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Iryna Hnasevych
PhD, Senior Legal Officer at
European Council on Refugees and Exiles

ASSESSING INTERNAL FLIGHT ALTERNATIVE AS A CRITERION FOR REFUGEE STATUS DETERMINATION IN THE CONTEXT OF DISPLACEMENT FROM UKRAINE

The Russian military aggression against Ukraine resulted in the displacement of over 8 million people from its territory. Some of the displaced persons applied for international protection in the European Union Member States (EU MS) or received temporary protection after the Temporary Protection Directive (TPD) was invoked. A number of Ukrainian citizens who left the territory of Ukraine in the past years had their international protection applications pending at the migration authorities in the EU MS. This article aims to discuss firstly, the issue of application of the internal flight alternative concept as a criterion of refugee status determination and, secondly, its relevance in the context of proceedings concerning asylum-seekers from Ukraine.

International protection can be granted to a person who left the territory of the country on the basis of a well-founded fear persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group. According to the definition, this person “is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country” [12].

It is at the stage of analyzing the reasons for displacement that the question of whether the fear of being persecuted in the country of origin is well-founded emerges. In addition, the analysis of a refugee status application also includes an examination of whether the individual has been able to benefit from the protection of the country that he left. Answering such questions requires research into the conditions of human rights protection in the country of origin.

Although the 1951 Geneva Convention Relating to the Status of Refugees definition does not contain conditions regarding the possibility to move to another part of the country, it is precisely this factor that can be important in deciding whether to grant the refugee status. Due to the significant number of internally displaced persons (IDPs) in Ukraine, a legal framework has been established aimed at ensuring the rights inherent to the population in the other part of the country. In this context, the issue of protecting the rights of internally displaced persons in their country of origin also arises. In view of this, the issue of the internal flight ('relocation') or protection alternative also touches upon the protection of the rights of IDPs.

The concept of an internal flight alternative (hereinafter 'IFA') is not established in international law. The IFA does not appear in the text of the 1951 Geneva Convention, nor in the 1967 New York Protocol, leaving States free to interpret the rules of the instrument "in a liberal and humanitarian spirit" [8]. Article 8 of the EU Qualification Directive indicates that MS may reject an application for international protection if an applicant has no well-founded fear of persecution or serious harm, has access to protection in a part of their country of origin, and can safely settle there [6]. To make this determination, Member States must consider the general circumstances of the part of the country and the applicant's personal circumstances. However, this provision has an optional character and its application depends on the transposition of this article by particular MS.

IFA is not a prerequisite for refugee status and does not constitute an "independent test" [8, 2] necessary for obtaining international protection. Nevertheless, the concept of IFA has become an important factor in the refugee recognition process in many countries.

The presence of internally displaced persons in certain states may be an indication of the possibility of receiving protection on the national level. Such a factor is taken into account by states in the context of the so-called "reasonableness test" [8]. This test examines whether an applicant can reasonably expect that moving to another part of the country will remove a well-founded fear of persecution. It is worth emphasising that among the factors that are directly relevant in determining whether relocation is possible are the level of provision of basic civil, political and socio-economic rights, the individual circumstances of the applicant's case and even the nature of the fear of persecution itself [2, 364,].

Ryszard Piotrowicz, stresses that the main purpose of the Geneva

Convention is protection from persecution, which includes protection from return to a country where there is a risk of human rights violations related to the circumstances specified in the refugee definition. The author fears that the established requirements for the level of human rights protection in the country of origin may lead to a situation where, if the IFA is applied, the standard of human rights protection for asylum seekers would be higher than the standard by which the rest of the country's population lives [3, 407].

Examples of the application of the concept of internal flight alternative in Europe include the practice of processing applications for refugee status for citizens of Ukraine. The problem of the application of the IFA concept by Polish administrative authorities was investigated by Paweł Dąbrowski. The author stressed that in Poland the development of the application of the concept has become particularly relevant precisely in connection with the examination of applications for international protection of Ukrainian nationals [1, 58]. The application of the IFA by the Polish administrative authorities is based on Article 18 of the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland. Refusal of international protection due to lack of a well-founded fear of persecution and real risk of serious harm may be granted when the following circumstances are simultaneously present: 1) there is no threat of persecution or risk of serious harm in a part of the territory of the State of origin; 2) there is a possibility of safe and lawful transfer to another part of the State; 3) there is a possibility of safe and lawful residence in that territory. The second paragraph of Article 18 emphasizes that these circumstances must be assessed in the light of the general situation in the part of the State to which the applicant may return, as well as his or her personal circumstances [13].

After 24 February 2022, several European countries decided to temporarily halt their assessment of applications for international protection from Ukrainian citizens. These countries include Belgium, Denmark, Finland, Germany, Iceland, Latvia, Luxembourg, the Netherlands, and Sweden [7].

It can be stated that the states that continued to consider the applications from Ukrainian citizens adopted different approaches towards the application of internal flight alternative concept. According to recent jurisprudence of Italian and Spanish courts the internal flight alternative was not applied in the cases of Ukrainian asylum-seekers. In particular, the Court of Turin [10] and the Court of Genoa [9] concluded that the conditions for granting subsidiary protection undoubtedly exist due to the exceptional level of violence found throughout the territory of Ukraine against civilians. The National Court of Madrid granted subsidiary protection to a Ukrainian family, whose application had previously been rejected, highlighting that protection cannot be guaranteed in any part of the country [4].

In contrast, France's national asylum court specified that particular regions of Ukraine (including Donetsk, Kharkiv, Luhansk, and Zaporizhzhia) are subject to "indiscriminate violence of exceptional intensity". As a result, the court granted subsidiary protection to individuals from these regions solely based on their origin, without considering the possibility of an internal flight alternative [5]. At the same time, the French court did consider the situation of applicants from other regions of Ukraine, such as Poltava, Chernihiv, Sumy, and Zhytomyr. The court found that

while applicants from the first three regions faced a real risk of serious threats upon returning home, the applicant from Zhytomyr did not exhibit any particular vulnerability and therefore did not face such risks [11].

The IFA concept has become an important factor in the refugee recognition process in many countries. The absence of a legal definition of IFA in international law, and its interpretation by individual states, raises concerns about the divergent approaches to granting international protection. While the presence of legal framework of IDPs protection in certain states may indicate the possibility of receiving protection on the national level, the established requirements for the level of human rights protection in the country of origin may lead to a situation where the standard of human rights protection for asylum seekers is higher than that for the rest of the country's population. Therefore, it is important to carefully consider the relevance and application of the IFA concept with regards to the individual circumstances of each asylum-seeker.

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Marta Romańska
PhD, Associate Professor of the
Department of Administrative Procedure
Faculty of Law and Administration,
Jagiellonian University in Krakow, Poland

MODEL ODPOWIEDZIALNOŚCI ODSZKODOWAWCZEJ ZA BEZPRAWNE DZIAŁANIA ORGANÓW WŁADZY PUBLICZNEJ – POLSKIE DOŚWIADCZENIA W KONTEKŚCIE NORM UNIJNYCH

I. Idea ponoszenia odpowiedzialności odszkodowawczej za szkody wyrządzone działaniami władzy publicznej jest obecnie realizowana we wszystkich systemach prawnych krajów europejskich. Procesy integracyjne wpływają na ujednolicenie przesłanek tej odpowiedzialności, niezależnie od różnic w opisywaniu jej charakteru jako publicznoprawnej lub cywilnej. Postrzeganie odpowiedzialności za szkodę wyrządzoną przez władzę jako z natury cywilnej następuje z założeniem, że znajdują do niej zastosowanie te same zasady, które rządzą odpowiedzialnością cywilną w ogólności, częściej jednak ustanowione są dla niej zasady szczególne. Najistotniejsze różnice między systemami prawnymi dotyczą ciągle sposobu jej dochodzenia przed sądami [1, 47].

Podstawowy europejski standard w dziedzinie odpowiedzialności za szkodę wyrządzoną przez działania władzy publicznej wyznacza Rekomendacja Nr R (84) 15, przyjęta 18.9.1984 r. przez Komitet Ministrów Rady Europy. Przewiduje ona obowiązek naprawienia szkody wyrządzonej przez władzę publiczną nie tylko jej bezprawnym działaniem, ale pod pewnymi warunkami także takiej, która wynikła z działań mających oparcie w prawie. Według Rekomendacji Nr R (84) 15 „czynność władzy publicznej" obejmuje wszelkie działanie lub zaniechanie, które może wywierać bezpośredni skutek w sferze praw, wolności lub interesów innych osób. „Władza" w pojęciach „organu władzy", „wykonywanie władzy publicznej" to korzystanie z uprawnień wobec obywatela, które są silniejsze niż uprawnienia zwykłych osób, a przejawia się możliwością jednostronnego ukształtowania lub stwierdzenia praw i wolności innych osób albo wywarcia skutku w sferze praw lub wolności jednostek w inny sposób, np. przez działania faktyczne. W świetle Rekomendacji Nr R (84) 15 szkoda wyrządzona przez bezprawne działanie władzy