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THE LEGAL STATUS OF REFUGEES AND DISPLACED PERSONS IN INTERNATIONAL LAW

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The article analyzes the main problems associated with the determination of refugee status and displaced persons.

Keywords: refugee, displaced person, the Convention "Legal Status of Refugees", United Nations High Commissioner for Refugees

У статті аналізуються основні проблеми, пов'язані з визначенням статусу біженця та переміщених осіб.

Ключові слова: біженець, переміщена особа, Управління Верховного комісара ООН у справах біженців (УВКБ ООН).

В статье анализируются основные проблемы, связанные с определением статуса беженца и перемещенных лиц.

Ключевые слова: беженец, перемещенное лицо, Управление Верховного комиссара ООН по делам беженцев (УВКБ ООН).

The purpose of this article is to study the legal status of refugees and displaced persons in international law.

A person recognized as a refugee as soon as his situation starts to match the definition. The refugee status is a formal acknowledgement of the human right to international protection or asylum. Formal determination of refugee status entails the legal consequences, which are that the position of a particular person or group satisfies the relevant legal criteria.

Legal regulation of the status of refugees and displaced persons is regulated by the Convention Relating to the Status of Refugees (1951), the Statute of the office of the UN

high Commissioner for refugees (1950), the Constitution of the International organization for migration (1989).

A study of the problems of legal status of refugees and displaced persons was developed by such scientists as A. Gabrielyan, V. Evtukh, A. Kablov, Y. Malinovskaya, Y. Olefir, S. PyrozHKov.

For the purposes of the present Convention, the term "refugee" shall apply to any person who: (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section; (2) As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

The term "economic refugees", the so-called fleeing their country in search of a better economic situation, does not belong to this category of people. More often, the refugees appear as a result of international or internal military conflicts.

In international law the term "refugee" appeared after the First World War. However, the constant increase of local and global armed conflicts led to the need for not only detailed regulation of legal status of refugees, but also to the creation of international structures specialized in nature. In the UN on the basis of General Assembly resolution 428 (5) of 14 December 1950 the Office of the High Commissioner for Refugees (hereinafter - UNHCR) was established, and in 1951 multilateral Convention relating to the status of refugees was concluded. It's said in the Convention that the term "refugee" means a person who was considered as a refugee due to a number of agreements concluded in the period between the two world wars, and also as a result of events occurring before 1 January 1951. In 1967 a Protocol was adopted relating to the status of refugees. In accordance with the Protocol of the 1951 Convention is already extended to people who became refugees after 1951.

To streamline the activities of UNHCR in 1954, the UN General Assembly adopted the Statute of UNHCR, on the basis of which UNHCR should operate. In addition to UNHCR, which is the Central element in the international system of refugee protection, other international agencies of the UN system were organized including international and regional organizations, non-governmental organizations and structures of the States involved in refugee protection.

For more effective functioning in recent years UNHCR is implementing closer cooperation with regional systems of refugee protection, with the aim of preventing the emergence of new flows of refugees, directly from states, international organizations involved in solving the problems of refugees and non-governmental organizations.

However, according to many experts, there is a need to create a new international body with a broader competence than the UNHCR, which would not have the status of a subsidiary UN agencies, and would be established by states through international agreements. More power should be given to the organization, as the power possessed by the Executive Committee of the programme of the High Commissioner, the High Commissioner, the UN General Assembly. ECOSOC does not allow them to take decisions that are binding on all parties concerned. Documents adopted by these international institutions are the so-called soft law, which sometimes negates the efforts of many individuals and organizations that are sincerely committed to help the refugees and displaced persons.

In the framework of the international community, intergovernmental cooperation resulted in a number of international legal instruments concerning the protection of the rights of refugees, these include:

- Universal international agreements regulate the legal status of refugees and protect their rights (the Convention relating to the status of refugees (1951), the Statute of the office of the UN high Commissioner for refugees (1950), The Constitution of the International organization for migration (1989));

- Regional international treaties and conventions govern the legal protection of refugees in a particular region (the Convention governing the specific aspects of refugee problems in Africa 1969, the Agreement on assistance to refugees and internally displaced persons, Cartagena Declaration on refugees 1984, etc.);

Article 12 of the Convention Relating to the Status of Refugees deals with the personal status of refugees. According to this article personal status of a refugee is governed by the law of the country of his domicile or if he has no domicile, by the law of the country of his residence country. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee. With regard to the protection of industrial rights, such as rights on inventions, designs and models, trademarks, business names, and of rights in literary, artistic and scientific works, the refugees in the country where they have their habitual residence, will be provided with the same protection as citizens of this country.

On the territory of any other Contracting State the same protection would be given to nationals of the country in which they have their habitual place of residence.

Every refugee will have free access to courts on the territory of all Contracting States. The territory of the Contracting State where his usual residence is located, every refugee will enjoy respect of the right of appeal to the court of the same status as nationals, particularly in matters of legal assistance and exemption from the payment of court costs.

Displaced persons are people who were forcibly removed during the Second World War by Nazi Germany and its allies with occupied territories for use as forced labour. After the war, the Soviet Union signed a number of bilateral agreements on repatriation (returning home) displaced persons from among Soviet citizens. To facilitate the return home of displaced persons in 1946 the government created the international organization for refugees, which ceased to exist in 1951 because of UNHCR creation.

The term "displaced persons" is not used in the Convention relating to the status of refugees of 1951, but currently it applies to some categories of "internal refugees", also

called "internally displaced persons". This term include those people who have left a particular conflict region of the state and settled in another region within the same state.

However, the problem of refugees exists in Ukraine too. Especially sharply it is reflected in the Autonomous Republic of Crimea. We all know that the question of nationality in the Crimea was and is important socially, but politically still extremely sensitive. The interethnic peace is very important in the Crimea. That's why the Ukrainian government has created all legislative and administrative prerequisites for its successful resolution with the assistance of the OSCE high Commissioner on national minorities of the OSCE Mission in Ukraine, as well as the office of the high Commissioner for refugees United Nations (UNHCR) and the International organization for migration. Many people who are citizens of other states have returned for permanent residence in Ukraine, after the proclamation of independence, or moved for the first time. A lot of them of them want to change their nationality in Ukrainian. In turn, for various reasons about 300 thousand citizens left Ukraine for other states. Many of them want to change the Ukrainian citizenship for citizenship of the country of their current residence. The human desire to be a citizen of the country in which it resides is quite natural.

A lot of people who want to change their current nationality into Ukrainian, were deported from Ukraine, e.g the Crimean Tatars and people of other nationalities who have returned or will soon return to their homeland as its permanent residents and citizens. The absence of citizenship of Ukraine from people returning from places of deportation severely hampers and complicates their reintegration into society. After all, before the acquisition of Ukrainian citizenship, they have no right to elect and be elected in legislative and representative bodies, to hold positions of public servants, to participate in the privatization of state property, to serve in the army, to be members of political parties, etc. It is clear that such a state is fraught with tension in relationships with these people and even the possibility of conflict.

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