

PROTECTION OF RIGHTS OF INTERNALLY DISPLACED PERSONS AMID MILITARY AGGRESSION IN UKRAINE¹

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Abstract: This article is devoted to the study of the legal status of internally displaced persons in Ukraine in the context of the full-scale war launched by the Russian Federation on 24 February 2022. During the study, an analysis of the doctrinal definition of “internally displaced persons” and the rights guaranteed by it in accordance with the current legislation, developed by the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, has been carried out. The article highlights the guiding principles of the international law that should be applied by the states when solving the problem of internal displacement, as well as specific examples of the measures taken by various European countries to solve this problem. Rights of internally displaced persons on right to employment and to receive special housing allowance were analysed as main guaranties. Right to free legal aid was considered as the key point guarantee for ensuring access to justice and protection of rights. Experience of states with similar experience of war (Serbia, Bosnia and Herzegovina, Georgia) were studied.

The conclusions focus on the problems of effective implementation of the right of internally displaced persons to free legal aid and summarize the need to improve the effective mechanism of protection of rights of internally displaced persons, which may also be of interest for the European states that sheltered more than 8 million Ukrainians during the war.

Keywords: Human rights, internally displaced persons, access to legal aid for internally displaced persons, right to employment for internally displaced persons, right to receive special housing allowance for internally displaced person, Ukraine.

INTRODUCTION

The end of the Second World War was marked by consolidation of the principle of territorial integrity or territorial inviolability of the state as a principle of international public law, according to which the territory of any sovereign independent state shall be deemed inviolable from encroachment by other states, in the United Nations Charter (1945), as well as in the Declaration on the Strengthening of International Security (UNGA,

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1970). The first article of the Constitution of Ukraine of 28.06.1996 (Verkhovna Rada of Ukraine, 1996) irrevocably and permanently enshrines the provision that Ukraine is a sovereign, independent, democratic, social, and legal state (Berchenko, Slinko and Horai, 2022; Khater, 2022)⁶. Despite this, in February-March 2014, the Russian Federation⁷, in violation of several of the international law regulations, invaded the territory of Ukraine on a full-scale basis, creating many political and legal problems (Prytyka et al., 2022)⁸, causing huge losses and displacement of people, seeking to escape from the war.

On 24 February 2022, around 4:30 a.m. in the morning, the citizens of Ukraine and the entire world community received a reminder that the events of 2014 were only a small prologue in the “Russian world’s” ode to the capture of a sovereign neighbouring state. The cynical and illegal full-scale invasion of the troops of the Russian Federation into Ukraine renewed the relevance of the topic of occupied territories and internally displaced persons (hereinafter – IDPs) who were forced to leave such territories against their will. During the first months of the war, approximately 43,300 sq.km. (7% of the territory of Ukraine) were under Russian occupation and millions of its inhabitants became displaced.

It is quite hard to count the affected displaced persons. The official statistics of the Ministry of Social Policy of Ukraine state that the number of people registered in the Unified Information Database of IDPs increased from 1 446 881 people in 2020 to more than 4 million people as of June 2022 (of which: 47% are children of various ages) (Filipchuk and Syrbu, 2022). Although this figure of 4 million is far from reality, because according to the data of the International Organization for Migration, the actual number of IDPs in Ukraine has long since exceeded 8 million (27% of people from Kharkiv region, 16% from Donetsk region, 7% from Zaporizhzhia region) (IOM, 2022a), however, most refugees from the occupied territories avoid obtaining the official status of an internally displaced person for various reasons. The issue of ‘invisible people’, which is also discussed below, is one more problem that should also be studied and discussed.

According to the UN (2022), about 12 million people may be affected by the war in Ukraine. Within Ukraine, the forced migrants became 14.2% of the total population of Ukraine that is 6,275 million persons (IOM, 2022b). It should be noted that this figure has decreased by 0.9 million persons since May 23 and the dynamics of returns is increasing, although 12% of the individuals note that they may leave home again because of the war.

In the end, no matter what the official statistics are, the fact is undeniable that *arma potentius aequum* (justice is stronger than weapons), and therefore Ukrainian legislation and the judicial system faced the task of solving a few new issues related to

⁶ Read more about the territorial integrity of Ukraine in the work by Berchenko, Slinko and Horai (2022), as well as in the work by Khater (2022).

⁷ Authors would like to retain the right to use the name of aggressor state not from the capital letter.

⁸ See more about legal issues in such publications as Prytyka, Izarova, Maliarchuk and Terekh (2022).

legal protection of IDPs– a huge group of persons that should be classified as vulnerable due to the circumstances which they undergo.

During the attack in February, Ukraine did not have the opportunity to immediately give a decent military response to the aggressor, at the same time, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, performing the main function of the state – protecting the rights and freedoms of the citizens and guided by the principle of *Amat Victoria Curam* (victory loves preparation), did everything dependent on them to react as quickly and qualitatively as possible to the actions of the Russian military in Crimea, Donetsk and Luhansk regions (Ilnytskyi, 2022; Kaplina, Kravtsov and Leyba, 2022; Khotynska-Nor and Bakaianova, 2022; Prytyka et al., 2022; Uhrynovska and Slyvar, 2022), by implementing their main functions. It is under these circumstances that the Ukrainian legislation was supplemented by such regulatory legal acts as:

1. Law of Ukraine on Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine No. 1207-VII of 15 April 2014;
2. Law of Ukraine on Ensuring the Rights and Freedoms of IDPs No. 1706-VII of 20 October 2014 (hereinafter referred to as the “Law No. 1706-VII”);
3. Resolution of the Cabinet of Ministers of Ukraine on Provision of Monthly Targeted Assistance to IDPs to Cover Living Expenses, Including Payment for Housing and Communal Services No. 505 of 1 October 2014 (hereinafter referred to as the “Resolution No. 505”);
4. Resolution of the Cabinet of Ministers of Ukraine on Accounting of IDPs No. 509 of 1 October 2014 (hereinafter referred to as the “Resolution No. 509”);
5. Resolution of the Cabinet of Ministers of Ukraine on Implementation of Social Payments to IDPs No. 637 of 5 November 2014 (hereinafter referred to as the “Resolution No. 637”).

These acts have been analysed in detail in this article, and their compliance with international soft law acts, defining main approaches to regulation of the relations with participation of internally displaced persons, has been determined.

It must be taken into account that Ukraine since 2014 also comprises the “Temporarily Occupied Territory” (Crimea and parts of Eastern Ukraine), in regard to which two laws were passed – the Law of Ukraine on Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine of 15 April 2014, No. 1207-VII (Verkhovna Rada of Ukraine, 2014a) and the Law of Ukraine on Particular Aspects of Public Policy Aimed at Safeguarding the State Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk Regions of 18 January 2018, No. 2268-VIII (Verkhovna Rada of Ukraine, 2018).

The promotion of the rights and freedoms of Ukrainian citizens residing in the temporarily occupied territory of Ukraine and in certain territories of Donetsk and Luhansk regions where the State authorities temporarily do not exercise their powers are an important task for the Ukrainian executive authority. A few transformation stages were undertaken – in 2016 the Ministry of Temporary Occupied Territories and IDPs was

created (Cabinet of Ministers of Ukraine, 2016; 2019)⁹; during 2019 this Ministry was joined with the Ministry of Veterans; in April 2021 the Ministry for Reintegration of the Temporary Occupied Territories was recreated (Cabinet of Ministers of Ukraine, 2020)¹⁰.

It should be noted that since 2014, more than one and a half million inhabitants of Ukraine were forced to leave their homes (Ministry of Social Policy of Ukraine, 2018)¹¹ and approximately 5 million live on these temporarily occupied territories, accounting for 13% of the total population of Ukraine (State Statistics Service of Ukraine, 2020)¹². The above-mentioned severe burden may be considered an additional, even transitional, challenge in rule of law and access to justice implementation and development in Ukraine and will be focused on in this paper.

During the period of full-scale war in 2022, the civilian population suffers significantly from military actions: common citizens are forced to leave their homes, saving their lives and partially their property from destruction. Moving in such conditions to a new, often temporary place of stay, they face many new challenges, which they would have never encountered in their pre-military life. We must mention various war traumas, caused by war activities and occupation since 2014, especially to those who have been displaced by the ongoing conflict (internally displaced people), who have significantly higher levels of PTSD compared to urban-dwelling people (Johnson et al., 2022; Kim et al., 2022)¹³.

At the same time, ensuring proper implementation of human rights and freedoms is extremely important, because equal rights for all are the basis of modern legal doctrine, and forced migrants are vulnerable persons, requiring special attention.

Taking into account the number of the population of Ukraine (more than 41.130 million people (State Statistics Service of Ukraine, 2022)), as well as the scale of the military operations that have been carried out since the end of February 2022 (Ministry for Reintegration of the Temporary Occupied Territories of Ukraine, 2022b)¹⁴, special

⁹ The name of the Ministry was changed when it was joined with the Ministry of Veteran Affairs in August 2019. The Directive concerning this Ministry was approved by Resolution No. 887 of the Cabinet of Ministers of Ukraine (2019).

¹⁰ For more information see the website of the Ministry <<https://minre.gov.ua>>.

¹¹ According to data of the Ministry of Social Policy of Ukraine (2018), as of 07.05.2018, 1.502.019 migrants from the Donbas Region and Crimea were taken in account.

¹² Information from the speech of the Minister of Temporary Occupied Territories and IDPs at the Plenary Session of the 74th General Assembly of the UN on 16 December 2019. According to the State Statistics Service of Ukraine (2020) as of 1 December 2017 this accounts for 42.403.200 people. Complex Statistical Publications see the website of the State Statistics Service of Ukraine <http://www.ukrstat.gov.ua/druk/publicat/kat_u/publ1_u.htm>.

¹³ Anyway, it is important to understand how IDPs are vulnerable for choosing the appropriate types of private dispute resolution.

¹⁴ According to the data of the Ministry for Reintegration of temporary occupied territories of Ukraine (2022b), the list of the territorial communities, located in the areas of military (combat) actions, or which are temporary occupied, surrounded (blocked) include 313 communities from 9 regions.

attention shall be paid to the study of the problems of access of IDPs to justice, as well as to improvement of the mechanisms of alternative settlement of disputes with their participation in order to reduce costs and ensuring efficiency, without narrowing the rights of these persons.

To understand the background of the Eastern Europe in case of IDPs it should be mentioned (Axmann, 1998). Important tendencies of Ukrainians towards the EU and Central European societies, particularly after the Revolution of Dignity and the beginning of the Russian-Ukrainian armed conflict. Before the full-scale war 2022 started, ‘despite the emergence of the phenomenon of internally displaced persons, the main way in which Ukrainians reach Europe remains labour migration’ (Lendel, 2016). It is also important for our research that the following groups prevail among internally displaced persons: elderly (51%), children under 17 (42%), as well as 12% of persons who were already internally displaced in 2014-2015 (Kofman et al., 2017; UN, 2014)¹⁵.

With this in mind, we made an attempt to summarize in this article provisions of the national legislation on the status of IDPs and characterize the specifics of their rights protection on the example of access to free legal aid. The concept of “internally displaced person” is defined at the level of international documents, as well as at the level of the national legislation; at the same time, in our opinion, it needs some clarification in connection, in particular, with the need to ensure protection of the rights of individuals.

1. IDPs IN INTERNATIONAL AND UKRAINIAN LEGISLATIONS

Who are IDPs and refugee – numbers of studies examine the notions from all of the world (Adeola, 2022; Datta, 2022; Orchard, 2018), at both levels – national and international legislations. It is widely shared, that both IDPs and cross-border refugees were caused by the Spanish Civil War, this helps to understand challenges that the war and subsequent post-war period may introduced in the realm of humanitarian protection for displaced populations, and how international policies may protect those displaced by the conflict (Rodrigo and Alegre Lorenz, 2022).

Nevertheless, the notion was introduced in one of the most important documents for regulation the internal displacement – in the 1998 UN Guiding Principles on Internal Displacement (2004; Cournil, 2009). The Guiding Principles outline 30 standards for the protections available to internally displaced people. These are soft law Guiding Principles that help to create a base on the global level, ‘while the Guiding Principles mark an important step forward, implementation of laws and policies based on them at the domestic level remains haphazard’ (Orchard, 2018).

¹⁵ In 2014, the territory of Ukraine was occupied, namely the Crimea was annexed, as well as the Eastern territories of Ukraine.

Glossary on Migration (IOM, 2019) and Guiding Principles on Internal Displacement (UN, 2004), annexed to the United Nations Commission on Human Rights contains the following notion of IDPs:

IDPs – 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 because of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and *who have not crossed an internationally recognized State border*.

displaced persons – persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, *either across an international border or within a State*, in particular because of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters¹⁶.

The next important step of the soft law creation was the Kampala Convention on internally displaced persons, adopted in October 2009 (African Union, 2009; Cournil, 2009). The Article 1 of this Convention defines IDPs 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border”.

This Kampala Convention also recognizes the important role of various groups. It mandates a role for international organizations and humanitarian agencies, which is important for our research.

In general, we may agree with the idea that ‘the global compacts were the result of three wider shifts in global governance from hard to soft law, from rights to aid, and from Cold War politics to nationalism’ (Micinski, 2021). Nevertheless, to look on the IDPs only from viewpoint of politic is a mistake, therefore a distinct field of IDP law is now emerging (Cantor, 2018). Some of triggers may help to identify while the landscape of national laws and regional frameworks on internal displacement has flourished, overall implementation has been problematic (Adeola and Orchard, 2020).

The current legislation of Ukraine establishes the legal framework for existence of such a category of persons as “internally displaced”. The legal framework for regulating

¹⁶ Glossary on Migration and Guiding Principles on Internal Displacement, annexed to United Nations Commission on Human Rights, Report of the Representative of the Secretary-General, Mr Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39, Addendum (11 February 1998) UN Doc E/CN.4/1998/53/Add.2.

the status of IDPs was developed in Ukraine back in 2014 and has not undergone significant transformation over the past 8 years, except for Resolution No. 505, which was repealed by Resolution No. 332 of the Cabinet of Ministers of Ukraine on Some Issues Related to Payment of Housing Allowances to IDPs of 20 March 2022 (hereinafter referred to as the “Resolution No. 332”).

The answer to the question “who are these IDPs according to the Ukrainian legislation?” is provided by Article 1 of Law No. 1706-VII, which states that:

“An internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who stays in the territory of Ukraine on legal grounds and has the right to permanent residence in Ukraine, who was forced to flee or leave their place of residence as a result of or in order to avoid the negative consequences of the armed conflict, temporary occupation, widespread manifestations of violence, violations of human rights and emergency situations of a natural or man-made nature” (Verkhovna Rada of Ukraine, 2014b).

It was incredibly rightly mentioned that IDPs are ‘Invisible People’. We should keep into account that the concept of the IDPs is far from being ideal – some authors mentioned on groups of people, who left out of the frames of the concept of internally displaced persons, for instance ‘those who are forcibly resettled and left unintegrated, are rendered invisible’ (Regasa and Lietaert, 2022).

It is also worth noting that simultaneously with the adoption of Law No. 1706-VII, a system of accounting for IDPs in the form of the Unified Information Database of Internally Displaced Persons, kept by the Ministry of Social Policy of Ukraine, became operational in Ukraine. Thus, to obtain the status of an internally displaced person, each displaced person from the occupied territories must get a “certificate on registration of an internally displaced person.” This certificate is drawn up in accordance with the procedure specified by Resolution No. 509 (Cabinet of Ministers of Ukraine, 2014a), by applying to the social protection department at the new (actual) place of residence. Such an application must contain data on the applicant’s identity, as well as confirmation of the circumstances that caused his/her internal displacement.

It is positive that the legislative provisions of paragraph 2 of Part 1 of Article 1 of Law No. 1706-VII remove the burden of proving such circumstances from individuals, calling them commonly known, but only on the condition that “data on such circumstances is contained in the official reports (notices) of the United Nations High Commissioner for Human Rights, the Organization for Security and Co-operation in Europe, the International Committee of the Red Cross and the Red Crescent, the Ukrainian Parliament Commissioner for Human Rights, posted on the websites of these organizations, or if, in relation to such circumstances, authorized state bodies have adopted the relevant decisions” (Verkhovna Rada of Ukraine, 2014b). Given this, in modern conditions of a full-scale invasion, the process of obtaining a certificate is reduced only to filling out an application and attaching the copies of the necessary documents to it, and the certificate itself shall be issued free of charge immediately on the date of submission of the application and shall be indefinite.

Moreover, the Ukrainian government reacted so quickly to the beginning of a full-scale war on 24 February 2022 that already in March IDPs were able to apply for registration through the Unified State Web Portal of Electronic Services “Diya” (hereinafter referred to as the “Diya Portal”).

Diya Portal is a mobile application, storing official documents of Ukrainians in an electronic version on a smartphone and can be used as full-fledged original copies in relations with public authorities, local self-government bodies and enterprises, institutions, organizations. Thus, at present, it is possible to issue a registration certificate in just a few minutes, having a smartphone and Internet access. However, despite simplicity of the procedure, the number of IDPs registered in the system is far from the reality, as most people refuse to be registered or due to the fact that, after receiving a certificate, it will be necessary to register at the territorial centre of recruitment and social support (the former “military commissariat”) at the new (actual) place of residence, or because of the boundless hope for a quick de-occupation of the territories and return home.

In addition, in Part 10 of Article 4 of Law No. 1706-VII, the legislator defined the grounds for refusing to issue a certificate of registration of internally displaced persons: An applicant may be denied the issue of the certificate of registration of an internally displaced person if: 1) there are no circumstances that caused internal displacement, defined in Article 1 of the Law; 2) public authorities have information about submission of knowingly false information for obtaining a certificate; 3) the applicant has lost his/her identity documents until they are restored; 4) the applicant has no record of residence registration on the territory of the administrative and territorial unit from which the internal displacement is being carried out, and there is no evidence confirming the fact of residence on the territory of the administrative and territorial unit from which the internal displacement is being carried out, as defined in Part seven of this Article; 5) the evidence provided by the applicant to confirm the fact of residence in the territory of the administrative and territorial unit from which the internal displacement is being carried out in connection with the circumstances specified in Article 1 of this Law, does not prove the fact of the applicant’s residence in the territory of the specified administrative and territorial unit (Verkhovna Rada of Ukraine, 2014b).

A person has the right to apply again if he/she has the grounds specified in Article 1 of Law No. 1706-VII, or if the obstacles to obtaining a certificate provided for above have been removed, or to appeal the Decision to deny the issue a certificate of registration internally displaced person to the court.

We have to admit that jurisdiction for IDPs remains quite controversial – despite the changes of settlement and residence, IDPs cannot apply to the court for jurisdiction at the place of their actual stay, since the certificate of registration of an internally displaced person does not confirm the registered place of stay and claims should be submitted to the competent courts who administer justice instead of those located in the temporarily occupied territories.

Summarizing the legal mechanism for obtaining registration documents, we would like to note that legal registration as an internally displaced person provides such persons with the following possibilities: the right to receive monthly assistance from the state; the right to re-register pension and other social benefits at the new (actual) place of residence; the right to medical care (including reimbursement of the cost of necessary medicines); the right to continue education in the territory of the new (actual) place of residence (for children of preschool age, schoolchildren and students); the right to free legal aid.

We will analyse these and other rights of internally displaced persons, as well as their duties in the next section of this article.

Summarising this part, we have to mention, that an important issue was solved in amended version of Law No. 1706-VII, this definition assigned the citizens of Ukraine to the category of internally displaced persons, depriving foreigners and stateless persons who were forced to leave the eastern part of Ukraine of the right to receive protection in connection with the armed conflict and temporary occupation of territories, but fortunately, this gap has already been filled. In general, the fixed definition reflects the concept contained in the Law of Ukraine, at the same time, it does not contain a restriction that concerns their crossing of the state border (*who have not crossed an internationally recognized State border*). This makes it possible to realistically identify a group of internally displaced persons, regardless of the definition of the borders of the state.

2. LEGAL STATUS OF INTERNALLY DISPLACED PERSONS: GUARANTEES OF RIGHTS' PROTECTION

It is quite natural that presence of a certain legal status in a person means for such a person availability of at least some privileges or special rights and obligations. IDPs are no exception to this general rule, so the state has granted them a few benefits that should ease the already difficult fate of such people. War is a horrible thing by its nature, even though we must ensure the protection of rights and appropriate regulation for all who are involved (Izarova, 2022). The main burden of ensuring the special rights and obligations of IDPs falls on those regions of Ukraine that have accepted the largest number of such persons, namely: Kyiv region – 13% of the total number of internally displaced persons; Dnipropetrovsk region – 12%; Lviv region – 8%; Kharkiv region – 8%; Poltava region – 7%.

It is understandable that the large numbers of IDPs moved to major Ukrainian cities as Kyiv and Lviv, as well as east region, which is the farer from the border part of country (Havryliuk, 2022). Nevertheless, most of the Ukrainian territory is rural area, which is also feel suffer from influx of IDPs to the countryside (Mamonova, 2022).

The first and probably the most important right, guaranteed by Ukraine to internally displaced persons, is the right to employment. Every internally displaced person who has lost his/her job due to occupation of the territories (which, according to official statistics, is 64% of the total number of IDPs in Ukraine) (Filipchuk and Syrbu, 2022) can

apply to the state employment service at new (actual) place of residence for registration as unemployed. The status of unemployed entitles an internally displaced person to unemployment benefits in the amount from UAH 1,800.00 (EUR 46.2) to UAH 9,750.00 (EUR 250) (depending on average salary and insurance experience).

In addition, the state also took care of protection of the most socially vulnerable sections of the population that experienced internal displacement – pensioners. According to the data from the International Organization for Migration, 49% of all IDPs are elderly (over 60 years old), of which 26% are disabled. This category of IDPs retained the right to pension, despite moving to a new (actual) place of residence. In accordance with Resolution No. 637, payment of pensions to IDPs shall be carried out by territorial bodies of the Pension Fund of Ukraine based on the information contained in the Unified Information Database of Internally Displaced Persons (Cabinet of Ministers of Ukraine, 2014b). That is, to receive pension support at the new (actual) place of residence, an internally displaced person needs only to apply to the nearest territorial body of the Pension Fund of Ukraine with an application for appointment/extension of the pension payment. Moreover, it is worth adding that the minimum amount of pension support in Ukraine, despite the war, increased from UAH 1,934.00 (EUR 49.6) (as of 01 January 2022) to UAH 2,027 (EUR 52) (as of 1 July 2022), and the total amount of monthly pension expenses is approximately UAH 47.8 billion (EUR 1.2 billion) (Ministry of Finance of Ukraine, 2022).

In addition, one of the main privileges granted by the status of an internally displaced person is the right to receive special housing allowance. Such allowance shall be provided based on the abovementioned Resolution No. 332 to the persons who have moved from the territory of Ukraine being temporarily occupied by the Russian Federation, as well as the territory of administrative and territorial units where hostilities are taking place (Cabinet of Ministers of Ukraine, 2022a). It is important to emphasize that the list of such units was determined recently by the Cabinet of Ministers of Ukraine (2022b) in Order No. 204-p of 6 March 2022 for the purpose of implementation of the special government program “eSupport”. Since introduction of this program in March 2022, payment of special allowance has been divided into two stages:

1. until April 2022, all IDPs registered in the Unified Information Database of IDPs had the right to monthly allowance. The amount of such allowance made up UAH 2,000.00 (EUR 51.3) for ordinary persons and UAH 3,000.00 (EUR 76.9) for the persons with disabilities and children;

2. from May 2022, those IDPs whose homes were destroyed or damaged in connection with the war launched on 24 February 2022 will also receive allowance.

As regards the case with the right to pension, the allowance is not automatically received by an internally displaced person, but only based on a specially submitted application for housing allowance to the social protection authorities. For the sake of fairness, it should be recognized that due to transfer of Ukraine’s economy to a state of war, many IDPs have still not received any payments for the previous months, despite the fact that there are many foreign programs and funds that help Ukraine financially.

For example, back in March 2022, the Office of the United Nations High Commissioner for Refugees started paying monthly payments in the amount of UAH 2,220.00 (€56.9) to each internally displaced person for three months, covering 360,000 displaced persons with this program (Ministry for Reintegration of the Temporary Occupied Territories of Ukraine, 2022a). The International Committee of the Red Cross and the Red Cross Society of Ukraine formed a joint budget of UAH 2.4 billion (EUR 61.5 million to provide financial assistance to IDPs (UAH 2,500.00 (EUR 64.1) per person) (Tkachenko, 2022). Other support programs are as follows: a joint program of UNICEF and the Ministry of Social Policy of Ukraine (UAH 110 million (EUR 2.8 million) monthly); the program of the International Organization for Migration (UAH 700 million (EUR 17.9 million); the program of the Norwegian Refugee Council (UAH 1.5 billion (EUR 39.4 million), etc.).

In conclusion, the legal status of internally displaced persons (IDPs) in Ukraine includes a comprehensive list of rights such as the ability to obtain identity documents, participate in affordable housing programs, vote in elections, access communal services, receive temporary accommodation, maintain family unity, and receive assistance in returning to their previous place of residence. The right to employment is considered a fundamental right for IDPs in Ukraine, and special provisions are made for the protection of socially vulnerable groups such as pensioners.

3. ACCESS TO LEGAL AID FOR IDPs IN UKRAINE

Access to justice is a fundamental right and a cornerstone of a modern democratic state governed by the rule of law, a right guaranteed by the Universal Declaration of Human Rights (UNGA, 1948) and the European Convention on Human Rights (CoE, 1950). It gives every person the right to a fair trial, the right to be heard by a court, the right to a legal aid, and so on (Farrow, 2014; Silvestri, 2014; Uzelac and van Rhee eds., 2009; Cappelletti, Garth and Trocker, 1982)¹⁷. Non-discrimination is the essential element of the delivering of access to justice (UN, 2023). And there is no similar access to justice in all EU Member States (European Union Agency for Fundamental Rights, 2023). In case of displaced people participation in civil proceedings it is much more difficult to implement fully these fundamental rights. The Sustainable Development Goals (UN, 2015b) directly address the need to ensure that all have equal access to justice and the creation of effective, affordable, and inclusive institutions at all levels (Kristoffersson and Qandeel eds., 2021)¹⁸. These lead us to pay special attention to such persons who are vulnerable, such as temporarily displaced persons from Ukraine, when they need the protection of their rights and have to take part in dispute resolution (Krakhmalova, 2019)¹⁹.

¹⁷ Some insights from the US and from Europe.

¹⁸ See more about sustainable development in civil procedure in law in Sustainability in East-Nordic Procedural Law in the work by Kristoffersson and Qandeel eds. (2021).

¹⁹ This issue attracts some attention, for instance see more Krakhmalova (2019).

The right of IDPs to receive free legal aid play a crucial role. Pursuant to subparagraphs 2¹-2² of Part 1 of Article 14 of Law of Ukraine No. 3460-VI on Free Legal Aid of 02.06.2011 (Verkhovna Rada of Ukraine, 2011a), the citizens of Ukraine who have applied for registration as internally displaced persons, as well as the IDPs themselves, shall have the right to free legal aid. Such free aid shall include protection, representation of interests before courts, other public authorities, local self-government bodies, as well as drawing up procedural documents.

According to the official statistics of the Ministry of Justice of Ukraine, IDPs take the third place (about 80,000 people) in terms of the number of applications for free legal aid (Kolomijecj, 2022). The absolute majority applied for restoration of lost documents, obtaining the status of an internally displaced person, obtaining financial assistance and compensation for the lost property. In addition, during the period of martial law, IDPs often apply for establishment of the facts of legal significance (for example, the fact of birth, death, family ties, cohabitation and dependent status, ownership over documents, confirmation of work experience, etc.) (21.4%); conclusion and dissolution of marriage (17.2%), as well as collection of alimony (15.3%). There are also rare cases of appeals for protection of labour rights, namely, termination of employment due to the fact that the workplace is located in a combat zone, and protection of the rights to social benefits (Ministry of Justice of Ukraine, 2023).

The Ukrainian law provides for benefits and additional support to internally displaced persons, which were introduced at the beginning of the war in Ukraine in 2014-2015.

In particular, according to the Law of Ukraine on Court Fees" (Verkhovna Rada of Ukraine, 2011b), the following persons are exempted from paying court fees during the consideration of a case in all court instances:

21) applicants – in cases of applications for the establishment of facts of legal significance submitted in connection with armed aggression, armed conflict, temporary occupation of the territory of Ukraine, emergency situations of a natural or man-made nature that led to forced resettlement from temporarily occupied territories of Ukraine, death, injury, imprisonment, illegal deprivation of liberty or abduction, as well as violation of the right of ownership of movable and/or immovable property;

22) plaintiffs – in cases of claims against the aggressor state of the Russian Federation for compensation for property and/or moral damage caused in connection with the temporary occupation of the territory of Ukraine, armed aggression, armed conflict that led to forced resettlement from the temporarily occupied territories of Ukraine, death, injury, imprisonment, illegal deprivation of liberty or abduction, as well as violation of the right to ownership of movable and/or immovable property (Article 5).

According to the Law of Ukraine on Free Legal Aid" (Verkhovna Rada of Ukraine, 2011a), IDPs have the right to protection; representation of the interests of persons entitled to free secondary legal assistance in courts, other state bodies, local self-government bodies, before other persons; as well as drawing up procedural documents (Articles 13

and 14). Citizens of Ukraine who applied for registration as IDPs have the same rights in matters related to obtaining a certificate of registration of an internally displaced person, until the moment of receipt of a certificate of registration of an internally displaced person (except protection).

The Civil Procedural Code of Ukraine included provisions on the peculiarities of proceedings in cases of establishing the fact of birth or death of a person in the temporarily occupied territory of Ukraine (Article 317) (Verkhovna Rada of Ukraine, 2004); the recognition of a missing person is primarily aimed at protecting these persons (Uhrynovska and Onyskiv, 2022).

At the same time, ensuring equal access to justice for IDPs is not an easy task that cannot be solved by providing free legal aid and court fee exemptions. The number of conflicts involving IDPs, as well as the specifics of the relationship between them, especially in cases of family, labor, inheritance conflicts, necessitates a wider use of alternative methods of dispute resolution. Ensuring access to court for representatives of such a vulnerable group of persons as IDPs cannot be considered a full-fledged effective protection of their rights - access to free legal aid and the cancellation of court fees does not cover all the problems of such persons. The creation of alternative out-of-court schemes will make it possible to resolve emerging disputes faster and cheaper, considering their nature (as well as the details clarified during interviews) and the behavior of individuals (in particular, the tendency to amicably resolve disputes or seek compromise in resolving disputes), as well as the tendency to apply for help from lawyers. And most importantly, alternative dispute resolution provides greater opportunities for preventing disputes, as well as maintaining normal relations between the parties to the dispute for the future. What are the relevant details for IDPs.

4. LEGAL PROTECTION OF IDPs IN COUNTRIES WITH EXPERIENCE OF WAR AND ARMED CONFLICTS

We believe that the above analysis of the legal status of IDPs will be incomplete without a comparison with the already existing international practices of protecting internally displaced persons, as well as an analysis of the resolutions of the Parliamentary Assembly of the Council of Europe (hereinafter referred to as the “PACE”), which related to the actions of the Russian Federation on the territory of Ukraine.

For example, Resolution No. 2122 of the Parliamentary Assembly of the Council of 21 April 2016 (PACE, 2016a) qualifies the actions of the Russian Federation against a part of the territories of Luhansk and Donetsk regions as military aggression, which leads to the following violations of human rights: torture, inhuman treatment and humiliation of human dignity, sexual violence, illegal arrests and lack of access to a fair trial.

Another PACE (2016b) Resolution No. 2132 on Political Consequences of Russian Aggression in Ukraine of 12 October 2016 condemns illegal annexation of the Crimean Peninsula and its subsequent integration with the Russian Federation, as this violates international law and the Statute of the Council of Europe, and “calls on the Russian

authorities to abolish illegal annexation of Crimea and allow Ukraine to regain control over the peninsula.”

Existence of effective control over the abovementioned temporarily occupied territories was also confirmed by PACE (2016c) Resolution No. 2133 of 12 October 2016. Namely, the Resolution states that the so-called “DPR” and “LPR” are under the effective control of the Russian Federation and were created in violation of Ukrainian legislation and international law. According to this Resolution, the attempted annexation of Crimea “violates the international law and principles supported by the Council of Europe”, and presence of the Russian Federation and presence of effective control in Crimea “were officially recognized by the Russian authorities”.

Based on the mentioned PACE Resolution and Articles 43-46 IV of the Hague Convention (regulations of international humanitarian law) (Hague Conference, 1907), the occupying state shall be responsible for protection of the population and undertakes to respect the rights and lives of individuals who are in the temporarily occupied territory. In cases of violations of fundamental human rights in the temporarily occupied territories, legal responsibility rests with the Russian Federation, which actually exercises control over the specified territories.

It is a well-known fact that since the beginning of the 1990s, such countries as: Cyprus, Croatia, Bosnia and Herzegovina, Georgia, Montenegro, Serbia, Turkey, etc. have faced the problem of internally displaced persons. The reasons for such displacement were armed conflicts: the Turkish invasion of Cyprus in July-August 1974 (200,000 Cypriots were forced to leave their homes) (Loizidou v. Turkey, 1995, para. 62); Yugoslav (southern Serbian) wars of 2000-2001 (4 million people became displaced) (UNHCR, 2023); the Russian-Georgian war of 2008 (230,000 Georgians were displaced) (Fawkes, 2008), etc. However, despite difference in time periods and the reasons that led to internal displacement, there is much in common between the situations in modern Ukraine and the abovementioned European countries. In particular, the greatest analogy may be traced in the challenges faced by the IDPs of each country.

For example, the problem of housing for IDPs in the already mentioned Yugoslavia (southern Serbia) was so severe that the Serbian government introduced a program called “Rural Houses”. The essence of this government program was that the government, by providing financial assistance, encouraged IDPs to buy old houses in the countryside, restore them and further develop the household by growing agricultural crops (Kälin, 2009). Today, a similar program called “Affordable Housing” operates in Ukraine, according to which IDPs have the right to state support in the amount of 50% of the cost of purchasing a new housing. Given that, according to the Ministry of Communities and Territories Development, the army of the Russian Federation has already destroyed or damaged about 116,000 residential buildings (Lotocjka, 2022), therefore, introduction of this program was an extremely timely step on the part of the Ukrainian government.

Another example is that the IDPs of Bosnia and Herzegovina (and there were 1.8 million of them during the “Bosnian War” of 1992-1995) repeatedly faced the

problem of receiving pensions, until the Pension Fund of the country was divided into three completely separate funds, which ensured payment of pensions in three different administrative regions of Bosnia and Herzegovina. It is worth noting that such a division completely saved the situation with pension payments to internally displaced persons. At the same time, Bosnia and Herzegovina faced a problem in the field of education, as many internally displaced pupils and students had no opportunity to continue their studies in educational institutions at their new place of residence. The government of the republic introduced a special system according to which educational documents were mutually recognized by all educational institutions within the country (Muni, 2017). It is worth noting that with the beginning of the full-scale war, the government of Ukraine also took measures in the field of education and introduced state-targeted support for education seekers who are registered as internally displaced persons, in the form of full payment of education at the expense of the state or local budget, payment of social scholarships, free support textbooks, etc.

In Georgia, during the Russian-Georgian war of 2008, in the Law on IDPs from the Occupied Territories of Georgia, the legislator specifically envisaged a section, regulating the issue of expenditures from the state and local budgets for internally displaced persons (Parliament of Georgia, 1996). This law directly distributed various expenses for IDPs between state bodies and institutions: for example, the Ministry of IDPs was obliged to pay monthly allowances, while local authorities had to compensate IDPs for the costs of housing, communal services, and burial in case of death. This approach of the Georgian legislator ensured the uninterrupted flow of state funds to IDPs and their effective use for their intended purposes.

Such examples are only a concise compilation of the problems of IDPs of each country, but they confirm the fact that the challenges faced by IDPs of Ukraine are far from new and international practice already has ready and, most importantly, effective mechanisms for solving them, and the government of Ukraine only needs to adapt such mechanisms to modern realities.

Within the scope of this study, it is also worth mentioning that all the mechanisms described above, despite their individual nature, are based on the provisions of several international regulations, ensuring legal status of internally displaced persons. We would like to emphasize that much less attention is paid to IDPs in international law than, for example, to the same refugees who are under the protection of the UN Convention on the Status of Refugees of 1951, which is legally binding for all signatories. Instead, protection of IDPs takes place on the basis of such regulations as: UN Guiding Principles on Internal Displacement (UN, 2015a) (ratified by Ukraine on 17 April 1998) (hereinafter referred to as the “UN Guiding Principles”) and Recommendations of the Committee of Ministers of the Council of Europe to member states on IDPs (CoE Committee of Ministers, 2006) (hereinafter referred to as the “Recommendation of the Committee of Ministers of the Council of Europe”), each of which in its essence is only a recommendatory act outlining the most general methods and means of protection of internally displaced persons. That is why Cyprus, Bosnia and Herzegovina, Georgia, Serbia once faced, and Ukraine is now facing the problem that the effective protection

of IDPs relies entirely on the state itself, and not on the international community (again, unlike protection of the same refugees).

However, the role of the UN Guiding Principles should not be underestimated, as they, although generally, define the rights and guarantees of protection for IDPs not only during their displacement, but also contain safeguards to avoid forced displacement (for example, Principle No. 7 of the UN Guiding Principles imposes on the authorities the obligation to consider all possible alternative solutions to avoid displacement, before making a decision to relocate persons) (UN, 2015a).

Pursuant to principle No. 3: “The state shall be entrusted with the primary duty and responsibility to provide protection and humanitarian assistance to IDPs under its jurisdiction”¹⁵, which confirms our thesis above that each state shall be independently responsible for proper protection of internally displaced persons. Among other principles, it is also worth highlighting:

1. the principle of prohibition of discrimination of internally displaced persons;
2. the principle of protection against arbitrary displacement of a person from his/her place of permanent residence;
3. the principle of special protection of indigenous peoples and minorities from displacement;
4. the principle of banning the conscription of internally displaced children for military service;
5. the principle of mandatory provision of humanitarian assistance to internally displaced persons; etc.

We would like to summarize the analysis of the UN Guiding Principles with the thesis that the regulations of Law of Ukraine No. 1706-VII do not fully correspond to the prescriptions of these UN Guiding Principles and do not envisage a number of principles, the consolidation of which would significantly improve the legal status of internally displaced persons, and therefore we recommend to revise Law of Ukraine No. 1706-VII in the near future and bring it into line with the UN Guidelines.

As regards the Recommendation of the Committee of Ministers of the Council of Europe, the Preamble of this act states the goal of “implementing the UN Guiding Principles in the European context and further development of some of these principles on the basis of the existing standards of the Council of Europe” (CoE Committee of Ministers, 2006). To achieve this goal, the Committee of Ministers recommends that member states of the Council of Europe be guided by a list of 13 principles, fixed in this Recommendation. It is worth paying attention to the fact that, to a greater extent, these principles echo, and in some parts even fully duplicate the UN Guiding Principles. However, an important innovation in the Recommendation of the Committee of Ministers of the Council of Europe is principle No. 10, which calls on states to develop preventive measures, such as strategic action plans, to be applied during a crisis that may lead to internal displacement. However, most states, including Ukraine, ignore this principle, taking measures *ex post facto*.

Summarizing all of the above, it is worth noting that there are not many regulations in the international law that determine the legal status of IDPs (in contrast to the countless Resolutions of the Parliamentary Assembly of the Council of Europe, which express endless “concern”, “worries” and “regret” with regard to the situation in Ukraine). And yet, Ukraine, having adopted a number of regulations since 2014, at the legislative level coped quite well with the task of ensuring protection of internally displaced persons, while taking into account both the existing international practice of other states and the guidelines used by the UN and Council of Europe.

5. INSTEAD OF A CONCLUSION

Despite the considerable scope and content of this article, it covers only a small part of the global problem of rights protection of internally displaced persons. Even though this problem has existed for more than a century, the international community has not invented a relevant mechanism for its quick and effective resolution, putting the main burden on the national governments of states that faced with the necessity to provide IDPs with support. To a large extent, precisely because of this approach to the problem of internal displacement, the state of Ukraine, having experienced the armed aggression of the Russian Federation in 2014, was forced, almost from scratch, to create a regulatory framework that would allow introducing the category of IDPs into the legal field, determining their legal status and protection mechanisms. As already have been mentioned in the text of the article, the acts adopted by the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine during the period of several months of armed aggression largely corresponded to the principles of international law and allowed in practice to effectively implement various types of support programs for internally displaced persons. Nevertheless, we should not forget that since 24 February 2022, the armed conflict between Ukraine and Russia has turned into a full-scale war, which continues. This war quite naturally gives rise to an ever-increasing number of internally displaced persons, and therefore the need to study international practice and introduce new mechanisms for protection of the rights and interests of IDPs into the legislation of Ukraine.

Ensuring equal access to justice for all is not a simple task even in peacetime, defined among the Sustainable Development Goals. This task becomes a serious challenge in the conditions of war and large-scale displacement of persons who are forced to seek shelter, and must also be ensured access to basic rights, including access to justice. Participation in the process of the representatives of such a vulnerable group of persons as temporarily displaced persons cannot be considered a full-fledged mechanism for ensuring such access – access to free legal aid and cancellation of court fees does not cover all the problems of such persons. Creation of alternative out-of-court mechanisms will make it possible to prevent and settle emerging disputes in a faster and cheaper way, given their nature (as well as the details clarified during the interviews), and behaviour of individuals (in particular, the tendency to peaceful settlement of disputes or finding a compromise in dispute settlement), as well as a tendency to address the lawyers for help.

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