

MEMORANDUM

on the prerequisites for refusal to grant refugee status, supplementary protection, consent for tolerated stay of Ukraine's nationals

Subject matter of the Memorandum:

The subject matter of this Memorandum is an analysis of the legal status concerning the prerequisites for refusal to grant refugee status, supplementary protection or consent for tolerated stay for Ukraine's nationals, including the procedures pending with the participation of Galina Murzak and Valentina Bondarenko.

Legal basis

This Memorandum is based on the provisions of the following acts of law:

1. Act of 13 June 2003 on Granting Protection to Foreigners staying on the Territory of the Republic of Poland (Journal of Laws /Dz. U./ of 2012, item 680, as amended),
2. Act of 12 December 2013 on Foreigners (Dz. U. of 2013, item 1650).

Facts

A. Procedure with the participation of Ms Galyna Murzak.

The decision on the refusal to grant the refugee status, supplementary protection, consent for tolerated stay, upon an application of Ms Galyna Murzak, was issued by the Head of the Office for Foreigners under the provisions of the Act of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland (Dz. U. of 2012, item 680, as amended) and under the Act of 12 December 2013 on Foreigners (Dz. U. of 2013, item 1650). The prerequisite provided for in Article 19(1)(1) of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland's reason for refusal which refers to the ***absence of reasonable fear of persecution in the country of origin.***

In the opinion of the Office's Head, in the case of Ms Galyna Murzak and her minor son ***"there actually exists a possibility of residing in another, safe region of Ukraine, which indicated the absence of the need to grant international protection to them."***

B. Procedure with the participation of Ms Valentina Bondarenko.

The decision on refusal to grant the refugee status, supplementary protection, consent for tolerated stay, upon an application of Ms Valentina Bondarenko, was issued by the Head of the Office for Foreigners under the provisions of the Act of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland (Dz. U. of 2012, item 680, as amended) and under the Act of 12 December 2013 on Foreigners (Dz. U. of 2013, item 1650). The prerequisite provided for in Article 19(1)(1) of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland's reason for refusal which refers to the ***absence of reasonable fear of persecution in the country of origin.***

In the opinion of the Head of the Office, ***"Having regard for the personal situation of Ms Bondarenko, who receives her disability pension, the Office's Head is of the opinion that said foreigner has a possibility of safely residing in a region other than the Crimea, where her life and health will not be threatened and where here safety will not be at risk and where she will be not be threatened with violation of her rights."***

Analysis of the applicable legal provisions

Reference should be made in the first place to the provisions which apply to all cases mentioned in the "Facts" section.

In accordance with Article 19(1)(1) of the Act on the Protection of Foreigners on the Territory of the Republic of Poland, a foreigner shall be denied the refugee status if:

- 1) **there does not exist a reasonable fear of persecution in his/her country of origin;**
- 2) the foreigner enjoys protection or receives assistance from bodies or United Nations agencies other than the United Nations' High Commissioner for Refugees, on condition that in the circumstances concerned the foreigner has a practical and legal pos-

sibility of returning to the territory where such protection or assistance is available, without there being a threat to his/her life, personal safety or freedom;

- 3) the foreigner is denied refugee status also where there are material grounds to believe that the foreigner:
 - a) has committed a crime against peace, a war crime or a crime against mankind in the meaning of international law;
 - b) is guilty of activities contrary to the aims and principles of the United Nations set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
 - c) has committed a crime other than political outside of the territory of the Republic of Poland, before the filing of an application for refugee status;

4) the foreigner is considered by the authorities of the Republic of Poland as a person who has rights and obligations relating to the possession of Polish citizenship.

In accordance with clause 2 of the aforementioned Article, refugee status is denied also to a foreigner with respect to whom there are material reasons to believe that he/she instigated or otherwise participated in the perpetration of the crimes or deed referred to in clause 1(3).

In accordance with clause 3 of the aforementioned article, a foreigner who has filed another application for refugee status may also be denied the status if the fear of persecution is based on circumstances which he/she intentionally created after the most recent refusal to grant refugee protection.

At the same time, the authority issuing the decision, relied on Article 18 of the Act which stipulates that:

1. **If on the territory of the country of origin there are no circumstances which justify the foreigner's fear of persecution or serious injury and there exists a reasonable presumption that the foreigner can reside without difficulty on that part of the territory, it shall be concluded that there does not exist a reasonable fear of persecution or a realistic risk of a serious injury in the country of origin.**
2. **The assessment of whether the situation on the part of the territory of origin is in compliance with clause 1, account shall be taken of the circumstances dominating on that part of the territory of the country and the personal circumstances of the foreigner.**

As regards denial of supplementary protection to the Applicants, the Authority relied on Article 15 of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland, which stipulates that:

A foreigner who does not meet the requirements for granting refugee status shall be granted **supplementary protection**, where **return to the country of origin may expose him/her to a realistic risk of a serious injury** by:

- 1) decision on capital punishment or delivery of execution,
- 2) torture, inhuman or degrading treatment or punishment,
- 3) serious and individualised threat to life or health resulting from common exertion of violence against civilians in a situation of an international and domestic military conflict and because of such a risk, the foreigner cannot or does not want to use protection of his/her country of origin.

Having regard to the article cited above, it was not possible to find the prerequisites stipulated therein, which would justify the granting of supplementary protection to the Applicants Galina Murzak and Valentina Bondarenko.

Conclusions:

The authority issuing the decisions on the applications of Ms Galyna Murzak and Ms Valentina Bondarenko, relied on the aforementioned provisions without finding, at the same time, the prerequisites stipulated therein, which would enable a positive decision on these applications. As a result of an analysis of the evidence and having regard to the personal characteristics of the Applicants, the Head of the Office for Foreigners concluded that there exists a realistic possibility for the Applicants to relocate to the territories of Ukraine which are not affected by military operations. Thus, the authority found that as regards Ms Murzak and Ms Bondarenko **there does not exist a reasonable fear of persecution on the territory of their country of origin.**

Having regard to the foregoing, it is to be pointed out that in the opinion of the Head of the Office for Foreigners, following an analysis of the entirety of the evidence, there does not exist a prerequisite for granting refugee status in the form of reasonable fear of persecution on the territory of their country of origin.