Securing the rights of refugees in international (universal) approach

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Abstract

The main scope of the problem is contained in the title of the article – Legal and institutional protection of refugees' rights in terms of a universal system of international protection of human rights. Protection of human rights, in the modern sense, has a global nature and it has significant importance for the democratic process. It should be noted that no system of human rights protection, including the universal system, is full and complete, because it must pass two levels, it means: external – international and internal – national.

The universalism of the Universal Declaration of Human Rights and the International Covenant provides the Constitution of Human Rights, which contain fundamental norms of human rights. In the sphere of universal international law related to refugees there are also the Geneva Convention and the New York Protocol. These acts paved the framework of the universal system of protection of refugees. In terms of institutional guarantees, we presented the organisations and institutions aimed at ensuring or securing specific and recognized rights or interests. They are of a general nature as well as specialized nature and together make up the protective potential of this system (the UN). There are also the independent non-governmental organizations. Exodus refugee provides one of the major challenges for human rights protection system in the twenty-first century and reveals the weakness of the universal refugee law and policies related to migration and refugee. New challenges are mainly of a practical nature which should be due to the realization of human and security needs.

Keywords: refugee, international law, asylum, human rights, migration, the United Nations.

Introduction

At the turn of the XX and XXI century, it has occurred and continues to experience a dramatic refugee exodus, which is, without doubt, one of the great challenges for the protection of human rights in the twenty-first century.

The new problems emerged and once again the idea of human rights was questioned. New challenges are practical. Millions of people want to get into Europe, causing a major political crisis in many countries in a united Europe. The absurd ideas from the point of view of migration policy are created. Uncontrolled wave of migration could threaten the still weak integration of the European Union.

We wish to introduce laws and institutional security issues of refugees in international – universal terms. The analysis will assess whether the system of international protection of human rights, including the refugees in universal terms, meets expectations and if it is suitable to the current situation arising in the XXI century.

Primarily, the international law is a guarantor of the rights of migrants and refugees including children. This law shapes the system of human rights protection both in the universal range (United Nations) and regional range, in the case of Europe, initiated by the Council of Europe, as well as making up the internal law of the European Union.

Rooting of the protection of refugees in the system of international protection of human rights are disclosed in the Article 14 of the Universal Declaration of Human Rights which states that every person, in the case of persecution, has the right to seek and enjoy asylum. The refugee status, as opposed to asylum, is a subject to regulation by both the norms of international law and national legislation.

The doctrine distinguishes between different types of granted asylum, taking into account the political asylum called territorial and diplomatic asylum, which consists in granting refuge in the diplomatic mission of the State (Sosnowski 1980, p. 21). The diplomatic Asylum is more common in Latin America than in other regions of the world. The right to grant territorial asylum is considered aa a norm of the customary law.

Legal guarantee of the basic human rights to those who have left their country of origin in the face of danger, as like in the situation where the country of origin has not complied with the obligation to protect within its jurisdiction, is nothing but a protection of refugees. Such an understanding of

refugee protection is complementary to human rights protection system as a subsystem (Goodwin-Gill 1989, p. 6 and next; Helton 1990, p. 119; Wierzbicki 1993, p. 93 and next; Noll, J. Vedsted-Hansen 1999, p. 363).

This underlines, at the same time, the specificity and partial autonomy of the international mechanisms for the protection of refugees resulting from the particular situation in which these people were. This leads to the distinction between refugee protection and immigration control policy – refugees. A fundamental problem is the efficient separation of people in real need of the international protection from those who are not in such need. So we will have to deal with the mechanisms geared to provide protection for individuals deprived of protection by their country and with the mechanisms geared to control immigration (Noll, J. Vedsted-Hansen 1999, p. 363). The general rules of international law imply the right to regulate the movement of people on its territory (Brownlie 2008, p. 519). This right is classified as primary and sovereign rights enjoyed by all States.

It should be emphasized that among legal theorists, the different theories on the issue of state rights in relation to persons residing in its territory were developed. The first theory, which operated since the early twentieth century (Runiewicz-Jasińska 2009, p. 302 and next), is that the state is arbitrary, no limited authority in making decisions regarding the stay of foreigners on its territory (Wierzbicki 1982, p. 89). At the beginning of the twenty-first century, with the rapid development of an international system of protection of human rights and freedoms associated with the United Nations, the first of the mentioned concepts become obsolete and lose its importance (Florczak 2006, p. 29). Currently, it is recognized that granting a foreigner the right to reside in the jurisdiction of a state or denying him this right, the state must take into account the norms of international law protecting persons (Góralczyk, Sawicki 2001, p. 271; Bierzanek, Symonides 2015, p. 265) and the state must provide legal protection of the universal human rights standards.

1. The legal system regulating the refugee matters

The Charter of the United Nations (Brownlie, Goodwin-Gill 2010, p. 3), although it did not include the catalogue of fundamental rights, the issues of human rights are highlighted and indirectly, the need to protect human and also the need to protect refugees are emphasized. In 1949, based on the General Assembly Resolution of the United Nations, the Ad Hoc Committee for Refugees

and Stateless Persons (ECOSOC Res.248 (IX)B Study of Statelessness, 1949) was appointed to developed a draft of the international convention governing these issues. In 1951, the conference was organized in Geneva and during that conference, the text of convention on the status of refugees was adopted on 28th July 2051. This convention was a base to shape the universal system of the protection of the refugee rights (Draft Convention Relation to the Status of Refugees). There were some limits in the Convention (UNHCR, Collection of International Instrument and Legal Texts Concerning Refugees, 2004, p. 47) because the term "refugee" was narrow to the people describe by this term in accordance with the Agreement of 12th May 1926 (Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees, 12th May 1926, p. 47) and of 30th June 1928 (Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees, 2006, p. 63) and according the Conventions of 28th October 1933 (Convention Relating to the International Status of Refugees, 1933, p. 199) and of 10th February 1938 (Convention concerning the Status of Refugees Coming From Germany, 1938, p. 59.), Protocol of 14th September 1939 (Additional Protocol to the Provisional Arrangement and to the Convention concerning the Status of Refugees Coming from Germany, 1939, p. 141.) also according to the Constitution of the International Refugee Organization (Constitution of the International Refugee Organization, 1946, p. 3).

Undoubtedly, the universality of the Universal Declaration of Human Rights and the International Covenants (creating a constitution for human rights) lies in the fact that the contained standards are based on the fundamental principle of human rights, it means on the personal dignity of the human being, and on resulting from the dignity: liberty, equality, fraternity, solidarity, etc. "the Declaration of the Rights of Man and of the Citizen" is in fact not the regulation, but certain assertion of the beyond-constitutional standards (Dreier 2009, p. 9).

In the sphere of universal international law, the essential sources are: the Geneva Convention on the Status of Refugees, signed in 1951 and the New York Protocol relating to the Status of Refugees done in 1967 (Journal of Laws, 1991, No. 119, item 517). The Optional Protocol is the separate act, independent of the Convention and signing it obliges states to respect international arrangements for refugees, without having to accede to the Convention itself (Fitzpatrick 1997, p. 4).

Poland ratified those two Agreement only in 1991 and our country has been obligated by those regulations since 27September 1991. Those universal instrument of the protection of refugees are supplemented by the act of the regional law.

It need to be underline that in Europe, in opposition to the American or African solutions, there was no single regional policy on the refugees for the long period of time and the regional standards, which supplemented the Geneva Convention, were not developed (two agreements adopted under the auspices of the Council of Europe are the only exceptions: the agreement on the abolition of visas for refugees in 1959, ETS 31, and the agreement on transfer of responsibility of the refugees in1980, ETS 107).

The situation has been changed since the eighties when the refugee issues in connection with the immigration issues have become the subject of increasing involvement of Member States of the European Communities.

The respect for human dignity and the prohibition of discrimination based on race, colour, sex, language, religion, national or social origin, property, birth or any other situation are the universal standards. They constitute a guarantee of the rights that are addressed only to foreigners. These rights relate to, among others, freedom of movement and residence within the territory of the host country, access to medical care or benefit from social assistance in that country. The limit of these rights is the facto legal residence of a foreigner on the territory of the host country. The protection of right of an alien against arbitrary expulsion and the right to international protection from persecution in their country of origin (asylum) is also important.

Noteworthy is the use of article 26 of the Geneva Convention relating to freedom of movement: each contracting State will give to refugees, lawfully staying in its territory, the right to choose their place of residence and the right to move freely within the territory, with the accordance to the regulations applicable to aliens generally in the same circumstances. The United Nations High Commissioner for Refugees (UNHCR) points out that article 26 refers primarily to recognized legally refugees, but it can also be used in the case of foreigners applying for refugee status, who reside on the territory of the host country in accordance with the law, it means also to those who have applied for refugee status after crossing the border unlawfully. Any restrictions on the choice of the place of residence should not be used against these people (Field Ophelia).

It is given in the literature that the principles of international law to protect refugees began to take shape only in the first half of the twentieth century (Hathaway 1984, p. 348; Wierzbicki 1993, p. 13 and next). The term "refugee status" adopted by the Geneva Convention and the New York Protocol paved the framework of a general system of refugee protection (Hathaway 1984, p. 348). In these acts, the refugee status is based on the recognition of the individual because of the risk of persecution is entitled to protection by guaranteeing not turning him or her back to the borders of the territory, where he or she would be exposed to persecution, as well as by guaranteeing their rights in the host country. As it is defined in article 1A of the Geneva Convention, the refugee is a person who is outside the country of origin and who cannot or do not want to use the protection of that country or return to it (this is due to well-founded fear of persecution), the fear of persecution is rooted in religion, race, nationality, membership of a particular social group or political opinion (Wierzbicki 1993, p. 35 and next).

Inconsistent use of criteria for granting refugee status by the European countries has prompted the Parliamentary Assembly of the Council of Europe to issue a recommendation on the harmonization of the policy of granting refugee status (Recommendation 787 (1976)). A significant role in the interpretation of the provisions of the Geneva Convention is played by the UNHCR. A particular importance is given to the recommendations issued taking into account the conclusions of the Executive Committee and the Manual of Procedures and Criteria for determining refugee status. Asylum policy encountered problems for many years in the EU. These problems were caused by the lack of a compromise between Member States.

M. Kowalski says that "the principle of *non-refoulement* is fundamental to the protection of refugees, (Smith 2006, p. 441). The article 33, paragraph 1 of the Geneva Convention provides the prohibition of expulsion and turning back a refugee, in any manner, to the borders of territories where his or her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This prohibition was adopted to be called the principle of *non-refoulement*. The principle of *non-refoulement* has crucial importance because – in the context of discretion for granting asylum by the state – is a decisive part of the framework for the protection of refugees. On the one hand, the individual at risk of persecution is only entitled to apply for the right to asylum; on the other hand, States Parties

of the Geneva Convention and the New York Protocol, defining the category of persons (refugees) in need of international protection and guaranteeing them a minimum standard of protection, committed themselves to abstain from refoulement, which is essential for protection from persecution / ... / The principle of non-refoulement has an essential importance for the protection of refugees also in the sense that it is inextricably linked to all the other key elements of the system and determines: the scope of persons covered by the term "refugee", and consequently the categories of people who – while remaining outside the scope of this concept – are in need of international protection; the right of access to the asylum procedure with the key issue of responsibility of States to examine an asylum application; the standards for asylum procedure, taking into account, for example: the suspensive effect of the appeal proceedings; the scope of the rights guaranteed to beneficiaries of protection, for example: in the context of the protection of refugee families, complementary protection mechanisms applicable in the event of a mass influx of people seeking protection" (Smith 2006, p. 441).

It should be noted that those who are guilty of tort international law (Czapliński 1993, p. 10 and next), in particular, the crimes of international law and progressing against the purposes and principles of the United Nations, have been excluded from the protection of the Convention (Potyrała 2005, p. 69). The offenses or ordinary crimes should not be a base for the refusal of protection of persons resulting from the Convention.

It should be emphasized that the right to reside on the territory of a third country, until the procedure for granting refugee status is done, is one of the six basic entitlements of refugees (Hathaway 2005, p. 278). The right of refugees to apply to them the non-refoulement principle also follows from the provisions of European Union on asylum. The fact that the various human rights instruments have been developed under the auspices of the United Nations and have been ratified by many countries, is considered as proof of the existence of universally shared values. One of the primary purposes of the United Nations was to establish and to describe as broad as possible the normative standards of human rights. These standards have been established in the Universal Declaration of Human Rights and in the two International Covenants on Human Rights. It set the canon in the field of normative protection of human rights in the world.

In addition to these above mentioned treaties, the fallowing regulation belong to the treaty system of human rights protection within the UN:

the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, along with three additional Protocols, the Convention on the Elimination of all forms of discrimination against women, together with the additional Protocol, the Convention on the protection of migrant workers and members of their families and the Convention on the rights of persons with disabilities together with the additional Protocol. Obviously, that these are not all the conventions as the number of treaties regulating various aspects of human rights protection adopted within the framework of the United Nations it is much greater.

The Universal Declaration of Human Rights as the resolution of General Assembly is not legally binding, however, its importance is beyond doubt. It became the basis for a number of UN resolutions and other international instruments. According to the predominant in doctrine thesis, the Declaration acquired binding force through the transformation of its provisions into the international custom. Many constitutions implemented directly the provisions of the Declaration, not referring to it. Secondly, the standards contained in the Declaration have been formulated so as to apply *erga omnes*, it means: not only between countries but also in society. Undoubtedly, the legislative, administrative and judicial practice of many countries around the world was influenced by the Declaration. The article 1 opens the UDHR with a fundamental statement about the inalienable rights: „All human beings are born free and equal in dignity and rights". The article 2, paragraph 2 extends the prohibition of discrimination on the distinction "on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs". This solution extends protection against discrimination of foreigner because of the status of the country or territory of origin.

The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, in the article 2, obliges States Parties to ensure all rights expressed in the Covenant without discrimination to all persons on their territory and being the subject to their jurisdiction. It might turn out that the expression of protection in the international system is inadequate, if there would be not a commitment to effective implementation by the States Parties as it is provided in the article 2, paragraphs 2 of the ICCPR (McGoldrick 1991, p. 272). The obligation to implement at national level was emphasized

in the General Comment No. 3 (Uwagi Ogólne Komitetu Praw Człowieka nr 3 1981, p. 2.). The Committee also stressed provided in the Covenant obligation to ensure the rights set out under the ICCPR to all people on the territory of the State and being the subject to its jurisdiction (Ibidem) In the General Comment No. 31, replacing the General Comments No. 3. the Committee notes that the use of the rights provided in the Covenant is not limited to only to citizens of States Parties but must be available to all individuals, regardless of nationality or if they have not the nationality. The Committee determines that it is about the individual, such as: asylum seekers, refugees, migrant workers and others who may find themselves in the territory or within the jurisdiction of a State Party (Ibidem, p. 10). Such a position the Committee has already, in its General Comment No. 15 (Uwagi Ogólne Komitetu Praw Człowieka nr 15, 1986), in which it referred to the situation of foreigners. The ICCPR takes the issue of foreigners in the article 12, which gives, to every person lawfully staying in the territory of a state, the right to freedom of movement and choice of residence within it, the right to leave the country, and also prohibits the denial of entry to their own country. The article 12, paragraph 3 expresses the prohibition to restrict those rights, with the exception of the need to protect national security, public order, public health or morality or the rights and freedoms of others, but the restrictions must be consistent with the ICCPR.

The article 14.1 points out on the access to the refugee procedure. The ICCPR, in the articles 9 and 12 guarantees to everybody the protection against the arbitrary restriction of personal freedoms. The article 9, paragraph 1 states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". The article 12, paragraph 1 says that: "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

In the article 8, the Covenant provides that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited" and in the article 24 "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State". The article 27 draws the attention

to an important bicultural approach. Unaccompanied children should not be deprived of liberty for the immigration reasons which is provided in the articles 7 and 9. It was pointed out to search for and to connect families and contact with the family – article 23.1 and on the wider temporary care in the article 1.1, 19, 21, 22, 24.1 as well as on the assistance in obtaining citizenship of the residence country – article 24.3.

It should be noted that the protection of the rights of foreigners in the universal system would not be complete without the protection of their rights provided for in the International Covenant on Economic, Social and Cultural Rights of 16th December 1966. The ICESCR, in article 1, gives to all nations the right to self-determination, added that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The Covenant, in article 2 specifies that the nations (State Parties) may freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation. In the article 2, paragraph 2, the Covenant provides the prohibition of discrimination (analogous to the views expressed by the ICCPR): States Parties shall ensure the rights of economic, social and cultural rights provided for in the ICESCR without any discrimination. In the article 2, paragraph 1, the State Parties are obliged to take to take steps, "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (Uwagi Ogólne Komitetu Praw Gospodarczych, Socjalnych i Kulturalnych nr 3, 1990, 5 sesja, p. 2,8,9,10).

In the nineties of the twentieth century, the human rights were promoted to the fore within international relations. In the Vienna Declaration of 1993 on human rights, it was stated in point no 4 that "the promotion and protection of all human rights is a legitimate concern of the international community". One of the obstacles to enforce and protect the rights, which was "artificial division between internal and international human rights issues" was overcome. In the Declaration, among others, most based on cultural relativism arguments against human rights were rejected. In point no 5, it is stated that "all human rights are universal, indivisible and interdependent and interrelated". Democracy, development and respect for human rights and fundamental freedoms were recognized as the interdependent and mutually supportive elements. The catalogue of human rights was expanded by

including in it, previously not sufficiently protected, the rights of refugees and displaced persons, minorities and indigenous peoples, women and children people with disabilities and the rights under international humanitarian law.

In this reflection on the problem of refugees matters, we cannot omit the issue of child – refugees and the Convention on the Rights of the Child as the basis for further considerations on this topic. In the context of the Convention, States must see their role as fulfilling clear legal obligations in relation to each and every child. Implementation of the human rights for children cannot be treated as an activity providing a favour to children.

The realization of the rights of children by the governments, parliaments and the judiciary is required for effective implementation of the Convention in general and, in particular, in the light of the articles of the Convention identified by the Committee on the Rights of the Child as general principles expressed in:

- ⇨ the article 2 defining the obligation of the Member for respecting and guaranteeing the rights contained in the Convention, within the limits of their jurisdiction, to each child without discrimination of any kind. The obligation concerning non-discrimination requires that State actively identify individual children and groups of children, who recognizing and in relation to who, the implementation of rights may require special measures;
- ⇨ article 3, paragraph 1 stressing that the best interests of the child is an imperative in all actions concerning children. This article refers to activities undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle contained in this article requires active measures done by the government, parliament and judiciary. Every office or institution of legislative, administrative or any authority or institution of justice is obliged to apply the principle of the best interests of the child by systematically analysing the impact or potential impact of their decisions or actions on the rights and interests of the child, for example: through the proposed or existing law or policy, or administrative action or court decision, including such actions or decisions that do not relate directly to children, but which have indirect impact;
- ⇨ article 6 selecting another weighty principle that every child has the inherent right to life and the States Parties are required to ensure, to the maximum extent, possible living conditions and development of the child;

- ⇨ article 12 stating the child's right to express those views freely "in all matters affecting the child", taking these views given due weight. This is the principle which emphasizes the role of the child as an active participant of the process of promotion, protection and monitoring of their rights, applies equally to all measures adopted by the State for the implementation of the Convention;
- ⇨ article 4, obliging all States Parties to take all steps to implement all the rights enshrined in the Convention, including the article 19. Applying the article 4 of the Convention, it should be noted that the right to protection from all forms of violence mentioned in the article 19 is a civil right and freedom.

Based on the article 43 of the UNCRC, the Committee on the Rights of the Child was established in 1990. The evaluation of actions taken by the States Parties to the exercise of the rights of children by the Committee and the developed of General Comments play an important role in the interpretation of international standard, although those comments, as well as statements given by other treaty bodies, have the power of recommendations only.

Extremely important is the attention of the Committee indicates that "in assessing the claims of refugees submitted by children unaccompanied or separated from the family, the State should take into account the development and the relationship between international human rights and refugee law, including positions developed by UNHCR in the exercise supervisory functions under the Convention on refugees of 1951. In particular, the definition of a refugee under this Convention must be interpreted in a manner sensitive to the age and gender, taking into account the special motivation and forms and manifestations of persecution experienced by children. Persecution by a relative, child labour, child trafficking for purposes of prostitution and sexual abuse, or female circumcision are the specific to children forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the foundations under the Convention on Refugees 1951. Therefore, States should pay much attention to such forms and manifestations of persecution specific to children, as well as violence based on gender, in the formulation of national procedures for determining refugee status". It was found that the full use of all the rights of refugees and human rights by children granted refugee status should be made – article 22 of the UNHCR.

2. Institutions, bodies and non-governmental organizations dealing with refugees

In terms of institutional guarantees, traditionally, all the institutions of a legal system, aimed at ensuring or securing specific and recognized rights or interests are recognized. They may have the character of both general and specialized, and together form the protective potential of the system of legal protection. This applies to individual systems of international protection of human rights and (by analogy) the legal national protection.

Important for this part of the research, the characteristics of the institutional guarantees of international human rights protection needs to focus on the international organization, the structure of the office, as well as other organs remain with the organization in direct relation.

It stands out among the structurally complex contemporary international organizations, the most general division of institutional guarantees for: the statutory bodies – main and auxiliary and the special bodies set up under specific provisions, and in particular those called treaty bodies, thus acting within the strict framework of its treaty. Depending on the situation, in the context of individual international organizations, the specialized agencies appear (mainly in the UN system). There are also the independent, non-governmental organizations, which on the basis of specific authorization can be included within the scope of a particular procedure.

Currently, the sources of refugee law are derived from three legal systems: the international system, the regional system (for example: the European law, including the Community regulation) and the national legal system.

The United Nations (UN), created in 1945, is the only international organization of universal range. According to the article 7, paragraph 1 of the Charter of the United Nations, the internal structure of the organization includes six main bodies: the General Assembly, the Security Council, the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice and the General Secretariat together with the Secretary-General. That provision provides, depending on emerging needs, the ability to create various subsidiary bodies. All the organs of the United Nations constitute the backbone of the organization and each of them, to a certain extent, has to perform a specific control task in the broader area of human rights. The cooperation for the promotion and strengthening the respect for human rights is one of the main goal of the organization (article 1, paragraph 3 of the UN Charter).

The General Assembly is the main deliberating and decision-making body composed of representatives of all Member States. It operates within the framework of the regular session mode, as well as in special sessions organized at the request of the Security Council or the group of Member States. From the protecting human rights and freedoms point of view, it is essential that the General Assembly endorses in external relations, developed within the organization standards. In other areas of its activity the General Assembly makes recommendations to the individual Member States. The General Assembly competence, in the field of human rights, are *expressis verbis* provided in the article 13, paragraph 1 of the UN Charter.

The Security Council is a collegial body, and its leading role is the responsibility for the maintenance of international peace and security. The Council has a broad ability to respond to the received complaint or notice: from the usual recommendations addressed to the parties to the conflict to entered into an agreement with peaceful means, through its own investigative activities and mediation. In the case of the most inflammatory conflict, the Security Council may use the Directives (for example: regarding the end of a firefight or sending UN peacekeepers). In the framework of its powers, the Security Council also has the opportunity to decide on enforcement measures such as the application of economic sanctions or peacekeeping action.

In the structure of the UN, the Economic and Social Council is a body that has been granted with many tasks directly referring to the issue of human rights and freedoms. According to the article 62, paragraph 1 of the UN Charter Council, the Council shall take or initiate studies and reports on the international economic, social, cultural, educational and health issues.

The International Court of Justice is the principal judicial organ of the United Nations with headquarters in The Hague. The scope of the Court's jurisdiction covers mainly the settlement of disputes between Member States and to give advisory opinions at the request of the General Assembly or the Security Council. The individuals do not have direct access to the Court and the importance of its activities for the protection of human rights, may be considered only in the level of indirect impact. It happens that the States submit to the ICJ disputes relating to violation of the rights of their citizens by other countries and acquire the dispute in accordance with the principle of fulfilling by a foreigner (a citizen of that country) national measures.

The Secretariat (together with the Secretary General) is the body that, beyond the current conventional administrative service for the entire organization, is engaged in substantive issues typically including in the preparation of studies in the field of human rights protection. The Secretary-General itself is the highest official of the United Nations representing the organization.

Under the resolution (A/RES/60/251) adopted on 15th March 2006, a new subsidiary body of the General Assembly of the UN – the Human Rights Council, located in Geneva was established. The Council replaced the Commission on Human Rights. The task of the Human Rights Council is to promote universal respect and protection of human rights and fundamental freedoms on an equal and fair manner to all people, regardless of their origin. The duty of the Human Rights Council is to deal with cases of human rights violations. The Council is to make recommendations for resolving cases of rights violations, carry out activities for the effective coordination of the work for human rights undertaken by the UN system. The Human Rights Council is guided by the principles of universality, impartiality, objectivity, constructive international dialogue and cooperation with the task of strengthening the observance and protection of all human rights, it means – the civil, political, economic, social and cultural rights and the right to development. The Human Rights Council should promote education in the field of human rights, support the development of the counselling and appropriate structures, provide technical assistance, in consultation with interested Member States, in order to serve as a "forum for dialogue" for stakeholders in issues relating to human rights, it should also make recommendations to the General Assembly, to ensure further development of international law, protecting human rights, support the implementation of the commitments undertaken by the country in terms of human rights, implement the goals and recommendations presented at the UN conferences and summits, carry out comprehensive periodic review regarding the fulfilment of commitments related to human rights by each State. These inspections should be made based on objective and reliable information and should be guided by the principle of equal treatment for all countries, they should develop recommendations for the protection of human rights on the basis of carried out comprehensive periodic review, to develop dialogue and cooperation aimed at preventing human rights violations. They should respond quickly to emergency situations of human rights violations, assume

the role and responsibilities of the Commission on Human Rights, working in close cooperation with the governments, the regional organizations and the national institutions dealing with human rights and civil society and it should submit annual reports to the General Assembly.

The office of the UN High Commissioner for Human Rights was created on 20th December 1993 based on a special UN General Assembly Resolution No. 47/141 (office has its headquarters in Geneva and in New York). The Commissioner is the primary body of promotion and information on the activities of the United Nations for the protection of human rights. It is to coordinate the activities of other United Nations bodies in this regard, provide access to current information, collaborate with the relevant institutions at the national level and support the education of human rights.

The Office of the United Nations High Commissioner for Refugees (UNHCR) was set up by the UN General Assembly on 14th December 1950. Range of subject-objective of this body is already set by its name. It conducts missions globally. The UNHCR protects today 22.3 million people in more than 120 countries. The UNHCR was originally established as a temporary office. Currently, over 60 years later, it is one of the most important humanitarian agencies based in Geneva and with the representations in more than 100 countries. In Poland, there is the Office of the High Commissioner for Refugees in Warsaw (http://www.unhcr-budapest.org/poland, access: 2016-07-12). The High Commissioner takes comprehensive action to protect the interests of refugees. Its duty is to conduct and regularly coordinate the international action in matters of refugees, including their rights to obtain asylum and to find safe place for them in a third country. The UNHCR supports refugees in several ways, including providing assistance in crisis situations (coordinates the distribution of water, hygiene products and medical care among clusters of refugees), through the establishment of an early warning system (the UNHCR delegates its observers to several former Soviet republics which have experienced tensions arising from the political transformation. Delegates are designed to constantly monitor the political situation in the country in order to give the international community opportunity to take early action in the event of armed conflict), by helping refugees who have returned to their country. The UNHCR is taking a number of projects on the local level, for example: reconstruction of roads and bridges, efforts to improve water quality and access to education and medical care.

The UN Committee on the Rights of the Child was established on the basis of the Convention on the Rights of the Child on 20th November 1989. Basic task of the Committee is to monitor the fulfilment of the Convention by States, issuing comments (interpretation) of the Convention on the Rights of the Child. On the basis of the Protocol III to the Convention, the Committee shall consider individual cases.

In the structure of the United Nations, there are specialized agencies, which have an autonomous status and which cooperate with the United Nations and between each other to each. The interaction takes place at intergovernmental level (together with the coordination of the Economic and Social Council (ECOSOC)) and on the level of cooperation between the secretariats. Among the specialized agencies of the most well-known, especially in the field of human rights are: the International Labour Organization (ILO), the Food and Agriculture Organisation (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF). Each of these organizations has clearly outlined the competence and the various legal instruments with which carries out its tasks, including tasks for children. The most well-known and recognized specialized organization, with the longest tradition, is the ILO, which is a leader in the formulation of standards for the interests of workers and employers within the broadly defined labour relations, including the protection of children from exploitation and forced labour. The ILO develops its own conventions (treaties) and recommended standards (recommendations). It also has a unique tripartite structure which combines the principles of equivalence cooperation of the government with the representation of employees and employers.

In addition to the UN agencies, more than 200 international organizations (both governmental and non-governmental) deal with the issue of helping refugees. Some of them have consultative status to the United Nations. There are:

- ⇨ the Association for the Study of the World Refugee Problem, was established in 1961 and it is headquartered in Vaduz; mainly deals with coordination of research on refugee problem;
- ⇨ the International Committee for Refugees from Central and Eastern Europe (now Organization for Migration) established in 1949 with headquarters in Brussels, dealing with assistance to refugees from the region of Europe; currently its importance to the changes in Central and Eastern Europe declined;

- ⇨ the European Consultation Committee on Refugees – asylum seekers, was established in 1979 with headquarters in London, gathered more than 50 non-governmental organizations; its aim is promotion and social oversee of the implementation of the law in different countries, their compliance with the Convention and international legal assistance for asylum seekers; one of the forms of action is creation with this organization, the European Legal Network for Asylum;
- ⇨ the International Council of Welfare Agency with headquarters in Geneva, was established in 1962 as a result of merger of the Conference of Non-governmental Organization on Emigration, the Conference of Charity Agency for Refugees, the International Committee for World Refugee Year; the desire of the organization is to create a forum for cooperation of member organizations aimed at exchange of information and opinions about the possibilities of assistance to refugees, as well as helping all associations and institutions dealing with refugees;
- ⇨ the International Council of Voluntary Agency located in Geneva, grouping 80 non-governmental organizations, dealing mainly with issues of care seeking asylum and already recognized as refugees;
- ⇨ the International Committee of European Migration, established in 1951 with headquarters in Geneva, whose goal is to help immigrants from countries with surplus labour and political refugees; the assistance is possible in close cooperation with the governments of the countries of migration and emigration; the Committee organizes, among others, language courses, vocational training, the information actions and it provides financial assistance, including cover travel costs of migrants;
- ⇨ the International Organization for Migration was established in 1948 with headquarters in Geneva as an intergovernmental organization dedicated to the problems of displaced people and assistance to refugees and migrants in Europe (currently throughout the world); it has operated in Poland since 2002, it deals with medical examinations of migrants, language learning, providing assistance to migrants returning to their home countries;
- ⇨ the International Social Aid was founded in 1921 under the name of the International Aid for Migration; from 1924 it is self-employed and it adopted its current name in 1946; it has its headquarters in Geneva, provides assistance to migrants, and examines the impact of migration on personal and family situation of moving people.

Non-governmental organizations (NGOs) are a very important factor to objectivize the protection situation of the person, the man – a citizen in relations with the State authorities. Today, in the international protection of human rights, the NGOs exist and widely practice the use of various control procedures with the professional support of NGOs. There are of the non-governmental organizations providing assistance in the field of human rights, including the refugees: the International Red Cross and the Red Crescent Movement, "Caritas", the Amnesty International, the Human Rights Watch, the Jesuit Refugee Service, the Quaker United Nations Office in Geneva, the International Save the Children Alliance, Terre des Hommes, the Defence for Children International and the World Vision International. Together with NGOs partner for example UNICEF provides care, support and in some cases financial support in order to implement national plans for disarmament, demobilization and rehabilitation of child soldiers.

The group of unaccompanied minors, whose legal position is protected by international law, is the most sensitive group and it requires special procedure, good practice and professional approach.

The Polish procedure for granting refugee status provided separate regulations that result from the Geneva Convention, as well as the recommendations of the UN High Commissioner for Refugees on standards refugee procedures. The report of the Head of the Office for Foreigners clearly states that „Poland in 2014 realized in full the obligations under the Geneva Convention and the New York Protocol" (Informacja Szefa Urzędu do Spraw Cudzoziemców o stosowaniu w roku 2014). There is no doubt that with regard to minors and who are often subjected to the described procedure, there is no equivalent statement that the Office of for Foreigners feels the need of implementation, on behalf of the Republic of Polish, of children's rights contained in the Convention on the Rights of the Child. In addition, it provides implementation of the provisions of Council Directive 2003/9/EC of 27th January 2003 on minimum standards for the reception of asylum seekers (Dz. Urz. WE nr L 031 of 6th February 2003) and the regulation of Council Directive 2005/85/EC of 1st December 2005 on minimum standards on procedures for granting and withdrawing refugee status in Member States (Dz. Urz. WE nr L 326 of 13 December 2005), implemented into Polish law. As it is noted by J. Chlebny (Chlebny 2011, p. 334-335) "the protection of procedural rights of the unaccompanied minor in the Polish legislation does

not go as far as it is provided by the recommendations [...] of Committee on the Rights of the Child Commentary (Komentarz Ogólny Nr 6/2005 z 01.09.2005 r.)".

From the point of view of interests of the child – a refuge, the General Comment of the Committee of the Rights of the Child No. 6/2005 (Komentarz Ogólny Komitetu Praw Dziecka nr 6/2005) and the General Comment No. 14/2013 (Komentarz Ogólny Komitetu Praw Dziecka nr 14/2013) in point 9 (on procedures of immigration and asylum) are extremely important.

Summary

The universal system of international protection of human rights, including refugees, has arisen since the end of World War II. Basis of the protection of refugees are located in adopted by the United Nations the Geneva Convention on Refugees of 1951 and the New York Protocol relating to the status of refugees of 1967.

These universal instruments of the refugees' protection are supplemented by the acts created regionally and by individual states. The universal system, which has global and general nature, does not fit all situations in the various regions of the world that require the protection of the rights of refugees. Over time, the regional systems of human rights protection were established which put more stress on the specificity of local community and religious groups, as well as on a specific cultural group values. Four regional systems of promotion and protection of human rights – European, American, African and Arabic systems have been created so far. There is no such system in Asia and there is no indication that they had built it in the foreseeable future. The same applies to Oceania.

There are three families of human rights (also referred to as generations). The first group includes civil and political human rights, the second – the economic, social and cultural right, to both of these families, the human rights of the people are included. The third group is composed with the human rights which were recognized the 60s and 70s of the twentieth century. These are the rights of human solidarity – the fruit of the realization by the United Nations that there are needs and common threats of all humanity.

The subject scope of protection provided in the Geneva Convention is not sufficient. This was illustrated by the article 3 of the European Convention for the Protection of Human Rights, in relation to the protection of persons

seeking international protection. Consequently, these guarantees have contributed to the development of, for example in Europe, supplementing to the Geneva Convention, forms of protection: subsidiary protection (granted to persons who do not meet the conditions for refugee status, but are in need of international protection) and temporary protection (applicable in situations of mass influx of people seeking protection). It should be emphasized that the guarantees under the article 3 of the ECHR significantly impact on the interpretation of the refugee definition contained in article 1A of the Geneva Convention by the European countries.

It should be noted that the State – Parties, based on international law, have the right to control and regulate the entry, residence and expulsion of aliens from its territory. Currently, we are experiencing a migration crisis constitutes challenges for the protection of human rights in the twenty-first century.

The situation of migration – refugees in the XXI century indicates a significant weakness of the universal refugee law and policies related to migration and refugee. A selective approach to human rights is unacceptable. Procedural and definitional imperfection forces the international community to resolve the potential conflict between national sovereignty and the obligations for the protection of human rights – the idea is to begin to see the problem in a serious and responsible manner. It is fitting to recall the statement expressed in the final document of the Second World Conference on Human Rights held in Vienna in 1993: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (Deklaracja Wiedeńska 1993, s. 43).

The main responsibility for the realization of human rights rests with the State. The responsibility rest also on the international community. It has, however, a secondary and mainly controlling character. Meaning and significance of the UN Charter, adopted in 1945 must restored, which states that the United Nations are determined to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The Charter states

that the main purposes of the United Nations are „promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". It must be remembered that the Universal Declaration on Human Right adopted by the General Assembly of the United Nations says that „All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The Declaration states that „it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". In the Declaration, it may be also read that "a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge".

The basic value must still be the dignity of the human person, and this is due to it, there is a need to accept refugees. The newcomers however must accept European values and respect the normative system including the constitutions of the countries which have accepted them. It would be reasonable to assist and to support the States which cannot cope with the social, political and economic problems of forming refugee and migration groups. Europe with its European law and with its European culture must ensure the identity of the continent and Europe must reconcile its identity and with openness.

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