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# *The System of Asylum Legislation in the Republic of Belarus*

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The Constitution of the Republic of Belarus of 15.03.1994 No. 2875-XII (ed. of 17.11.2004)<sup>1</sup> stipulates that Belarus may grant the right of asylum to individuals persecuted in other states for political opinions, religious beliefs or national affiliation<sup>2</sup>. The Constitution of the Republic of Belarus also endows the President with the right to resolve issues related to granting asylum (Art. 84(17)).

Asylum is granted to foreign citizens and stateless persons also in accordance with the Decree of the President of the Republic of Belarus of 05.04.2006 No. 204 (edited on 13.08.201) 'On the Approval of the Regulation on Granting Asylum to Foreign citizens and Stateless Persons in the Republic of Belarus, its Forfeiture and Withdrawal as well as other Issues Related to the Stay of Foreign citizens and Stateless Persons in the Republic of Belarus'<sup>3</sup> (further on – the Regulation) and the Law of 04.01.2010 No. 105-3 'On the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus'<sup>4</sup> (Art. 4 (2), 48 (10), 53 (3), 68).

In accordance with the Presidential Decree No. 204<sup>5</sup>, the right of asylum is the right of a foreign citizen persecuted in another state for political opinions, religious beliefs or national affiliation to stay on the territory of the Republic of Belarus (par. 2). Asylum is granted by the President of the Republic of Belarus. Documents on issues related to granting asylum are submitted addressing the President of the Republic of Belarus in entities of the Ministry of the Interior of the Republic of Belarus according to the applicant's place of residence. Preparation of necessary materials is carried out by the Ministry of the Interior together with the Ministry of Foreign Affairs, Committee for State Security of the Republic of Belarus, Ministry of Labour, which, within their scope of competence, present necessary information and offer their conclusions as regards every applicant. Materials submitted to the Administration of the President of Belarus undergo preliminary examination in the Commission for Citizenship of the President of Belarus which submits materials to the President for examination (par. 9, 11 of the Regulation). Foreign citizens granted asylum in Belarus enjoy the rights and freedoms and bear responsibilities equal to foreign citizens permanently residing in the Republic of Belarus (par. 12 of the Regulation). It is stated that granting asylum to a foreign citizen is extended to cover his/her family members that have arrived together with him/her.

It is noteworthy that Belarusian legislation distinguishes between the notions of 'refugee status' and 'asylum' although the differences are not significant. For example, differences refer to the grounds for granting asylum (in accordance with the Presidential Decree No. 204, par. 2) and refugee status. Thus, to grant asylum, it is necessary to establish one of the three grounds – danger of persecution for political opinions, religious beliefs or national affiliation. While granting refugee status is possible both in the presence of any of the above three grounds and in the presence of any of the following grounds: danger of becoming a victim of persecution because of race, citizenship or membership in a given social group.<sup>6</sup> Besides, a foreign citizen granted refugee status enjoys a wider range of rights in

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<sup>1</sup> The source of publication: *'Народная газета' ('National Newspaper')*, No. 298. - 27.11.1996

<sup>2</sup> The Constitution of the Republic of Belarus of 15.03.1994 No. 2875-XII (ed. 17.11.2004).

<sup>3</sup> newspaper *'Советская Белоруссия' ('The Soviet Belarus;')* No. 66. - 08.04.2006

<sup>4</sup> The source of publication: The National Register of Legal Acts of the Republic of Belarus, 2010, No. 15, 2/1657.

<sup>5</sup> If we were to concisely characterise the Regulation, adopted by the Presidential Decree No. 204 of 05.04.2006, we shall underline that it defines the procedure of granting asylum to foreign citizens in the Republic of Belarus. The document defines the mechanism of submitting and examining applications and petitions for granting asylum, identifies categories of foreign citizens who are not granted asylum. It is stipulated that the case under an application for asylum granted to foreign citizens is examined by the Ministry of the Interior and is then forwarded via the Administration of the President of the Republic of Belarus to the Commission on Citizenship of the President of Belarus. The Regulation provides for the cases of forfeiture of asylum by a foreign citizen in the Republic of Belarus as well as cases of withdrawal of asylum.

<sup>6</sup> Art. 18 of the Law of 23.06.2008 No. 354-3 (edited on 03.07.2011) 'On Granting Foreign citizens and Stateless Persons Refugee Status, Subsidiary and Temporary Protection in the Republic of Belarus' // *'The National Register of Legal Acts of the Republic of Belarus'*, 02.07.2008, No. 158, 2/1451.

Belarus compared to a foreign citizen granted asylum.<sup>7</sup> Another difference between asylum and refugee status lies in the procedure of examining petitions (applications) and making a respective decision. As has been indicated, asylum is granted by the President of Belarus, while the decision about granting refugee status or subsidiary protection is taken by the Department on Citizenship and Migration of the Ministry of the Interior of Belarus.<sup>8</sup>

Legislation of the Republic of Belarus on refugee status, subsidiary and temporary protection comprises:

- The Law of 23.06.2008 No. 354-3 (edited on 03.07.2011<sup>9</sup>) ‘On Granting Foreign citizens and Stateless Persons Refugee Status, Subsidiary and Temporary Protection in the Republic of Belarus’<sup>10</sup>;
- The Law of the Republic of Belarus of January 4, 2010, ‘On the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus’<sup>11</sup>;
- other legal statutory acts of the Republic of Belarus;
- international agreements of the Republic of Belarus<sup>12</sup>.

The Law No. 354-3 (further on – the Law) defines the grounds and procedure for granting refugee status<sup>13</sup> or subsidiary and temporary protection<sup>14</sup> to foreign citizens and stateless persons, establishes economic, social and legal guarantees for protection of rights and lawful interests of refugees, regulates their obligations<sup>15</sup>, defines grounds for withdrawal and forfeiture of refugee status<sup>16</sup>.

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<sup>7</sup> Art. 19 of the Law of 23.06.2008 No. 354-3 (edited on 03.07.2011) ‘On Granting Foreign citizens and Stateless Persons Refugee Status, Subsidiary and Temporary Protection in the Republic of Belarus’ // *‘The National Register of Legal Acts of the Republic of Belarus’*, 02.07.2008, No. 158, 2/1451.

<sup>8</sup> Art. 10 (14), 43 of the Act of 23.06.2008 No. 354-3 (edited on 03.07.2011) ‘On Granting Foreign citizens and Stateless Persons Refugee Status, Subsidiary and Temporary Protection in the Republic of Belarus’ // *‘The National Register of Legal Acts of the Republic of Belarus’*, 02.07.2008, No. 158, 2/1451.

<sup>9</sup> The Law of the Republic of Belarus of July 3, 2011 No. 278-3 ‘On the Introduction of Changes and Amendments into Certain Laws of the Republic of Belarus on Issues of the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus’ // *‘The National Register of Legal Acts of the Republic of Belarus’*, 2011, No.77, 2/1830), 2011, № 77, 2/1830)

<sup>10</sup> The text of the document was published in ‘The National Register of Legal Acts of the Republic of Belarus’, 02.07.2008, No. 158, 2/1451.

<sup>11</sup> The National Register of Legal Acts of the Republic of Belarus, 2010, No. 15, 2/1657.

<sup>12</sup> See the Law of the Republic of Belarus of 04.05.2001 No. 10-3 ‘On Acceding by the Republic of Belarus to the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees’ // *‘Народная газета’* (*‘The National Newspaper’*), No. 97-98, 11.05.2001

<sup>13</sup> Art. 18 ‘The Grounds and Period of Granting Refugee Status’, Art. 27 ‘Submitting an Application for Protection’, Art. 28 ‘Submitting an Application for Protection of Unaccompanied Foreign Minor’, Art. 31 ‘Key Stages and Conditions of Examining Applications for Protection and Key Stages of Examining Applications for Extending Subsidiary Protection’.

<sup>14</sup> Art. 21 ‘The Grounds and Period of Granting Subsidiary Protection’, Art. 24 ‘The Grounds and Period of Granting Temporary Protection’, Art. 27, 28, 31. The Law also provides for temporary protection to a group.

<sup>15</sup> Art. 19 ‘The Rights of a foreign citizen Granted Refugee Status’, Art. 20 ‘Obligations of a foreign citizen Granted Refugee Status’, Art. 22 ‘The Rights of a foreign citizen Granted Subsidiary Protection’, Art. 23 ‘Obligations of a foreign citizen Granted Subsidiary Protection’, Art. 25 ‘The Rights of a foreign citizen Granted Temporary Protection’, Art. 26 ‘Obligations of a foreign citizen Granted Temporary Protection’, Art. 29 ‘Rights of a foreign citizen Applying for Protection’, Art. 30 ‘Obligations of a foreign citizen Applying for Protection’.

<sup>16</sup> Art. 48 ‘The Forfeiture of Refugee Status or Subsidiary Protection’, Art. 49 ‘The Repudiation of Refugee Status or Subsidiary Protection’, Art. 50 ‘The Decision about the Forfeiture, Repudiation of Refugee Status or Subsidiary Protection’.

Art. 19<sup>17</sup> of the Law enumerates specific rights of foreign citizens granted refugee status, subsidiary and temporary protection. Besides, it is outlined that in general they enjoy the same rights as foreign citizens permanently residing in the Republic of Belarus and fulfil the same obligations.<sup>18</sup> Article 47 ('*Family Reunification*') of the Law No. 354-3 outlines that family members of a foreign citizen granted refugee status or subsidiary protection are also granted refugee status or subsidiary protection, following the principle of family unification.

It is noteworthy that the Law identifies three categories of foreign citizens based on the legal status:

1. foreign citizens granted refugee status;
2. foreign citizens granted subsidiary protection;
3. foreign citizens granted temporary protection.

The first and the second category of foreign citizens enjoy the same rights, except for the fact that subsidiary protection is granted urgently (for a period of up to one year, with an option of annual extension). And temporary protection is granted to a group of foreign citizens for the period of one year within which they have to either leave the territory of the state or undergo the procedure of individual examination of applications for protection. Individuals granted temporary protection are largely limited in their rights compared to refugees and foreign citizens granted subsidiary protection.

A statutory document that implements provisions of the Law (in accordance with Article 9) is the Decision of the Council of Ministers of the Republic of Belarus of 14.04.2009 No. 461 '*Issues Related to Granting Foreign citizens and Stateless Persons Refugee Status, Subsidiary and Temporary Protection in the Republic of Belarus*'.<sup>19</sup> It approves two Regulations: one of them regulates the procedure of granting a lump-sum financial aid to foreign citizens applying for refugee status or subsidiary protection in the Republic of Belarus and individuals granted such a status.<sup>20</sup> The second Regulation defines the procedure of granting foreign citizens temporary protection in Belarus.<sup>21</sup> Decision No. 461 also approves '*The Rules of Stay in the Republic of Belarus of Foreign citizens and Stateless Persons Applying for Refugee Status or Subsidiary Protection as well as Foreign citizens and Stateless Persons Granted Refugee Status or Subsidiary Protection in the Republic of Belarus*'.

A number of by-laws have been adopted that subsidiarily specify the procedure of examination of foreigner applications for asylum and refugee status, subsidiary and temporary protection. The Procedure of working arrangements of employees of the Ministry of the Interior of the Republic of Belarus when granting foreign citizens refugee status or subsidiary protection in Belarus is regulated by the Decision of the Ministry of the Interior of the Republic of Belarus of 11.05.2009 No. 143<sup>22</sup> (it implements provisions of the Law No. 354-3 of 23.06.2008 – Art. 10 (5, 14, 35, 36, 39, 43), 43); the Procedure of working arrangements of employees of the Ministry of the Interior as regards documents (issue, registration, exchange, finding invalid, seizure, storage, marking, annulment and so on) that are

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<sup>17</sup> Art. 19 '*The Rights of a foreign citizen Granted Refugee Status*'

<sup>18</sup> To observe the Constitution of the Republic of Belarus and state laws, register in migration agencies and so on. See the Law of the Republic of Belarus of 04.01.2010 No. 105-3 '*On the Legal Status of Foreign citizens and Stateless Persons in the Republic of Belarus*' // '*The National Register of Legal Acts of the Republic of Belarus*', 20.01.2010, No. 15, 2/1657. (Chapter 2 '*Rights, Freedoms, Obligations and Responsibility of Foreign citizens in the Republic of Belarus*')

<sup>19</sup> '*The National Register of Legal Acts of the Republic of Belarus*', 22.04.2009, No. 96, 5/29595.

<sup>20</sup> '*The Regulation on the Procedure of Providing Financial Aid Granted to Foreign citizens and Stateless Persons Applying for Refugee Status or Subsidiary Protection in the Republic of Belarus as well as Foreign citizens and Stateless Persons Granted Refugee Status in the Republic of Belarus*'.

<sup>21</sup> '*The Regulation on the Procedure of Granting Foreign citizens and Stateless Persons Temporary Protection in the Republic of Belarus*'

<sup>22</sup> '*On the Approval of the Instruction on the Procedure of Working Arrangements when Granting Foreign citizens and Stateless Persons Refugee Status or Subsidiary Protection in the Republic of Belarus, their Forfeiture or Repudiation*' // '*The National Register of Legal Acts of the Republic of Belarus*', 15.06.2009, No. 144, 8/20959

issued to refugees, foreign citizens granted subsidiary protection, is regulated by the Decision of the Ministry of the Interior of the Republic of Belarus of 05.12.2008 No. 366 (edited on 31.05.2010)<sup>23</sup>. The final mentioned document – Decision No. 366 is in compliance with the provisions of the Law No. 354-3 of 23.06.2008 (Art. 10 (9, 10, 18, 27, 30, 32, 37)).

The Procedure of personal identification of foreign citizens and stateless persons applying for refugee status or subsidiary protection in the Republic of Belarus is regulated by the Decision of the Ministry of the Interior of the Republic of Belarus of 02.06.2009 No. 178.<sup>24</sup> This decision is based on the provisions of the Law No. 354-3 (Art. 10 (6, 28, 47)). It stipulates that identification covers foreign citizens applying for protection in the Republic of Belarus and lacking valid passports or other documents that replace them issued for travelling abroad. Besides, identification covers foreign citizens who have presented forged or counterfeit documents for a trip abroad. The Decision establishes the procedure of referring foreign minors applying for protection and lacking documents certifying their age or having presented forged or counterfeit documents certifying their age (in the case of doubts as regards their age) for forensic medical examination in order to establish their age.

We shall separately underline that annual distributive quota of applicant registration for refugee status or subsidiary protection (which is established by the above Law No. 354-3 of 23.06.2008 (Art. 2 (10), 10 (7,29), 33) are established in the Republic of Belarus. The quotas define the number of applications for granting protection that can be submitted by foreign citizens in each of six regions of the Republic of Belarus within a calendar year. In 2011 these quotas were set by the Decision of the Ministry of the Interior of the Republic of Belarus No. 445 of 28.12.2010.<sup>25</sup> The electronic record within the studied area of legal relations is carried out according to the common Decision of the Ministry of the Interior and the State Committee of the Frontier Troops of Belarus of 30.01.2007 No. 10/2 (ed. on 20.02.2009)<sup>26</sup>. The mentioned decision is compulsory for officials representing law enforcement agencies that register applications of foreign citizens and draw up respective documents.

An important stage in the asylum-granting procedure, in accordance with the Law mentioned above, is compulsory medical certification of foreign citizens applying for protection in the Republic of Belarus. Medical examination is regulated by the Decision of the Ministry of Health of the Republic of Belarus No. 49 of 07.05.2009<sup>27</sup>. This Decision is adopted in accordance with the Law No. 354-3 (Art. 14). The Decision stipulates that medical examination of foreign citizens is carried out free of charge by public health organisations in accordance with foreigner place of residence or temporary residence by a commission comprising at least five expert physicians in view of health assessment and identification of illnesses.

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<sup>23</sup> 'On the Procedure of Working Arrangements as regards Issue, Registration, Exchange, Finding Invalid, Seizure, Storage and Destruction of the Residence Permit in the Republic of Belarus, of Refugee's Identity Card and Travel Document of the Republic of Belarus as well as Forms of Notes Entered into these Documents as well as Procedure of their Entering and Annulment' // The National Register of Legal Acts of the Republic of Belarus, 04.02.2009, No. 29, 8/20193

<sup>24</sup> No. 178 'On the Establishment of the Instruction on the Procedure of Personal Identification of Foreign citizens and Stateless Persons Applying for Refugee Status or Subsidiary Protection in the Republic of Belarus' / The National Register of Legal Acts of the Republic of Belarus, 14.07.2009, No. 162, 8/21133

<sup>25</sup> Decision No. 445 'On the Establishment of Distributive Quota of Registration of Applications for Granting Refugee Status or Subsidiary Protection in the Republic of Belarus for the Year 2011'. // The National Register of Legal Acts of the Republic of Belarus, 03.02.2011, No. 14, 8/23210

<sup>26</sup> The Decision 'On the Automated System of Record of Foreign citizens and Stateless Persons Applying for Refugee Status or Subsidiary Protection in the Republic of Belarus as well as Foreign citizens and Stateless Persons Granted Refugee Status or Subsidiary Protection in the Republic of Belarus', «Беженцы» ('Refugees')// The National Register of Legal Acts of the Republic of Belarus, 19.03.2007, No. 67, 8/15851

<sup>27</sup> Decision No. 49 'On the Establishment of the Instruction on the Procedure of Carrying out Compulsory Medical Examination of Foreign citizens and Stateless Persons Applying for Refugee Status or Subsidiary Protection in the Republic of Belarus' // The National Register of Legal Acts of the Republic of Belarus, 15.06.2009, No. 144, 8/20988

National legislation complies with universally recognised norms of the international law, in particular: the definition of the 'refugee' notion, grounds for granting refugee status and subsidiary protection comply with similar provisions of international legal documents (in particular, the 1951 UN Convention 'Relating to the Status of Refugees'). Belarus ratified international treaties on economic, social and cultural, civil and political rights and joined the International Convention on the Elimination of All Forms of Racial Discrimination and Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Foreign citizens applying for recognition as refugees as well as recognised refugees enjoy special privileges and may count on certain types of aid on behalf of the state. In particular, according to the national legislation in Belarus, socio-economic rights of refugees are equal to the rights of citizens of the Republic of Belarus, refugees are granted free access to the national system of education and health system. Children of refugees enjoy the right to attend preschool facilities.

Currently the drawback of the national legislative system in the discussed area is underregulation of issues related to refugee integration, conditions for their active participation in the life of society, ensuring equal rights and opportunities for men and women. Besides, representation of legal provisions in a multitude of statutory acts, including by-laws and decisions of state agencies, makes their application inconvenient. It also has a negative effect on the quality of cooperation and coordination of work of public authorities when addressing issues related to granting asylum.