

THE IMPACT OF FORCED INTERNAL MIGRATION ON THE DEVELOPMENT OF LEGAL SYSTEM: THE EXPERIENCE OF UKRAINE AND THE STATES OF CENTRAL AND EASTERN EUROPE

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Summary. In the framework of this research the influence of forced internal migration processes on the change and improvement of the legislation of Ukraine and individual EU countries is analyzed. A comparative analysis of the concept of ‘internally displaced person’ in the legislation of Ukraine and countries of Central and Eastern Europe is carried out. In addition, compliance with the Guiding Principles on Internal Displacement Persons within the Country the regulations that are legally enshrined in Ukraine, Croatia, Georgia, Russian Federation and Moldova is investigated.

On the basis of the conducted research it was made a conclusion that in comparison to the Council of Europe standards and legislation of individual EU countries in the field of IDPs rights provision, the Ukrainian legislation has the disadvantage of relatively declarative enshrined IDPs rights. A number of amendments to the Law of Ukraine ‘On the Protection of the Rights and Freedoms of Internally Displaced Persons’ in order to stop discrimination and bring it in line with European and international standards is proposed to be introduced.

Key words: internally displaced person, refugee, law, human rights

INTRODUCTION

The violation of the territorial integrity of Ukraine, the occupation of the Crimea, the ongoing military conflict on the territory of Donetsk and Luhansk regions forced many people to leave their places of residence. This is the second time in the last thirty years that Ukraine has faced a massive forced displacement. The first experience of the mass displacement of the population was connected with the accident at the Chernobyl Nuclear Power

Plant in 1986, when over 116,000 people were relocated from radioactive contaminated areas¹.

According to the official information of the departments of social protection of population of the Ministry of Social Policy, as of May 2017, the number of internally displaced persons consists of 1 million 584 thousand people or almost 1,3 million families. Among the total number of IDPs, there are 806,6 thousand pensioners, 57,6 thousand people with disabilities, 241 thousand children². The UNO data exceed official statistics information, according to which about 2,3 million people have been forced to leave their homes in the conflict zone and traveled to other regions of Ukraine and abroad³. The UN High Commissioner for Refugees reports that according to official sources in host countries there are more than a million Ukrainians who seek refugee status or are otherwise trying to regulate their stay in the border states. Most of them are in the Russian Federation (1,092,212) and Belarus (130,056)⁴.

In comparison to the situation in other states according to information of the Monitoring Center for involuntary movements, the number of IDPs in the world reached a record mark of 33,3 million, which is twice the number of refugees (about 16 million). Only in 2013 their number increased by 4.5 million people. The most acute problem is in Syria, Colombia, Sudan, Nigeria, Iraq. As of December 2015, the number of IDPs in Syria reached 6,600,000 people, Colombia – 6,270,436 people, Iraq – 3,290,310 people, Sudan – 3,182,286 people, Yemen – 2,509,068 people, Nigeria – 2,959,812 IDPs⁵. There are 543 thousand in Azerbaijan, 34 thousand in Russia, 8 thousand in Armenia, 4 thousand in Turkmenistan and 3 thousand IDPs in Uzbekistan⁶. In Moldova, as a result of the Transnistria conflict, 51 289 IDPs (including 28 746 children) were officially registered, and unofficial figures reached 100 thousand. According to the UNHCR estimations, as of mid-2013, Georgia had 282,130 IDPs⁷.

¹ V. Smal, *Great resettlement: how many people are actually internally displaced in Ukraine*, in: <https://voxukraine.org/2016/06/30/velyke-pereselennya-skilky-naspravdi-v-ukraini-vpo-ua/> [accessed: 21.06.2017].

² Solving the social problems of internally displaced persons is still actual. Ministry of Social Policy, in: <http://www.msp.gov.ua/news/13260.html> [accessed: 23.06.2017].

³ O. Syrovyi, A. Churaeva, *Means of international legal resolution of armed conflict in the East of Ukraine*, "Legal scientific electronic journal" 6 (2015), p. 233.

⁴ Improvement of the national legislation of Ukraine regarding the protection of the human rights of internally displaced persons. The Council of Europe Project 'Strengthening the Human Rights Protection of IDPs in Ukraine', in: <https://rm.coe.int/1680693ca7> [accessed: 23.06.2017].

⁵ V. Smal, *Great resettlement*.

⁶ Ways to solve the problem of internally displaced persons: some lessons from foreign experience, in: http://www.niss.gov.ua/content/articles/files/migrac_prob1-a598d.pdf [accessed: 24.06.2017].

⁷ A. Solodko, T. Doroniuk, *Protection of socio-economic rights of internally displaced per-*

However, official statistics do not fully reflect the situation, since not all IDPs are officially registered. In most cases, migrants are the whole families and mothers with children. At the same time, there is a problem of the implementation and protection of the rights of internally displaced persons (hereinafter – IDPs), for the effective resolution of which Ukraine needs to take into account European and international experience.

In addition, in Ukraine there is relatively little amount of complex scholarly researches on the legal status of internally displaced persons. The domestic legal doctrine focuses on the study of the nature of the United Nations Guiding Principles on persons who are involuntarily displaced within countries, the analysis of certain aspects of the constitutional and legal, administrative and legal status of internally displaced persons in Ukraine. Foreign scientists also pay attention to the analysis of the United Nations Guiding Principles on Internal Displacement, international standards in this area⁸, the study of the legal status of IDPs, the content of the right to freedom of movement and residence, the violation of these rights in Georgia as a result of the war in August 2008 with Russia⁹. The experience of individual states in ensuring the right to freedom of movement and other rights of refugees and internally displaced persons, in particular in Jordan, Lebanon, Afghanistan, Somalia, Syria and Ukraine is also investigated¹⁰.

1. THE CONCEPT OF ‘INTERNALLY DISPLACED PERSON’ IN THE LEGISLATION OF UKRAINE AND STATES OF CENTRAL AND EASTERN EUROPE

The term ‘internally displaced person’ (or ‘displaced inside the state person’), unlike the term ‘refugee’, began to be used in international law only at the end of the XX century.

The current definition of the concept of ‘refugee’ was laid down in the Statute of the Office of the United Nations High Commissioner for Refugees

sons: *priority tasks for Ukraine*, in: http://www.cedos.org.ua/system/attachments/files/000/000/045/original/CSR_IDP.pdf?1400493355 [accessed: 23.06.2017].

⁸ M. Asplet, *Internal Displacement: Responsibility and Action*, “Handbook for Parliamentarians” 20 (2013), pp. 138, in: <http://archive.ipu.org/PDF/publications/Displacement-e.pdf> [accessed: 30.10.2017].

⁹ C. Bailliet, *Right to freedom of movement of internally displaced persons (IDPS)*, 2011, pp. 71, in: <https://www.duo.uio.no/bitstream/handle/10852/22886/ThesisNinoJANIASHVILI.pdf?sequence=2> [accessed: 30.10.2017].

¹⁰ Ch. Steadman, *Rights of Refugees, the Internally Displaced, and Asylum Seeking People*, 2015, in: <https://www.odu.edu/content/dam/odu/offices/mun/docs/hrc-rights-of-refugees-the-internally-displaced-and-asylum-seeking-people.pdf> [accessed: 21.08.2017].

(UNHCR). As a refugee was considered a person, who was not a citizen of the country, in which he applied for asylum and had well-founded fears of becoming a victim of persecution on grounds of race, religion, nationality or political beliefs and did not enjoy the protection of the country of nationality. It should be noted that persecution for belonging to a particular social group was not originally indicated in the definition of the concept of 'refugee'¹¹.

In 1951 the UN General Assembly adopted the UN Convention 'On the Status of Refugees', Ukraine joined it in 2002. In Art. 1 (A) 2 of the Convention of 1951 year as a refugee it considers 'a person, who because of reasonable fears of becoming a victim of persecution on grounds of racial membership, religion, nationality, membership of a particular social group or political views, is outside his nationality and is unable to enjoy the protection of that country or does not want to enjoy such protection as a result of such fears, or, having no definite citizenship and being outside the country of his former residence as a result of such events, can not or does not want to return it owing to such fear'.

The limited use of the concept of 'refugee' has also led to the creation of subsidiary protection for asylum seekers. At present, there is no single approach to subsidiary protection in the countries of the world. In Ukraine, only from 2011, subsidiary forms of protection for asylum seekers have been introduced. Thus, the Law of Ukraine 'On Refugees and Persons Requiring Additional or Temporary Protection' regulates in addition the rights and obligations of refugees, the status of persons, who need additional and temporary protection¹².

The mechanisms, created for refugees, did not consider those, who were forced to move within their own country. Those persons, who due to various reasons were unable or unwilling to leave their country, did not fall under international legal protection. The internationalization of this problem was also hampered by the traditional notion of state sovereignty. The governments of the countries reserved the exclusive right to resolve issues related to the situation of their citizens¹³. In this regard for a long time there was no legal definition of the term 'internally displaced person'. Currently international law includes the only universally accepted term applicable to such persons – internally displaced persons (IDPs).

¹¹ M. Savchyn, V. Navrotskyi, M. Mendzhul, *The mechanism of protection of the rights of refugees and asylum seekers: international and national level*, Olexandra Harkusha Publishing House, Uzhhorod 2007, pp. 8–9.

¹² On Refugees and Persons Requiring Additional or Temporary Protection, "Law of Ukraine" of July 8, 2011, No. 3671-VI, in: <http://zakon5.rada.gov.ua/laws/show/3671-17> [accessed: 22.08.2017].

¹³ I. Kozynets, L. Shestak, *International standards for protection and assistance for internally displaced persons*, "Young Scientist" 12 (15) 2014, p. 258.

One of the major international instruments for defining the legal status of internally displaced persons is the Guiding Principles on Internal Displacement inside a state, developed by the Office of the United Nations High Commissioner for Refugees (hereinafter – Guiding Principles)¹⁴. This document refers to internally displaced persons as those who were forced to leave their places of permanent residence, in particular as a result of armed conflict, massive manifestations of violence, human rights violations, natural or man-made disasters, and which did not cross internationally recognized state borders.

According to the Law of Ukraine ‘On the Protection of 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 legally in Ukraine and has the right to permanent residence in Ukraine, which was forced to leave his place of residence as a result or in order to avoid the negative effects of armed conflict, temporary occupation, widespread manifestations of violence, human rights violations and natural or man-made emergencies¹⁵.

Regarding the analysis of the national legislation of the EU countries, it is worth to analyze the experience of Croatia, where a separate law on the IDPs was adopted. Paragr. 1 of Art. 2 of the Croatian Law ‘On the Status of Expellees and Refugees’ in 1993 sets out the definition of the term ‘expellee’ and the term ‘refugee’ at the same time. Thus, a war impacted person from the territory of the Croatian Republic, who individually or in an organized manner has left his place of residence to avoid a direct danger to his life through aggression or other military actions, acquires an expellee or refugee status. An expellee according to the mentioned Law is a person specified in Paragr. 1 of Art. 2, which escaped from one territory of the Republic of Croatia to another territory of the Republic of Croatia¹⁶.

In addition, the Croatian Law ‘On the Status of Expellees and Refugees’ up to 1999 divided internally displaced persons into two categories – so-called ‘expelled’ persons and ‘displaced’ persons. The mentioned division was carried out according to the criterion of the date of forced displacement of certain persons¹⁷. However, in fact, the specified division of internally displaced persons distinguished them also on the basis of an ethical origin. ‘Expelled’

¹⁴ Guiding Principles on Internal Displacement, United Nations 1998, in: <http://www.legislationline.org/documents/action/popup/id/7886> [accessed: 20.09.2016].

¹⁵ On the Protection of the Rights and Freedoms of Internally Displaced Persons, “Law of Ukraine” of October 20, 2014, No. 1706-VII. Verkhovna Rada of Ukraine, “Vidomosti of the Verkhovna Rada of Ukraine” 1 (2015), p. 1.

¹⁶ Law on the Status of Expellees and Refugees 1993, Croatian Parliament, Legislationline, in: <http://legislationline.org/documents/action/popup/id/5999> [accessed: 22.08.2017].

¹⁷ Republic of Croatia, Extraordinary Presidential Elections 24 January & 7 February 2000: Final Report. Office for Democratic Institutions and Human Rights, Warsaw 2000, in: <http://www.osce.org/odihr/elections/croatia/15670?download=true> [accessed: 22.08.2017].

persons are mostly ethnic Croats of all age groups, who have moved beyond the Trans-Danube region of Croatia. As of February 2000, the number of such persons was 47,000. The ‘displaced’ persons are mostly ethnic Serbs, mainly the elderly and socially disadvantaged groups displaced to the Trans-Danube area of Croatia. As of February 2000, their number was 3,000 persons¹⁸.

The division of internally displaced persons into several categories was only foreseen by Croatian law, although it does not comply with the principles of international law, since it contains some discrimination (albeit hidden) on the basis of ethnic origin.

In November 1999, the Croatian Government introduced changes to the actual at that time legislation that formally eliminated discrimination in favor of one category of internally displaced persons – ‘expelled’ persons (mainly Croats) at the expense of other displaced persons (mostly Serbs). However, in practice, the discriminatory effects of the law remained: individuals (‘expellees’) retained the appropriate status and benefits that they received in accordance with the original Law¹⁹.

In Georgia, the official definition of the term ‘internally displaced person’ was enshrined in the 1996 Law ‘On Internally Displaced Persons – Persecuted’ of 1996 year. In particular, an internally displaced person is a citizen of Georgia or a stateless person, who permanently resides in Georgia and who was forced to leave his place habitual residence and was moved (within the territory of Georgia) as a result of the threat to her life, health or liberty or to the life, health or freedom of her family members due to the aggression of a foreign state, internal conflict or mass violations of human rights. However, in order to obtain the status of an internally displaced person in Georgia, the person must submit an application to the local administrative authorities of the Ministry for Refugees and Resettlement or to the diplomatic mission of Georgia²⁰.

The legislation of the Russian Federation also defines and regulates the legal status of forced migrants. In accordance with the Part 1 of Art. 1 of the Russian Federation Law ‘On Forced Migrants’ (1993), a forced migrant is a citizen of the Russian Federation, who has left his place of residence as a result of violence or persecution against him or his family members in other forms or as a result of the existence of a real threat of persecution on the basis of race, nationality, religion, language, as well as on the basis of belonging to

¹⁸ Croatia, Housing rights and employment still preventing durable solutions, Internal Displacement Monitoring Centre 2009, in: <http://www.internal-displacement.org/assets/library/Europe/Croatia/pdf/Croatia-September-2009.pdf> [accessed: 22.08.2017].

¹⁹ Ibidem.

²⁰ The Law of Georgia on Internally Displaced Persons, Persecuted No. 335-II S 1996 [updated 2001], Parliament of Georgia, in: <http://legislationline.org/documents/action/popup/id/5529> [accessed: 11.10.2016].

a particular social group or political views that have become the pretext for carrying out hostile actions against this person and or group of persons, mass violations of public order. At the same time, according to Art. 2 of the Russian Federation Law 'On Forced Migrants' one is not considered as a forced migrant if he left his place of residence because of: economic reasons; famine; an epidemic; emergency situations of a natural or man-made character²¹.

Thus, forced migrants in Russian Federation are considered only as those, who left their place of residence due to the violation of human rights in the form of violence, persecution, and the commission of hostile acts. In this case, military conflicts or military actions as grounds for the forced displacement of persons are not mentioned in any way. The question of whether it is possible to consider armed conflicts or military actions as forms of detection of violence or hostile actions in the sense of the Russian Federation Law 'On Forced Migrants' remains open.

As it could be seen, Part 1 of Art. 1 of the Russian Federation Law 'On Forced Migrants' defines mainly the reasons why forced migrants leave their place of permanent residence, and already Part 2 and Part 3 of the same article specify which categories of persons may be recognized as involuntary settlers, in particular:

- 1) citizens of the Russian Federation, forced to leave their place of residence on the territory of a foreign state and who arrived on the territory of the Russian Federation;
- 2) citizens of the Russian Federation, forced to leave their place of residence on the territory of one Russian Federation subject and arrived on the territory of another subject of the Russian Federation;
- 3) foreign citizens or stateless persons, who permanently reside legally on the territory of the Russian Federation and who have changed their place of residence within the territory of the Russian Federation²².

Just like the legislation of Georgia, the Law of the Russian Federation 'On Forced Migrants' provides a certain procedure for obtaining the status of a forced migrant. Therefore, the term 'forced migrants' in the Russian Federation does not cover those, who have not acquired such status in the manner prescribed by law, in particular, who have not applied for no valid reasons for the recognition of their forced migrants within 12 months from the date of their departure from their place of residence or within 1 month from the date of loss of refugee status in connection with the acquisition of Russian Federation citizenship.

²¹ On Forced Migrants, "Law of Russian Federation" of February 19, 1993, No. 4530-1: with amendm. of July 01, 2011, Federal law, in: <http://www.diaconia.ru/zakon-o-vynuzhdennykh-pereselencah> [accessed: 11.10.2016].

²² Ibidem.

In our opinion, this regulation can be regarded as unjustifiably restricting the rights of internally displaced persons, since in the conditions of persecution, the threat to life or health, or simply because of the person's lack of knowledge of the procedure for obtaining the status of a forced migrant, the person will be denied the receipt of such status.

Thus, according to the laws of certain states, different terms are used for persons, who because of certain situations, which are dangerous to their lives, are forced to leave their places of permanent residence and move to other regions (regions) of the same country: internally displaced persons (e.g. Ukraine, Georgia), forced migrants (Russian Federation), expellees (Croatia), etc.

In addition to the discrepancies in the term, certain differences are observed in determining the reasons why internally displaced persons leave their place of permanent residence. In general, the main reason for the displacement of persons from their places of permanent residence under the laws of individual states is the manifestation of human rights violations, the threat to life, health, massive violations of public order, etc. At the same time, the regulations of some states focus on the causes of violations of human rights, in particular in the presence of hostilities, armed conflicts or occupation (Ukraine, Georgia, Croatia). In this context, attention is drawn to the definition of forced migrants under the laws of the Russian Federation, where war crimes or armed conflicts are not mentioned among the reasons for persecution and the threat to life of individuals. Such a situation can be regarded as a gap in Russian Federation legislation, since a situation arises, when a person, who has left his place of permanent residence in the territory of the Russian Federation due to military actions or an armed conflict and has moved to a permanent residence in another region of the state, has no legal grounds for recognition as a forced migrant.

It should also be noted that in the normative legal acts of individual states, although the term 'internally displaced person' is mentioned, but its legal definition is not given. Such a state is, for example, Moldova. In December 2004, the Government of the Republic of Moldova adopted Resolution No. 1410 'On the Plan of Measures to Provide Living Space for Internally Displaced Persons from the Eastern Districts of the Republic of Moldova'²³. The mentioned Plan was developed in pursuance of the Resolution of the Government of the Republic of Moldova No. 658 dated 21.10.1993 'On Ensuring the Living Space of Citizens Who Were Forced to Leave Their Place of Residence in the Eastern Regions of the Republic of Moldova'. At the same

²³ On the Plan of Measures to Provide Living Space for Internally Displaced Persons from the Eastern Districts of the Republic of Moldova, Regulation of the Government of the Republic of Moldova No. 1410 of December 20, 2004, Government of the Republic of Moldova, "Monitorul Oficial" of 2004, No. 237-240, Art. 1609, in: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=299153&lang=2> [accessed: 22.08.2017].

time, none of the legal acts of Moldova establishes the legal definition of internally displaced persons.

It should be mentioned that the appearance of internally displaced persons in Moldova was resulted by an armed conflict, that lasted from March to July, 1992. As internally displaced people 51,289 people were registered on the right-bank side of the Republic of Moldova, 28,746 of which were children. The completion of hostilities and the achievement through the mediation of the OSCE the agreements on the unimpeded return of people to their places of permanent residence allowed the operative solution of the problem of displaced persons. The bulk of the people returned to their place of permanent residence. As of 2013, about 200 families left on the right-bank side of the state and have not yet returned to their former permanent residence. In particular, the issue of housing of these families remains open²⁴.

Consequently, the lack of legal definition of the term 'internally displaced person' in the legislation of the Republic of Moldova is apparently due to the fact that after the problem of the return of internally displaced persons arose, the lists of such persons were updated, and measures were taken to return them to the places of permanent residence. However, it should be noted that it would be unlikely to be realized if the armed conflict lasted not several months, but, for example, several years.

The fact that among the analyzed normative acts of individual states defining the concept of internally displaced person (forced migrant), only the legislation of Ukraine mentions emergency situations of a natural or man-made character as the reason for the resettlement of a person within the country. Normative acts of Croatia, Georgia or the Russian Federation do not define emergency situations of any character as the reason for the relocation of a person from the place of his permanent residence as an internally displaced person. Moreover, the Russian Federation Law 'On Forced Migrants' in Paragr. 3 of Part 1 of Art. 2 identifies natural or man-made emergencies as not the grounds for recognizing the persons as internally displaced.

Then the following question arises: does the concept of internally displaced persons cover the category of persons, who left their places of permanent residence and moved to another territory of the same state due to a natural disaster of natural origin, an industrial disaster (for example, as an accident at the Chornobyl NPP), etc.? To address this issue, we need to turn to the international understanding of the concept of internally displaced persons.

An analysis of the Guiding Principles on Internal Displacement of persons within the country makes it possible to conclude that the most closely related to the definition of internally displaced persons, enshrined at the international level, is the relevant definition in the Law of Ukraine 'On the Protection of the

²⁴ V. Moraru, V. Moshniha, H. Rusnak, *Migration pendulum*, Tipografia-Sirius, Chisinau 2012, p. 18.

Rights and Freedoms of Internally Displaced Persons'. The lack of legislation of individual states among the grounds for the recognition of persons internally displaced by emergencies or natural disasters, while at the same time stressing the issue on grounds such as human rights violations or the threat to citizens' lives through armed conflicts or occupation is evidently due to historical preconditions. Indeed, in such states as, for example, Georgia, Ukraine or Croatia, the relevant legislation on the legal status of internally displaced persons has been developed and adopted immediately after armed aggression, temporary occupation, hostilities, etc., arise on their territory.

On the basis of the analysis, we can conclude that only in certain countries, in particular in Russian Federation, internally displaced persons are considered to be those, who left their places of permanent residence and moved within the country through persecution for their political beliefs. Neither the legislation of Ukraine, nor Georgia, nor Croatia provides for such a factor in gaining the status of an internally displaced person.

On the other hand, prosecution of persons due to their political convictions can be considered as one of the forms of violation of human rights. Thus, it can not be argued that the legislation of Ukraine or Georgia does not recognize internally displaced persons, who have changed their place of permanent residence within the country due to persecution for their political views. The exception is Croatia, which legislation provides a very narrow and limited definition of internally displaced persons – only those persons, who have moved from one region of Croatia to another due to danger to life or health due to aggression or hostilities are considered as such.

2. THE IMPROVEMENT OF THE UKRAINIAN LEGISLATION ON THE REGULATION OF THE IMPLEMENTATION OF INDIVIDUAL RIGHTS BY THE IDPS CONSIDERING EUROPEAN STANDARDS

Art. 14 of the Law of Ukraine 'On the Protection of the Rights and Freedoms of Internally Displaced Persons' declares that the IDPs enjoy the same rights and freedoms in accordance with the Constitution, laws and international treaties of Ukraine, as well as other citizens of Ukraine permanently residing in Ukraine. Discrimination against them is prohibited in the realization of their rights and freedoms on the grounds that they are internally displaced persons.

At the same time, this law already contains provisions that are discriminatory in relation to IDPs. For example, certain rights are guaranteed only by registered IDPs (Art. 7), and at the same time, the IDPs have certain responsibilities, that are not typical for other citizens: for example, the obligation to report changes in the place of residence to a structural subdivision on social protection of population of district, district in the city of Kyiv public

administrations, executive bodies of city, district in cities (in case of education) councils for a new place of residence within 10 days from the date of arrival to the new place of residence (Art. 9).

If to analyze the experience of the European Union itself in the field of the legal protection of the rights of IDPs, then it is necessary to investigate the acts adopted on this issue at the EU level, as well as the Croatian Law 'On the Legal Status of Displaced Persons and Refugees'.

Already in Art. 1 the Croatian Law 'On the Legal Status of Displaced Persons and Refugees' guarantees all displaced persons and refugees proper accommodation, nutrition, education of children, health care and assistance in meeting other vital needs²⁵. This regulation is general and does not define specific rights of IDPs.

In Art. 8 the Croatian Law 'On the Legal Status of Displaced Persons and Refugees' establishes a very important principle that allows the IDPs to realize a number of other rights, namely the realization of rights and the receipt of public documents at the place of actual residence on the basis of a certificate confirming the status of a displaced person. In many cases, the obstacle to the realization of IDPs rights is the lack of necessary documents, that certify certain rights or the legal status of a person and which are usually issued at the registered place of residence. This principle is universal, because it can be used in the realization of any rights – both property and personal non-property.

Art. 13 of the law establishes the main guarantees of the rights of IDPs in Croatia, which in general resemble those rights, that are guaranteed to the IDPs under Ukrainian law, namely: the right to proper housing; the right to food; the right to regular financial assistance to persons without income in the form of monthly payments in the amount approved by the Government of the Republic of Croatia; the right to psychological assistance and assistance in social adaptation; the right of children of IDPs to education; rights in the sphere of health care; the right to help in the provision of other vital needs (transportation costs, funeral expenses, etc.)²⁶.

However, unlike the Ukrainian legislation, the Croatian law details the implementation mechanism and the peculiarities of providing almost all of these rights. For example, provision of accommodation to the IDPs should be carried out in such a way, that corresponds to the number and age of the family members of the internally displaced person, taking into account the special needs of individual members of the family (for example, health status). Nutrition should be provided through social welfare facilities, recreation facilities, hotels or other accommodation facilities, or by providing food. The

²⁵ Croatian Law on the Status of Displaced Persons and Refugees, 2 November 1993, Republic of Croatia, "The Official Gazette" of 1993, No. 96/1993, in: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5294bf094> [accessed: 22.08.2017].

²⁶ Ibidem.

right of children to education is realized by providing such children with books for education, providing them with food, transportation to the place of study, providing financial assistance for placement of students in dormitories, etc.²⁷

Another very interesting fact, which is also distinguished by the Croatian law on IDPs, from the Ukrainian one, is that in Croatia it is guaranteed that even those IDPs, who independently find and provide themselves with housing, where they have organized a domestic economy, are guaranteed to be assisted in Croatia. Such persons are provided with assistance in the form of sets of foodstuffs or other life-giving things, coupons or financial assistance for the purchase of certain goods in accordance with the procedure established by the law.

Both in Croatia and in Ukraine, the state guarantees the assistance to IDPs in returning to their abandoned residence. However, in Ukraine, this guarantee is accompanied by two specific obligations of the state: provision of free travel in all types of public transport (Paragr. 16, Part 1, Art. 9 of the Law ‘On the Protection of the Rights and Freedoms of Internally Displaced Persons’) and the duty to facilitate the replacement the movable property of the IDPs for returning to the residual place of residence (Paragr. 4, Art. 9, Art. 11 of the Law)²⁸. While in Croatia, in order to provide assistance to the IDPs in returning to resettlement, the state, together with the municipalities, develops a plan for the movement of persons, guarantees all the necessary conditions: transportation, support, reception at the place of residence, provision of any necessary assistance, organizes the formation of a returning committee, which includes IDPs or refugees from certain areas²⁹.

Based on the analysis of the Guiding Principles on Internal Displacement of persons within the country, it can be concluded that in the overwhelming majority of the provisions of the current legislation of Ukraine in the field of the realization of rights and interests of IDPs they are consistent with the content of the Guiding Principles. However, a number of important principles have not been consolidated either in the Law of Ukraine ‘On Protection the Rights and Freedoms of Internally Displaced Persons’, nor in other normative legal acts of Ukraine.

At the level of the European Union, the Committee of Ministers of the Council of Europe issued in 2006 the Recommendations on IDPs³⁰. Thus, at

²⁷ Ibidem.

²⁸ On the Protection of the Rights and Freedoms of Internally Displaced Persons, “Law of Ukraine” of October 20, 2014, No. 1706-VII. Verkhovna Rada of Ukraine, “Vidomosti of the Verkhovna Rada of Ukraine” 1 (2015), p. 1.

²⁹ Croatian Law on the Status of Displaced Persons and Refugees, 2 November 1993, Republic of Croatia, “The Official Gazette” of 1993, No. 96/1993, in: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5294bf094> [accessed: 22.08.2017].

³⁰ Recommendation Rec (2006) 6 of the Committee of Ministers to member states on internally displaced persons (Adopted by the Committee of Ministers on 5 April 2006 at the 961st meet-

the level of the Council of Europe it is recognized that internal displacement of persons in one way or another leads to a violation of their rights, and the primary duty to ensure the rights of IDPs lays to the state within which the relevant movement is taking place. In addition, the Committee of Ministers stresses the need to develop additional international instruments in the field of the provision of IDPs rights.

Almost all the rights specified in the Recommendation are reflected in the Law of Ukraine 'On the Protection of the Rights and Freedoms of Internally Displaced Persons', except the right to use their property and to own property left after the transfer, as well as the right to reasonable compensation in case of deprivation of property. The lack of provisions in the Ukrainian legislation guaranteeing the implementation and protection of property rights of IDPs is one of the main shortcomings of domestic legislation.

Taking into account the above and also the fact that the Council of Europe calls upon its member states to adhere to the UN Guiding Principles to the IDPs and to use the Guiding Principles for the development of national legislation in this area, the Law of Ukraine 'On the Protection of the Rights and Freedoms of Internally Displaced Persons' requires such changes:

- 1) to secure guarantees for the protection of the rights of those categories of IDPs, who need special protection – pregnant women, children, disabled, women with minor children, the elderly;
- 2) to prohibit the forced transfer of persons not only on the grounds stipulated in Art. 1 of the Law of Ukraine 'On the Protection of the Rights and Freedoms of Internally Displaced Persons', but also together with the implementation of the policy of apartheid, 'ethnic cleansing' or similar grounds;
- 3) to guarantee the inviolability and protection of persons involved in the provision of humanitarian assistance to the IDPs;
- 4) to establish the obligation of state bodies to take measures to assist the IDPs in returning the abandoned or seized property if they returned to their previous residence or to facilitate compensation in the event of the impossibility of returning such property.

CONCLUSIONS

Thus, the concept of 'internally displaced persons' covers persons who have resided permanently on the territory of the state (including citizens, foreigners and stateless persons) and were forced to leave their place of residence and resettle within the same state due to a real threat for life, health of them

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personally or members of their families, mass violations of human rights, persecutions caused by military actions, armed conflicts, mass manifestations of violence, emergency situations of natural or man-made character.

The concept of ‘internally displaced person’ is enshrined in the legislation of those states that in practice faced the problem of mass displacement of persons from their places of permanent residence from one region of the state to another, mainly due to armed conflicts or occupation. The term ‘internally displaced person’, as defined in the Law of Ukraine ‘On the Protection of the Rights and Freedoms of Internally Displaced Persons’, generally complies with the Guiding Principles on Internal Displacement of persons within the country. However, it is necessary to make changes in the legislative definition of the concept of ‘internally displaced person’, namely to fix word ‘was forced’, because the circumstances force the person to leave his place of residence.

On the basis of the investigation, it can also be concluded, that in comparison to the standards of the Council of Europe and the legislation of such an EU country as Croatia in the field of the protection of the rights of IDPs, Ukrainian legislation has its disadvantage with regard to the declarative nature of the secured rights of IDPs. It is also important to amend the Law of Ukraine ‘On the Protection of the Rights and Freedoms of Internally Displaced Persons’ in order to stop discrimination and guarantee the rights of IDPs, regardless of the procedure for their registration.

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WPLYW WYMUSZONEJ MIGRACJI WEWNĘTRZNEJ NA ROZWÓJ
SYSTEMU PRAWNEGO: DOŚWIADCZENIE UKRAINY
I KRAJÓW EUROPY ŚRODKOWEJ I WSCHODNIEJ

Streszczenie. Badania w artykule dotyczyły analizowania wpływu wymuszonej migracji wewnętrznej do zmian i poprawy ustawodawstwa Ukrainy i niektórych krajów UE. Przeprowadzono analizę porównawczą koncepcji „wewnętrznie przesiedlonych osób (WPO)” na podstawie prawa Ukrainy i krajów Europy Środkowej i Wschodniej. Zbadano również przestrzeganie wytycznych w sprawie przepływu osób w przepisach krajowych obowiązujących na Ukrainie, w Chorwacji, Gruzji, Rosji i Mołdawii.

Na podstawie badań stwierdzono, że w porównaniu ze standardami Rady Europy i prawodawstwa poszczególnych krajów UE w dziedzinie praw człowieka WPO, ukraińskie ustawodawstwo ma wady, tzn. tylko deklaruje gwarantowanie praw WPO. Dlatego zachodzi potrzeba wprowadzenia kilku zmian do ustawodawstwa Ukrainy „w sprawie praw i wolności osób wewnętrznie przesiedlonych” w celu położenia kresu dyskryminacji i dostosowania tego prawa do standardów europejskich i międzynarodowych.

Słowa kluczowe: osoba wewnętrznie przesiedlona, uchodźca, prawo, prawa człowieka

