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The legislative system of the Russian Federation in the area of asylum and refugee status

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1. Evolution of the Law ‘On Refugees’

The backbone legal act within this area is the **Law** No. 4528 ‘**On Refugees**’ of 19.02.1993.¹

In 1997, the law No. 95-Φ3 ‘*On the Amendments and Supplements to the Law of the Russian Federation ‘On Refugees’*’² revised the original text from 1993 in that the definition of a refugee and criteria of granting refugee status were specified, a new – two-stage – procedure of defining refugee status was provided for, the formulation and list of rights and obligations of an asylum-seeker and recognized refugee were specified. Essentially, a new version of the Law ‘On Refugees’ was formed, which, retaining the initial number and date, currently operates as the **Federal Law ‘On Refugees’**.

Subsequent changes introduced into the Law were not fundamental in nature and reflected either changes in the system of public administration (the reshuffle of competences between the Federation and its subjects or between federal executive authorities) or changes in sectoral legislation – to the extent to which they have touched upon the category of asylum-seekers and recognized refugees.

Examples of such amendments – Art. 3 of the Law has been supplemented with the norm on compulsory dactiloscopic registration (following the adoption of the law on state dactiloscopic registration) for an asylum-seeker, or amendments introduced into a number of articles of the Law as regards registration of recognized refugees, (following the introduction of the migration record in the Russian Federation). These and other amendments (11 altogether) are directly included in the text of the law ‘On Refugees’ with the indication of the date and number of the law which provides for the new edition of these articles or their paragraphs.

2. The scope of the Law

In accordance with the preamble, the law ‘On Refugees’ defines the grounds and procedure of recognition of a refugee on the territory of the Russian Federation, establishes economic, social and legal guarantees of the protection of rights and lawful interests of refugees in accordance with the Constitution, norms of the international law and international agreements of the Russian Federation.

The definition of the notion of a ‘refugee’ in Art. 1(1)(1) of the law, as well as criteria for granting asylum comply with the 1951 Convention relating to the Status of Refugees and 1967³ Protocol relating to the Status of Refugees.

3. The procedure of determining refugee status

The procedure of determining refugee status established by the Law comprises two stages – preliminary examination of an application for granting refugee status (the admissibility of the claim, Arts. 4-5) and examination of an application on the merits (substantive examination, Art. 7).

At the first stage the presence or absence of conditions that constitute the grounds for the refusal of refugee recognition is clarified (an exhaustive list of such grounds is contained in Art. 5). Following the results of preliminary examination of an application, a person is issued a certificate of examining an application on the merits or notification about the refusal to examine. A person issued a certificate acquires certain rights, in particular, the right to receive services of an interpreter, to receive a lump-

¹ The Bulletin of the Congress of National Deputies of the Russian Federation and the Russian Federation’s Supreme Council, 1993, No. 12, Art. 425

² The collection of legislation of the Russian Federation (C3 PΦ), 1997, No. 26, Art.2956.

³ The Russian Federation joined the Convention and Protocol on February 2, 1993.

sum grant (a symbolic sum of money), reference to the temporary accommodation centre, food, medical and medicinal help provided at the temporary accommodation centre.

At the second stage a more detailed check of conditions presented in an application is carried out. Following the results of the examination of an application on the merits, a decision is taken whether to grant a person refugee status and provide him/her with a refugee ID card that replaces his/her former ID, or refuse refugee status.

4. The rights of asylum seekers and refugees

The Law does not contain any provisions on procedural rights of asylum-seekers, including the granting of legal aid. It only provides for the right of appeal against the negative decision taken both at the first and second stage of the procedure, ‘to the superior body or the court’.

Art. 8 of the Law enumerates the list of rights and obligations of recognized refugees, including social rights enjoyed ‘together with RF citizens in accordance with the present Federal Law, other federal laws and other RF legal statutory acts, with an exception of cases provided for by RF legislation’. They include the right to medical and medicinal help; right to paid employment and self-employed economic activities; right to social protection, including social security. In accordance with Art. 8(1)(14), a recognized refugee has the right to file an application for residence permit or for Russian citizenship in accordance with the existing legislation.⁴

5. Temporary asylum

Apart from granting refugee status, the Law (Art. 12) provides for the possibility to grant temporary asylum to an individual. Temporary asylum, in accordance with Art. 12 – is the possibility of temporary legal residence on the territory of the Russian Federation that is granted to a foreigner citizen or stateless person who does not have grounds for recognition as a refugee but cannot be expelled from the Russian Federation for humanitarian reasons. The Law does not specify what motives or reasons can be regarded ‘humanitarian’. Thus, granting temporary asylum for humanitarian reasons falls within the discretion of the decision-making body.⁵

6. Political asylum

The Russian legal order provides for another form of asylum, namely political asylum. Political asylum is granted based on Art. 63 of the Constitution and is regulated not by the law ‘On Refugees’ but by the *Regulation on the Procedure for Granting Political Asylum in the Russian Federation*, approved by the decree of the RF President (of 01.07.1997 No. 746, in force since 27.07.2007 No. 993)⁶. Political asylum is granted to individuals seeking protection from persecution ‘for socio-political activity and beliefs that do not contradict democratic principles shared by the world

⁴ In accordance with the currently operating legislation on RF citizenship, a recognized refugee may file an application for citizenship a year after the date of the granted status, and s/he does not have to possess residence permit in RF or repudiation of previous citizenship.

⁵ In the opinion of the RF Constitutional Court, in this case we cannot speak of the unlimited freedom of discretion of the decision-making body, since the decision shall be made ‘taking into account the legal nature and designation of the institution of temporary asylum as well as the constitutional principle of the highest value of rights and freedoms’. The Constitutional Court defines temporary asylum as an additional protection measure preventing from deportation individuals ‘who have no lawful grounds for the stay on the RF territory, yet owing to a difficult life situation of temporary nature they are forced to stay on its territory’. The definition of the RF CC as of 30.09.10 No. 1317-O-II (The Bulletin of the RF Constitutional Court, 2011, No. 2).

⁶ The original text was published in the RF Collection of Laws, 1997, No. 30, Art. 3601

community', taking into account public interests of the Russian Federation and based on the norms of the international law, while persecution is suffered by the individuals in the country of their citizenship or habitual residence – in the case when such persecution is pointed directly against the individual filing an application for granting political asylum. A denial of political asylum does not exclude the possibility for an individual to file an application for refugee status.

7. Relevant by-laws

Individual articles of the law 'On Refugees' contain mandates to the RF Government with respect to the adoption of by-laws on particular issues related to the situation of asylum-seekers and recognised refugees. To comply with them, the RF Government adopted several decisions at different times that are also included in the system of Russian legislation on refugees. These decisions include in particular the decision '*On the Refugee Identity Card (together with the Regulation on Drawing up, Issue and Exchange of a Refugee Identity Card)*' of 10.05.11 No. 356, adopted as a commission contained in par. 7 Art. 7 of the Law⁷, and the decision of the Government '*On Granting Temporary Asylum on the RF Territory (together with the 'Procedure for Granting Temporary Asylum')*' of 09.04.2001 No. 274 (in force in the edition as of 06.04.2011 No. 251)⁸, adopted in accordance with Art. 12 of the Law. Concerning other two mandates – on the procedure of issuing and form of the refugee travel document (Art. 8) and the procedure of drawing up, issuing and exchange of a certificate on examining an application on the merits (Art. 4), in 2008 they were referred 'to the plenipotentiary executive body', although by the time the RF Government already adopted respective decisions. As regards these issues, the orders of the RF Federal Migration Service have recently been adopted: '*On the Travel Document Issued to a Refugee*' of 25.03.2011 No. 80 and '*On the Certificate of the Examination of an Application for Refugee Recognition on the RF Territory on the Merits*' as of 05.04.2011 No. 87, both of them with a footnote that they are going to be in force after the expiry of the respective decisions of the RF Government (formally these provisions are still in force).⁹

8. The Role of the Federal Migration Service

Implementation of asylum-related legislation is within the competence of 'the federal body of executive power, authorized to fulfill functions of control and supervision in the field of migration and its territorial bodies'. Currently the Federal Migration Service (FMS Russia) is such a body, under the jurisdiction of the RF Ministry of the Interior¹⁰.

Departmental statutory acts of FMS Russia play an important role in application of asylum-related legislation, since these very documents are in the first place taken into account by the staff of its territorial bodies that directly carry out work with asylum-seekers.

The key document is the *Administrative Rule of Procedure of FMS Russia as regards Fulfillment of the State Duty to Implement Legislation on Refugees*, adopted by the order of RF FMS as of 05.12.2007 No. 452¹¹. It defines time limits and consequence of administrative procedures of admission and examination of applications on granting refugee status and temporary asylum, on

⁷ Published in the RF Collection of Laws, 2011, No. 20, Art. 2838. It replaced the earlier adopted decision 'On the Refugee Identity Card' 1995.

⁸ The original text was published in the RF Collection of Laws, 2001, No. 16, Art. 1603

⁹ Registered in the RF Ministry of Justice on 16.05.2011, No. 20752 and 12.07.2011, No. 21820, respectively.

¹⁰ The Regulation on the Federal Migration Service, adopted by the Decree of the RF President as of 19.07.2004 (ed. on 31.10.2009), Art.2, par.6.

¹¹ Registered in the RF Ministry of Justice 21.02.2008, No. 11209, published in «Российская газета» (*The Russian Newspaper*), 23.04.2008, No. 88,

extending the period of refugee recognition as well as the procedure of cooperation between FMS Russia and its territorial bodies and federal executive authorities and their territorial bodies while fulfilling this function.

A separate *Administrative Rule of Procedure of FMS Russia as regards Fulfillment of the State Duty to Implement Legislation on Granting Political Asylum to Foreigners and Stateless Persons* was adopted by the order of FMS Russia as of 05.12.2007 No. 451¹².

Another statutory act – the *Administrative Rule of Procedure of FMS Russia on Providing Public Service as regards Implementation of the Migration Record in the Russian Federation*, adopted by the order of FMS Russia as of 06.07.2009 No. 159¹³ - is directly related to granting asylum in view of the presence in its chapter on ‘Administrative procedures’ of a special sub-section ‘The Characteristics of the Record by the Place of Stay of Foreigners Applying for Refugee Status, Recognized Refugees, Filing an Application for Granting Temporary Asylum or Granted Temporary Asylum or Filing an Application for Granting Political Asylum by the Russian Federation’.

9. Concluding remarks

The Russian law ‘On Refugees’ in terms of its principles and key provisions complies with the Convention relating to the Status of Refugees. Still, this general compliance has turned out to be insufficient for the institution of asylum to operate effectively in the Russian Federation.

The unsettled nature of the procedure of determining refugee status and the lack of procedural guarantees for asylum-seekers creates the possibility for denials of granting asylum, on the grounds of political rationale. In the first place, this refers to refugees from the countries – former USSR republics (Uzbekistan, Turkmenistan, Tajikistan) as well as DPRK (North Korea) and PRC (China). Even in cases when the instance of persecution cannot be doubted, they are not granted refugee status but temporary asylum, although this institution by definition serves a different purpose, and granted protection is of considerable volume.

Decisions about the denial to grant refugee status in many cases do not contain the motives of the denial or are limited to the reference to the fact that an asylum-seeker has left the place of residence for economic reasons. In the majority of cases the asylum-seeker is not provided with the negative decision as such, which makes it much more difficult to appeal against it.

As regards the rights, especially social rights, of an individual granted refugee status, the lack of the mechanism of their realisation in legislation creates serious obstacles for refugee integration.

¹² Registered in the RF Ministry of Justice on 28.02.2008, No. 11245, and published in «Российская газета» (*The Russian Newspaper*), 19.03.2008. No. 58

¹³ The newsletter of statutory acts of federal executive bodies, 2009, No. 39, 28.09.2009.