that there is the a need for a clear national strategy, for an integration of persons recognized as refugees, which is a set of necessary measures in order to facilitate the social integration of refugees through cooperation of public authorities, central and local level and the non-governmental sector in Ukraine.

We can agree with the view of many scientists that among the most important issues to be addressed in the formation of the comprehensive strategy of integration of persons recognized as refugees should be allocated, providing them with effective access to all services provided by government agencies, continuous monitoring of refugees problems by central and local authorities, raising the legal culture of refugees, in particular on their rights, duties and guarantees [9, p. 656].

The conclusions of the study. Thus, analyzing the legal status of refugees in international law and domestic law of Ukraine, the following conclusions can be drawn:

1. The international legal protection of refugees was launched just after the First World War. The practice of the first international instruments of refugees' protection demonstrated the inadequacy of these agreements in terms of legal protection outcasts because of political instability and conflict states. The process of improving the protection of the system began to be formed only with the establishing of the duty of the United Nations High Commissioner of Refugees. Besides the persons which are defined by the Statute of the refugees, there are also many other categories of people in need of protection. However, this extension of the mandate is always temporary and is associated usually with the deterioration of the humanitarian situation in a given region.

2. The dominant in international law is the definition of «refugee», which is contained in the Refugee Convention 1951 which sets out an exhaustive list of criteria under which a refugee status is granted. But states may extend the said determination to help the people who, in their opinion, need their protection. However, this expansion of the concept is always the law of the State and cannot be defined as its responsibility.

3. The refugees should be provided with the definite amount of economic and social rights. A full range of rights should be granted to women and children who are the most vulnerable social groups.

4. The national law of Ukraine on refugees does not meet the standards of international law.

5. The lack of state control over the process of settlement of the refugees' problem creates certain complications of legal,

economic and social issues. These complications arise as the causes of objective and subjective nature. The objective reasons primarily include: lack of financial resources, housing and others. Subjective – lack of coordination and sophistication of public authorities, which depend on the issues of refugees, and the imperfect nature of Ukrainian legislation as to the subject. In this connection it is necessary to develop and adopt appropriate regulations, instructions that would regulate the work of ministries and agencies that deal with these issues. In addition, the legislation should be introduced as a new form of refugees' protection – a «humanitarian status».

Thus, the problem of refugees continues to be a challenge for the international community. While the states receiving refugees should continue to perform their duties as to the people's protection and help to create conditions of tolerance towards people of other nations, the states of refugees' origin are required to prevent actions that generate mass escape of their population.

At the same time, the international community should determine the most effective ways to prevent new flows of refugees. Further researches in this sphere which investigate the causes of these phenomena and activities to improve the situation should be made.

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Камінська Н. В. – доктор юридичних наук, професор, професор кафедри гуманітарних та загальноправових дисциплін Національної академії внутрішніх справ;

Мірошніченко І. Т. – здобувач Національної академії внутрішніх справ

Правові засади захисту біженців: сучасний стан та перспективи розвитку

Розкрито важливі питання захисту біженців як теоретичного, так і практичного характеру. Обґрунтовано необхідність правового забезпечення осіб, визнаних біженцями. На основі аналізу нормативно-правової бази у сфері захисту біженців в Україні виокремлено низку гострих проблем та запропоновано конкретні заходи щодо їх розв'язання.

Ключові слова: правовий статус; біженці; міграція; захист; асиміляція; права людини; расизм; економічні мігранти; міжнародно-правові документи.

Каминская Н. В. – доктор юридических наук, профессор, профессор кафедры гуманитарных и общеправовых дисциплин Национальной академии внутренних дел;

Мирошниченко И. Т. – соискатель Национальной академии внутренних дел

Правовые основания защиты беженцев: современное положение и перспективы развития

Раскрыты важные вопросы по защите беженцев как теоретического, так и практического характера. Обоснована необходимость правового обеспечения лиц, признанных беженцами. На основании анализа нормативно-правовой базы в сфере защиты беженцев в Украине выделен ряд острых проблем и предложены конкретные меры по их разрешению.

Ключевые слова: правовой статус; беженцы; миграция; защита; ассимиляция; права человека; расизм; экономические мигранты; международно-правовые документы.