

## The role of Council of Europe law and ECtHR practice in the protection of refugee rights

PhD. Yuliya M. HRYSHYNA<sup>1</sup>

PhD. Maryna BARSUK<sup>2</sup>

PhD. Ivan Y. KAYLO<sup>3</sup>

PhD. Volodymyr O. HAVRYLYUK<sup>4</sup>

PhD. Dmytro V. TKACHENKO<sup>5</sup>

### **Abstract**

*Despite the fact that international law is aimed at the settlement of any disputes through negotiations and litigation, and the principle of peaceful settlement of disputes is one of the fundamental principles of international law, there are still subjects of international law in the world who prefer the military way of dispute settlement and violate the fundamental principles of peaceful interstate relations. One of the most striking examples is the armed aggression of the Russian Federation against an independent European state - Ukraine. Russia not only violated the fundamental principles of international law, such as peaceful settlement of disputes, respect for the sovereignty of the state, etc. but also caused a huge number of human rights violations. As a result of the armed aggression, many Ukrainian citizens were forced to seek refuge abroad in European countries. Thus, the issue of legal regulation of the rights of refugees in Europe is relevant both for the European countries that accept and protect such refugees, and for the citizens of Ukraine who are forced to obtain such status. The author of the article paid special attention to the protection of refugees' rights within the framework of the Council of Europe law and the ECtHR case law, as these institutions are key to the protection of human rights in the European space. Thus, the study of the role of the Council of Europe and the ECtHR will provide an opportunity to understand the overall picture of refugee protection in the region. In general, the growth of annual migration volumes makes it necessary to pay special attention to this issue, especially in relation to forced migrants who are vulnerable and in need of protection by the host state. The purpose of this article is to explore the role and significance of the law of the Council of Europe, as well as the ECHR in the protection of the rights and freedoms of refugees in the European region, as well as the current issues faced by Ukrainian refugees in European countries. In addition, the article examines the fundamental approaches to the understanding of the concept of refugee in the theoretical and legal plane.*

**Keywords:** *refugees, human rights, war in Ukraine, ECtHR, Council of Europe, protection of refugee rights, European Court of Human Rights.*

---

<sup>1</sup> Yuliya M. Hryshyna - People's Deputy of Ukraine of the 9<sup>th</sup> convocation, Kyiv, Ukraine, yuliya\_hryshyna@acu-edu.cc.

<sup>2</sup> Maryna Barsuk - Northern Commercial Court of Appeal 23, Kyiv, Ukraine, maryna\_barsuk@sci-univ.com.

<sup>3</sup> Ivan Y. Kaylo - Kononenko, Kaylo & Partners JSC., Kyiv, Ukraine, kaylo8260-5@sci-univ.com.

<sup>4</sup> Volodymyr O. Havrylyuk - Prosecutor of the Zakarpattia region, Ukraine, havrylyuk8260-2@sci-univ.com.

<sup>5</sup> Dmytro V. Tkachenko - Boryspil city and district court of the Kyiv region, Ukraine, dmytro\_tkachenko@edu.cn.ua.

*JEL Classification: K33, K38*

DOI: 10.24818/TBJ/2023/13/3.10

## 1. Introduction

The modern world is becoming more and more united. Globalization, improved means of transport and communication, liberalization of border controls all increase the scale of international movements of people, both short-term and long-term. The volume of international migration is growing rapidly. According to the UN Report International Migration, 2019, the number of international migrants reached 272 million people in 2019, compared to 153 million in 1990. That is, during this period, the number of international migrants in the world increased by about 119 million. According to the UN, during this period, countries in more developed regions received 69 million international migrants, while 50 million migrated to countries in less developed regions. In 2019, almost 56 percent of international migrants lived in more developed regions, while less developed regions hosted 44 percent<sup>6</sup>. Thus, we can definitely say that the volume of labor migration is growing every year.

However, it should be noted that the above data shows the total number of labor migrants, without dividing them into categories. However, the analysis should consider them depending on the purpose of their migration, because in international law there is such a thing as forced migrants. Along with the increase in the number of voluntary movements, there is an increase in the volume of forced movements of people caused by armed conflicts, serious human rights violations, as well as situations of natural or man-made nature that governments are unable to cope with<sup>7</sup>. According to the United Nations Refugee Agency, in 2019, there were 79.5 million internally displaced persons in the world, of which 26 million crossed state borders and moved to other countries in search of refuge<sup>8</sup>. Considering the military aggression against Ukraine, it can be stated that the data for 2022 will show a significant increase in the number of refugees in the world due to the arrival of refugees from Ukraine.

Differences in the purpose of migration lead to significant differences in the legal status of migrants. In the context of this article, the author considers only the peculiarities of legal protection and status of refugees as a separate and important

---

<sup>6</sup> International Migration: Highlights (2019). UN Report. Retrieved from: [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un\\_2019\\_internationalmigration\\_highlights.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_2019_internationalmigration_highlights.pdf), consulted on 10.04.2023.

<sup>7</sup> Plotnikov, O. V. (2021). *Practice of the European Court of Human Rights regarding refugees and asylum seekers*. Retrieved from: <https://www.dk.od.ua/news/praktika-evropejskogo-sudu-z-prav-lyudini-shchodo-bizhentsiv-ta-shukachiv-pritulku>, consulted on 10.04.2023.

<sup>8</sup> International Migration: Highlights (2019). UN Report. Retrieved from: [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un\\_2019\\_internationalmigration\\_highlights.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_2019_internationalmigration_highlights.pdf), consulted on 10.04.2023.

category of forced migrants who belong to vulnerable groups of the population and need special protection. According to international law, in particular the Convention relating to the Status of Refugees, 1951, a refugee is any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or not having a nationality and being outside the country of his/her<sup>9</sup>. Refugees, unlike other categories of migrants, such as economic migrants, are a more vulnerable category, because they were forced to migrate from their country of citizenship due to difficult socio-economic conditions. That is why the international community pays special attention to their protection. The difficult situation of refugees in the host country, the need to protect the human rights of refugees, as well as the large number of refugees in Europe have necessitated the study of this issue.

## 2. Methodological framework

In the course of the study the author used a system of general scientific, philosophical and special methods, the use of which provides the reliability of the results and the achievement of the formulated objectives of the article. The leading method of scientific research is the legalistic method. This is used by the author to analyze the acts of international law that regulate the status and protection of refugees, including legal acts adopted within the framework of the Council of Europe.

The method of analysis and synthesis was widely applied by the author to analyze the role and significance of the Council of Europe and the ECtHR in the context of refugee rights protection. This method was of particular importance for the analysis of the practice of the European Court of Human Rights on the basis of violations of the ECHR. In particular, the author reviewed a number of ECtHR judgments related to violations of the rights of refugees. Since the ECHR itself does not provide for provisions relating to refugees, the cases were selected according to the principle of individual issues that concerned violations of the ECHR, but the plaintiffs in such cases were refugees.

On the basis of the method of analysis and synthesis applied to study the Court's jurisprudence, the author concluded that refugees quite often apply to the ECtHR for the protection of their rights which are violated. Therefore, we can once again state the vulnerability of refugees in the host country and the need to improve the mechanisms for the practical implementation of their rights. Statistical method was used by the author in the study of the UN Report International Migration, as well as the United Nations Refugee Agency, thanks to which the author of the article provided statistical data showing the situation with migration in general and forced migration in particular in the world, in particular indicated that the number of

---

<sup>9</sup> Convention relating to the Status of Refugees (1951). Retrieved from: <https://www.unhcr.org/5d9ed32b4>, consulted on 10.04.2023.

international migrants reached 272 million people in 2019, compared to 153 million in 1990.

The application of the systematic method enabled the author of the article to summarize all the information studied and to highlight certain factors that played a key role in the study. For example, the systematic method was applied by the author to highlight the EU law, which deals with the rights of refugees, justifying the essential place of the protection of refugee rights in Europe, regulating in its legislation and recommendatory acts various aspects of their rights.

The method of induction and deduction was applied in the analysis of existing in Europe violations of the rights of refugees, which are stipulated in the European Convention on Human Rights, which is reflected in the decisions of the ECtHR. In addition, this method was applied to consider the protection of the rights of refugees under occupation, which, according to the author, can be a useful practice for Ukrainian refugees in Europe. Also, this method was used to analyze the possible responsibility of Russia to Ukrainian citizens in the context of the withdrawal of the Russian Federation from the Council of Europe. The author concluded that Russia would be responsible for all violations until the date of its withdrawal.

### **3. Results**

#### **3.1 General theoretical and international legal approaches to refugee rights protection**

As noted earlier, the concept of refugee is defined in the 1951 Convention relating to the Status of Refugees. The Convention has become a universal and basic international document that enshrines the definition of refugee in international law<sup>10</sup>. Subsequently, this definition of refugee was adapted to the national legislation of most states. However, in 1966, the Protocol relating to the Status of Refugees of 1966 was adopted, which detailed the concept of refugee on a temporal basis.

The need to adopt this document was due to the fact that in the Convention relating to the Status of Refugees of 1951 there were two restrictions to the definition of refugee, which created significant obstacles to solving the problems of refugees, ensuring their rights and freedoms at the proper level: temporary, geographical (the right to be considered a refugee did not apply to persons who became such as a result of events that occurred after January 1, 1951)<sup>11</sup>.

Other legal acts regulating general aspects of refugee protection include the Convention for the Protection of Civilian Persons in Time of War, 1949; the Agreement on the Abolition of Visas for Refugees, 1959; the Convention of the Organization of African Unity regulating specific aspects of the refugee problem in Africa, 1969; the Convention relating to the Status of Stateless Persons, 1954; the UN Declaration on Territorial Asylum, 1967 and several others. Generally

---

<sup>10</sup> Ibid.

<sup>11</sup> Protocol relating to the Status of Refugees (1966). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>, consulted on 10.04.2023.

recognized principles of international law codify a state's human rights obligation that guarantees the rights of basic individuals, including the right to life, dignity, and security. Refugee migration is often the result of mixed motives. Most asylum seekers do not always come from the world's poorest countries, but from states that are often developing, or even developed, but which have suffered civil war, or from countries with a high degree of human rights violations<sup>12</sup>.

Asylum seekers and refugees have all the rights and fundamental freedoms enshrined in international human rights treaties. The issue of refugee protection should therefore be seen not only as a question of respecting the rights of refugees, but also in the broader context of protecting human rights. The UN's human rights work has the goal of protecting human dignity. In addition, many universally recognized human rights apply directly to refugees. These include the right to life, protection from torture and ill-treatment, the right to nationality, the right to freedom of movement, the right not to be forcibly returned<sup>13</sup>. These rights, along with other civil, political, economic, social, and cultural rights for all persons, citizens and non-citizens alike, are enshrined in the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Cultural Rights, 1966, which together constitute the International Bill of Human Rights.

All important refugee rights are not specifically mentioned in the International Bill of Human Rights. Central to the international protection of refugees is the right not to be forcibly returned or expelled in circumstances which might endanger life or liberty. This principle of non-refoulement is enshrined in Article 33 of the Convention relating to the Status of Refugees, 1951. The principle of non-refoulement is further developed in Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984<sup>14</sup>.

At the same time, it should be understood that migration and asylum seeking are causal factors. Thus, the global community also needs to pay attention to such causes of outflows as interference in the internal affairs of states by third states<sup>15</sup>. It seems right to introduce, at the universal level, the institution of responsibility with regard to those states responsible for the migratory outflows from their usual places of residence in search of a stable life. This is often the consequence of armed conflicts, internal disturbances, civil wars, which were started due to interference in the internal affairs of states. International law, in particular the UN Charter, enshrines

<sup>12</sup> Berdibaeva, A. (2018). *International Legal Mechanisms for the Protection of the Rights of Refugees and Internally Displaced Persons in the Context of the Notion of Vulnerable Groups*. „Problems of Economics and Legal Practice”, 2, 203-205.

<sup>13</sup> Morgun, Y. (2000). *Human Rights and Refugee Protection*. „Belarusian Journal of International Law and International Relations”, 5. Retrieved from: <https://evolutio.info/ru/journal-menu/2000-5/2000-5-morgun>, consulted on 10.04.2023.

<sup>14</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>, consulted on 10.04.2023.

<sup>15</sup> Paitian, R. (2018). *Shortcomings of universal mechanisms of legal protection of refugees in the light of contemporary challenges*. „Issues of International Law and Comparative Law”, 3(82), 113-118.

this principle. No State has the right to interfere, directly or indirectly, for any reason whatsoever, in the internal and external affairs of another State<sup>16</sup>. In the international legal acts that relate to the protection of the rights of migrants, it is necessary to introduce such a norm.

### **3.2 The Council of Europe and its significance for the protection of the rights of refugees in Europe**

The history and current activities of the Council of Europe, the only pan-European intergovernmental organization whose main tasks are the protection and promotion of human rights, democracy and the rule of law, as well as the preservation of cultural identity on the continent, reflect the complexity and contradictions of the unification processes in Europe after World War II. Today the Council of Europe can be considered the leading international organization in the European space in the field of human rights protection. An important aspect of the Council of Europe 's activity is to monitor the situation in the areas of democracy and human rights protection in its member states (for example, compliance with democratic norms and standards of constitutional reforms, elections at all levels, observance of human rights by law enforcement agencies, penitentiary institutions, etc.)<sup>17</sup>.

One of the fundamental documents adopted within the Council of Europe is the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. It is an international agreement between member states of the Council of Europe at the time of its adoption. The ECHR is an international instrument with the primary aim of establishing the inalienable rights and freedoms of everyone, obliging states that have ratified it to guarantee these rights and freedoms to everyone within their jurisdiction<sup>18</sup>. The value of the Convention, as French scholar C. Vasak writes, is determined in fact by its mechanism, not by the rights it protects. For the first time in the history of mankind, the author stresses, there is an international mechanism that functions outside the state and expresses the common values of all mankind<sup>19</sup>.

The Convention also enshrined the principle of the collective enforcement of human rights. It recognized that the surest way to prevent a repetition of the heinous iniquities of the 1930s and 1940s was to subject the state to a degree of external control that went far beyond states' diplomatic protection of their citizens

---

<sup>16</sup> United Nations Charter (1945). Retrieved from: <https://www.un.org/en/about-us/un-charter>, consulted on 10.04.2023.

<sup>17</sup> Cherneha, V. N. (2015). *The role of the Council of Europe in the formation of the pan-European space of democracy and human rights*. „Current problems of Europe”, 45-68.

<sup>18</sup> Samovych, I. (2018). *International legal peculiarities of the concept of victim of rights violation*. „Actual problems of constitutional, municipal and international law”, 118-123.

<sup>19</sup> Vasak, K. (1982). *The International Dimensions of Human Rights*. Volume. 2. Paris: United Nations Educational, Scientific and Cultural Organization. Retrieved from: <https://unesdoc.unesco.org/ark:/48223/pf0000056230>, consulted on 10.04.2023.

abroad<sup>20</sup>. The number of migrants on the territories of countries that have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms increases every year, the migration crisis and the reluctance of some countries to host refugees leads to a large number of violations of human rights and freedoms. There are frequent cases of violations of the rights of non-citizens by the countries in which they currently reside.

The main difference of the European Convention on Human Rights from other international treaties regulating this sphere was not only the proclamation of human rights and freedoms, but also the creation of a special unique mechanism for their protection and guarantee. Thus, a fundamental feature of the Convention is the possibility of direct recourse by citizens to the supranational jurisdiction created by it, whereby judicial protection of their rights is no longer the exclusive prerogative of states. Thus, for the first time the citizen was granted the status of a subject of international law<sup>21</sup>. Under Article 25 of the Convention, individuals, along with States, may initiate proceedings for an alleged violation by a State party of the standards set forth therein<sup>22</sup>. This right is at the heart of the legal system established by the Convention and has played a crucial role in its evolution. It is a means of protecting violated human rights and freedoms used by many migrants whose rights have been violated.

The European Court is designed to ensure that the rules of the European Convention on Human Rights are strictly enforced and respected by its member states. This is done by accepting for examination and resolution specific cases that are accepted by the Court for examination on the basis of individual complaints lodged either by an individual or by a group of persons or a non-governmental organization<sup>23</sup>. Overall, therefore, the Council of Europe is far from exhausting its potential. Its role in shaping and maintaining the pan-European humanitarian space, especially in areas such as democracy, human rights and the rule of law, cannot be overestimated.

Therefore, we can state that, in general, the role of the Council of Europe on the European continent in the context of the protection of human rights is very great. The Council of Europe has created important legal and institutional mechanisms for the protection of human rights, making the individual the subject of international legal proceedings, as well as affirming the principles of human-centrism in international law. In addition, Council of Europe law has been implemented in the legislation of member states, thereby forming the basis for the protection of human rights in Europe.

---

<sup>20</sup> Ierofeev, I. (2015). *On the role of the Council of Europe Convention for the protection of human rights and fundamental freedoms in the European Law System*. „Constitutional and Municipal Law”, 1(51), 50-54.

<sup>21</sup> Tumanov, V. A. (2001). *European Court of Human Rights. The essay of organization and activity*. Moscow: Publishing House NORMA, p. 304.

<sup>22</sup> European Convention on Human Rights (1950). Retrieved from: [www.echr.coe.int/documents/convention\\_eng.pdf](http://www.echr.coe.int/documents/convention_eng.pdf), consulted on 10.04.2023.

<sup>23</sup> Akhkamova, L. (2020). *The European Court of Human Rights as protection of migrants' rights*. „Legal Science”, 10, 103-108.

However, it is also worth considering the role of the Council of Europe in creating a legal mechanism to protect the rights of refugees, as Convention does not provide for the right to asylum or the right to be granted refugee status or a person in need of subsidiary protection. In the case No. 13163/87 *Vilvarajah and Others v. the United Kingdom*, 1991, the ECtHR notices that "the right to political asylum is not contained in the Convention or its Protocols"<sup>24</sup>. At the same time, under Article 1 of the ECHR, the parties undertook to guarantee to everyone within their jurisdiction the rights and freedoms set forth in the Convention. The Convention guarantees apply to all persons, not just citizens. The actions of the state related to the control of the stay of foreigners on its territory may in themselves lead to a violation of the Convention rights.

Among the legal instruments for the protection of the rights of refugees specifically as a separate category of forced migrants within the framework of the Council of Europe there are several other documents. Concluded on 20 April 1959 the European Agreement on the Abolition of Visas for Refugees (hereinafter — the 1959 Agreement) has played a significant role in the process of accumulation and improvement of European experience in solving refugee problems. In particular, according to paragraph 1 of Art. 1 of the 1959 Agreement, refugees lawfully residing in the territory of one of the States Parties to the Agreement shall be exempt from the obligation to obtain a visa to enter or leave the territory of another State across any frontier, provided that they are in possession of valid travel documents and their stay does not exceed three months.

However, a visa may be required for a stay of more than three months or for paid employment in the territory of another state party to the Agreement (paragraph 2 of Article 1)<sup>25</sup>. According to Article 5 of the 1959 Refugee Convention, refugees who have arrived in the territory of one of its States Parties shall at any time be admitted back to the territory of the State Party to the Convention that issued their travel documents, if the authorities of the first mentioned State have applied to the latter with a corresponding request (exceptions may be cases when the first mentioned State has allowed the persons concerned to settle in its territory). It should be emphasized that the 1959 Agreement provided for the possibility of temporary suspension by the States Parties of its application in cases where it is necessary for reasons of public order, safety or public health (paragraph 1 of Article 7). We consider that this approach was applied to secure and protect the interests of the state from a large flow of refugees<sup>26</sup>.

Recommendation 773 Situation of de facto refugees was adopted by the Parliamentary Assembly of the Council of Europe in 1976 in view of the fact that there were a significant number of persons in the member states of the Council of

---

<sup>24</sup> Case of *Vilvarajah and Others v. the United Kingdom* (1991). Court. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22Vilvarajah%22%5D,%22itemid%22:%5B%22001-57713%22%5D%7D>, consulted on 10.04.2023.

<sup>25</sup> Sirant M. (2010). *The legal status of refugees: the experience of the Council of Europe*. „Scientific Bulletin of Lviv State University”. 1. 452-458.

<sup>26</sup> European Agreement on the Abolition of Visas for Refugees (1959). Retrieved from: <https://www.whatconvention.org/en/convention/256>, consulted on 10.04.2023.



Europe who had not been recognized as refugees in accordance with the provisions of the 1951 Convention and the 1967 Protocol and who were unable or unwilling, for political, racial, religious or other compelling reasons, to return to their country of origin (de facto refugees).

In particular, the Parliamentary Assembly proposed to the Committee of Ministers of the Council of Europe to entrust the competent Committee of Governmental Experts to develop an appropriate document on de facto refugees, which would regulate issues related to the implementation of their legal status: a) granting such persons a residence permit and providing them with housing; b) protection of their rights under Articles 17, 23, 24, 31, 32, 33 of the 1951 Convention (respectively, on the rights of de facto refugees: to work for hire; to receive government assistance; to protect labor rights and social security; to prohibit extradition, expulsion or refoulement of refugees to their country of origin); c) recognition of professional qualifications; d) promotion of local integration of de facto refugees through language learning and vocational education; e) provision of such persons with travel documents, etc.<sup>27</sup>.

Also, Recommendation 773 (1976) contained a proposal to the governments of the Council of Europe member states to liberally apply the definition of refugee provided by the 1951 Convention. In addition, it was also proposed a) that the expulsion of de facto refugees should be possible only in case of their admission to another country where they would not face persecution; b) that states should not refuse admission and residence to persons who have found protection or asylum elsewhere only if they are actually admitted to another country; c) that de facto refugees should not be subject to other restrictions on their political activities (except for political rights in the strict sense of the term, which depend on citizenship)<sup>28</sup>.

A number of other important documents were adopted: Declaration on Territorial Asylum, 1977; Recommendation 817 (1977) on Certain Aspects of the Right to Asylum, 1977; European Agreement on Transfer of Responsibility for Refugees, 1980; Recommendation No. R (1981) 16 on the Harmonisation of National Procedures Relating to Asylum, 1981; Recommendation No. R (84) 1 on the Protection of Persons Satisfying the Criteria in the Geneva Convention who are not Formally Recognised as Refugees, 1984.

It can thus be argued that the Council of Europe has given a significant place to the protection of refugees' rights in Europe, having regulated various aspects of their rights in its legislation and recommendations. In addition, in addition to the rights that refugees have by virtue of their legal status, they are also endowed with fundamental human rights, which are protected by the ECHR. With this in mind, a refugee can file a complaint against the activities of any state that has accepted and ratified the ECHR and recognized the jurisdiction of the ECtHR. Further, the author proposes to consider the most prominent or the most recent cases of the ECtHR on the protection of refugees' rights on the basis of the ECHR.

---

<sup>27</sup> Situation of de facto refugees (1976). Recommendation 773. Retrieved from: [https://assembly.coe.int/nw/xml/XRef/Xref-XML2\\_HTML-en.asp?fileid=14807&lang=en](https://assembly.coe.int/nw/xml/XRef/Xref-XML2_HTML-en.asp?fileid=14807&lang=en), consulted on 10.04.2023.

<sup>28</sup> Ibid.

### 3.3 The role and practice of the ECtHR in protecting the rights of refugees

Every year migrants apply to the European Court of Human Rights for protection of their rights, seeking restoration of their rights and compensation for violation. In the context of this article the author considers it appropriate to consider several cases related to complaints of refugees against the actions of the receiving European state. The author has tried to collect fresh and relevant cases in order to analyze the current situation with the violation of refugees' rights and the role of the ECtHR in the restoration of violated rights.

According to Article 34 of the ECHR, a person who applies to the European Court of Human Rights must be a victim of a violation of the rights and freedoms guaranteed by the Convention. Judicial practice allows to consider the concept of victim more broadly than in the usual interpretation of this word, suggesting that the European Court independently in each specific case, depending on the conditions of the applicant and the circumstances of the case before it<sup>29</sup>.

The state must ensure that any application of a person in need of international protection is considered before returning that person to the country of origin. In this context, the example of case No. 59793/17 *M.A. and Others v. Lithuania*, 2019 is very interesting. In the case, the ECtHR noted that there is no specific form in which an application for protection at the border should be submitted (in this case, asylum seekers handed the border guards a note with the word „azul” (from the French asile — asylum) written in the Cyrillic alphabet). In any case, the state should ensure that border officials are trained to identify and understand asylum claims even in cases where asylum seekers are unable to clearly express their desire to seek asylum<sup>30</sup>.

In Case No. 12552/12 *Kebe and Others v. Ukraine*, 2017, the applicants arrived in the port of Mykolaiv in Ukraine in February 2012 after taking refuge on a Maltese-flagged commercial vessel. They complained that when the ship they were traveling on arrived in Ukraine, border guards prevented them from entering Ukraine, prevented them from applying for asylum, and exposed them to the risk of abuse in their countries of origin, ensuring they remained on the ship (which was bound for Saudi Arabia). They also complained that they had no recourse to a domestic legal procedure to address these actions. The Court held that there had been a violation of the applicant's right to an effective remedy under Article 13, read together with Article 3 of the Convention. Before the interim measure was taken by the Court, the border guards prevented the applicant from disembarking in Ukraine, so that he could be expelled from Ukraine at any time without the authorities examining his claim of possible ill-treatment<sup>31</sup>.

---

<sup>29</sup> Vasiliev, S. (2018). *Victim and potential victim of a crime as a subject of legal relations*. „Victimology”, 2(16), 34-40.

<sup>30</sup> Case of *M.A. and Others v. Lithuania* (2019). No. 59793/17. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-188267%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-188267%22]}), consulted on 10.04.2023.

<sup>31</sup> Case of *Kebe and Others v. Ukraine* (2017). No. 12552/12. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170058%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170058%22]}), consulted on 10.04.2023.

Hence, we can see that the Court supports and protects the right of refugees to apply for asylum. We believe that providing refugees with the opportunity to apply for asylum is one of the most important steps to protect forced migrants, because the opportunity to apply for and receive asylum in the host country for a person who is threatened in his or her country of origin is primarily a way to save lives and lead a decent life. It is not surprising that the Court in cases of refusal of asylum to refugees took the side of the plaintiffs. A common situation in practice is the detention at the border of a group of foreigners trying to enter the country legally or illegally in order to apply for asylum. In such a situation, the state must ensure individual consideration of the situation of each person<sup>32</sup>.

The decisive factor for determining whether there is a collective expulsion of aliens in an asylum-seeking situation is the fact of individual consideration of each person's application. In case no. 16483/12 *Khlaifia and Others v. Italy*, 2016, the ECtHR stated that: in order to establish whether there has been a sufficiently individualized examination, it is necessary to take into account the circumstances of the case and to verify whether the specific situations of the persons concerned have been taken into account in the expulsion decision ... The specific circumstances of the expulsion and the general context at the relevant time should also be taken into account. The Court further held that Italy's return of migrants to Tunisia did not violate the prohibition on collective expulsion in Article 4 of Protocol 4 of the ECHR. Enforcement of the judgment would require many European states to provide a clear basis in domestic law for the detention of migrants and asylum-seekers<sup>33</sup>.

Important in the context of refugee protection is the risk assessment carried out by the host state when deciding on granting refugee status. Since obtaining refugee status entails a number of certain benefits and assistance provided for by the law of the host state, the approach to its granting should be very balanced in order not to deprive a person of the relevant status due to an unsuccessful risk assessment. The case law of the European Court of Human Rights demonstrates that regardless of the credibility or validity of the asylum seeker's allegations, the absence or incompleteness of risk assessments may in themselves indicate a violation of the state's conventional obligations. Risk assessment is a procedural obligation, not a result obligation. In other words, in order to establish the correctness of the risk assessment, attention should be paid not to the result in the form of recognition or non-recognition of the existence of risk, but to the state's compliance with the risk assessment procedure.

The Court has repeatedly emphasized that the national authorities are in the best position to assess not only the facts but, more specifically, the credibility of the asylum seekers' allegations, as reflected in the case No. 41827/07 *R. C. v. Sweden*,

---

<sup>32</sup> Plotnikov, O. V., *op. cit.* (2019).

<sup>33</sup> Case of *Khlaifia and Others v. Italy* (2016). No. 16483/12. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22Kh%20laifia%22%5D,%22itemid%22:%5B%22001-170054%22%5D%7D>, consulted on 10.04.2023.

2010<sup>34</sup>. Risk assessment is carried out both when a person applies for asylum and in case of any actions that may lead to the return of a person to a situation of danger, in particular in case of forced return or expulsion of a person. The obligation to assess risk is provided for in Ukrainian legislation when considering applications for recognition as a refugee or a person in need of complementary protection. The European Court of Human Rights considers the issue of risk assessment in cases of forced expulsion or any other return of a person to a situation of danger. The issue of risk assessment in forced removal will be discussed below.

However, when considering the issue of risk in expulsion, the ECHR has repeatedly touched upon issues related to risk assessment when a person applies for asylum, so its practice is quite applicable to such applications. Thus, consider case no. 30696/09 *M.S.S. v. Belgium and Greece*, 2011. The complainant left Kabul in early 2008 and, travelling via Iran and Turkey, entered the European Union via Greece, where he was fingerprinted in Mytilene on 7 December 2008. He was detained for a week, and when released he was ordered to leave the country. He did not apply for asylum in Greece. On February 10, 2009, after transiting through France, the applicant arrived in Belgium, where he presented himself to the Aliens Office without identification documents and applied for asylum.

During the interrogation under the Dublin Regulation on 18 March 2009, the complainant told the Aliens Office that he had fled Afghanistan with the help of a smuggler to whom he had paid \$12,000 and who had taken his identity documents. He said he chose Belgium after meeting some Belgian NATO soldiers who seemed very friendly. In December 1980, the Alien Entry, Residence, Settlement and Expulsion Act (*Aliens Act*) decided not to allow the applicant to stay and issued an order directing him to leave the country. The ECtHR held that there had been a violation by Belgium of Article 3 of the Convention because, by sending him back to Greece, the Belgian authorities had exposed the applicant to the risks associated with the shortcomings of the asylum procedure in that State<sup>35</sup>.

The author also considers it appropriate to draw attention to the case 26565/05 *N. v. The United Kingdom*, 2008. According to the circumstances of the case, the applicant, originally from Uganda, applied for refugee status on the sole ground that she needed assistance in the treatment of HIV, which she allegedly contracted as a result of rape. However, the host state rejected her asylum application. The applicant applied to the ECtHR under Article 3 of the ECHR Prohibition of Torture. The Court found that her expulsion would not violate Article 3, outlining the following principles.

First, aliens subject to expulsion cannot claim the right to remain in the territory of the State in order to continue to receive medical, social or other forms of assistance or services. The fact that the applicant's health will deteriorate and her life

---

<sup>34</sup> Case of *R.C. v. Sweden* (2010). No. 41827/07. Retrieved from: [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/R.C.%20v.%20Sweden%20%28Application%20no.%2041827-07%29\\_0.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/R.C.%20v.%20Sweden%20%28Application%20no.%2041827-07%29_0.pdf), consulted on 10.04.2023.

<sup>35</sup> Case of *M.S.S. v. Belgium and Greece* (2011). No. 30696/09 Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%2201-103050%22%5D%7D>], consulted on 10.04.2023.

expectancy will be reduced does not in itself give rise to a violation of Article 3. Secondly, humanitarian considerations can only justify a prohibition of removal in exceptional cases and a very high standard of proof must be met in such cases. A clear distinction must be made between suffering that may be intentionally caused and suffering resulting from illness. Thirdly, the Convention does not impose an obligation on States Parties to provide free and unrestricted medical assistance to all aliens under their jurisdiction, as this would place an undue burden on the State<sup>36</sup>.

In other words, the expulsion of a person may entail a violation of the prohibition of ill-treatment within the meaning of Article 3 of the Convention not only because of the direct threat in the country of origin, but also because of the inability to receive adequate medical care in case of expulsion. In principle, in such cases, a person may invoke the protection of Article 3, but this Article will create a prohibition of expulsion only in exceptional cases. As a general rule, the mere fact that medical care in the country of origin is worse than in the expelling country cannot be grounds for a prohibition of expulsion.

However, in the practice of the ECtHR there were cases where medical care was still a key factor in the prohibition of expulsion of a person. Thus, in the case 146/1996/767/964 *D. v. United Kingdom*, 1997 it was about a person who had HIV in the terminal stage and was constantly in the hospital. The expulsion of the person would have led to an immediate sharp deterioration of his condition and, with a high probability, to his imminent death. In addition, the applicant would be left without any medical care and without a roof over his head. The Court found that there were exceptional circumstances and found that the removal would violate Article 3 of the Convention<sup>37</sup>.

One of the most pressing issues for Ukraine, which suffered from the military aggression of Russia and is currently being discussed all over the world, is the practice of human rights protection during the occupation. As a general rule, in case of occupation of a part of the territory of one state by another state, the occupied territory is subject to the jurisdiction of the occupying state. This applies, in particular, to the obligation to ensure to all persons under such jurisdiction the rights and freedoms provided by the ECHR, even if the occupied country is not a party to it.

Thus, in the case No. 55721/07 *Al-Skeini and Others v. the United Kingdom*, 2011, the ECtHR found that Iraqi citizens who were in the territory of Iraq occupied by the United Kingdom were under the jurisdiction of the United Kingdom, and the latter was responsible for violations of the rights of these Iraqi citizens under the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>38</sup>. According to the circumstances of the case, on March 20, 2003, the armed forces of

<sup>36</sup> Case of *N. v. The United Kingdom* (2008). No. 26565/05. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-86490%22%5D%7D>, consulted on 10.04.2023.

<sup>37</sup> Case of *D. v. United Kingdom* (1997). No. 146/1996/767/964. Retrieved from: <https://www.refworld.org/cases,ECHR,46deb3452.html>, consulted on 10.04.2023.

<sup>38</sup> Case of *Al-Skeini and Others v. the United Kingdom* (2011). No. 55721/07. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22002-428%22%5D%7D>, consulted on 10.04.2023.

the United States, the United Kingdom and their coalition partners entered Iraq to overthrow the Baathist regime then in power.

On May 1, 2003, the main hostilities were declared over, and the United States and the United Kingdom became the occupying powers. They set up a Coalition Provisional Authority to temporarily exercise the powers of the government. These powers included providing security in Iraq. The security role assumed by the occupying powers was recognized by the UN Security Council in Resolution 1483, adopted on May 22, 2003. During the occupation, Britain commanded a military division, the Multi-National Division (Southeast), which included al-Basrah province.

Since May 1, 2003, British forces in al-Basrah province assumed responsibility for maintaining security and supporting the civil administration. The applicants were close relatives of six Iraqi citizens killed in Basra in 2003 during this period of occupation. Relatives of the first, second and fourth complainants suffered fatal gunshot wounds when British soldiers opened fire, presumably believing them to be under attack or in imminent danger. The third applicant's wife was killed after allegedly being caught in the crossfire during an exchange of fire between a British patrol and unidentified gunmen. In each of these four cases it was decided — in the first three cases by the soldiers' commanders and in the case of the fourth applicant by the Special Investigation Unit of the Royal Military Police.

The fifth complainant's son was beaten by British soldiers who suspected him of looting and was thrown into a river where he drowned. Although the Special Investigations Unit opened an investigation and the four soldiers were tried before a court-martial for manslaughter, they were acquitted when a key prosecution witness failed to identify them. All of the complainants sued for violations of Article 2 of the ECHR Right to Life. In that decision, the court found violations in all cases and awarded compensation to the victims<sup>39</sup>.

In cases No. 43370/04, 8252/05 and 18454/06 *Catan and Others v. the Republic of Moldova and Russia*, 2012, the Court stated that the obligation to guarantee the rights and freedoms provided for in the Convention arises for the occupying power regardless of whether it administers the occupied territory directly or through a subordinate local administration. The applicants were children and parents from the Moldovan community of Transnistria, a region in eastern Moldovan territory over which the Moldovan government exercises no control. This territory is governed by the Moldovan Republic of Transnistria ("MRT"), a separatist movement. The MRT has not been recognized by the international community.

The applicants complained about the consequences of the separatist authorities' language policy for their education and family life, as well as for their children. The essence of their complaint relates to the measures taken by the MRT authorities in 2002 and 2004, which prohibited the use of the Latin alphabet in schools and required all schools to register and start using the MRT approved curriculum and the Cyrillic script. These actions consisted of forcibly evicting students and teachers from their schools, then closing them down and transferring schools to remote and poorly equipped premises.

---

<sup>39</sup> Ibid

The complainants also claimed that they were subjected to a systematic campaign of harassment and intimidation by members of the MRT regime and private individuals. They claimed that children were verbally abused on their way to school and were stopped and searched by MRT police and border guards, who confiscated Latin script textbooks when they found them and that, in addition, two schools located in MRT controlled territory were repeatedly vandalized. The applicants argued that the events in question fell within the jurisdiction of both respondent States. The claims were brought by the victims on the basis of Article 2 of Protocol 1 to the ECHR Right to Education. The Court found the States guilty on all claims and ordered them to pay pecuniary compensation to the victims<sup>40</sup>.

The analysis of the above practice is useful for Ukraine and its citizens, in particular those who have suffered as a result of Russia's armed aggression and whose rights have been violated by the actions of this state. However, on March 16, 2022, Russia was expelled from the Council of Europe and the ECtHR announced that it would cease to consider claims against Russia. A logical question arises: can citizens of Ukraine (or citizens of other states) file lawsuits with the ECtHR against Russia's actions that violate the ECHR, taking into account its expulsion from the Council of Europe? We consider this issue relevant and state the need for its more detailed consideration.

First of all, it is worth mentioning that Russia announced its withdrawal from the ECHR on September 16, 2022. Until then, it is covered by the convention and, consequently, it is possible to file claims against Russia with the ECtHR as long as the ECHR applies to the Russian Federation. Attention should also be drawn to Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe. Article 7 of this resolution states that the Russian Federation ceases to be a High Contracting Party to the European Convention of Human Rights on September 16, 2022<sup>41</sup>. It can thus be stated that citizens of Ukraine, as well as the state itself, can file claims to the ECtHR against Russia for all cases that relate to violations of the ECHR and that occurred before September 16, 2022. Therefore, the above-mentioned practice of decisions on cases related to the occupation is useful for the protection of the rights of Ukrainian citizens.

In general, having analyzed the practice of the ECtHR, it can be stated that refugees quite often apply to the ECtHR for the protection of their rights which are violated. Therefore, we can once again state the vulnerability of refugees in the host country and the need to improve the mechanisms for the practical implementation of their rights.

---

<sup>40</sup> Case of *Catan and Others v. the Republic of Moldova and Russia* (2012). No. 43370/04, 8252/05, 18454/06. Retrieved from: [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22002-7212%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22002-7212%22]), consulted on 10.04.2023.

<sup>41</sup> Resolution CM/Res(2022)3 (2022). On legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe. Retrieved from: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a5ee2f](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f), consulted on 10.04.2023.

#### 4. Discussion

The practical handbook by O. Plotnikov, created jointly with the UN Refugee Agency, deserves special attention. The manual reveals statistical data regarding the increase in the number of migrants, directions of migration, regions of refugee arrival, and other data. This manual contains a systematic presentation of the case law of the European Court of Human Rights on the protection of the rights of refugees and asylum seekers. The manual is divided into thematic sections that correspond to the procedures for refugees and asylum seekers established by Ukrainian legislation. The manual also contains advice on the application of the ECHR case law in the work of lawyers<sup>42</sup>.

Important conclusions about the role of the law of the Council of Europe, in particular the ECHR, was made by researcher L. Akhkamova. She assesses the role and importance of the European Court of Human Rights in the international protection of the rights of non-citizens, as well as the importance of the ECHR in the protection of the rights of refugees. In addition, the author analyzed the jurisprudence of the European Court of Human Rights regarding the various rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. The focus is on the fact that the intervention of the European Court of Human Rights can be carried out only in exceptional cases, as it is not an appellate instance. The author concludes that the role of the European Court in protecting the rights of non-citizens is significant. Application to the European Court enables non-citizens to protect their rights and freedoms that have been infringed by the States in which they have been<sup>43</sup>.

The work also uses the approaches of the French researcher K. Vasak, who highlighted the leading role of the ECHR in building a mechanism for the protection of human rights through recourse to an international court. He also stressed that the advantage of the system created on the basis of this Convention is that it is constantly evolving and is supplemented by new documents. The Additional Protocols to the Convention included in the European system of protection virtually the entire list of civil and political rights, as well as some socio-economic rights<sup>44</sup>.

Another researcher whose materials were used in the article is R. Paitian. The author focuses on the problematic issues of ensuring the rights of refugees at the universal and regional levels. The author makes proposals to improve the international legal regulation of migration issues, taking into account the respect for human rights and freedoms. The paper proposes new approaches to solve the problems of asylum acquisition. The article indicates the main gaps that exist in the sources of law, aimed at creating universal mechanisms for the protection of the rights of refugees. In particular, it justifies the need to supplement the concept of *refugee* with new categories and characteristics. In addition, the author justifies the need to introduce the institution of responsibility in respect of those states that create

---

<sup>42</sup> Plotnikov, O. V., *op. cit.* 2019.

<sup>43</sup> Akhkamova, L., *op. cit.*, 2020, p. 107.

<sup>44</sup> Vasak, K., *op. cit.*, 1982, p. 57.



instability in other regions, which generates population outflows. The author concludes that the problem of refugees continues to be a challenge to the international community. The sharp increase in the number of migrants leads to political, economic, social crises within states and, as a consequence, to internal unrest. This problem cannot be solved at the domestic or regional level; more global measures must be taken<sup>45</sup>. Certain aspects of refugee rights protection within the Council of Europe and the ECtHR have been addressed in their papers: Berdibaeva A., Ierofeev I., Morgun Yu., Samovych Iu., Cherneha V. Sirant M., Tumanov V., Vasiliev S. etc.

Despite the existence of a large number of scientific works on the topic of protection of refugee rights in general and the role of the Council of Europe and the ECtHR in particular, as well as international legal regulation of this issue and national legislation of countries on this topic, violations of refugee rights still occur, which is also confirmed by the practice of the ECtHR. In addition, new violations of international law, such as the use of force and armed aggression, pave the way for new forced migrants. A particularly large number of refugees are arriving in Europe, which makes this issue particularly relevant for analysis. In view of all of the above, there is a need to study the role of the Council of Europe and the ECtHR in the protection of refugee rights.

## 5. Conclusion

The European Convention, unlike other international treaties on the protection of human rights and fundamental freedoms, not only proclaimed the fundamental human rights and freedoms, but also created a special unique mechanism for their protection. The Convention allowed direct recourse by citizens to the European Court of Human Rights, which subsequently played an important role in the recognition of the international legal personality of individuals. The protection of human and civil rights and fundamental freedoms in practice requires, on the one hand, a developed system of laws guaranteeing them and, on the other hand, an equally developed system of constitutional means for putting these laws into practice.

The European Convention contains fundamental principles concerning human rights. Their significance lies in the fact that all specific norms in the legislation of member states must be developed in accordance with these principles, which are at the same time a criterion of their legitimacy. The legal system of each member country of the Council of Europe is obliged to enshrine the fundamental principles enshrined in the European Convention. These include the democratic principles of the organization and operation of any state power: the power of the people, the separation of powers, the rule of law and the existence of an independent judiciary.

---

<sup>45</sup> Paitian, R., *op. cit.*, 2018, p. 115.

The ECtHR is an important institution for the protection of the rights of refugees in Europe. Forced migrants quite often apply to the ECtHR for the protection of their rights, which they violate. Therefore, we can once again state the vulnerability of refugees in the host country and the need to improve the mechanisms for the practical implementation of their rights.

### Bibliography

1. Akhkamova, L. (2020). *The European Court of Human Rights as protection of migrants' rights*. „Legal Science”, 10, 103-108.
2. Berdibaeva, A. (2018). *International Legal Mechanisms for the Protection of the Rights of Refugees and Internally Displaced Persons in the Context of the Notion of Vulnerable Groups*. „Problems of Economics and Legal Practice”, 2, 203-205.
3. Case of *Al-Skeini and Others v. the United Kingdom* (2011). No. 55721/07. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22002-428%22\]}](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],%22itemid%22:[%22002-428%22]}).
4. Case of *Catan and Others v. the Republic of Moldova and Russia* (2012). No. 43370/04, 8252/05, 18454/06. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-7212%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7212%22]}).
5. Case of *D. v. United Kingdom* (1997). No. 146/1996/767/964. Retrieved from: <https://www.refworld.org/cases, ECHR,46deb3452.html>.
6. Case of *Kebe and Others v. Ukraine* (2017). No. 12552/12. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170058%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170058%22]}).
7. Case of *Khlaifia and Others v. Italy* (2016). No. 16483/12. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22fulltext%22:\[%22Khlaifia%22\],%22itemid%22:\[%22001-170054%22\]}](https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Khlaifia%22],%22itemid%22:[%22001-170054%22]}).
8. Case of *M.A. and Others v. Lithuania* (2019). No. 59793/17. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-188267%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-188267%22]}).
9. Case of *M.S.S. v. Belgium and Greece* (2011). No. 30696/09 Retrieved from: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-103050%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-103050%22]}).
10. Case of *N. v. The United Kingdom* (2008). No. 26565/05. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-86490%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-86490%22]}).
11. Case of *R.C. v. Sweden* (2010). No. 41827/07. Retrieved from: [https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/R.C.%20v.%20Sweden%20%28Application%20no.%2041827-07%29\\_0.pdf](https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/R.C.%20v.%20Sweden%20%28Application%20no.%2041827-07%29_0.pdf).
12. Case of *Vilvarajah and Others v. the United Kingdom* (1991). Court. Retrieved from: [https://hudoc.echr.coe.int/fre#{%22fulltext%22:\[%22Vilvarajah%22\],%22itemid%22:\[%22001-57713%22\]}](https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Vilvarajah%22],%22itemid%22:[%22001-57713%22]}).
13. Cherneha, V. N. (2015). *The role of the Council of Europe in the formation of the pan-European space of democracy and human rights*. „Current problems of Europe”, 45-68.
14. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.
15. Convention relating to the Status of Refugees (1951). Retrieved from: <https://www.unhcr.org/5d9ed32b4>.
16. European Agreement on the Abolition of Visas for Refugees (1959). Retrieved from: <https://www.whatconvention.org/en/convention/256>.

17. European Convention on Human Rights (1950). Retrieved from: chrome-extension://efaidnbmnnnibpcajpcgcle findmkaj/https://www.echr.coe.int/documents/convention\_eng.pdf.
18. Ierofeev, I. (2015). *On the role of the Council of Europe Convention for the protection of human rights and fundamental freedoms in the European Law System*. „Constitutional and Municipal Law”, 1(51), 50-54.
19. International Migration: Highlights (2019). UN Report. Retrieved from: [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un\\_2019\\_internationalmigration\\_highlights.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_2019_internationalmigration_highlights.pdf).
20. Morgun, Y. (2000). *Human Rights and Refugee Protection*. „Belarusian Journal of International Law and International Relations”, 5. Retrieved from: <https://evolutio.info/ru/journal-menu/2000-5/2000-5-morgun>.
21. Paitian, R. (2018). *Shortcomings of universal mechanisms of legal protection of refugees in the light of contemporary challenges*. „Issues of International Law and Comparative Law”, 3(82), 113–118.
22. Plotnikov, O. V. (2021). *Practice of the European Court of Human Rights regarding refugees and asylum seekers*. Retrieved from: <https://www.dk.od.ua/news/praktika-evropejskogo-sudu-z-prav-lyudini-shchodo-bizhe-ntsiv-ta-shukachiv-pritulku>.
23. Protocol relating to the Status of Refugees (1966). Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>.
24. Resolution CM/Res(2022)3 (2022). On legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe. Retrieved from: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a5ee2f](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f).
25. Samovych, I. (2018). *International legal peculiarities of the concept of victim of rights violation*. „Actual problems of constitutional, municipal and international law”, 118-123.
26. Sirant M. (2010). *The legal status of refugees: the experience of the Council of Europe*. „Scientific Bulletin of Lviv State University”. 1. 452-458.
27. Situation of de facto refugees (1976). Recommendation 773. Retrieved from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14807&lang=en>.
28. Tumanov, V. A. (2001). *European Court of Human Rights. The essay of organization and activity*. Moscow: Publishing House NORMA. 304 p.
29. United Nations Charter (1945). Retrieved from: <https://www.un.org/en/about-us/un-charter>.
30. Vasak, K. (1982). *The International Dimensions of Human Rights. Volume. 2*. Paris: United Nations Educational, Scientific and Cultural Organization. Retrieved from: <https://unesdoc.unesco.org/ark:/48223/pf0000056230>.
31. Vasiliev, S. (2018). *Victim and potential victim of a crime as a subject of legal relations*. „Victimology”, 2(16), 34-40.