

## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

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### ***Access of refugees and displaced persons to socio-economic rights in the Russian Federation***

**Vadim Voinicov**

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## 1. Legal status of refugees and displaced persons in Russia

This explanatory note is devoted to the socio-economic status of two categories of citizens forced to leave their permanent place of residence, namely: refugees and displaced persons.

Under the Federal Law “On refugees”<sup>1</sup> (hereinafter – the Law on Refugees), a refugee is a person who is not a citizen of the Russian Federation and had to leave the country of customary residence due to justified fear of becoming a victim of persecution.

A displaced person, under the law “On displaced persons”<sup>2</sup> (hereinafter – the Law on Displaced Persons) is a citizen of the Russian Federation or a foreigner permanently residing in the Russian Federation, forced to change the place of residence within Russia due to violence committed against him/her or his/her family members or due to other forms of persecution based on different motives.

Legal status of refugees and displaced persons is determined by their citizenship. The government guarantees them additional rights predicated on exceptional circumstances they found themselves in and meant to assist refugees and displaced persons in ensuring normal living conditions in the recipient country.

Despite different legal status and citizenship, refugees and displaced persons have one thing in common: they had to leave their place of permanent residence against their will. Hence these persons can be qualified as forced migrants.

## 2. General conditions of refugees’ and displaced persons’ access to socio-economic rights

Legal position of refugees and displaced persons is regulated by a number of universal international legal acts in the field of human rights protection.

The main specialized international legal document defining the status of refugees is the UN Convention of 28 July 1951 “On status of refugees”<sup>3</sup> (hereinafter – Convention), that Russia joined in December 1992<sup>4</sup>.

Under this Convention, member states shall provide refugees with a wide range of rights, including a complex of economic and social rights (right to paid job, housing, public education, public welfare and social security etc.). The indicated rights are guaranteed only to persons who were granted refugee status in the recipient country and possibly to persons under temporary or supplementary protection<sup>5</sup>. In other words, social and economic guarantees stipulated by the Constitution do not cover asylum seekers. A specific mechanism for implementation of refugees’ socio-economic rights is established by the national legislation consisting of federal laws on refugees and displaced persons.

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<sup>1</sup> Federal law of 19.02.1993 No. 4528-1 “On refugees” // *Rossiyskaya Gazeta*, No. 126, 03.06.1997.

<sup>2</sup> Russian law of 19.02.1993 No. 4530-1 “On displaced persons” // Collection of Russian legislation, 25.12.1995, No. 52, p. 5110

<sup>3</sup> Convention relating to the Status of Refugees adopted on 28 July 1951 by the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened following the Resolution 429 (V) of the UN General Assembly of 14 December 1950 [http://www.un.org/ru/documents/decl\\_conv/conventions/refugees.shtml](http://www.un.org/ru/documents/decl_conv/conventions/refugees.shtml)

<sup>4</sup> Regulation of the Russian Supreme Council of 13.11.1992 No. 3876-1 “On accession of the Russian Federation to the Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees”, Bulletin of the Congress of People’s Deputies and Supreme Council of the Russian Federation, 10.12.1992, No. 49, p. 2863.

<sup>5</sup> Cholevinski R. Economic and social rights of refugees and persons seeking political asylum: right to health and education, <http://www.memo.ru/hr/refugees/sem6ru/Chapter13.htm>

Furthermore, starting from 1 September 1995 Russia has been a member of the CIS agreement of 24.09.1993 “On assistance to refugees and displaced persons”<sup>6</sup>, that establishes additional guarantees of assistance to refugees and displaced persons.

Socio-economic rights of refugees and displaced persons represent a complex of rights of forced migrants in economic, social and cultural areas guaranteed by international and national legislation, meant to correspond to material, spiritual and other social needs of a person. These rights touch upon such aspects of human life, as economic activities, property, labor, leisure, health, education etc. Socio-economic rights of refugees and displaced persons to the same extent apply to accompanying family members.

The Convention covers socio-economic rights of refugees in chapters II (Juridical status), III (Gainful employment), IV (Welfare). In the Russian legislation socio-economic rights of refugees are covered in the Law on Refugees (article 8) and the Law on Displaced Persons (articles 4 and 6).

Based on above-mentioned provisions and taking into account the scope of rights implementation, socio-economic rights of refugees and displaced persons can be divided into the following groups:

1. housing rights;
2. economic and labor rights;
3. social security and public assistance;
4. education and healthcare rights.

The present paper draws its structure from this classification.

This explanatory note aims at studying the socio-economic status of refugees and displaced persons in the Russian Federation. This goal is to be achieved by comparing Convention provisions guaranteeing socio-economic rights of refugees to relevant provisions of the Russian legislation, as well as Russian law enforcement practice.

### **3. Housing rights of refugees and displaced persons**

Under article 21 of the Convention, contracting states shall accord to refugees “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

Under point 6 of article 8 of the Federal Law on Refugees, a person acknowledged as a refugee has a right to use living space offered from the temporary accommodation stock that includes houses, apartments, dormitories, other types of living space, specifically meant for refugees and their families. Under Housing Code of the Russian Federation (article 97), the indicated living space belongs to the category of specialized housing stock. Procedure of formation and use of the housing stock for temporary accommodation of refugees is determined by the Russian Government Regulation No. 275 of 09.04.2001<sup>7</sup>.

Similar provisions are found in the legislation on displaced persons, so, under article 6 of the Federal Law on Displaced Persons, when displaced persons cannot find housing in Russia on their own, they are entitled to be placed at the Center for temporary accommodation of displaced persons or living space from the housing stock for temporary accommodation of displaced persons.

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<sup>6</sup> Agreement of CIS member states of 24.09.1993 “On assistance to refugees and displaced persons”, Bulletin of International Treaties, No. 5, 1995

<sup>7</sup> Regulation of the Russian Government of 09.04.2001 No. 275 “On housing stock for temporary accommodation of persons recognized as refugees and its use”, Collection of Russian legislation, 2001, No. 16, p. 1604.

Thus, the law provides displaced persons with accommodation at the temporary accommodation center<sup>8</sup> or housing from the temporary accommodation stock.

Specific forms of housing arrangement for displaced persons are determined by the Russian Government Regulation No. 845 of 08.11.2000<sup>9</sup>, under which the government guarantees allocation of temporary accommodation and assists displaced persons in getting permanent housing. One should note that the housing stock for temporary accommodation of refugees and the housing stock for temporary accommodation of displaced persons are actually two separate stocks.

The loss of refugee or displaced person status terminates the right to use housing provided from the temporary accommodation stock. In this case housing rights of that person are defined depending on his/her new status.

These provisions were the subject of proceedings at the Russian Constitutional Court that examined their compliance with the Constitution. The Constitutional Court confirmed legality of this rule, indicating that the housing stock for temporary accommodation has a strict designated purpose and is meant to provide housing to persons recognized within the established procedure as displaced persons and their family members. The court ruled that “contested normative provisions do not envisage accommodation of persons who lost their displaced person status in the living space for temporary accommodation of displaced persons and are aimed at ensuring guaranteed housing arrangements for displaced persons as a special category of citizens in need of enhanced legal and social protection, hence they cannot be regarded as violating constitutional rights of citizens not recognized within the stipulated procedure as displaced persons or those who lost this status”<sup>10</sup>.

## 4. Economic and labor rights

Economic and labor rights of refugees and displaced persons include the following subgroups: property rights, right to entrepreneurship and right to labor.

### 4.1 Property rights

Regarding property rights the Convention obliges contracting countries to “accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances” (article 13).

Russian civil legislation makes refugees equal to other categories of foreign citizens, when it comes to ownership, use and disposition of movable and immovable property. Unlike refugees, displaced persons are usually citizens of the Russian Federation and hence enjoy the same property rights as other Russian citizens.

At the same time the law envisages additional property guarantees to the indicated persons. For instance, under article 7 (1(4, 5)) of the Law on Displaced Persons, federal and regional executive bodies render assistance to displaced persons in getting back their property that was left in the Russian territory or territory of a foreign state, and when it is impossible to return the property to a displaced person, he or she is reimbursed.

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<sup>8</sup> Regulation of the Russian Government of 22.01.1997 No. 53 “On approval of the Standard regulation on the center for temporary accommodation of displaced persons”, Collection of Russian legislation, 27.01.1997, No. 4, p. 550.

<sup>9</sup> Regulation of the Russian Government of 08.11.2000 No. 845 “On approval of the Regulation on housing arrangement for displaced persons in the Russian Federation”, Collection of the Russian legislation, 13.11.2000, No. 46, p. 4562.

<sup>10</sup> Ruling of the Russian Constitutional Court of 16.07.2009 No. 917-O-O “On refusal to take under consideration the complaint of citizen Zoya Alexandrovna Ulyanova about violation of her constitutional rights by provisions of article 11 of the Russian Federation law “On displaced persons”, subparagraph c of paragraph 23, subparagraph b of paragraph 33 and paragraph 34 of the Regulation on Housing for Displaced Persons in the Russian Federation”.

In accordance with the procedure of goods transfer by physical persons over the customs border of the customs union for personal use<sup>11</sup>, refugees and displaced persons are exempt from customs duties with regards to goods (including one car) previously used and imported into the customs union of Russia, Belarus and Kazakhstan.

## 4.2 Right to entrepreneurship

Under article 18 and 19 of the Convention, with regards to entrepreneurial activity (including when establishing commercial organizations) contracting parties shall accord to refugees “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

Under article 8 (1(9)) of the Law on Refugees, refugees are entitled to perform work for hire or entrepreneurial activities on equal terms with Russian citizens. Thus, Russian legislation equalizes refugees with Russian citizens in the field of entrepreneurship.

## 4.3 Right to labour

Under article 17 of the Convention, when it comes to wage-earning employment, contracting states shall accord to refugees “the most favourable treatment accorded to nationals of a foreign country in the same circumstances”.

Furthermore, under article 24 of the Convention, contracting parties are obliged to abstain from any forms of discrimination with regards to remuneration, including family allowances, where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, n’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining”.

Under article 8 (1(8,9)) of the Federal Law on Refugees, a person recognized as a refugee is entitled to assistance in getting professional education or employment, as well as work for hire or entrepreneurial activity, social protection, including social security, on equal terms with Russian citizens, with the exception of cases envisaged by the Russian legislation and international treaties that Russia is a member of.

When refugees exercise the right to work, it is necessary to be guided by special laws regulating labor activities of foreign citizens. Under Federal Law “On legal status of foreign citizens in the Russian Federation”<sup>12</sup>, employer has a right to attract and use foreign workers when having a *permit to attract and use foreign workers*, and a foreign citizen has a right to perform work when having a *work permit*. Work permit in this case is a document confirming the right of a foreign worker to temporarily perform labor activity in the Russian Federation (article 2 of the Law No. 115-FZ).

The procedure described above does not cover foreign nationals listed in par. 4 of article 13 of the Law No. 115-FZ; there are no refugees in that list of foreign nationals.

One should note that under par. 18 of the Provision on Attraction and Use of Foreign Workforce in the Russian Federation<sup>13</sup> mandatory procedure for issuing work permits is not applied with regards to

<sup>11</sup> Agreement between Government of the Russian Federation, Government of the Republic of Belarus and Government of the Republic of Kazakhstan of 18.06.2010 “On procedure of transfer of goods by physical persons over the customs union border for personal use and customs transactions associated with their issue”, Collection of Russian laws, 03.09.2012, No. 36, p. 4866.

<sup>12</sup> Federal law of 25.07.2002 No. 115-FZ “On legal status of foreign citizens in the Russian Federation”, Collection of Russian legislation, 29.07.2002, No. 30, p. 3032.

<sup>13</sup> Decree of the Russian President of 16.12.1993 No. 2146 “On attraction and use of foreign workforce in the Russian Federation”, Collection of Russian President’s and Government’s acts”, 20.12.1993, No. 51, p. 4934.

refugees. However, this decree was cancelled on 15 January 2007 due to publication of the Decree of the Russian President No. 1475 of 28.12.2006.

Thus, at present labor activities of a refugee can be performed, provided there is a work permit and permit to attract foreign workers. Besides, refugees who are foreign citizens or stateless persons do not have access to public or municipal service and other positions that cannot be filled by foreigners.

## 5. Social security and public relief

Under article 24 of the Convention, contracting states shall accord to refugees the same treatment that is accorded to nationals with regards to social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme).

Under article 8 (10) of the Federal Law on Refugees, a person acknowledged as a refugee is entitled to social protection, including social security, on equal terms with Russian citizens. This norm covers all types of social security in the Russian Federation, including retirement benefits, social insurance etc.

In most cases refugees are granted rights in the field of social security equal to those of Russian citizens. Thus, under article 1 of the Federal Law “On public benefits to citizens having children”<sup>14</sup>, provisions of the law equally cover foreign citizens, stateless persons and refugees permanently residing in Russia.

Under article 6 of the Federal Law “On social care for senior citizens and disabled”<sup>15</sup>, foreign nationals, including refugees, enjoy the same rights in the field of social service, as Russian citizens.

Refugees are also entitled to retirement benefits on equal terms with Russian citizens. However, right to benefits and other forms of social security is enjoyed only while the refugee status is valid.

Public relief is a special form of social protection of refugees. Under article 23 of the Convention, contracting states shall accord to refugees the same treatment with respect to public relief and assistance as is accorded to its nationals.

Legislation currently in force envisages approximately identical forms of public relief for refugees and displaced persons. Stemming from analysis of the Law on Refugees and Law on Displaced Persons one can identify two types of public relief:

1. one-time monetary allowance for each family member of the person who was granted a certificate of registration of petition for displaced person status<sup>16</sup> (article 4 (1(1)) of the Federal Law on Displaced Persons) or certificate of examination of petition for refugee status<sup>17</sup> (article 6 (1(3)) of the Federal Law on Refugees).

<sup>14</sup> Federal law of 19.05.1995 No. 81-FZ “On public benefits to citizens having children”, Collection of the Russian Federation, 22.05.1995, No. 21, p. 1929.

<sup>15</sup> Federal law of 02.08.1995 No. 122-FZ “On social care of senior citizens and disabled”, *Rossiyskaya Gazeta*, No. 150, 04.08.1995.

<sup>16</sup> Regulation of the Russian Government of 16.06.1997 No. 724 “On the size of one-time money allowance and procedure of its payment to a person who received the certificate of registration of petition for being recognized as a displaced person”, Collection of the Russian legislation, 23.06.1997, No. 25, p. 2943.

<sup>17</sup> Regulation of the Russian Government of 23.05.1998 No. 484 “On the size of one-time money allowance and procedure of its payment to a person who received certificate of examination of petition for being recognized as a refugee in the Russian Federation territory”, Collection of the Russian legislation, No. 22, 01.06.1998, p. 2457.

2. meals and utilities (article 4 (1(4)) of the Federal Law on Displaced Persons and article 8 (1(4)) of the Law on Refugees).

Therefore, in the field of social security refugees' rights are equalized with those of Russian citizens and in the course of refugee status validity they are entitled to all kinds of social security in the scope stipulated for Russian citizens.

## **6. Rights in the field of education and healthcare**

### **6.1 Right to education**

Under article 22 of the Convention, with regards to elementary education contracting states shall accord to refugees the same treatment as it accorded to nationals. As for other types of public education, such as, for instance, access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships, contracting states shall accord to refugees "treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".

Thus, the Convention establishes different forms of guarantees in the field of elementary (school) education and secondary or higher professional education.

Under article 8 (1(11)) of the Federal Law on Refugees, a person acknowledged as a refugee is entitled on equal terms with Russian citizens to get assistance in enrolling children to public or municipal preschools, general education institutions and institutions of basic professional education, as well as in getting them transferred to educational institutions of secondary and higher professional education.

Similar provisions can be found in the Federal Law on Displaced Persons (article 7 (1(9)) of the Law). Meanwhile, the scope of rights in the field of education differs for refugees and displaced persons. The norm mentioned above does not guarantee refugees additional rights in the field of education compared to other categories of foreign citizens and stateless persons.

Children of refugees and children of foreign citizens from other categories have a right to study at public or municipal institutions of elementary education on a free-of-charge basis on equal terms with Russian citizens.

As for higher and secondary professional education, Russian legislation does not guarantee refugees and their children the right to free-of-charge education. A foreign student can be enrolled into the higher educational institutions on a free-of-charge basis only if expenses will be covered from the state budget in accordance with an international treaty or within the established quotas. In other cases foreign students can be enrolled into higher educational institutions on a fee-paying basis.

At the same time these provisions do not exclude the possibility of enrolling refugees and their children into institutions of professional education on a free-of-charge basis. In this case education is carried out on the basis of established quotas following petitions by regional and federal bodies in charge of education<sup>18</sup>, including petition of the United Nations Office of the High Commissioner for Refugees.

As for displaced persons who are Russian citizens, they or their children are entitled to enter higher educational institutions on a competitive basis in accordance with the usual procedure.

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<sup>18</sup> See Partnership in education – guarantee of the future for children of refugees,  
[http://www.voprekivsemu.com/factualweb/rus/2.4/articles/Education\\_Russia.html](http://www.voprekivsemu.com/factualweb/rus/2.4/articles/Education_Russia.html)

## 6.2 Access to healthcare system

Russian legislation that is currently in force establishes equal rights of refugees and displaced persons to medical care (see article 1(7)) of the Law on Refugees and article 4 (1(5)) of the Law on Displaced Persons<sup>19</sup>).

Medical care is provided to displaced persons and refugees by enrolling them into the mandatory medical insurance system, under article 10 of the Federal Law No. 326-FZ of 29.11.2010<sup>20</sup>. Therefore, mandatory medical insurance of foreign citizens and members of their families recognized as refugees is ensured on equal terms with Russian citizens. Therefore, refugees are equalized in rights with Russian citizens in the field of healthcare.

## Conclusion

Based on analysis of the valid Russian legislation regulating the status of refugees and displaced persons, one can make a conclusion that guarantees of their socio-economic status correspond to generally recognized norms of international law and the 1951 Convention relating to the Status of Refugees.

Russian legislation stems from the fact that access to socio-economic rights of a refugee is defined by his/her status of a foreign citizen or stateless person. Therefore, in most cases access to the indicated rights is carried out in accordance with the regime established for foreign citizens. However, in some cases (right to retirement benefits, right to social security, right to medical services) a refugee is given additional rights analogous to rights of Russian citizens.

This approach to identification of socio-economic status of refugees corresponds to the requirements of the 1951 Convention relating to the Status of Refugees.

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<sup>19</sup> The indicated norm is applied with regards to persons who received certificates of registration of petitions for displaced person status.

<sup>20</sup> Federal law of 29.11.2010 No. 326-FZ “On mandatory medical insurance in the Russian Federation”, *Rossiyskaya Gazeta*, No. 274, 03.12.2010.