

Status of Refugees and International Protection Seekers: Administrative-Legal and Socio-Communicative Aspects*

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Abstract.

The article aims to disclose the administrative, legal, and socio-communicative status of refugees and seekers of international protection. It is demonstrated that the administrative and legal status of refugees encompasses the rights and freedoms granted to them, which are classified into two groups. The first group consists of non-specific rights, or fundamental universally recognized rights and freedoms, enjoyed by all non-citizens within the territory of the country of asylum. These include rights realized through general procedures as well as rights with specific implementation aspects concerning refugees. The second group involves specific rights, which are exclusive to refugees, such as the right to monetary assistance, the right to preferential access to citizenship, and the right to free legal aid during refugee status determination procedures. In addition, it is concluded that the administrative and legal status of refugees also includes specific duties regulated by Ukrainian legislation, such as the obligation to inform the central executive body responsible for refugee policy about travel outside their registered administrative-territorial unit. This study employs a qualitative research method with a literature and legal approach, analyzing primary and secondary legal materials relevant to refugee protection. Through this method, the article offers a comprehensive understanding of the legal frameworks that structure refugee rights and obligations, aiming to strengthen the protection mechanisms for individuals in need of international protection.

Keywords: Status; Refugees; International Protection; Seekers; Administrative-Legal Aspects; Socio-Communicative Aspects; Global Standards; Foreign Experience

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A. INTRODUCTION

The implementation and protection of the rights and freedoms of refugees and persons in need of international (additional or temporary) protection is a critical issue in connection with the current situation in the global arena. The spread of armed conflicts, political repression, environmental disasters and economic crises leads to an increase in the number of refugees and persons in need of protection in other countries. Ukraine, due to its geopolitical situation, is no exception - millions of citizens have become internally displaced persons, and foreigners seeking asylum also apply for international protection.

Administrative and legal support of the rights of such persons is key to their proper protection. Effective mechanisms that guarantee their rights, determine the procedures for obtaining refugee status, and provide temporary protection mechanisms in case of urgent need must be created. Normative legal acts should provide security and access to medical, social, and legal services. The above-mentioned determines the relevance of the study of administrative and legal support for the rights of refugees and persons needing international (additional or temporary) protection.

The study of the problems of establishing the content of refugee status and persons in need of international (additional or temporary) protection requires a comprehensive scientific development, which is associated not only with the establishment of legal aspects of determining their status but also with social, political, and economic aspects. The problems of establishing the status of refugees and persons needing international (additional or temporary) protection were studied in the scientific works of domestic scientists such as V. Averyanov, O. Andriyko, Yu. Bitiak, N. Zadyraka, T. Kolomoets, T. Minka, Ye. Leheza ([Leheza et al., 2022](#)), Yu. Leheza, Ye. Gerasymenko, Y. ([Gerasymenko, Y., 2022](#)), and others.

B. METHODS

Scientific research was carried out based on theoretical and practical conclusions obtained in the scientific works of foreign and Ukrainian researchers on methodological approaches to establishing administrative, legal, and socio-communicative aspects of the status of refugees and persons in need of international protection.

The study was based on applying the epistemological method of scientific knowledge, which made it possible to understand the essence of the status of

refugees and persons needing intergenerational protection. Classification, systematisation, and structural-logical settlement were used to ensure the ontology of scientific knowledge of the problem of establishing the status of refugees and persons in need of intergenerational protection.

C. RESULTS AND DISCUSSION

The situation in which refugees find themselves is associated with a temporary stay on the territory of a foreign state and the inability or unwillingness to use the protection of the country of their citizenship. Such specificity gave some scholars the right to deny the correctness and possibility of using the "legal status" concept about refugees. ([Poiedynok, 2021](#))

The legal status of refugees should be distinguished from that of foreign citizens (foreigners) since refugees are a separate category of persons ([Basalaieva et al., 2020](#))—a special kind of non-citizens. We support this position because the mutual rights and obligations of refugees and the state established by law and the procedure for acquiring and losing such rights and obligations are qualitatively different from those of a foreign citizen and a stateless person.

In addition, unlike foreign citizens, refugee protection is provided by the state of asylum, not by the state of citizenship, which radically distinguishes refugees from citizens. Refugee citizenship is thus "suspended," if not formally, it becomes ineffective. The person and the state do not realize mutual civil rights and obligations. Stateless persons are generally deprived of the opportunity to receive such protection from their state of origin due to a lack of citizenship. That is why the definition of refugees conventionally contains provisions relating to citizens and stateless persons. However, the stateless state provides asylum to refugees. Therefore, protection from the state of asylum separates refugees from the circle of other stateless persons. Formally remaining a citizen or stateless person, the refugee acquires legal status, the basis of which is protection by the state of asylum, the status of which differs from the status of foreigners and stateless persons and allows us to conclude that refugees, together with them, are a separate type of non-citizen.

Some researchers link the international legal status of refugees with the system of norms of international law and the practice of their application about the rights and obligations of persons subject to the internationally recognised definition of refugees, as well as the legal regime of refugees as a special form of realisation of a certain international status of refugees in the state of asylum ([Borysenko et al., 2022](#)). We can generally agree with this view if it relates to the

"legal status of refugees" category as a legal body and institution of law. However, we defend the position that the legal status is primarily determined through the rights and obligations defined by the norms of law, which scientists have repeatedly expressed. ([Gerasymenko et al., 2022](#))

A similar position is that the legal status of a refugee is a separate type of status, different from the status of a foreigner, citizen, stateless person, or internally displaced person, which Yu respects. Turkish. We support the researcher's proposals for highlighting the characteristic signs of refugee status and propose to present them as follows:

- The legal status of a refugee is determined by both the norms of international law and the norms of national asylum legislation.
- The prerequisite for obtaining refugee status is a reasonable fear of becoming a victim of persecution based on relevant, specific grounds and a lack of protection from the state of citizenship.
- Formal preservation of citizenship/citizenship, if any;
- The legal status of a refugee includes granting a person additional (special) rights and imposing appropriate obligations based on protection by the state of asylum.

The question of the relationship between the concepts of "legal status" and "legal regime," which apply, in particular, to foreigners and refugees, also deserves attention. Some authors identify these concepts, consider them synonymous and define the legal status (regime) of foreigners as a set of their rights and obligations on the territory of a specific state ([Moldova, 1996](#)). At the same time, there is a point of view about the need to distinguish between these concepts. In particular, the legal regime for the stay of foreigners in another state is defined as "established and controlled by the state order and conditions for the acquisition and realisation by foreigners of certain rights and obligations" ([Piskun, 1998](#)). Accordingly, a difference is made between these concepts and those about refugees. Under the international legal status of a refugee, it is understood that a system is recognised and enshrined in the norms of international law and practice of states, as well as the rights and obligations of persons considered refugees. Furthermore, the legal regime provides for a specific implementation of the already defined international refugee status in the state's territory that accepts it. ([Kopylenko, 2020](#))

The legal status of a foreign citizen or subject in any country is dual. The first of this provision's components (elements) is the legal status of a citizen

(subject) of the state of origin, including consular or diplomatic protection by this state. The second element is the legal status granted to foreigners in the country of asylum. However, from the point of view of the host country, refugees are foreigners or stateless persons who do not enjoy the protection of their state of origin. Therefore, their legal status is different from that of other foreigners in the country of asylum. This is manifested in an expanded list of rights and obligations that refugees are given, compared to ordinary foreigners.

So, in world practice, national legislation and international treaties provide for different legal regimes for foreigners: the regime of reciprocity, "open doors," identity, national, most favoured nation, special (preferential), etc. The most traditional or commonly used are three main types of legal regime of foreigners: national, which provides for the provision of foreigners with the same rights as citizens of the host country; most favored nation regime, which means providing foreigners with the same number of rights and obligations as citizens of a third state; a special regime that determines the granting of rights and obligations to foreigners that differ from those established for their citizens.

The 1951 Convention relating to the Status of Refugees establishes five different standards for treating refugees, meaning there are five types of legal treatment of refugees in the country of asylum. First, refugees are entitled to a position generally enjoyed by other foreigners, except where the Convention provides a more preferential position (Article 7 of the Convention). In other words, the general principle of determining the legal status of refugees is equality in rights and obligations with other foreigners in the host country. The second concerns the series. In other words, the general principle of determining the legal status of refugees is equality in rights and obligations with other foreigners in the host country. The second concerns rights granted to refugees in the territory of States Parties to the Convention on the same terms as their citizens (for example, the right to education, government assistance and support, protection of copyright and industrial rights). The third standard is the right of refugees to at least the same favourable conditions as citizens of the host country regarding the freedom to practice their religion. The fourth standard provides refugees a situation no worse than that usually used by foreigners in the same circumstances (for example, the right to work for hire or engage in free professions, the right to association in associations and trade unions). The fifth is connected with providing refugees with the most favourable legal position, that is, in any case, a position no less favourable than that usually used by foreigners in the same circumstances (for example, about the right to housing). ([Hathaway, 2005](#))

It is simplistic to say that, by the Convention, refugees have rights and obligations equal to those of other foreigners in their country of residence. This is the so-called minimum standard. At the same time, they realise certain rights and obligations along with citizens of the country of asylum, including the right to education, government assistance and support, to protect copyright and industrial rights, etc. At the same time, refugees are granted specific rights directly related to their special situation and aimed at resolving their problems, such as the prohibition of expulsion. ([Leheza, 2020](#))

Separately, I would like to draw attention to this of the most important aspects of the legal status of refugees, defined in the 1951 Convention and the 1967 Protocol, as its international character, manifested in the preservation and continuity of the refugee status after it is defined by any of the countries parties to the Convention.

The rights and obligations of refugees differ depending on the possibility of their restriction in the country of asylum. Indeed, when acceding to the 1951 Convention, any State may make reservations to its articles, including those relating to the rights and obligations of refugees. However, according to Article 42 of the 1951 Convention, reservations cannot relate to the definition of "refugee," provisions prohibiting discrimination and freedom of religion, the right of free recourse to court and the prohibition of forcibly returning refugees to the borders of a country where they would be in danger.

The Convention list of rights and freedoms of refugees does not include several important personal human rights, in particular, the right to life, personal inviolability, non-interference in personal and family life, etc. A similar situation is observed in the vast majority of acts of national legislation on the status of refugees. However, this does not mean that refugees do not have such rights. Since these rights are fundamental human rights, they are recognised by each person. They are enshrined in international legal acts on human rights, and in national law, in constitutions or constitutional laws ([Leheza et al., 2023](#)). Legal acts relating to the legal situation of refugees should not list all the rights that they have, like any other person, but are designed to determine precisely the specific features of the legal status of this category of persons. It should be noted that there is a close connection between the rights of refugees and human rights, which is not only that all refugees are endowed with the latter. It also lies in the fact that most often, the cause of forced migration of persons is precisely a violation of universally recognised human rights.

The 1951 Convention also defines the so-called "non-specific" rights of refugees, which may have a particular specificity of implementation regarding

refugees. In particular, refugees are guaranteed freedom from discrimination (Article 3 of the Convention), freedom of religion (Article 4), the right to freely apply to the court (Article 16), the right to work for hire, in their enterprise and to engage in free professions (Articles 17, 18,19), the right to housing (Article 21), to education (Article 22), for government assistance and support (Article 23), the right to social security (Article 24), freedom of movement and the right to freely choose the place of residence (Article 27). In addition, refugees are guaranteed the right to participate in non-political associations (Article 15), the protection of their copyright and industrial rights (Article 14), as well as a situation no less favourable than for foreigners regarding the acquisition of movable and immovable property (Article 13). This list includes those rights and freedoms recognised by the vast majority of persons, regardless of the specifics of their legal status. ([Mitchuk, et al. 2023](#))

At the same time, the 1951 Convention on the Status of Refugees provides for several "specific" rights that belong exclusively to refugees, such as: the right to obtain a refugee identity card (Article 27) and travel documents (Article 28); the right to export the property that the refugees brought with them to another country to which they were granted the right of entry for settlement (Article 30); the right to exemption from penalties for illegal entry or illegal stay in the territory of the host State (Article 31); the right not to be expelled or returned to the borders of a country where their life or freedom would be in danger (Article 33). ([Shkuta, et al., 2023](#))

An analysis of the Convention's text allows for the classification of refugees' rights and freedoms by the scope of their guarantee ([Kulinich et al., 2023](#)):

- Which are guaranteed on an equal basis with citizens of the country of asylum;
- Which are guaranteed on an equal basis with citizens of other non-citizens;
- Special rights.

The first category of the Convention includes freedom of religion (Article 4), copyright and industrial rights (Article 14), the right to appeal to the court (Article 16), primary public education (part 1 of Article 22), labour rights and social security (Article 24). The second category includes the property right (Article 13), the right to unite in organisations that are not political (Article 15), the right to employment (Article 17), entrepreneurship (Article 18) and to engage in free professions (Article 19), the right to housing (Article 21), the right to other types of public education (Section 2, Article 22) and freedom of movement

(Article 26). The third group - special rights - includes the right to obtain identity cards and travel documents (Articles 27 and 28), freedom from prosecution for illegal entry into the country (Article 31), freedom from expulsion and forced return (Articles 32 and 33).

There is no doubt that certain rights of refugees from this list can be realised only with the assistance of the state, represented, among other things, by the subjects of public administration, which causes the emergence of administrative and procedural legal relations, including those related to the provision of administrative services. Protection of these rights occurs in the court, administrative and judicial, etc. Therefore, even those rights that are not traditionally related to the content of a person's administrative and legal status are realised with the participation of state subjects in the relevant administrative legal relations. ([Leheza et al., 2023](#))

Accordingly, we can allocate rights that can be realised exclusively through interaction with the public administration, as determined by the norms of administrative law, which entails forming administrative legal relations. In addition, rights and freedoms can be allocated, the realisation of which requires, in some cases, the state's involvement in the person of authorised subjects of public administration. The first group includes the right to freedom of association, which includes mandatory legalisation or state registration of the newly created public association on the initiative of refugees. The second group of rights and freedoms includes, for example, freedom of religion, which covers the right to have or not to have a religion or belief; the right to accept or change religion; the right to profess their religion and beliefs, both collectively and individually, during worship, during religious and ritual rites. Refugees can have a religion that differs from the religion of the majority of the population of the host country. Therefore, they are particularly vulnerable to measures affecting their religious freedom, and the state should not adversely affect the freedom of religion of minorities, who are also refugees. At the same time, realising their freedom of religion, refugees, like other residents of the state, will enter into administrative legal relations only in cases where this is required by law - when creating a religious organisation, during mass events for religious purposes, etc. ([Leheza et al., 2024](#))

Separately in this list of rights is the right to appeal to the court, which is sometimes called access to the courts. In the context of the administrative and legal status of a person, this right deserves special attention, because in Ukraine, for more than 15 years, there has been a system of administrative courts, which is designed to protect the rights and freedoms of individuals from violations by

subjects of power. In this order, refugees may appeal against decisions relating to their refugee status and other decisions, actions or inactions of the subjects of power relating to their rights, freedoms and legitimate interests. In addition, the Code of Administrative Justice of Ukraine is allocated to a separate group of cases in which non-citizens, including refugees, participate as defendants in claims of subjects of power regarding their detention, expulsion, forced return, etc. ([Zadyraka et al., 2023](#))

In some countries, individuals have access to the courts as plaintiffs if they are citizens of that country or another country with which reciprocity is agreed. In other states, non-citizens have access to the court, but in the absence of a reciprocity regime, must pay an amount that, at the discretion of the court, is sufficient to cover the costs that a non-citizen will be forced to pay to the other party if he loses the case (*cautio judicatum solvi*). Refugees who do not have de facto citizenship are usually not subject to reciprocity arrangements, and even if everyone has the right to appeal to the court, the requirement of *cautio judicatum solvi* and the lack of legal assistance can, in practice, make it impossible for refugees to exercise their rights in courts. Article 16 of the 1951 Convention aims to remedy this situation. ([UNHCR, 1997](#))

The Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols Nos. 1950) in Article 6 contains provisions of some interest in connection with Article 16 of the 1951 Convention. Thus, according to the provisions of Part 1 of Article 6 of the ECHR, everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial court established by law, which will resolve the dispute regarding his rights and obligations of a civil nature or establish the validity of any criminal charges brought against him. Paragraph 3 (c) of the same Article establishes a rule according to which each accused of a criminal offence has, among other things, the right to defend himself or herself or to use the legal assistance of a defender chosen at his discretion, or - in the absence of sufficient funds to pay for the legal assistance of a defender - to receive such assistance free of charge when the interests of justice require it. Paragraph 3 (e) provides the possibility of obtaining free assistance from an interpreter if the accused does not understand the language used in court or does not speak it. Article 6 provided the most extensive interpretation of the European Court of Human Rights in its practice.

Refugees' realisation of the right to education depends on the education level. The 1951 Convention guaranteed access to primary education on an equal basis with citizens of the country of asylum. However, about other educational

levels and types of education, states guarantee only a regime no less favorable than the regime that is provided to foreigners, as a rule, under the same circumstances (regarding the opportunity to study, recognition of foreign certificates, diplomas and degrees, exemption from tuition fees and fees, as well as the provision of scholarships). ([Barvinenko, et.al., 2023](#))

Differentiation of the mode of access to education depending on its level follows from the fact that primary education is the most important for the proper socialisation of a person. This is consistent with the provisions of the 1966 International Covenant on Economic, Social and Cultural Rights, which requires countries to make primary education "compulsory and free for all" (Article 13.2 (a)), while creating an equal level of accessibility for complete secondary and higher education.

In many cases, this provision of Article 22 of the Convention can be refuted due to the more favourable provision of Article 29 ("they will not impose any duties, fees or taxes on refugees, except or over those levied or may be levied on their citizens in such situations"). Thus, if nationals of an asylum State are exempted from certain payments or fees under certain circumstances in the manner prescribed by law, regulation or established practice, the refugee will be entitled to the same treatment under Article 29.

The Convention, in Article 13, provides that the Contracting Parties shall give the refugees the most favourable position in respect of ownership of movable and immovable property, as well as in respect of lease and other contracts relating to movable and immovable property, and, in any case, no less favourable than that enjoyed by foreigners in the same circumstances.

At the present stage of legislation development, property ownership is often guaranteed to foreigners equally with citizens. However, specific laws were developed after the First World War, according to which rights were limited for emergency reasons, and a distinction was made between citizens and foreigners on issues such as rent control, etc. In addition, some states have a special legal regime for using people's property, such as natural resources. In some cases, exhaustive natural resources are forbidden from being provided to the user.

Article 15 of the 1951 Convention guarantees refugees the right to unite in non-political and non-profit organizations and trade unions. The exercise of this right by refugees lawfully residing in the territory of States of asylum must be ensured in the most favourable regime available to nationals of foreign countries under the same circumstances. This right is protected in primary international and regional human rights instruments. Under international human rights law

(e.g. Article 22 of the International Covenant on Civil and Political Rights), freedom of association may be subject only to such restrictions as are deemed necessary in a democratic society, in the interests of national security or public safety, public order, health or morals, or the protection of the rights and freedoms of others. Similar provisions are contained at the European regional level in Article 11 of the ECHR.

Articles 17, 18 and 19 of the 1951 Convention define the regime of the right to work for hire (access to the labour market), to work in one's enterprise (the right to entrepreneurial activity), as well as the right to engage in free professions. Refugees should be able to support themselves and their families, especially given the spectre of hopes for a rapid change in conditions in their countries of origin that will ensure safe voluntary return. Thus, the above group of rights is crucial for refugees.

The provisions of the Convention establish a standard of "the most favourable treatment to be accorded to citizens of a foreign state," but also establish a softer minimum standard in respect of wages (Article 17 (2)). However, international human rights law contains other rules on the right to work that may apply to refugees and asylum seekers. The general non-discrimination rule stipulates that everyone in any country should have the same rights. Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights contains an explicit provision prohibiting discrimination: "States participating in this Covenant undertake to ensure that the rights proclaimed in this Covenant will be exercised without any discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other circumstance." Although the ICESCR does not expressly allow restrictions on the right of non-citizens to work (as follows from Article 6), it should be remembered that this right falls under the same restriction as all other rights provided for in Article 4: "States Parties to the present Covenant recognise that, about the enjoyment of those rights which a State provides by the present Covenant, that State may impose only such restrictions on those rights as are determined by law and only insofar as it is compatible with the nature of those rights and solely to promote the general welfare of a democratic society."

Thus, any restriction on the right of refugees to work should be: "determined by law" - this means that specific norms of the general law should establish it; "compatible with the nature of that right" - meaning that it should not be applied in such a way as to endanger the very existence of the right; "solely to promote the general welfare in a democratic society" - this means that such a restriction is a necessary reason for improving the welfare of society as a whole.

D. CONCLUSIONS

In a certain sense, the mechanism for implementing the requirement for knowledge of the state language or its understanding in an amount sufficient for communication remains uncertain. Indeed, today, no developed mechanism would establish a straightforward procedure for determining the subject's level of proficiency in the state language or the criteria by which the limit of a person's understanding of the state language is determined in an amount sufficient for communication.

We hope that solving these and other legal problems soon will allow Ukraine to create proper conditions and mechanisms to protect the central element of the legal status of refugees—the fundamental rights and freedoms proclaimed by Ukrainian legislation.

The content of the administrative and legal status of refugees includes the rights and freedoms that belong to them, which are classified into the following groups: non-specific rights, or fundamental universally recognised rights and freedoms, are enjoyed by non-citizens in the territory of the country of asylum (rights realised in the general order; rights with peculiarities of implementation about refugees); specific rights (rights that belong only to refugees in the territory of the country of asylum, in particular, the right to monetary assistance, to preferential citizenship, to free legal assistance in cases of refugee status).

It is noted that the issuance of a travel document to a refugee does not, in any case, provide the holder with the right to diplomatic protection of the country of issue of the document or give diplomatic or consular institutions the right to protect refugees. It is emphasised that the right of refugees not to be expelled is a guarantee against their forced return to the situation of persecution and forms the basis of the refugee protection system. It is indicated that it is impossible to apply to a refugee the provisions of Article 24 of the Code of Ukraine on Administrative Offenses regarding the application to foreigners, stateless persons of such a measure of administrative coercion as administrative expulsion from Ukraine, as well as reducing the period of temporary stay of such persons in Ukraine.

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