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THE LEGAL PROBLEMS OF FORCED MIGRATION: A COMPARATIVE AND LEGAL ANALYSIS ILLUSTRATED BY THE EUROPEAN UNION COUNTRIES AND RUSSIA

Elena Anatolyevna Kirillova*, Vladimir Nikolaevich Suslikov*,
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Teymur El'darovich Zul'fugarzade***

The study based on the comparative and legal analysis illustrated by the European Union countries and Russia is performed in this article for the first time. Russia has experienced a migration crisis at the close of the 20th century with the collapse of the Soviet Union and has the experience on the settlement of the uncontrolled flow of the refugees, that can be used by the European countries. The purpose of this study is to consider the legal problems of the forced migrants and to propose the possible technologies to regulate the migration processes and to reform the legal framework in the field of migration policy of the countries, experiencing currently the uncontrolled inflow of the refugees. The case-study method was used in this study to develop the models of the different situations, allowing to analyze the legal implications of the forced migration in Europe and to develop the best practical solution in the context of the problem. The comparative analysis method was used to review the practice of the legal regulation of the forced migration in Europe, in the US and in Russia. The study highlights the negative effects of the migration crisis in Europe, including the risk of secession of Europe; the growth of the terrorist threat; the public safety destabilization; the strengthening of the public opposition forces, advocating for the interests of the Europeans, the European identity change. The author's classification of the refugees, which has the theoretical and practical significance, able to assist the application of the basic legal actions, depending on the category of the forced migrants, is proposed. The Russian migration policy experience allows to determine the main trends in the activities of the EU countries to prevent the negative consequences of the uncontrolled migration from the countries of the Middle East: a partnership based on the principle of "positive conditionality" is required, the priority of the national interests, the legislative enshrinement of the minimum compensation payable to the forced migrants and the amplification of the refugee status acquisition mode in the EU countries, it is required to control the external and the internal borders and to depart the migrants back to their homeland.

Keywords: forced migration; refugees; extremism; armed conflicts; the institution of asylum.

1. INTRODUCTION

Forced migration is one of the most difficult problems faced by the international community in modern times, as a huge number of the forced migrants from the Middle East come to the countries of the European Union as a result of the geopolitical conflict, hostilities and increase in the tension between the countries

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of the antiterrorist coalition and the extremist organization Islamic State. In this difficult situation, the current legislation of the countries hosting the migrants can not cope with the function of monitoring of these processes, which leads to numerous violations of the rights and freedoms of people of both parties: the migrants and the citizens of the host parties (Parkinson, & Behrouzan, 2015).

By the beginning of the new century, it became evident that the national governments, the intergovernmental organizations and especially the United Nations High Commissioner for Refugees faced the enormous challenges in the human flow control, and the necessity to maintain the institution of asylum in its traditional form (Avato *et al.*, 2010).

The purpose of this study is to consider the legal problems of the forced migrants and to propose the possible technologies to regulate the migration processes and to reform the legal framework in the field of migration policy of the countries, experiencing currently the uncontrolled inflow of the refugees.

The interest in the legal status of the refugees and the forced migrants has emerged in the course of the exacerbation of the conflicts and military actions. In recent years, a large number of works were written by the famous scientists; for example, M. Kreibaum (2016) considered the problem of the Congolese refugees, S.E. Parkinson, O. Behrouzan (2015) studied the issues on the legal status of the Syrian refugees, K. Strauss, S. McGrath (2016) wrote about the temporary migration, R. El-Bialy, S. Mulay (2015) studied the factors intended to support the well-being of the refugees, D. MacKenzie (2015) compared the statistic indicators of the number of the refugees in various countries, K. Long (2011) considered the rights and the freedoms of the forced migrants, A. Chin, Kalena E. Cortes (2015) studied the legal status of the refugees, G. Ođuz (2011) dedicated his work to the influence of the Turkish migration over the position of the European Union citizens, D. Coleman (2015) examined the migration processes in Europe in the early 20th century, etc. In recent years, the study of the problems of the refugees and the forced migrants has become much more active, but, nevertheless, many questions remain insufficiently developed.

The legal implications of the forced migration were mainly characterized by the registration of the position of the refugees and the forced migrants according to the indicators of need, as well as the mutual assessments of the migrants and the indigenous population (Ibáñez, & Vélez, 2008). The studies dedicated to the investigation of the complex legal consequences of the forced migration in modern times characterized by the increase in the tensions between the anti-terrorist coalition countries and the extremist organization Islamic State, for both the refugees and the host communities, could not be detected. For the first time a study is carried out based on the comparative and legal analysis illustrated by the European Union countries and Russia. Russia has experienced a migration crisis at the close of the 20th century with the collapse of the Soviet Union and has the experience on the

settlement of the uncontrolled flow of the refugees that can be used by the European countries.

2. METHOD

The case-study method was used in this study to develop the models of the different situations, allowing to analyze the legal implications of the forced migration in Europe and to develop the best practical solution in the context of the problem. The dialectical method was used to examine the problems of the legal status of the refugees in the modern period comprehensively and more specifically, to assess qualitatively the legal phenomena and to identify the dependency of the form of the phenomena on their essence.

The comparative analysis method was used to review the practice of the legal regulation of the forced migration in Europe, in the US and in Russia, to draw a conclusion about the need to reform the legal framework regulating the migration processes, on the basis of the obtained data.

The statistical method was used to compare the percentage of the number of refugees in the modern period and the period of the last century; this method performed the following basic functions: descriptive, explanatory, predictive and organizational and practical.

The following basic techniques of logic were applied: induction; deduction; analogy; hypothesis. In the study of the legal basis, the system analysis and such methods of cognition as analysis and synthesis, abstraction and the ascent from the abstract to the concrete were used.

The special methods of theoretical and legal science were applied: formal-legal (dogmatic) method by which the legal texts and the legal facts, their interpretation in a logical sequence with the use of special legal terms and structures were investigated. This method allowed to study the migration process independently of the economy, politics, morality and other social phenomena.

In the writing of this article, a method of legal modeling was used. The modeling process included three steps:

- 1) the problem definition and the targeting;
- 2) the study of the model and the conclusion drawing;
- 3) the interpretation (analysis, interpretation) of the results and the attribution of the knowledge obtained to the original.

3. RESULTS

In 1951 in Geneva, all countries of the European Union without exception signed the international Convention on the Status of Refugees and the Protocol of January 31, 1967, which constitutes the amendment to the Convention and obliges the member-states to cooperate with the Office of United Nations High Commissioner

for Refugees. The decision on the establishment of this Convention is due to the events, firstly, related to the First World War, accompanied by the collapse of the Ottoman, the Austro-Hungarian and the Russian empires, the territorial changes, the cases of genocide and, as a result, the massive migrations of the population, and, secondly, related to the Second World War (Kreibaum, 2016).

Since the entry into force of the Amsterdam Treaty of 1999, the common policy on migration has existed and underwent modifications in the European Union. It is represented by such documents as the Regulation 539/2001 of 2001 “On the establishment of the list of third countries the nationals of which must have visas and the nationals of which are exempt from visas”, the Directive 2009/50/EU of 2009 “On the establishment of the conditions of entry and residence for the third-country nationals for the purposes of the highly qualified employment”, etc., creating a favorable regime for the certain categories of persons. This policy includes the Common European Asylum System (CEAS), which means the harmonization of the national legislations in this field. In 2010, the Regulation entered into force, establishing the European Asylum Support Office (EASO), which is to facilitate, to coordinate and to intensify the cooperation of the Union member-states on all matters of asylum provision. One of the most important documents in the light of the migration crisis in the European Union is the Regulation “Dublin III” entered into force in 2013. According to the regulation, the migrant is entitled to request the refugee status in only one country — the country of entry into the EU. Thus, the responsibility for the granting of refugee status lies with the country of entry. In practice, many countries have terminated the Regulation Dublin III on their territories and allowed the migrants to leave for the second countries in the north and west of Europe (El-Bialy, & Mulay, 2015).

Thus, the analysis of the history of the regulatory problem of refugees in European law allows to conclude that a fundamental principle in regard to the refugees, enshrined in these legal systems, is a humanitarian principle. A refugee is protected and has a certain range of rights, such as the right to free access to the courts in the territory of all member-countries to the Convention, the right to a primary education, the right to a government assistance, etc. (Strauss, & McGrath, 2016). Moreover, the most favored nation treatment, which means giving them the same rights and freedoms, as are exercised by the citizens of the European Union under the same circumstances, is effective for the certain issues relating to the refugees (Ođuz, 2011). However, this is feasible only at the same high level of political, economic and social development, which is available in the member-countries, which have signed the international agreements, mentioned above.

According to the European Statistics Office, most of the arrivals in Europe have applied for the refugee status – 942,400 people. Therefrom, the largest number of applications was received by Germany (more than 315,000 by the end of October 2015). The second place belongs to Hungary (55,174 applications for the same

period). Although these countries are in the lead in the overall number of applications, in Sweden the ratio of applications to the population of the country is the highest: more than 1,575 applications to one hundred thousand Swedish citizens in 2015. According to this indicator, Hungary occupies the second position (nearly 1,508 applications to one hundred thousand citizens) (European Commission. Eurostat, 2016). In Germany, the ratio is 520 to one hundred thousand citizens (Figure 1. The number of accepted refugees by the countries of accommodation in 2015 (according to Eurostat)).

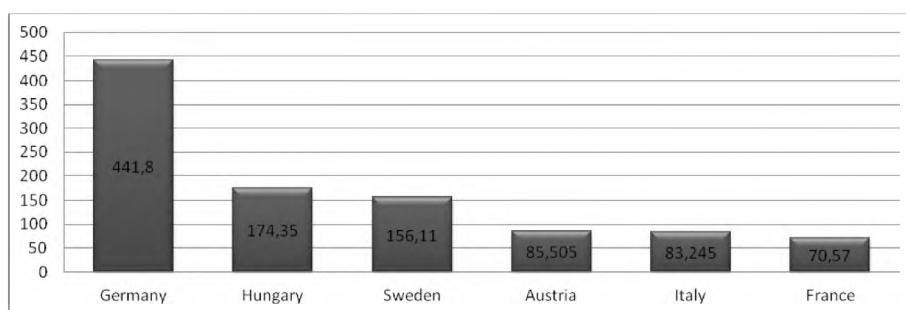


Figure 1: The number of accepted refugees by the countries of accommodation in 2015 (according to Eurostat)

The basic line-up of the refugees is the following: the Syrians (29%), while the half of them asked for the asylum for the first time in Germany, 14% of all refugees in Europe are the Afghans, 10% are the Iraqi and others (Figure 2. The number of the refugees by nationality).

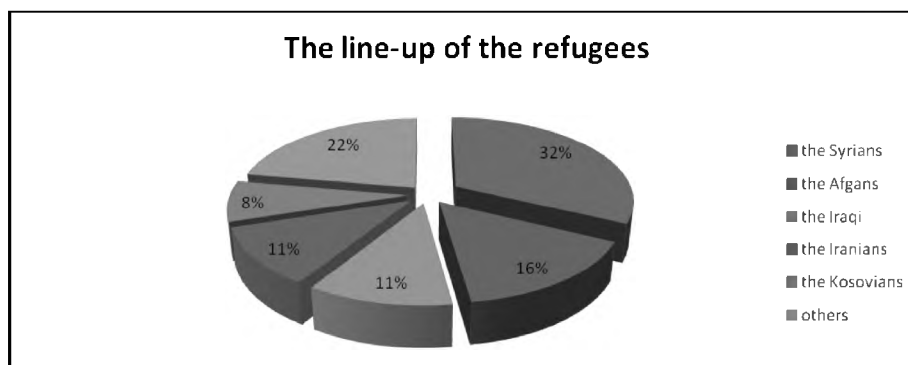


Figure 2: The number of the refugees by nationality

The different qualities of the refugees allow to define the criteria to construct based on them a classification of both theoretical and practical significance. Among the main criteria are the following:

1. The criterion of orientation: arriving – departing;
2. Place of origin: external – internal;
3. Sources of danger: military conflicts, environmental disasters, economic crises, political events;
4. Occupancy: temporary – permanent.

It should be noted that in practice there are no pure form of one or another category of the refugees addressed within the proposed classification. A refugee can be addressed from the standpoint of different criteria and combine several features, forming the basis of the classification, at a time.

Considering the migration crisis in Europe, the following negative effects can be identified (Figure 3. The negative effects of the migration crisis in Europe):



Figure 3: The negative effects of the migration crisis in Europe

The forced migration is one of the most difficult problems faced by Russia at the turn of the millennium; the violation of the rights of non-indigenous nationalities and the ethnic conflicts resulted in the mass migration flows. From 8.6 million migrants which arrived in Russia after the collapse of the Soviet Union, only 1.6 million received the official status. And only 500 thousand during 10 years have received a very small compensation from the state. The Russian treasury has not bankrupted because of the migrants; at the same time, the state has received hundreds of thousands of energetic, highly skilled professionals, making themselves comfortable on their own, without burdening the state.

Unlike Europe, the migration crisis caused by the tension between the anti-terrorist coalition countries did not touched Russia in 2015. 337 Syrians applied to Russia for the status of a refugee, but none of them have received this status. Of the 360 applied Afghans, the refugee status has been received by 15 persons. The temporary asylum was granted to only about a half of the applied (695 of 1,124 Syrians and 220 of 553 Afghans). The experts point out that the low level of

guaranteed payments and the bureaucratic barriers to the approval of the applications for a refugee status lead to the said situation. Therefore, the entire migration flow penetrating into Russia from the Middle East region is aimed at the penetration into the European Union. While the eastern border along Serbia is being tightened, the refugees begin to lay an alternative route – from Russia to Finland and Norway (Lebedeva *et al.*, 2016).

According to the Head of the Federal Migration Service, since autumn of 2015 the number of foreigners, trying to use Russia for the transit to Finland has increased. Basically, they are the citizens of Syria and other Middle Eastern, Asian and African countries. Subsequently, this border was closed; at the moment, the main migration channel is a Norwegian-Russian border crossed by the refugees on bicycles as this border is allowed to be crossed only in the vehicle. In 2015, 5,500 migrants from Syria, Afghanistan and Iraq arrived in Norway through the city of Nickel (the so-called Arctic route) (MacKenzie, 2015).

The Russian migration policy experience allows to determine the main trends in the activities of the EU countries to prevent the negative consequences of the uncontrolled migration from the countries of the Middle East: a partnership based on the principle of “positive conditionality” is required, the priority of the national interests, the legislative enshrinement of the minimum compensation payable to the forced migrants and the amplification of the refugee status acquisition mode in the EU countries is required, whereof any agreement on cooperation must constrain the forced migration, it is necessary to control the external and the internal borders and to depart the migrants back to their homeland, these forced actions are not contrary to the Geneva Convention. The Article 9 of the General Regulations reads: nothing in this Convention shall disentitle a Contracting State, in time of war or other grave and exceptional circumstances, to take provisional measures which it considers necessary in the interests of national security, in relation to a particular person, pending a determination by this Contracting State, of the fact, that this person is actually a refugee and that the continuance of such measures against him/her is necessary in the interests of the national security (Hatton, 2015).

4. DISCUSSION

Considering the European approaches to the settlement of the migration crisis, it may be noted that the unprecedented measures were taken with regard to the refugees. This is the barrier, sometimes complete with the barbed wire and the police to prevent the attempts of illegal border crossing. The temporary control of the borders was forced into application by Belgium, Denmark, Germany, Hungary, Austria, Slovenia, Sweden and Norway. France instituted the border control in connection with the climate summit and after the terrorist attacks of November 13, 2015 in Paris (Migrant crisis: Migration to Europe explained in graphics, 2016). Macedonia and Slovenia closed their borders for the flow of the refugees. Croatia

prohibited the transit of the refugees through the country. Serbia, which is not the member of the EU, fearing the concentration of the migrants in its territory as a result of the closure of the European borders, closed the border with Macedonia. The refugees, including the illegal migrants, accumulate in Greece because of tightening of the border control from the part of Macedonia. Due to the fact that the Balkan countries have imposed the restrictions on the passage of up to 580 people a day, Bulgaria in terms of the expected inflow of the refugees decided in spring to involve, if necessary, the army to control the border with Turkey. Europe is also planning to create a common EU border service up to thousand and a half people.

The attempts to destroy the refugee camps at the sights of accumulation took place. For example, the French authorities began to dismantle the structures located on the territory of the refugee camps in Calais city where have been accumulated up to 4 thousand people, hoping to reach the UK. All migrants are being relocated to a nearby camp. The Greek authorities plan to resettle the spontaneous refugee camp, which was formed in the village Idomeni on the Greek-Macedonian border (Coleman, 2015).

The NATO forces are involved in the settlement of the migration crisis, providing the Greek and Turkish coast guard with the information required to increase the effectiveness of their work (Kinzie, 2016).

The measures taken by Europe to regulate the migrant motion within the European Union are causing the controversy with the Convention on the Status of Refugees (Phalet *et al.*, 2015). The main proposals on the settlement of the migration crisis are reduced to the distribution of the migrants over all EU countries – the so-called “quota arrangement” (Bosetti *et al.*, 2015). In September, the similar decision was taken despite the objections of the Czech Republic, Hungary, Romania and Slovakia. It was agreed, according to the allocated quotas, to accommodate 40 thousand people from Greece and Italy during two years. However, the critics of this approach state that the existence of the porous borders in the EU nullifies the effectiveness of this approach, so it is necessary to establish the control at the internal borders (Kunuroglu *et al.*, 2015).

Another option is to provide the Middle East countries, such as Lebanon, Jordan and Turkey, accepting the largest number of the Syrian refugees, with the assistance from the part of the EU. Some experts ask to organize the centers for the refugees in North Africa and the Middle East, so that the refugees could apply there with no need to cross the Mediterranean Sea, which at the same time would reduce the number of the illegal migrants in the EU. The critics of this plan say that the accumulation of a vast number of the applicants in such centers could further destabilize the already weak countries (Phalet *et al.*, 2015).

One of the initiatives of the European Commission on this issue is the idea of creation of a common list of safe countries, which would make it possible to accelerate the process of considering of an application for asylum and deportation.

This measure would significantly affect the migrants from the Balkan countries, the applications of which account for 40% of all applications filed in Germany in the first half of 2015. The countries where the direct military activities are performed – Syria, Iraq, Afghanistan, etc. – would be included in the list of hazardous countries. To this effect, it would be possible to distinguish between the forced migrants from the war zones and the economic migrants (Wouterse, 2012). The human rights defenders argue that such lists infringe the rights of the refugees, and are wondering about the criteria for the evaluation of the safety (Mahmoud, & Trebesch, 2010). Moreover, there is a problem related to the method of distinguishing among the undocumented migrants. The migration plan, consisting of 10 points, adopted by the EU in April 2015, includes a call for systematic attempts to capture and destroy the vessels of the smugglers. According to the experts, the implementation of such an idea would require to conduct the operations in the border waters of Libya, Turkey, Tunisia and even ground campaigns in these countries (Chin *et al.*, 2015). However, this approach does not take into account the expelling factors which have resulted in the migration into Europe: the poverty and the continuing conflict in the Middle East, in Africa, which have left the people with no means for survival. Thus, the proposed measures might help the EU to regulate the flow of migrants, but they cannot solve the crisis (Coleman, 2015).

To reduce the number of the migrants to an acceptable level, it is necessary to pay attention to the causes of such migration and to take certain measures: to help to put an end to the war in Syria, to restore the stability in Libya, to help the countries of Africa.

At the national legislative level in European countries, it is required to provide for the establishment of the control at the external and internal borders of the European countries, the quota arrangement, the cooperation with the countries supplying the migrants, the departure of the migrants back to their homeland and the termination by the member-states of the process of transit of the refugee flow through their territory to the other EU member-states.

5. CONCLUSION

The analysis of the history of the regulatory problem of refugees in European law allows to conclude that a fundamental principle in regard to the refugees, enshrined in these legal systems, is a humanitarian principle. Moreover, the most favored nation treatment, which means giving them the same rights and freedoms, as are exercised by the citizens of the European Union under the same circumstances, is effective for the certain issues relating to the refugees.

1. The negative effects of the migration crisis in Europe were defined, including the risk of secession of Europe; the growth of the terrorist threat; the public safety destabilization; the strengthening of the public opposition forces, advocating for the interests of the Europeans, the European identity change.

2. The author's classification of the refugees, which has the theoretical and the practical significance, was proposed. The categories of the refugees were defined based on the following criteria:
- The criterion of orientation: arriving – departing;
 - Place of origin: external – internal;
 - Sources of danger: military conflicts, environmental disasters, economic crises, political events;
 - Occupancy: temporary – permanent.
- It should be noted that in practice there is no pure form of one or another category of the refugees addressed within the proposed classification. A refugee can be addressed from the standpoint of different criteria and combine several features, forming the basis of the classification; at a time, however, the refugee classification, proposed in this article, will facilitate the application of the basic legal measures, depending on the category of the forced migrants.
3. At the national legislative level in European countries, it is required to provide for the establishment of the control at the external and internal borders of the European countries, the quota arrangement, the cooperation with the countries supplying the migrants, the departure of the migrants back to their homeland and the termination by the member-states of the process of transit of the refugee flow through their territory to the other EU member-states.

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