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## **Internal Forced Migration in Ukraine: Legal Aspects**

**Abstract:** The article is devoted to the study of the problems of forced internal migration in Ukraine. Forced migration significantly affects the geography, structure and dynamics of the population of Ukraine and its regions, the level of development of productive forces in the regions, the state of the labor market and the socio-economic characteristics of living standards of different categories of the population.

At present, migration processes in Ukraine are difficult to track, given that the last demographic census was conducted in 2001, and therefore it is difficult to establish the actual number of people in our country, and, accordingly, almost impossible to determine the number of internally displaced persons.

According to the results of the study, the authors conclude that internally displaced persons (under current legislation) have the same rights and freedoms as other citizens of Ukraine permanently residing in Ukraine. However, in practice, internally displaced persons face restrictions on their rights and freedoms due to subjective factors. The basic rights that the state guarantees to internally displaced persons include: the right to employment, pensions, compulsory state social insurance, education, suffrage and economic rights. It is expedient to introduce tax benefits for enterprises founded by internally displaced persons, as well as to provide these benefits for enterprises that employ internally displaced persons.

**Keywords:** internal forced migration, internally displaced persons, Ukraine.

## Introduction

The issue of internal migration in Ukraine during the hybrid war in the East is currently in the public spotlight for several reasons. First, it is important to respect the rights of internally displaced persons under the Convention for the Protection of Human Rights and Fundamental Freedoms. Second, this issue is significant and important for the country's economy. Third, proper protection of the rights and interests of internally displaced persons will facilitate the end of the war in the East as soon as possible.

In the recent past (during the Soviet era), the issue of internal migration was very acute, as a large part of the population of the Soviet Union for a long time did not even have passports. Older people do remember the times when, even to go to the bazaar, they had to ask for a certificate from the head of the village council. If he wanted to, he would give it; if he didn't want to, you wouldn't go to the market or to city relatives. In Soviet times, the passport less status of peasants, especially collective farmers, until 1974 could not be called anything but enslavement<sup>1</sup>.

Forced migration significantly affects the geography, structure and dynamics of the population of Ukraine and its regions, the level of development of productive forces in the regions, the state of the labor market and the socio-economic characteristics of living standards of different categories of the population. Both statistical and sociological data confirm that internally displaced persons are a resource for the development of communities, regions and countries in general, and mass examples of successful implementation of labor, entrepreneurial, scientific, educational and cultural activities of migrants provide a basis for optimistic assessments of their role and prospects, and the development of society, economy and state<sup>2</sup>. From the economic aspect, as a result of internal forced migration, the sex and age composition, and educational and professional levels, of the population of the donor region and the recipient region undergo significant changes. On the one hand, it leads to the elimination of labor shortages, increasing competitiveness, labor efficiency, economic growth and curbing inflation, on the other, increasing competition, reduction in the quality of work (through retraining displaced persons),

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1 Seliany i pasporty: radianske "kriposne pravo" (Peasants and passports: Soviet "serfdom"), <https://www.poglyad.tv/selyany-i-pasporty-radyanske-kriposne-pravo/> (accessed 12.03.2020) (in Ukrainian).

2 O.F. Novikova and O.V. Pankova, *Vymushena mihratsiia vnutrishno peremishchenykh osib Ukrainy: stan, problemy, shliakh y rozv'iazannia* (Forced migration of internally displaced persons of Ukraine: state, problems, solutions), "Problemy ekonomiky" 2018, no. 3. p. 224 (in Ukrainian).

an increase of the burden on the housing market and often an increase in the level of economic and other crime, and so on<sup>3</sup>.

Normative legal acts still do not clearly define the term “internal forced migration.” In the scholarly literature in this regard, it is proposed to understand internal forced migration as forced territorial movement of citizens within administrative-territorial units without crossing the state border, due to armed conflict, environmental catastrophe, and so on<sup>4</sup>.

Forced internal migration in Ukraine has a “hybrid” character – being both group and family, partly permanent (some migrants do not want to return to the places where they lived before the military conflict), partly temporary (some migrants returned in less than six months), partly alternating (some migrants periodically return to the conflict zone for work, and then go again to a new place of residence); migration from the conflict zone in eastern Ukraine is political, military and economic, and the main causes are hostilities, economic crisis and lack of work in the conflict zone<sup>5</sup>.

At present, migration processes in Ukraine are difficult to track, given that the last demographic census was conducted in 2001, and therefore it is difficult to establish the actual number of people in our country, and, accordingly, almost impossible to determine the number of internally displaced persons. The Ministry of Social Policy registers these persons in accordance with the Procedure for Registration and Issuance of a Certificate of Registration of an Internally Displaced Person, which was approved by the Resolution of the Cabinet of Ministers of Ukraine no. 509 of October 1, 2014.

Pursuant to paragraph 2 of the above-mentioned procedure, an adult or a minor internally displaced person applies for a certificate in person, and a minor or an incapacitated person or a person with limited legal capacity applies, through a legal representative with an application for registration approved by the Ministry of Social Policy, to the structural subdivision on social protection of the population of the district, the district in Kyiv state administrations, executive bodies of the city, or the district in cities (in case of formation) of councils<sup>6</sup>. According to the Ministry

3 Y.V. Soloviov, *Vnutrishnia vymushena mihratsiia yak ob'iekt derzhavnoho rehuliuвання* (Internal forced migration as an object of state regulation), “Teoriia ta praktyka derzhavnoho upravlinnia” 2016, no. 3., p. 149 (in Ukrainian).

4 O. Kapinus, *Derzhavne rehuliuвання vnutrishnoi vymushenoї mihratsii: poniatiino-katehorialnyi apparat* (State regulation of internal forced migration: conceptual and categorical apparatus), “Public Administration and Local Government” 2017, no. 3, p. 20 (in Ukrainian).

5 Y. Soloviov, *Determinatsiia osnovnykh poniat mihratsiinykh protsesiv, shcho protykaiut v Ukraini, v rakursi u chasnykh realii* (Determination of the basic concepts of migration processes taking place in Ukraine, in the perspective of modern realities), “Aspekty publichnoho upravlinnia” 2019, no. 6–7, T. 7, p. 26 (in Ukrainian).

6 *Poriadok oformlennia I vydachi dovidky pro vziattia na oblik vnutrishno peremishchenoi osoby, yakyi zatverdzhenyi postanovoiu Kabinetu Ministriv Ukrainy* (The procedure for registration and

of Social Policy of Ukraine, the number of internally displaced persons in the period 2016–2020 fluctuates on average around 1,500,000 people. More exact detail is given in the corresponding diagram (fig. 1)<sup>7</sup>.

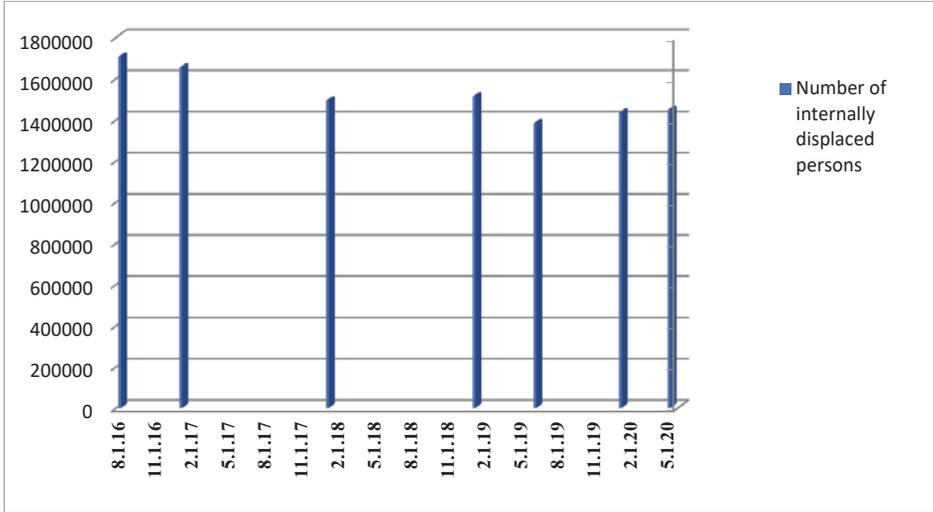


Fig. 1. Dynamics of the number of internally displaced persons in Ukraine for 2016–2020

The main legal act that regulates the rights of internally displaced persons is the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons.” Article 1 of this Law states that an internally displaced person is a citizen of Ukraine, as is a foreigner or a stateless person who is on the territory of Ukraine legally and has the right to permanent residence in Ukraine, who was forced to leave or left his place of residence as a result or to avoid adverse effects of armed conflict, temporary occupation, widespread violence, human rights violations and natural or man-made emergencies<sup>8</sup>.

K.O. Krakhmalyova notes that the main features of the administrative and legal status of internally displaced persons in Ukraine are its temporary nature; the endowment of internally displaced persons with special additional rights and

issuance of a certificate of registration of an internally displaced person, which was approved by the Cabinet of Ministers of Ukraine) no. 509 vid 1 zhovtnia 2014 r., <https://zakon.rada.gov.ua/laws/show/509-2014-p#Text> (accessed 12.03.2020) (in Ukrainian).

7 Vnutrishno peremishcheni osoby (Internally displaced persons), Ministerstvo sotsialnoi polityky Ukrainy, <https://www.msp.gov.ua/timeline/Vnutrishno-peremishcheni-osobi.html> (accessed 12.03.2020) (in Ukrainian).

8 Pro zabezpechennia prav i svobod vnutrishno peremishchenykh osib (On ensuring the rights and freedoms of internally displaced persons), Zakon Ukrainy vid 20.10.2014 no.1706-VII, <https://zakon.rada.gov.ua/laws/show/1706-18#Text> (accessed 12.03.2020) (in Ukrainian).

responsibilities due to the peculiarities of their situation and needs; the dependence of the scope and procedure for the exercise of such rights and obligations on whether such internally displaced persons are citizens of Ukraine, foreigners or stateless persons by their general administrative and legal status; and being common to a certain group of persons recognized by law as internally displaced<sup>9</sup>.

It is important for internally displaced persons that they enjoy the same rights and freedoms in accordance with the constitution, laws and international treaties of Ukraine as other citizens of Ukraine permanently residing in the country. Thus, the state guarantees internally displaced persons the observance of the following basic rights: employment, pensions, compulsory state social insurance, education, suffrage, etc. In addition, the state seeks to ensure an adequate level of material security for internally displaced persons (economic rights). Let us consider in more detail each category of the rights of internally displaced persons.

*The right to employment.* Employment is provided by establishing relations governed by employment agreements (contracts), conducting business and other activities not prohibited by law. As rightly noted by U.Y. Sadova, O.T. Ryndzak and N.I. Andrusyshyn, in order to develop measures to address the most pressing problems of IDPs, and the problems of their employment in particular, their plans for the future are of key importance. After all, different patterns of behavior of internal migrants require appropriate methods of regulation<sup>10</sup>. The territorial bodies of the central executive body, which implements the state policy in the field of employment and labor migration, are responsible for clarifying plans for the future of internally displaced persons.

H.A. Kaplina points out that the difficulty of employing migrants from Donbass is partly explained by their professional specifications. The most vulnerable to unemployment were workers in the coal industry and metallurgy, whose employment is limited by the lack of demand for their profession in other regions of Ukraine. For such migrants, the issue of vocational retraining for more popular and widespread professions is relevant<sup>11</sup>.

9 K.O. Krakhmalyova, *Administrativno-pravove zabezpechennia statusu vnutrishno peremishchenykh osib* (Administrative and legal support for the status of internally displaced persons), dys. kand. yuryd. nauk: 12.00.07 / Instytut derzhavy i prava imeni V.M. Koretskoho NAN Ukrainy, Kyiv 2017, p. 169 (in Ukrainian).

10 U.Y. Sadova, O.T. Ryndzak and N.I. Andrusyshyn, *Aktualni problem zainiatosti vnutrishno peremishchenykh osib: rehionalnyi aspekt* (Actual problems of employment of internally displaced persons: regional aspects), "Demohrafiia ta sotsialna ekonomika" 2016, no. 3 (28), p. 181 (in Ukrainian).

11 H.A. Kaplina, *Trudovi prava ta zainiatist vnutrishno peremishchenykh osib v Ukraini* (Labor rights and employment of internally displaced persons in Ukraine), "Aktualni problem prava: teoriia i praktyka" 2016, no. 32, p. 66 (in Ukrainian).

Legal regulation of employment is carried out on the basis of the Law of Ukraine “On Employment”. This law, in Article 24, defines special measures to promote the employment of internally displaced persons, namely:

- compensation to the registered unemployed person from among internally displaced persons of actual transport costs for moving to another administrative-territorial unit of the place of employment, as well as costs for passing a preliminary medical and narcological examination in accordance with the legislation, if necessary for employment;
- compensation of the employer’s labor costs for employment of registered unemployed persons from among internally displaced persons on the terms of fixed-term employment contracts lasting not more than six calendar months;
- reimbursement of the expenses of the employer who employs the registered unemployed from among internally displaced persons for a period of not less than twelve calendar months, for retraining and advanced training of such persons<sup>12</sup>.

An internally displaced person who resigned (terminated another type of employment), in the absence of documents confirming the fact of dismissal (termination of another type of employment), periods of employment and insurance history, is registered as unemployed and receives unemployment benefits, social and other services under the obligatory state social insurance in case of unemployment, according to the legislation. An internally displaced person who does not have the documents required to be granted unemployment status is granted unemployment status without the requirements applicable under the normal procedure. Until the receipt of documents and information on periods of employment, wages (income) and insurance history, unemployment benefits are granted to such persons in the minimum amount established by law in case of unemployment.

*Pension provision.* A citizen of retirement age, a person with a disability, a child with a disability or another person in difficult life circumstances who is registered as an internally displaced person has the right to receive social services in accordance with Ukrainian legislation at the place of registration of the internally displaced person.

The problem of paying pensions is very acute given that a certain number of pensioners remained in the occupied territory of Donbass and did not register as internally displaced persons. In this regard, the question arose as to whether such a person is entitled to receive pensions from the state budget of Ukraine. The answer

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12 Pro zainiatist naseennia (On employment of the population), Zakon Ukrainy vid 05.07.2012 no. 5067-VI, <https://zakon.rada.gov.ua/laws/show/5067-17#Text> (accessed 12.03.2020) (in Ukrainian).

to this question was provided by the Grand Chamber of the Supreme Court in a ruling of September 4, 2018, which states the following:

The person filed a lawsuit in court, stating that she is a pensioner and receives an old-age pension. In connection with the fighting and anti-terrorist operation in the village at her place of residence, she was forced to leave her permanent residence and move to the Bakhmut district of the Donetsk region, where she was registered as an internally displaced person. However, on April 1, 2017, the defendant suspended the payment of her pension on grounds not provided for in Article 49 of the Law of Ukraine of July 9, 2003, no. 1058–IV “On Compulsory State Pension Insurance”: the right to a pension and its receipt cannot be linked to a person’s place of residence.

The Grand Chamber of the Supreme Court upheld the recognition and cancellation of the order of the Pension Fund of Ukraine dated March 24, 2017 to terminate the plaintiff’s pension until clarification and the obligation of the Pension Fund of Ukraine to resume payment of the plaintiff’s old-age pension from April 1, 2017. At the same time, the court pointed out that by terminating the accrual and payment of the plaintiff’s pension in the absence of the grounds provided by the laws of Ukraine, the defendant violated the plaintiff’s right to receive a pension. The right to a pension is protected under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. The defendant’s interference with the plaintiff’s right to peaceful possession of their property in the form of a pension is not based on the law. The establishment by the court of the illegality of the interference, i.e. the commission of acts not in the manner prescribed by law, is sufficient grounds for concluding that the plaintiff’s right to peaceful possession of their property has been violated. In view of the above, according to the court of first instance, the termination of the plaintiff’s pension from April 1, 2017 was not carried out in the manner prescribed by Law 1058–IV, but in the context of Article 1 of Protocol No. 1 to the Convention, such interference was not lawful<sup>13</sup>.

*Compulsory state social insurance.* Internally displaced persons from the temporarily occupied territory are entitled to receive material support, insurance benefits and social services under the obligatory state social insurance in connection with temporary disability, from an accident at work or an occupational disease that caused disability, directly from the working bodies of the Social Insurance Fund of Ukraine at the actual place of residence. Material support and insurance payments are assigned in the presence of the necessary documents confirming the right to these payments, and in their absence, according to the State Register of Compulsory State

13 Postanova Velykoi Palaty Verkhovnoho Sudu (Resolution of the Grand Chamber of the Supreme Court), vid 4 veresnia 2018 roku u spravi no. 805/402/18, <http://www.reyestr.court.gov.ua/Review/76945461> (accessed 12.03.2020) (in Ukrainian).

Social Insurance, in the manner prescribed by the Board of the Social Insurance Fund of Ukraine.

*The right to education.* A registered internally displaced person has the right to continue to obtain a certain level of education in other regions of Ukraine at the expense of the state budget or other sources of funding. Children of internally displaced persons or children who have the status of a child affected by hostilities and armed conflicts, who study in primary school, secondary or vocational schools, regardless of subordination, types and forms of ownership, are provided with free meals according to the order established by the Cabinet of Ministers of Ukraine.

The process of social adaptation of internally displaced children is important. In this regard, I. Khomyshyn notes that conflicts between peers who are internally displaced children in secondary and high school, in addition to common causes related to the specifics of age, arise on the basis of different identification and the increased sensitivity of migrant children to the negative<sup>14</sup>.

*The right to vote.* An internally displaced person exercises his/her right to vote in elections for the president of Ukraine, the people's deputies of Ukraine, local elections and referendums in accordance with the procedure established by law. However, internally displaced persons have the right to vote in a nationwide constituency (for political parties), but they cannot vote in single-member constituencies under a majority system, which effectively restricts their voting rights.

*Economic rights.* Ensuring compliance with this category of rights is the most difficult, as it requires the allocation of funds from the state budget of Ukraine. As noted by L.A. Veselska, despite the difficult situation in Ukraine and financial tensions in the country, a comprehensive program to address the problems of internally displaced persons is being implemented. To date, Ukraine has developed and implemented an appropriate regulatory framework, taking into account the specifics of state regulation of migration processes. At the same time, at the local level, the socialization of internally displaced persons is hampered by the insufficient financial independence of the regions, and the overloading of social services<sup>15</sup>.

Ukraine is taking all measures to provide material support to internally displaced persons, which is reflected in the provision of:

- financial assistance;
- affordable housing;
- employment benefits.

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14 I. Khomyshyn, *Realizatsiia prava na osvitu vnutrishno peremishchenymy osobamy* (Realization of the right to education by internally displaced persons), <http://science.lpnu.ua/sites/default/files/journal-paper/2018/jun/13343/30.pdf> (accessed 12.03.2020) (in Ukrainian).

15 L.A. Veselska, *Spetsyfika derzhavnoho rehuliuвання vymushenoї mihratsii v Ukraini za umov antyterrorystychnoi operatsii* (Specifics of state regulation of forced migration in Ukraine under the conditions of anti-terrorist operation), "Investytsii: praktyka ta dosvid" 2017, no.19, p. 62 (in Ukrainian).

In particular, Ukraine has a procedure for providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and communal services, approved by the Cabinet of Ministers of Ukraine no. 505 of October 1, 2014, which defines the mechanism for providing this assistance. Financial assistance is provided to internally displaced persons who have moved from the temporarily occupied territories of the Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol. The total amount of family allowance is calculated as the sum of the amount of assistance per family member and may not exceed UAH 3,000 (equivalent to 110 euros)<sup>16</sup>.

The state also provides a subvention to local councils for the purchase of housing for temporary use by internally displaced persons. At the same time, the state subvention is 70% of the cost of housing, and the rest is financed by local councils. In addition, it is possible to provide a mortgage loan to internally displaced persons to purchase their own housing at 3% per annum. Such a loan is provided for up to 20 years, but not more, until the borrower reaches retirement age.

It is important to improve state programs to promote employment and the employment of internally displaced persons, to create vacancies that would meet the educational and qualification characteristics of internally displaced persons. The Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine has announced a new project, "Housing + Work", which will allow IDPs to find available housing and jobs in Ukraine. According to Ruslan Kalinin, Deputy Minister of the Ministry for Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, an interactive map should be introduced, on which every IDP can see available housing, jobs and also "Housing + Work". There are companies that want to hire migrants and provide them with temporary housing<sup>17</sup>.

It should be noted that subventions from the state budget of Ukraine do not cover all the necessary costs to ensure the economic rights of internally displaced persons, in connection with which we propose the introduction of tax benefits for enterprises founded by internally displaced persons. We also consider it appropriate to provide tax benefits for companies that employ internally displaced persons. The

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16 Poriadok nadання shcho misiachnoi adresnoi dopomohy vnutrishno peremishchenym osobam dlia pokryttia vytrat na prozhyvannia, v tomu chysli na oplatu zhytlovo-komunalnykh posluh, zatverdzeni postanovoioi Kabinetu Ministriv Ukrainy (The procedure for providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and communal services, was approved by the Resolution of the Cabinet of Ministers of Ukraine), no. 505 vid 1 zhovtnia 2014 r., <https://zakon.rada.gov.ua/laws/show/505-2014-%D0%BF> (accessed 12.03.2020) (in Ukrainian).

17 U Min veteraniv anonsuvaly noviy proekt dlia pereselentsiv "Zhytlo+robota" (The Ministry of Veterans announced a new project for displaced persons "Housing + Work"), <https://www.unn.com.ua/uk/news/1853407-u-minveteraniv-anonsuvali-noviy-proekt-dlya-pereselentsiv-zhitlo-robota> (accessed 12.03.2020) (in Ukrainian).

proposed tax benefits will not lead to direct payments from the budget, but will only encourage internally displaced persons and businesses that will use the work of internally displaced persons.

## Conclusions

Internally displaced persons (under current legislation) have the same rights and freedoms as other citizens of Ukraine permanently residing in the country. However, in practice, internally displaced persons face restrictions on their rights and freedoms due to subjective factors. The basic rights that the state guarantees to internally displaced persons include: the right to employment, pensions, compulsory state social insurance, education, suffrage and economic rights. It is advisable to introduce tax benefits for enterprises founded by internally displaced persons, as well as to provide these benefits for enterprises that employ internally displaced persons.

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