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Legal Regulation of the Status of Internally Displaced Persons in Ukraine: Theoretical and Administrative Aspect

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Abstract

The aim of the research was to reveal the legal regulation of the status of internally displaced persons in Ukraine in terms of theoretical and administrative aspects. A positive step towards realization of the rights and guarantees of forced migrants consists in the introduction by the Government of Ukraine of the following areas of assistance: monetary assistance, promotion of their employment, introduction of compensation for the costs of payment of communal services for families who have taken in displaced persons free of charge. It has been established that such a public initiative as «Prykhystok» («Shelter») plays an extremely important role in exercising the rights and guarantees of forced migrants. The following methods were used in the research: analysis of biographical sources, synthesis, deduction, comparative analysis and meta-analysis, etc. Conclusions: it has been shown that programs such as «Prykhystok» are a positive step towards proper implementation of the rights and guarantees of IDPs, but at the moment they are not working properly. Even fulfilling all the conditions, many forced migrants have not yet received their funds, they have been denied their certificates and most employers do not want to hire people belonging to this category.

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Keywords: internally displaced; vulnerable citizens; guarantees for the rights of internally displaced persons; rights of the child; dignity of the human person.

Regulación jurídica del estatuto de los desplazados internos en Ucrania: Aspecto teórico y administrativo

Resumen

El objetivo de la investigación fue revelar la regulación legal del estatus de los desplazados internos en Ucrania en términos aspectos teóricos y administrativos. Un paso positivo para hacer realidad los derechos y garantías de los inmigrantes forzosos consiste en la introducción por parte del Gobierno de Ucrania de las siguientes áreas de asistencia: asistencia monetaria, promoción de su empleo, introducción de compensación por los costos de pago de los servicios comunales para las familias que se han acogido personas desplazadas de forma gratuita. Se ha establecido que una iniciativa pública como “Prykhystok” (“Refugio”) desempeña un papel extremadamente importante en el ejercicio de los derechos y garantías de los inmigrantes forzosos. En la investigación se utilizaron los siguientes métodos: análisis de fuentes biográficas, síntesis, deducción, análisis comparativo y metaanálisis, etc. Conclusiones: se ha demostrado que programas como “Prykhystok” son un paso positivo para la adecuada implementación de los derechos y garantías de los desplazados internos, pero por el momento no están funcionando adecuadamente. Incluso cumpliendo todas las condiciones, muchos inmigrantes forzosos todavía no han recibido sus fondos, les han negado sus certificados y la mayoría de los empleadores no quieren contratar personas que pertenezcan a esta categoría.

Palabras clave: desplazado interno; ciudadanos vulnerables; garantías para los derechos de los desplazados internos; derechos del niño; dignidad de la persona humana.

Introduction

The events of recent years, namely the annexation of the Crimea in March 2014 and the armed conflict that began in the East of Ukraine in April 2014, led to a significant and massive displacement of civilians both within the country and abroad. In connection with the beginning of the full-scale war of the Russian Federation against Ukraine, the number of internally

displaced persons in our country has increased significantly. Therefore, according to the report of the International Organization for Migration, more than 7.7 million Ukrainians have become internally displaced persons since 24 February, 2022.

Minister of Social Policy of Ukraine Maryna Volodymyrivna Lazebna reported that as of 25 April, 2022, more than 2 million people had been registered as internally displaced persons. She notes that today the Unified Information Database on Internally Displaced Persons has information on 3.4 million people. Of them, over 2 million people were forced to move after the introduction of martial law. And of them, 1.9 million people were forced to move for the first time.

After leaving their homes, these individuals not only lost a roof over their heads, but also lost ownership of their property, they were left without work and means of supporting their existence. In connection with this, problematic situations arise and in these situations such persons cannot always fully exercise their rights. And therefore there is a need to determine the main problems of the legal status of internally displaced persons as well as ways to solve such problems.

1. Literature review

Legal regulation of the status of internally displaced persons in Ukraine has been partially considered by such scientists as Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna etc. (Halaburda *et al.*, 2021).

According to part 1 of Article 1 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”, an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who is in the territory of Ukraine on legal grounds and has the right to permanent residence in Ukraine, who was forced to leave his or her place of residence as a result of (or in order to avoid negative consequences of) an armed conflict, temporary occupation, widespread manifestations of violence, violations of human rights and natural or man-made emergencies (Law of Ukraine, 2014).

Therefore, one of the important circumstances that determine provision of the legal status of an internally displaced person to citizens of Ukraine, foreigners and stateless persons is the need to leave one’s own place of residence against personal will in order to avoid consequences of an armed conflict and the temporary occupation of certain territories of Ukraine, as a result of well-founded fears for own life, health and protection of rights and interests.

However, it should be noted that, in our opinion, the term “internally displaced person” does not adequately describe this category of persons. We fully agree with Y. Lushpienko, who noted that the term “internally displaced” literally means a person who has changed his/her location within the state, while the concept of “forced” means a coercive nature and performance of an action against the person’s will under the pressure of circumstances. Therefore, the term “forced migrant” ensures a more successful description of the category of persons who changed their place of residence for reasons beyond their control, since the very concept of “forced” in its meaning explains presence of problems as a logical consequence of a certain event (Lushpienko, 2017. 190).

At the same time, taking into account the dynamic changes in this area, the indicated problems require a more comprehensive and complex analysis, in particular, legal regulation of the status of internally displaced persons in Ukraine is needed.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers regarding legal regulation of the status of internally displaced persons in Ukraine, etc.

With the help of the epistemological method, the legal regulation of the status of internally displaced persons in Ukraine was clarified, etc., thanks to the logical-semantic method, the conceptual apparatus was deepened, the legal regulation of the status of internally displaced persons in Ukraine was determined, etc. Thanks to the existing methods of law, we managed to analyze the essence of legal regulation of the status of internally displaced persons in Ukraine, etc.

3. Results and discussion

The category of “internally displaced person” is quite close to the category of “refugee”. The main difference is that the latter leave the country where they are citizens and do not wish to return to their country of permanent residence due to fear of becoming a victim of persecution (Kobrusieva *et al.*, 2021).

It is worth noting that the concept of “internally displaced person” appeared in the legislation of Ukraine in connection with the accident at the Chernobyl Nuclear Power Plant on 26 April, 1986. As a result of radioactive pollution, approximately 200,000 people were forced to change their place of residence (Deliia, 2020). In 1986-1987, approximately 15,000

apartments and dormitories for more than 1,000 people, 23,000 buildings, as well as approximately 800 social and cultural institutions were built for immigrants. (Tsymbalisty, 2019: 129). The first legislative act on this issue was the Law of the Ukrainian SSR “On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster”, which was adopted only on 28 February, 1991.

We should point out that today the legal status of internally displaced persons is regulated by the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”; this law directly defines the rights and obligations of internally displaced persons, it establishes economic, social and legal guarantees for protection of their rights and legitimate interests on territory of Ukraine in accordance with the Constitution of Ukraine, international treaties of Ukraine, as well as the principles and norms of international law (Law of Ukraine, 2014).

The basic (constitutional) rights of internally displaced persons as citizens of Ukraine are enshrined in Chapter II “Human and Citizens’ Rights, Freedoms and Duties” of the Constitution of Ukraine (Law of Ukraine, 1996).

The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” contains a list of rights of this category of persons and guarantees of their implementation. Therefore, the Law provides for the right to receive documents certifying the identity and confirming the citizenship of Ukraine, or documents certifying the person and confirming his/her special status; the right to employment, pension provision, mandatory state social insurance, social services, education; electoral rights (Law of Ukraine, 2014).

Article 9 of this Law contains other rights of an internally displaced person, including the following: family unity; assistance by state executive authorities, local self-government bodies and private law entities in the search and reunification of family members who have lost contacts with each other due to internal displacement; information about the fate and location of missing family members and close relatives; reliable information about presence of a threat to life and health in the territory of person’s abandoned place of residence, as well as the place of his/her temporary settlement, the state of the infrastructure and the environment, ensuring person’s rights and freedoms; assistance in moving person’s movable property; assistance in returning to the previous place of residence; provision of medicinal products in cases and according to the procedure defined by the legislation; provision of necessary medical assistance in state and communal health care institutions; placement of children in preschool and general educational institutions; provision of free-of-charge travel for voluntary return to the abandoned place of permanent residence in all types of public transport in the event of the disappearance of the circumstances that caused such

displacement; receiving humanitarian and charitable aid (Law of Ukraine, 2014).

Duties of internally displaced persons have their own specificity, taking into account the peculiarities of the status of such persons. Imposition of such duties is necessary to maintain the relevant status, confirm information and facilitate the provision of these persons of special rights, guarantees, assistance to these persons.

In our opinion, it is an indisputable fact that forced migrants need various types of assistance, namely: assistance in obtaining pensions, social benefits, finding a job, housing, means of subsistence, etc. Legal support to this category of people should be aimed at solving the following basic problems: employment of healthy (employable) adults and family members; finding a place of residence, housing, temporary accommodation of IDPs; provision of humanitarian aid; provision of psychological support; organization of leisure; regulation of work performed by charitable foundations and public organizations providing assistance to IDPs, in accordance with the intrinsic dignity of the human person (Matviichuk *et al.*, 2022).

It is worth noting that in connection with the beginning of the full-scale war of the Russian Federation against Ukraine, the Cabinet of Ministers of Ukraine brought a number of changes to the normative legal acts regulating the issue of ensuring the mechanism for execution of the rights of internally displaced persons.

Therefore, the legislation currently provides for two methods of obtaining a registration certificate of an internally displaced person, which is the main document confirming the fact of internal displacement. Before the start of the full-scale war, in order to obtain such a certificate, these persons had to personally or through a representative apply for registration to the structural unit for social protection of the population of district, district in Kyiv state administrations, executive bodies of city, district in cities (in the case formation) councils. During the period of martial law, an internally displaced person can also apply to the authorized person of the executive body of the village, settlement, city council or administrative services center to obtain the respective certificate (Law of Ukraine, 2014).

In addition, today, in order to obtain the certificate in addition to applying to the above-mentioned authorities, this category of persons (if technically possible) can submit an application for registration and inclusion of information about an internally displaced person in the Unified Information Database on Internally Displaced Persons; this can be done through the Unified State Web-portal of electronic services (“Diya” portal) which greatly simplifies this procedure. To submit an application, a person only needs to install the mobile application of the “Diya” Portal on an electronic device connected to the Internet, with the geolocation function

enabled, and undergo electronic identification and authentication using an integrated electronic identification system, an electronic signature based on a qualified electronic signature certificate, or other means of electronic identification that enable unambiguous identification of an individual (Law of Ukraine, 2014).

Also, it is worth noting that in order to implement the guarantees of internally displaced persons, the Government has introduced three lines of assistance, including namely: monetary assistance, promotion of displaced persons' employment and introduction of compensation for the costs of paying for communal services to families who sheltered displaced persons free of charge.

Therefore, in accordance with the Procedure for providing accommodation assistance to internally displaced persons, approved by the resolution of the Cabinet of Ministers of Ukraine dated 20 March, 2022 No. 332, monetary assistance is provided monthly from the month of application before April 2022 inclusive for each internally displaced person whose information is included in the Unified Information Database on Internally Displaced Persons, in the following amounts: for persons with disabilities and children - UAH 3,000; for other persons - UAH 2000. In order to receive assistance, an internally displaced person shall fill in an application, which is formed by means of the Unified State Web-portal of Electronic Services; in particular, this can be done using the mobile application of the "Diya" Portal (Law of Ukraine, 2022)

Also families that are internally displaced persons, which include: three or more children with at least one child under the age of two; or two or more children, with at least one disabled child, can receive monetary assistance in the amount of UAH 1,220 for each family member per month, but not more than for five persons, such assistance shall be made in a single payment calculated per three months, in connection with the entry into force of the resolution of the Cabinet of Ministers of Ukraine "On the Implementation of a Joint Project with the United Nations International Children's Emergency Fund (UNICEF) on Additional Measures of Social Support for the Most Vulnerable Categories of the Population" dated 05 April, 2022 p. No 405 (Law of Ukraine, 2022).

In addition to the above-mentioned financial assistance programs, internally displaced persons can receive international targeted monetary support implemented jointly with the Government of Ukraine. In particular, this support can be obtained by them from: The Mission of the International Committee of the Red Cross in Ukraine in cooperation with the Red Cross Society of Ukraine (the CMU Resolution No. 487 "On the implementation of a joint project in cooperation with the Mission of the International Committee of the Red Cross in Ukraine and the Red Cross Society of Ukraine regarding additional measures for social support of

certain categories of the population”), United Nations Refugee Agency, UN World Food Program, International Organization for Migration; Norwegian Refugee Council (Forced migrants can receive international monetary assistance. What programs are available, 2023).

Conclusion

Therefore, one direction of assistance to internally displaced persons consists in promotion of their employment through state compensation of costs to the employer for each employed person of this category. In the “Diya” Portal, an employer can submit an application for compensation of expenses in the amount of UAH 6,500 per month for each employed person, for whom a single contribution is made to the mandatory state social insurance, for the period of wartime and within 30 calendar days after its cancellation or termination.

Employers can also submit this application in paper form - personally during a visit to the employment center or by means of filing the application to the e-mail address of the relevant employment center located at the respective location. This is a positive step, since, in our opinion, employment of this category of people should be the basis of their support, because their monetary savings and budgetary support opportunities are gradually running out, therefore it is extremely important to promote the self-sufficiency of displaced persons while restoring the economy.

An extremely important role in the implementation of the rights and guarantees of forced migrants belongs to such a public initiative as “Prykhystok” (“Shelter”) (<https://prykhystok.gov.ua/>). On this website, owners of homes where they wants and are able to accommodate internally displaced persons can post their own offer, and displaced persons can find their temporary housing.

In addition, home owners can receive compensation of costs for provision of temporary housings to internally displaced persons who moved during the period of martial law and do not receive monthly targeted assistance for internally displaced persons to cover living expenses, including payment of housing and communal services.

For this purpose home owners need to register their housings on the “Prykhystok” website, then, no later than the next day, they should submit an application to the local self-government bodies (executive committee), indicating the name and patronymic of each of the accommodated persons and attaching copies of personal identity documents of these accommodated persons, and they should apply to the executive committee of the village, settlement, city council at the location of the residential premises in order

to receive financial assistance. The amount of compensation is about UAH 450 per month (UAH 14.77 per day for each accommodated person).

It is worth noting that these programs are a positive step for the proper implementation of internally displaced persons' rights and guarantees, however, at the moment, they are not functioning properly. Even providing compliance with all conditions, many forced migrants still have not received their funds, their certificates have been refused and most employers do not want to hire people belonging to this category.

In order to solve the abovementioned problem, in our opinion, when receiving and analyzing information about labor opportunities of displaced persons state employment centers should offer such persons to businesses and this will restore work of state enterprises and institutions, promoting employment of the latter.

Thus, we have analyzed only a small part of the problems of the legal status of internally displaced persons and we have come to the conclusion that in recent years the legislator has managed to settle a number of problematic issues.

A positive step for realizing the rights and guarantees of forced migrants consists in introduction by the Government of Ukraine of the following areas of assistance: monetary assistance, promotion of their employment, introduction of compensation for the costs of paying for communal services for families who sheltered displaced persons free of charge. Digitalization of this process, including operation of the "Diya" Portal, is of great importance for simplifying the procedure of registering persons as internally displaced ones, submitting applications for receiving financial assistance, compensation of expenses.

However, as practice shows, today there are still existing problems concerning registration of persons as internally displaced ones, as well as concerning access to habitable housing, protection of property rights, obtaining means of supporting existence, finding durable solutions and access to information and these problems need to be solved.

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