

DOI: 10.7596/taksad.v6i3.

Citation: Borisov, G., Safronova, E., Sinenko, V., Tonkov, E., & Turanin, V. (2017). Interpretation of the “Refugee” Term in the International Legal Acts and Laws of the CIS Countries. *Journal of History Culture and Art Research*, 6(3), 1451-1458. doi:<http://dx.doi.org/10.7596/taksad.v6i3.1016>

Interpretation of the “Refugee” Term in the International Legal Acts and Laws of the CIS Countries

**Gennadij A. Borisov, Elena V. Safronova,
Vladimir V. Sinenko, Evgenij E. Tonkov, Vladislav Yu. Turanin**

*Belgorod State University, 85 Pobedy Street, Belgorod,
Belgorod region, 308015, Russia E-mail: turanin@mail.ru*

Abstract

The article describes peculiarities of the "refugee" term interpretation in the international legal acts and laws of the CIS countries. In particular, much attention is paid to its usage in the UN Convention of 1951 “About the status of refugees” and Protocol to it of 1967, and also in the Laws of the Russian Federation (Federal Law of 19.02 1993 No 4528-I “About refugees”), Armenia (The Law of the Armenia Republic of 16.01.2007 No 3P-47 “About refugees and asylum”), Belarus (The Law of the Belarus Republic of 23.06 2008 No 354-3 “About granting to citizens and people with no citizenship a refugee status, additional or temporal protection in the Belarus Republic”) and Ukraine (The Law of Ukraine of 08.07.2011 No 3671-VI “About refugees and people who need additional or temporal protection”). Specific features of the interpretation of the concept of "refugee" in the legal system of these states are defined. The article gives arguments as for a single approach to the “refugee” term interpretation that must be legally confirmed within every country by a traditional international definition.

Keywords: Refugee, International legal acts, Laws, CIS

Introduction

Human rights are the very value that defines the most important processes and events in the society. It's a particular form of people interaction, coordination of their deeds and connections and conflict prevention among them, between society and state.

Unfortunately, at present, we can't say that human rights are absolutely respected in any of the countries. Probably, it's a peculiar ideal that should be reached by every modern state. That's why there is a range of the problems in the whole world in general and in CIS in particular, which are backgrounds for the forced people migration and refugee appearance.

In this article, we will focus on the idea and language form of the "refugee" term, which is widely used in the international acts and laws of different countries. This analysis is based on some results of our earlier studies related to linguistic errors in the texts of laws [1] and definition of prospects of the perfection of legal terminology in the context of the development of modern legislative activity [2].

Getting the idea of the "refugee" term will allow us to develop the usage of this term in the legislation of the Russian Federation [3], Armenia [4], Belarus [5], Ukraine [6] – countries in the CIS.

Method

Different scientific methods and logical ways of cognition. Methods of analysis and synthesis were used to explore the nature of "refugee" term in the international legislation of different countries. Systemic-structural, functional and formal logical approaches were used to identify systematic and logical characteristics of the instruments of the international legislation of the countries of the CIS. The use of formal legal and comparative legal methods allowed us to carry out a comparative analysis of the interpretations of the studied concepts in different legal acts and to make a conclusion about the need of unification of approaches to its perception.

Results and Discussion

Two main documents give the definition of the “refugee” term in the international law: the UN Convention of 1951 “About the status of refugees” and Protocol to it of 1967 referred to the refugee status [7, p. 455-470]. These acts have their peculiarities. In particular, the UN Convention of 1951 includes temporal and geographical limitations. It means that it’s implied to the European countries and people who became refugees in the result of the events of January 1, 1951. As for the Protocol of 1967, it denies the limitations mentioned above and is implied without any of them to any state and events, which caused the refugee problem, in the past and future. It should be pointed out that it’s necessary to take into consideration the involvement of one or the other state in the documents mentioned above.

The Article 1 of the Convention “About the status of refugees” gives the following definition to the “refugee” term: it’s a person which “in the result of the events happened before January 1, 1951 and because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution, is out of the country of his nationality and can’t use its protection or doesn’t want to use it in the result of his concerns; or having no citizenship, or being out of the place of residence in the result of such events, he can’t or doesn’t want to come back because of his concerns”. As we can see, the provisions of the Convention could be used only by the people who became refugees in the result of the events before January 1, 1951. However, as it turned down, the floods of refugees were not just the result of the World War II and its consequences. In this connection, it was needed to adopt an additional document which would cancel the mentioned limitation. Such a document was the Protocol of 1967, that was about the refugee status. It spreaded the Convention performance to the “new refugees” - people, who became refugees, according to the definition in the Convention, after the events of January 1, 1951.

The term “refugee” is widely used in the laws of CIS countries. Let’s follow its explanation in the legislation of the four countries:

1. The Russian Federation. According to the Article 1 of the Federation Law of 19.02.1993 № 4528-I “About refugees”, a refugee is a “person who is not a Russian Federation citizen and who, because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution, is out of the country of his nationality and can’t use its protection or doesn’t want to use it in the result of his concerns; or having no citizenship, or being out of the place of his residence in the result of such events, can’t or doesn’t want to come back because of his concerns” [3].

2. Armenia. According to the Article 6 of the Law of the Armenia Republic of January 16, 2007 № 3P-47 “About refugees and asylum”, “a refugee is: 1) a foreign citizen which, because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution, is out of the country of his nationality and can’t use its protection or doesn’t want to use it in the result of his concerns; or the person with no citizenship who is out of the country of his nationality and can’t or doesn’t want to come back because of his concerns; 2) a foreign citizen who has to leave his country, for a person with no citizenship – the country of his residence, because of total violence, external aggression, internal conflicts, violations of human rights or other serious events that disturb public order” [4].

3. Belarus. In the modern legislation of the Belarus Republic, there is no such term as "refugee". The Article 18 of the Law of the Belarus Republic of 23 June 2008 N 354-3 “About granting to citizens and people with no citizenship a refugee status, additional or temporal protection in the Belarus Republic” declares, that “the Belarus Republic gives a refugee status to a foreign citizen who is on the territory of the Belarus Republic because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution, is out of the country of his nationality and can’t use its protection or doesn’t want to use it in the result of his concerns” [5].

4. Ukraine. According to the Article 1 of the Law of Ukraine of 08.07.2011 № 3671-VI “About refugees and people who need additional or temporal protection”, a refugee is “a person who is not a citizen of Ukraine and because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution, is out of the country of his nationality and can’t use its protection or doesn’t want to use it in the result of his concerns; or having no citizenship, or being out of his place of residence in the result of such events, can’t or doesn’t want to come back because of his concerns” [6].

Summing up the given definitions we can outline the main features of the person supposed to be recognized as a refugee:

- this person must be a citizen of the host country. It means that it can be a foreign citizen and a person with no citizenship;

- this person must be out of the country of his nationality or out of the country of his usual residence because of well-grounded concerns to become a victim of racial, religious, national, social group membership or political position persecution;

- this person doesn't have a possibility or doesn't want to use the protection of the country of his nationality in the result of his concerns (for a foreign citizen);

- this person doesn't have a possibility or doesn't want to come back to the country of his permanent residence in the result of the concerns mentioned above (for a person with no particular citizenship).

It's easy to notice that all the definitions of the "refugee" term taken from the studied laws generally reflect the definition given by the UN Convention of 1951 and the Protocol of 1967. Though there are some specific moments.

Thus, the Federal Law "About refugees", the Republic Belarus Law "About granting to the citizens and people with no citizenship a refugee status, additional or temporal protection in the Belarus Republic" and the Law of Ukraine "About refugees and people who need additional or temporal protection" point out that nationality is the reason for persecution.

The Law of the Armenia Republic "About refugees and asylum" gives a range of additional reasons for declaring a refugee person. They are: total violence, external aggression, internal conflicts, violations of human rights or other serious events that disturb public order.

It's worth paying attention to the difficult language constructions that were used to define the term "refugee" in the researched legislative documents. Alongside with it, Sh. L. Montesque said that "laws mustn't be refined anyway: they are accounted for people with mediocre mental abilities" [8]. We suppose that the aim of the law elaboration mustn't be to make it just for a particular layer of society with some professional knowledge. For example, the authors of the German Civil Code of 1900 knowingly "worked out not a popular Civil Code for everybody's comprehension, but a strictly legal work oriented on lawyers only..." [9]. The modern Netherlands Civil Code of 1992 also took this model: its main ideologist E. Mayers was eager to make a code of scientists but not a code for an ordinary person [10]. Such an approach, that is called "German" [11], can't be used to explain such basic terms as "refugee". This term must be clear at once, without any doubts. Otherwise, if it's taken wrong, it can lead to law-enforcing mistakes.

Notice also, that in the valid legislation of the CIS countries territories there is one more definition of the term "refugee". It's fixed in the Agreement of the CIS countries of 24.09.1993 "About help to refugees and forced migrants" and signed by the heads of

Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan.

The Article 1 of the Agreement mentioned above says, that “for the aims of the real Agreement, a refugee is a person who is not a citizen of the Side granted asylum and was forced to leave his permanent place of residence on the territory of another Side because of committed violence, prosecution in a different way or real danger to be prosecuted for racial or national identity, religion, language, political position and social group membership because of armed and international conflicts to him and members of his family.

Refugee can't be a person committed a crime against peace, humanity or other intentional criminal offense" [7, p.849]. This interpretation caused arguments among the participants of the Agreement, that's why all the questions connected with the definition of the mentioned notions were presented for discussion of the CIS Economic Court, which made a corresponding decision. In particular, the Court decided that the definition of the “refugee” term has got four criteria and person must correspond to them to get the refugee status according to the Agreement of the participant country (positive criteria):

- The person mustn't be a citizen of the country granted asylum (the country of entry);
- The person must leave his place of residence, which must be on the territory of another country (the country of exit). Alongside with it, person can be a citizen of the country of exit, a person with no citizenship, a citizen of any third country on condition that he permanently lived on the territory of the country of exit. However, as the country of entry, so the country of exit must be the members of the Agreement about help to refugees and forced migrants of 24 September 1993;
- The reason why the person has to leave the country must be committed violence or persecution in different forms, or real danger to be persecuted. Besides, violence and persecution in different forms can be committed either to the very person, or to the members of his family (the definition of the researched term has got comprehensive list of signs of committed crime or persecution, or there must be a real danger to be persecuted: racial or national identity, religion, language, political position and membership in a particular social group);
- there must be a connection between violence commission or persecution, or real danger to be persecuted and take part in the armed (international) conflicts.

The definition has got a negative criterion: a refugee can't be a person committed a

crime against peace, humanity or any other criminal offense.

Thus, to be recognized as a refugee according to the Agreement it's necessary and enough to find out, that it satisfies all the positive criteria the definition has and doesn't subject to negative ones [10].

Conclusion

The analysis of the international law acts and the laws of CIS countries showed there are some differences in the definition of the "refugee" term, which can be substantial in some cases (for example, in the case of the Law of the Armenia Republic "About refugees and asylum"). Are they acceptable? From our point of view, defining such a basic term common to all mankind it's necessary to have a unique approach confirmed by an international, traditional definition in the legislation of every country.

References

1. Tonkov, E. E. & Turanin, V. Y. (2012). Linguistic mistakes in the texts of the Russian laws. *Belgorod State University Scientific Bulletin. Philosophy Sociology Law*, 14 (21): 138-144.
2. Tonkov, E. E. & Turanin, V. Y. (2017). Prospects for improving the legal terminology in the context of the development of modern legislative activity. *Belgorod State University Scientific Bulletin. Philosophy Sociology Law*, 3 (39): 117-120.
3. Federal law of 19.02 1993 № 4528-I "About refugees". *Rossiiskaya Gazeta*, 1993, 54. (in Russian).
4. The Law of the Armenia Republic of 16.01.2007 № 3P-47 "About refugees and asylum". Available at: <http://www.parliament.am/legislation.php?sel=show&ID=3422&lang=rus#1> (accessed 23 April 2017) (in Russian).
5. The Law of the Belarus Republic of 23.06 2008 № 354-3 "About granting to citizens and people with no citizenship a refugee status, additional or temporal protection in the Belarus Republic". Available at: <http://mvd.gov.by/main.aspx?guid=284113> (accessed 23 April 2017) (in Russian).
6. The Law of Ukraine of 08.07.2011 № 3671-VI "About refugees and people who need additional or temporal protection". Available at: http://kodeksy.com.ua/ka/o_bezhencah_i_licah_nuzhdajushhihsja_v_dopolnitelnoj_ili_vremennoj_zashhity/statja-1.htm (accessed 23 April 2017) (in Ukrainian).

7. Kartashkin V. A., & Lukasheva, E. A. (Comp) (2002). International acts about human rights: Collection of documents. Moscow: NORMA: pp. 944. (in Russian).
8. Montesquieu, Ch., (1961). De l' esprit des lois. Ed. by J. Berthe De La Gresssaye. Paris: Soc. Les Belles Lettres: p. 410.
9. Pedamon, M., (1997). Le centenaire du BGB. Avril: 106-110.
10. Tallon, D., (1998). Le nouveau code civil des Pays-Bas. La codification / F. Lessay, D. Baranger, D. Tallon [et al.]. Paris: 27: 181-182.
11. Lasserre-Kiesow, V., (2002). La technique législative: étude sur les codes civils français et allemand. Paris: LGDJ: pp. 525.
12. The Decision of the CIS Economic Court of September 11, 1996 - № C-1/14-96 Available at: http://base.spinform.ru/show_doc.fwx?rgn=15373 (accessed 23 April 2017) (in Russian).