

POLITICAL AND LEGAL CHALLENGES IN THE MANAGEMENT OF MIGRATION FLOWS OF INTERNALLY DISPLACED PERSONS

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Problem statement and its relation to important scientific or practical tasks. As a result of Russia's war against Ukraine, our state faced the problem of unprecedented migration processes. Since 2014, despite significant work on the legal, political and institutional provision of temporarily displaced persons, a number of issues remain unresolved. The gaps in the legislation have recently become more painfully apparent and nowadays our state is dealing with the threatening processes of internal migration crisis. The latter can significantly affect various aspects of public life, as well as domestic and foreign policy. The problems of social security for victims of hostilities are particularly urgent, as far as there are reasons for raising prices of basic necessities, unemployment, cheaper labor, gender discrimination, social tensions, destabilization of parliament, increasing the role of extreme political parties.

Analysis of recent researches and publications, which have initiated problem solution, the author relies on. In the period between 2014 and 2021, the issues of the legal status and rights of temporarily displaced persons were profoundly studied. This field of research includes the publications by V. A. Haponenko¹, M. I. Malykha², O. V. Novakova³, V. A. Yavir⁴, etc., analytical reports by human rights organizations.

Identification of previously unresolved matters of the generic problem the article deals with.

However, on February 24, 2022, with the beginning of the full-scale Russian invasion of Ukraine, the circumstances, pace and volume of migration flows changed significantly. This raises the issue of the appropriate level of legal regulation and institutional support of internally displaced persons' rights, their ability to manage migration processes, efficiency in preventing social and political crisis.

Goal statement (task statement). Therefore, the aim of the publication is to analyze the political and

legal support for the management of migration of internally displaced persons. Achieving this aim requires accomplishment of the following tasks: to clarify the main terms of the study, analyze and compare the legal framework in the previous and current periods, determine its efficiency under current conditions and outline recommendations on how to prevent the crisis.

Presentation of research material with full justification of findings. First of all, the category of 'forcibly displaced persons' or 'internally displaced persons' should be defined because in the scientific literature there are several synonymous concepts to denote this social group.

Thus, the first attempts to regulate the status of internally displaced persons in the international law date back to the second half of the twentieth century in connection with the civil wars in Africa and the South-East. During this period, there was a need to clarify the provisions of the 1951 UN Refugee Convention, as in this case individuals did not fully meet the criteria to be determined as refugees because they did not cross the internationally recognized state borders. In this regard, in 1972, the UNHCR mandate included the issues of internally displaced persons. In 1998, *the UNHCR Guiding Principles on Internally Displaced Persons* were developed. This document defines this category of people as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border"⁵.

Thus, protection of the rights of this category of forced migrants has become the subject of regulation in international humanitarian law. The generally accepted term used for this category of people is '*internally displaced persons*' (IDP)⁶. 'Displaced persons' is another term which is widely used in the international law to denote victims of such a phenomenon as forced migration.

It should be noted that in the countries where cases of internal displacement are widespread, there is a need

¹ Гапоненко В. А. Інституційні механізми захисту прав людини в умовах військово-політичного конфлікту. *Політичне життя*. №4. 2019. С. 10-15.

² Малиха М.І. До проблеми сутності поняття «внутрішньо переміщені особи»: державна політика та регіональна практика. *Грані. Політологія*. N 8 (124). 2015. С. 6-14.

³ Новикова О.В. Проблеми та складові соціальної політики української держави щодо окупованих територій Донбасу. *Науковий часопис Національного педагогічного університету імені М.П. Драгоманова. Серія 22. Політичні науки та методика викладання соціально-політичних дисциплін*. 2018. Випуск 24. С.11-16.

⁴ Явір В. А. Роль інформаційної політики в реінтеграції України. *Гілея: науковий вісник*. 2017. Вип. 121. С. 239-242.

⁵ Внутрішньо переміщені особи / УВКБ ООН (The UN Refugee Agency) URL: <http://unhcr.org.ua/uk/novini/novyny/1293-vnutrishno-peremishcheni-osobi>.

⁶ Удовика Л. Г. Питання нормативного закріплення та гарантування прав внутрішньо переміщених осіб в Україні. *Prava a slobody clovekaa obcana: mechanismus ich implementacie a ochrany roznych oblastiach prava* (19-20 septembra 2014 r.). Bratislava: Paneuropska vysoká škola : Fakulta práva. С. 113.

for legal regulation on the state level, mainly by means and methods of administrative law⁷.

Representatives of UNHCR consider the researched concept as a category of Ukrainian citizens, foreigners or stateless persons who were forced to leave their place of residence as a result of or to avoid the negative consequences of the armed conflict in Donetsk and Luhansk regions of Ukraine or occupation of the Autonomous Republic of Crimea⁸.

It should be noted that at the time of the evident danger in our country, there were only regulations for the internal replacement of victims of the Chernobyl disaster.

We agree that the most relevant definition is the one suggested by Y. Rymarenko, namely: "An internally displaced person is a person who is forced to move from his place of permanent residence within his country due to armed conflict, internal disorder, systematic human rights violations, or natural disasters"⁹.

It is in this sense that the legal status of internally displaced persons is determined by Art. 1, Par. 1 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" according to which an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who legally stays on the territory of Ukraine and has the right to permanent residence in Ukraine, who has been forced to flee or leave his place of residence as a result of or to avoid negative consequences of armed conflict, occupation, widespread violence, violation of human rights and emergencies of natural or man-made nature¹⁰.

The advantages of the above-mentioned law include consolidation of the list of rights for internally displaced persons, in particular: creation of appropriate conditions for their permanent or temporary residence; provision of free temporary places of residence insured by state executive bodies, local self-government bodies and subjects of private law (if a person pays the cost of utilities) within 6 months from the date of registration of an internally displaced person; for the large families, the disabled, the elderly, this period may be extended; provision of medicines in the cases and in the manner prescribed by law; provision of the necessary medical care in state and municipal healthcare facilities; enrollment of children in preschool establishments and secondary schools; provision of social and administrative services

at the place of residence; free travel in case of voluntary return to their abandoned permanent places of residence in all types of public transport when the circumstances that led to replacement disappear; receiving humanitarian and charitable assistance; other rights defined by the Constitution and laws of Ukraine¹¹.

The system of legal regulation of forced internal migrants is complemented by the Law of Ukraine "On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine", adopted on 15 April, 2014, which guarantees the rights and freedoms for citizens of Ukraine who left the temporarily occupied territory¹², Comprehensive State Program on support, social adaptation and reintegration of Ukrainian citizens relocated from the temporarily occupied territory of Ukraine and areas of anti-terrorist operation to other regions of Ukraine for the period up to 2017¹³, Resolution of the Cabinet of Ministers of Ukraine "On providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and communal services" of October 1, 2014 № 505¹⁴, Resolution of the Cabinet of Ministers of Ukraine "On Registration of Internally Displaced Persons" of October 1, 2014 № 509¹⁵ and the Resolution of the Cabinet of Ministers of Ukraine "On the peculiarities of the rights of certain categories of persons to compulsory state social insurance" of October 1, 2014 № 531¹⁶. After the beginning of the full-scale invasion, the regulatory framework was expanded by the Resolution "On Amendments to the Procedure for Registration and Issuance of Certificates of Registration of Internally Displaced Persons"¹⁷.

⁷ Герасименко Є. С. Визначення притулку в законодавстві України: його співвідношення з правовим статусом біженців і внутрішньо переміщених осіб. *Адміністративне право і процес*. № 3(9). 2014 Ювілейний випуск. URL: <http://aplaw.knu.ua/index.php/arkhiv-nomeriv/3-9-2014>

⁸ Внутрішньо переміщені особи / УВКБ ООН (The UN Refugee Agency) URL: <http://unhcr.org.ua/uk/novini/novyny/1293-vnutrishno-peremishcheni-osobi>.

⁹ Міграційні процеси в сучасному світі: світовий, регіональний та національний вимір. Понятійний апарат, концептуальні підходи, теорія і практика : енциклопедія / за ред. Ю. Римаренка. К.: Довіра, 1998. 184 с., с. 95

¹⁰ Про забезпечення прав і свобод внутрішньо переміщених осіб : Закон України від 20.10.2014 № 1706-VII. URL: <http://zakon4.rada.gov.ua/laws/show/1706-18>.

¹¹ Про забезпечення прав і свобод внутрішньо переміщених осіб : Закон України від 20.10.2014 № 1706-VII. URL: <http://zakon4.rada.gov.ua/laws/show/1706-18>.

¹² Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України : Закон України від 15.04.2014 № 1207-VII. *Відомості Верховної Ради України*. 2014. № 26. Ст. 892.

¹³ Про затвердження Комплексної державної програми щодо підтримки, соціальної адаптації та реінтеграції громадян України, які переселилися з тимчасово окупованої території України та районів проведення антитерористичної операції в інші регіони України, на період до 2017 року : Постанова Кабінету Міністрів України від 16.12.2015 № 1094. *Офіційний вісник України*. 2016. № 2. С. 582

¹⁴ Про надання щомісячної адресної допомоги внутрішньо переміщеним особам для покриття витрат на проживання, в тому числі на оплату житлово-комунальних послуг: Постанова Кабінету Міністрів України від 1.10.2014 № 505. *Офіційний вісник України*. 2014. № 80. С. 22. Ст. 2271.

¹⁵ Про облік внутрішньо переміщених осіб: Постанова Кабінету Міністрів України від 1.10.2014 № 509. *Офіційний вісник України*. 2014. № 81. Ст. 2296.

¹⁶ Про особливості реалізації прав деяких категорій осіб на загальнообов'язкове державне соціальне страхування: Постанова Кабінету Міністрів України від 1.10.2014 № 531. *Офіційний вісник України*. 2014. № 84. Ст. 2372.

¹⁷ Про внесення змін до Порядку оформлення і видачі довідки про взяття на облік внутрішньо переміщеної особи : Постанова Кабінету Міністрів України від 13.03.2022 № 269. URL: <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-doporyadku-oformlennya-i-vidachi-dovidki-pro-vzyattya-na-oblik-vnutrishno-peremishchenoyi-osobi-269>

However, these laws and by-laws cannot solve the whole array of problems faced by this category of persons. Comparing the previous migration processes in Ukraine and the current ones, we can state that a number of legal norms have not been worked out at the proper level. In particular, we can highlight the following contradictions of current legislation in regulating the status and rights of internally displaced persons.

First, it is inconsistency of the regulatory framework. Mainly, there are no further changes and clarifications of the laws in the related fields, which are to be made after granting specific rights to internally displaced persons. For example, among other administrative public rights of internally displaced persons, the Law of Ukraine “*On Ensuring the Rights and Freedoms of Internally Displaced Persons*” enshrines the right to terminate self-employment, register a legal entity / individual entrepreneur under a simplified procedure. However, the relevant articles of the Law of Ukraine “*On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations*” have not been amended¹⁸.

We can also state that there are excessive details in certain rights. In particular, the right of internally displaced persons to obtain identity documents, confirm citizenship or special status, conduct state registration of civil status acts, amend, renew / cancel them or receive other administrative services at the place of temporary residence does not need to be recorded, since according to the Constitution of Ukraine, all citizens of Ukraine can exercise this right¹⁹.

Secondly, there is glaring lack of a comprehensive and systematic approach to the participation of internally displaced persons in the management of local affairs, proper implementation of housing rights, compensation for damaged (destroyed) property²⁰. There are corresponding statements by the President of Ukraine, but the development of appropriate mechanisms is still ongoing and in today’s conditions (destruction of Borodyanka, Bucha, Irpen, Mariupol, etc.) requires significant financial and material resources.

According to principles 14, 18 and 28 of the *Guiding Principles on the Internal Replacement of Persons* (1998) the state’s activities in the context of temporary replacement of citizens may be divided into two areas:

1) creating conditions for free movement of internally displaced persons within the country, providing them with housing or shelter, which is necessary in case of existence of territories affected by the circumstances specified in Art. 1 of the Law of Ukraine “*On Ensuring the Rights and Freedoms of Internally Displaced Persons*”;

2) creating conditions for voluntary return and reintegration of internally displaced persons in their previous places of residence.

According to Par. 7, Part 1, Art. 9 of the Law of Ukraine “*On Ensuring the Rights and Freedoms of Internally Displaced Persons*”, these persons have the right to free temporary residence (provided that they pay the cost of utilities) for 6 months from the date of registration; for the large families, the disabled, the elderly the term may be extended. The function of exercising this right is entrusted to state executive bodies, local self-government bodies and subjects of private law. This is supported by Art. 11 of the above-mentioned law, which endowed local state administrations and local governments with the following powers: 1) provision of habitable temporary housing or social housing for internally displaced persons (if they pay the cost of utilities); 2) provision of housing for family-type orphanages who have been forced to leave their place of residence as a result of the circumstances specified in Part 1, Art. 1 of the Law of Ukraine “*On Ensuring the Rights and Freedoms of Internally Displaced Persons*”. According to Art. 17, these bodies, together with the state-owned banking institutions, should also develop regional long-term concessional loan programs (including mortgages) to construct or purchase housing for internally displaced persons, provided that international humanitarian or charitable assistance is available. At the same time, targeted assistance provided by domestic and international benefactors for this purpose is subject to income tax exemption and value-added tax exemption.

At the state level, neither the procedure for providing housing for internally displaced persons nor those responsible for this process have been defined so far. In addition, the program and procedure for granting preferential / mortgage long-term loans for the purchase of land, construction or purchase of housing for internally displaced persons have not been approved. So, in fact, the state has chosen the path of settling internally displaced persons on temporary terms at state / communal facilities (dormitories, sanatoriums, camps, hotels). We would like to draw your attention to the fact that the Law of Ukraine “*On Ensuring the Rights and Freedoms of Internally Displaced Persons*” does not in any way establish requirements for such housing, except that it must be ‘habitable’.

Currently, these norms need numerous clarifications as to the scale of destruction and the amount of available living space. After all, it is likely that affordable housing may not be enough for those who have been left

¹⁸ Про державну реєстрацію юридичних осіб, фізичних осіб – підприємців та громадських формувань: Закон України від 20.10.2014 № 1706-VII. *Відомості Верховної Ради України*. 2015. № 1. Ст. 1.

¹⁹ Конституція України: Закон України від 28.06.1996 № 254к/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

²⁰ Захист прав внутрішньо переміщених осіб: аналіз та рекомендації щодо вдосконалення нормативно-правової бази / Громадський холдинг “ГРУПА ВПЛИВУ” в партнерстві з громадською організацією «Донбас СОС». URL: https://www.vplyv.org.ua/wp-content/uploads/2018/06/Group-of-Influence_analyses.pdf

homeless. Previous experience in providing displaced persons with housing shows that the right to housing is not provided by a specific legislative mechanism, and the burden of its regulatory provision is fully placed on local executives and self-government bodies.

Also, internally displaced persons are given the opportunity to exercise their right to vote in elections of the President of Ukraine, People's Deputies of Ukraine, local elections and referendums by changing the place of voting without changing the electoral address²¹. But there are no relevant remarks in the Law of Ukraine "*On the State Register of Voters*"²²

There is no corresponding norm in the Electoral Code of Ukraine either²³, despite the fact that it was adopted after the problem of forced mass migration within the country had appeared. In fact, there is still no mechanism for internally displaced persons to exercise their right to vote in local elections.

Due to the fact that the Council of Europe Convention of 1992 grants the right to participate in and run for local governments even to foreigners residing in the country for more than 5 years, there is a reason to believe that this violates the constitutional equality of citizens and indirectly discriminates against migrants. The right to participate in local elections is no less important for Ukrainian IDPs than participation in national elections, as many issues related to their activities are solved at the local level (creating conditions for registration, settlement, benefits, settling the issues of utility bills in places of compact residence, etc.). Moreover, in some areas, internally displaced persons make up a significant proportion of the electorate. We are convinced that much larger number of displaced persons in 2022 is likely to reinforce this contradiction.

Third, numerous collisions arise in the field of granting social rights to internally displaced persons. At the end of February 2016, verification of social benefits for IDPs began as one of the stages of social reform; On July 8, 2016, the Cabinet of Ministers of Ukraine adopted Resolution "*On Some Issues of Social Benefits to Internally Displaced Persons*" № 365, which introduced the Procedure for assignment (restoration) of social benefits to IDPs and the Procedure for monitoring the implementation of social benefits for IDPs at the place of actual residence / stay. The first procedure establishes a mechanism for appealing to social protection bodies on the initiative of IDPs. This results in inspection by the body that will appoint or pay social benefits. The second pro-

cedure is initiated by the structural units for social protection of the population in the relevant administrative territorial unit where an IDP lives (in case of a scheduled inspection, which takes place at least once every six months), or by the decision of state administrations or executive bodies of city councils (in case of unscheduled / additional inspection of an IDP's actual place of residence). The latter, 'additional' inspections, are conducted by the structural units for social protection or working groups including representatives of territorial units of the Ministry of Internal Affairs of Ukraine, the State Migration Service of Ukraine, the Security Service of Ukraine, the National Police, the State Financial Inspection, the State Audit Office and the Pension Fund. Control inspections are carried out within ten workdays. In the absence of physical identification of an IDP, payments may also be suspended unilaterally by Oschadbank with subsequent notification to the structural units for social protection.

At the same time, we emphasize the inefficiency of control over the place of residence / stay of such persons who have official status and receive targeted financial assistance. However, the procedures for providing and controlling funding and the status of the subjects of their implementation must be clearly regulated. In addition, only those payments and special benefits provided exclusively for internally displaced persons which are defined at the legislative level may depend on the material living conditions of a person. Therefore, those payments that do not depend on the material well-being of the recipient may depend only on the fact that internally displaced persons live on the territory controlled by Ukraine. This issue also reflects the functions of bodies and subdivisions of the State Border Guard Service of Ukraine in the replacement of persons (direction, duration) across the line of demarcation. Some state bodies of Ukraine draw appropriate conclusions from such information.

Fourth, the Law of Ukraine "*On Ensuring the Rights and Freedoms of Internally Displaced Persons*" did not differentiate the status of temporarily displaced persons from the occupied territories²⁴, and did not provide for the protection of the rights of foreigners and stateless persons who were forced to leave their place of residence. In the future, this will introduce misunderstandings and the need to constantly review and explicate the rights of migrants from other territories of Ukraine.

Finally, researchers have consistently emphasized lack of a regulatory framework for reintegration of the occupied territories. Established in 2016, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, whose functions include reintegrating the tem-

²¹ Про забезпечення тимчасової зміни місця голосування виборця без зміни його виборчої адреси : Постанова Центрвиборчкому від 13.09.2012 № 893. URL: <http://zakon5.rada.gov.ua/laws/show/v0893359-12>.

²² Про Державний реєстр виборців: Закон України від 22.02.2007 № 698-V. *Відомості Верховної Ради України*. 2007. № 20. Ст. 282.

²³ Виборчий кодекс України: Закон України від 19.12.2019 № 396-IX. *Відомості Верховної Ради України*. 2020. № 7, № 8, № 9. Ст. 482.

²⁴ Перешкоди в реалізації прав і свобод осіб на окупованій території Кримського півострова та тимчасово непідконтрольних територіях Донецької та Луганської областей / ГО Центр правових та політичних досліджень «СІМ», ГС Українська Гельсінська спілка з прав людини. Аналітичний звіт. URL: <https://helsinki.org.ua/wp-content/uploads/2018/02/Zvit.pdf>

porarily occupied territories and their population, dealing with the consequences of the conflict, humanitarian cooperation, protection of the population in the armed conflicts, etc., failed to propose an agreed standard to regulate termination of the corresponding status. Art. 12 of the Law of Ukraine “*On Protection of the Rights and Freedoms of Internally Displaced Persons*” provides that a person loses the status of an internally displaced person if he / she returns to his / her place of permanent residence. It is obvious that duration of Russia’s war against Ukraine also requires revision of this norm.

It should be taken into account that real conditions must be created for the return of displaced persons not only from other regions of Ukraine, but also from abroad. Reintegration processes should also include programs for rebuilding the infrastructure and economy of the regions, which provide for the search for sources of reintegration processes.

Conclusions

Thus, in the conditions of Russia’s war against Ukraine, the issue of political and legal management of migration processes and ensuring the rights of internally displaced persons has become particularly important. This area requires further specification and systematization of legislation, which has not yet provided effective mechanisms for the implementation of declared rights, differentiation of various groups of internally displaced

persons, control over guarantees of rights, a procedure for termination of social benefits.

A number of remarks should be made about the political and institutional support that is necessary to manage migration processes. The important task in optimizing the process of social security of internally displaced persons is to establish active cooperation between central and local authorities that will be able to accumulate more resources to solve the urgent problems through constructive cooperation. As for the recommendations for creating actual guarantees of IDPs’ rights, we consider it appropriate to involve the public sector and social capital in this process, develop and support various forms of volunteering, charitable organizations, self-assistance unions, encourage domestic and foreign investment, etc. In this respect, Ukraine needs significant international financial assistance (such as the Marshall Plan) and material assistance to restore the devastated industries.

Finally, lack of distinct legislation on the mechanisms of ensuring the rights of internally displaced persons turns them into meaningless declarations, an element of populist rhetoric that threatens to increase social tensions and the likelihood of acute internal conflicts. Therefore, management of migration processes and successful implementation of existing legal norms is a promising area for further scientific interdisciplinary research.

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