

CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

Co-financed by the European Union

Public Debate on the Law on Refugees in Ukraine

Alissa Tolstokorova

CARIM-East Explanatory Note 12/14

Socio-political Module

January 2012



Abstract

On July 2011 the National Parliament of Ukraine adopted the Law of Ukraine “On refugees and persons who need complementary or temporary protection”. Its adoption was an important step forward in terms of bringing the national legislation in compliance with international standards and regulations. Thus, it has taken into consideration the provisions of the Convention on refugees’ status of 1951, Protocol on the Status of Refugees of 1967, and strategic documents on migration issues adopted by the Council of Europe and the European Union. Furthermore, it introduced a cluster of significant innovations regulating the procedure of allocating the legal status to foreign nationals and persons with no citizenship and enabled a better protection of rights of refugees and asylum seekers. However, the expert community expressed concerns regarding a number of shortcomings in the Law. Thus, one of the most challenging issues was the actual possibilities for the practical implementation of the Law. The paper outlines the public debate on the Law which exposed a diversity of opinions by both supporters and opposers to the Law. The general conclusion is that the Law is an important step of the state on the way to quality reformation of the current Ukrainian legislation in the area of immigration, which will draw it in compliance with international standards and norms and enhance democratic developments in the society.

On July, 20, 2011 the National Parliament (Verkhovna Rada) of Ukraine has adopted in the second reading the Law of Ukraine “On refugees and persons who need complementary or temporary protection”. The Law, designed by the Ministry of Justice, was signed up by the President of Ukraine on July 28 and came into force on August 4, 2011.

The adoption of the Law was an important step forward in terms of bringing the national legislation in compliance with international standards and regulations. It has taken into consideration the provisions of the Convention on refugees’ status of 1951, Protocol on the Status of Refugees of 1967, and strategic documents on migration issues adopted by the Council of Europe and the European Union. Furthermore, it introduced a cluster of significant innovations regulating the procedure of allocating the legal status to foreign nationals and persons with no citizenship and enabled a better protection of rights of refugees and asylum seekers.

One of the key innovations in the Law is the extended checklist of criteria for granting official refugee status by Ukrainian authorities. Another progressive development in the current edition of the Law, which differs it from the earlier version as of 2005, is that it allows a person to be recognized not only as a refugee, but also as one requiring complementary protection. The latter provision of the Law, which expands the category of those requiring protection, was highlighted as its main breakthrough by the team of international and local experts at “No borders” project¹. Furthermore, the Law outlines the legal status of refugees and individuals in need of complementary protection as well as those who have been granted temporary protection in Ukraine and specifies the conditions for the loss and deprivation of such a status .

According to experts of the “Rokada Charitable Foundation”, alongside with this, there are several other social advantages. Most important is the simplified procedure for securing opportunities for legal employment, which promotes better integration of refugees².

Representatives of the State Migration Service in Ukraine contend that the Law was aimed to harmonize the Ukrainian legislation with the European norms and practices. The advantage of the new Law, they argue, is in the introduction of a standard ID for asylum seekers, which enables the documentation of the latter throughout the whole duration of the application process³.

Experts of the Chernihiv Civic Committee for Human Rights underlined the importance of the newly introduced regulations of the Law regarding reunification of immigrant families, which also matters in terms of the protection of the rights of the child in such families⁴.

It was emphasized that the key among the new achievements of the Law is the introduction of “complimentary mechanisms” for the protection of asylum seekers which apply to the category of persons, not covered by the UN Convention of 1951 as persons who have grounds to secure the status of refugees. This will enable a tangible perfection in the functioning of both the state institutions and grass-

¹ No Borders” project (“Social Action” Centre NGO) comments the Law of Ukraine “On refugees and persons who need a complementary or temporary protection, adopted by the Verkhovna Rada of Ukraine on July 8, 2011. <http://noborders.org.ua/sfery-dijalnosti/bizhenci-ta-shukachi-prytluku/komentari-vid-proektu-bez-kordoniv-tsentr-sotsialna-diya-do-uhvalennya-verhovnoyu-radoyu-zakonu-pro-bizhentsiv-ta-osib-yaki-potrebuyut-dodatkovoho-abo-tymchasovoho-zahystu-8-lypnya-2011-r/> [Stand 13-07-2011].

² Stadnyk, H. Will the new law make life easier for refugees? Website of the Ukrainian Helsinki Human Rights Union. <http://www.helsinki.org.ua/en/index.php?id=1313655354> [Stand 18.08.2011].

³ Borzhavsky, I. В Ужгороді обговорили новий закон про біженців [In Uzhgorod they discussed the new Refugees Law]. Голос Карпат [Voice of Carpathians]. <http://goloskarpat.info/Novini-Zakarpatya/V-Uzhgorodi-obgovorili-noviy-zakon-pro-bizhentsiv?print=1&tmpl=component> [Stand 20.08.2011].

⁴ Edieva, N. Чого очікувати від нового закону про біженців? [What should be expected from the Refugees Law?] Портал «Громадський простір» [Civic Space Portal] <http://www.civicua.org/text/news/view.html?q=1664125> [Stand 04.08.2011].

roots organizations in Ukraine. Meanwhile, international human rights organizations have voiced their concerns with regard to the content of the above regulation of the Law. Thus, the UNHCR in its press release on the adoption of the Law noted that the definition of “complimentary protection” is tangibly lower than is prescribed by the EU standards. In particular, the Law of Ukraine does not stipulate the provision of complimentary protection to persons who are experiencing life threats in conditions of arms conflicts. UNHCR is concerned in earnest about persons requiring international protection and especially those who while escaping arms conflicts will not be able to find protection in Ukraine⁵.

Alongside with that, the expert community expressed concerns regarding the actual possibilities for the practical implementation of the Law. It was noted that while newly introduced legal norms are important, a Law alone is insufficient to improve everyday lives of refugees and asylum seekers. For the Law to be efficient a whole specter of conditions is required, the key among them being the orderly functioning of the judiciary. As noted by the above “Rokada” expert, asylum seekers, having had their application turned down, often appeal against the decision to the court. However, due to the judicial changes the country has lost many judges who were qualified and knowledgeable in this area. For that mater asylum seekers often wait years for a decision.

Not less important for the efficacy of the Law will be the introduction of guidelines for practical implementation and the development of complimentary clauses to the Law by the State Migration Service, in addition to a respective department to be created within its structure.

Last but not least, the Law does not guarantee either the protection from ill-treatment to asylum seekers, or the protection to persons whose applications had been rejected, while the procedure for forced deportation is specified in very narrow terms.

Overall, all the experts agreed that although the Law was the first, yet hopefully not the only step of the state on the way to quality reformation of the current Ukrainian legislation in the area of immigration. It is expected that the new Law will bring it in compliance with international and European standards and norms, given that efficient regulation of migratory fluxes is a prerequisite for the democratic development of the society

⁵ Taken from Edieva, N.