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The Provision of the Protection of the Rights of Internally Displaced Persons

Abstract: This article is devoted to the protection of the rights of internally displaced persons. The purpose of the present study is to analyze the current state of the rights of internally displaced persons, to identify problems in their implementation and to propose effective mechanisms for their protection. The author considers the rights of internally displaced persons depending on their specification, such as: social and pension assistance, housing, education and employment. The problem of the protection of the property of internally displaced persons is considered. It is determined that the protection of the property rights of internally displaced persons should be entrusted to the state, and effective mechanisms should be established at the legislative level to ensure the return of property or reimbursement of its value in the case of destruction or damage. The author draws attention to the fact that the realization of the rights of internally displaced persons is possible with the support not only of the state, but also of local authorities. The following scientific methods were used in writing the article: analysis and synthesis, the method of specific sociological research, systemic, structural-functional, synergetic, comparative-legal and other methods.

Keywords: internally displaced persons, law, protection of rights, occupied territory.

Introduction

Due to the armed conflict in the East of Ukraine and the annexation of the Autonomous Republic of Crimea, the biggest internal displacement of citizens happened in Ukraine. The emergence of such a category as internally displaced persons is new to Ukrainian national legislation and for Ukrainian society in general. The requirement to determine their status and content prompted the state to develop and adopt new legislation. Despite the fact that in Ukraine, at present, the regulatory

framework is formed on the basis of which rights of internally displaced persons are protected, there are problems that need further solution.

Such scholars as I. Zhilinkova, V. Borisova, O. Bandurka, S. Britchenko, E. Gerasimenko, O. Goncharenko, N. Grabar, I. Kovalyshyn, N. Bortnyk, O. Matsegorin, T. Podolyaka, D. Tsvigun, E. Mykytenko, S. Zakirova, I. Khomyshyna and M. Malykhahave studied the problems of protection of citizens' rights, including the rights of internally displaced persons. However, there is currently no unambiguous scholarly view on certain aspects of the protection of the rights of internally displaced persons, which is why they need to be further studied and developed in practice.

The rights of internally displaced persons are protected by the state in various ways. Legislation has been passed defining the rights and freedoms of internally displaced persons; a state body was set up to deal directly with the problems of internally displaced persons – the Ministry of the Temporarily Occupied Territories and Internally Displaced Persons. But, as it turned out, most of the steps taken or currently being taken are unfortunately not effective, and some are generally contrary to the Constitution of Ukraine and to international law.

1. The areas of the rights of internationally displaced persons

It is not possible to determine which of the problems are the main ones and need immediate solution on the state level. All of them concern the human life, rights and interests of citizens who left their places of permanent residence. If we consider social rights, and the protection of the social rights of internally displaced persons, they still remain at a rather low level of realization.

Due to the temporary loss of control over the occupied part of the territory of the Donetsk and Luhansk regions, both the functioning of public authorities in this territory and the payment of pensions and social benefits at the place of residence of the recipients were suspended. The state does not define a clear procedure for social benefits for internally displaced persons. On the contrary, in 2016 a number of legislative acts were adopted which made it difficult for internally displaced persons to access social benefits.

The government of Ukraine has introduced a procedure for restoring social and pension benefits to residents of uncontrolled territories only in cases of the transfer of a person to the controlled territory and on obtaining a certificate of registration as an internally displaced person (Resolution of the Cabinet of Ministers of Ukraine of November 5, 2014 no. 637 “On realization of social payment for persons moved from the temporarily occupied territory of Ukraine and areas of the anti-terrorist operation”). The state did not define any mechanisms for persons who were entitled to pension payments but remained in the occupied territories. That is, such persons

were deprived of the opportunity to exercise their constitutional right to social protection.

Internally displaced persons are deprived of the freedom to choose the method and place of receiving pensions and social assistance. There is a mandatory procedure for receiving social and pension benefits only at the State Savings Bank of Ukraine, where there are queues and problems with payments at present.

With regard to the protection of citizens' rights to pensions, it should be noted that the Supreme Court, in considering the case no.263/7763/17 (K / 9901/202/17) of 06.02.2018, in its decision clarified that it is impossible to stop paying pensions to internally displaced persons due to their absence at the place of residence. After lengthy disputes, the Supreme Court upheld the right of internally displaced persons to receive pensions independently of their place of residence.

Issues of the protection of social rights of internally displaced persons require the definition of a mechanism for the implementation of pension and social benefits to persons living both in government-controlled territory and in temporarily uncontrolled territories. There is also an unresolved issue regarding the resumption of pensions to citizens of Ukraine who, with the beginning of the armed conflict, moved to and live in other countries.

Other issues related to the protection of the social rights of internally displaced persons include housing. Article 47 of the Constitution of Ukraine states that everyone has the right to housing. Due to the imperfection of the current legislation, Ukraine cannot regulate the issue of providing housing for internally displaced persons. In Ukraine, there are no comprehensive government programs for soft loans, construction, renovation or purchase of new housing for the affected population. The experience of the city of Mariupol is positive; the local government provides such people with social housing at the expense of the local budget. But this problem needs to be addressed at the state level by developing soft loan mechanisms.

The rights of internally displaced persons with regard to employment in the context of discriminatory treatment from the local population towards displaced persons need additional protection. The problem arises from the fact that internally displaced persons are perceived as temporary workers. The regions from which internally displaced persons originate have huge industrial facilities where the majority of citizens worked. Therefore, it is difficult for such persons to find a job corresponding with their professional skills due to the lack of similar facilities in other regions of the country. The legislator needs to give personal attention to women who are raising children and are deprived of the opportunity to work full-time. It is impossible to find a job for this category of people at all. Therefore, the state must determine guarantees for the employment of such persons.

With regard to the right to education, the state has taken some steps to protect this right of internally displaced persons. Additional places in primary and secondary schools were allocated for internally displaced children; 18 higher education

institutions were relocated from Crimea, the non-controlled territories of the Donetsk and Luhansk oblasts, and some issues of ensuring their activities at the legislative level were settled¹; a simplified procedure for the admission campaign for entrants has been introduced²; a more flexible mechanism was developed for confirming the qualifications, educational level and transfer of students from universities from the occupied territory of Ukraine, creating conditions for such students to receive a social scholarship.

Ensuring the realization of the rights of internally displaced persons to receive education is extremely important for the development of children, adolescents and young people, and their opportunities in the future. Equal access to education is an important indicator of the integration of internally displaced persons into host territorial communities³. In Ukrainian legislation, the exercise of the right to education of internally displaced persons is defined by Article 7 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”. Local state administrations and local self-government bodies, within the limits of their powers, ensure the placement of children in preschool and general educational institutions in state ownership⁴. According to the Law of Ukraine “On Higher Education”, the state provides targeted support to children registered as internally displaced persons, including children who study full-time in higher education institutions, for obtaining higher education in state and municipal educational institutions until graduation, but not after they have reached 23 years of age.

At the legislative level, the state has provided opportunities for children from the occupied territories to obtain a document of the state standard of Ukraine on basic or complete general secondary education (certificate) in a simplified way, and to enter Ukrainian educational institutions under a simplified procedure through the educational centers “Donbass-Ukraine” or “Crimea-Ukraine”. These provisions should be considered a positive step by the state, because it demonstrates the state’s concern for the citizens of Ukraine who remained in the occupied territories.

1 Law of Ukraine, “On amendments to certain laws of Ukraine concerning the activities of higher educational institutions, scientific institutions relocated from the temporarily occupied territory and from settlements in the territory of which public authorities temporarily do not exercise their powers” (November 3, 2016 no.1731–VIII), <http://zakon2.rada.gov.ua/laws/show/1731-19> (accessed 17.04.2020).

2 Order of the Ministry of Education and Science of Ukraine, “On Approval of the Procedure for Admission to Higher and Vocational Education of Persons Living in the Temporarily Occupied Territory of Ukraine” (May 24, 2016 no. 560), http://old.mon.gov.ua/files/normative/2016-06-07/5622/nmon_560.pdf (accessed 17.04.2020).

3 Order of the Cabinet of Ministers of Ukraine, “On approval of the strategy for integration of internally displaced persons and implementation of long-term decisions on internal displacement until 2020” (November 15, 2017 no.909), <http://mtot.gov.ua/5891-2/> (accessed 17.04.2020).

4 Law of Ukraine, “On Ensuring the Rights and Freedoms of Internally Displaced Persons” (October 20, 2014 no.1706–VII), <http://zakon3.rada.gov.ua/laws/card/1706-18> (accessed 17.04.2020).

The realization of the educational rights of internally displaced persons is possible with the support not only of the state, but also of local communities in providing appropriate conditions for obtaining education, taking into account the needs of such persons.

Ukraine, as a democratic and legal state, cannot develop without ensuring the social rights of its citizens, including internally displaced persons. In order to regulate relations in the field of protection of these rights, in particular the right to housing, employment and education, it is necessary to apply appropriate amendments to the current Ukrainian legislation.

The newly appeared category of persons who need social protection identified social problems that existed both before and after the hostilities. The situation demonstrated the imperfection of the existing social protection system. It is possible that the situation in the Donetsk and Luhansk oblasts will contribute to a rethinking of the state's social policy in general. The settlement of social problems will become more definite and the discretionary powers of the authorities will be limited, which will undoubtedly have a positive effect on the better implementation of the principle of legal certainty⁵. The example of a real urgent social problem in a state that seeks to become legal, and the search for ways to solve it successfully, demonstrate the connection between the rule of law and the social state. Without ensuring the necessary (sufficient) level of material well-being for oneself and one's family members, which would be sufficient for food, clothing, housing, proper education, medical care, etc., human dignity will be declarative, and the principles of the rule of law, and the rule of law itself, can become a non-functioning doctrinal abstraction⁶.

According to Article 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to human for its activities. The establishment and protection of human rights and freedoms is the main duty of the state. The declaration in Article 47 of the Constitution of Ukraine, the right to housing, is an inseparable part of the right to respect for human dignity, as housing belongs to basic needs, without which self-realization of a person as an individual is impossible. The lack of housing for internally displaced persons puts them in a discriminated position compared to other citizens of Ukraine. The legislator must develop a clear, step-by-step procedure for obtaining housing, provide effective, efficient guarantees for the protection of this right, revise the provisions and eliminate those that are almost impossible to implement.

5 T. Podoliak, Peculiarities of realization of the right to housing of internally displaced persons in Ukraine, "Scientific notes of NaUKMA" 2018, vol. 1, pp. 78–83.

6 M. Kozyubra, General Theory of Law, Kyiv 2015, p. 193.

The problem of the protection of property rights of internally displaced persons remains relevant. To date, there is no normative act in Ukraine on the real protection of the property rights of internally displaced persons. The issue of property located in territories where armed conflicts, temporary occupation or other circumstances continue, due to which the owners of such property were forced to leave their place of permanent residence, needs to be resolved. Most often there is an illegal unauthorized seizure of someone else's home, vehicles, etc. in the temporarily occupied territories.

If the property has been destroyed or damaged, the only means of judicial protection of property rights that can be used to restore the violated property rights by internally displaced persons is a claim for damages. However, there are also significant difficulties with such claims, as in the context of armed conflict and occupation it is almost impossible to identify the person who is the direct perpetrator of the damage⁷.

It should be noted that ensuring the proper protection of the property rights of internally displaced persons should be the responsibility of the state, and effective mechanisms should be in place at the legislative level to ensure the return of property or reimbursement in the event of destruction or damage. World experience confirms that the most effective means of protection of property rights is restitution, but the relevant legal mechanism in a similar format is not reflected in the current legislation of Ukraine. The practice of Ukrainian courts in imposing the obligation to compensate for the damage caused to victims by the armed aggression in eastern Ukraine against the Russian Federation has a positive effect. The state is the guarantor of the property rights of internally displaced persons, but legislation or judicial acts are sometimes impossible to enforce due to the fact that enforcement problems require not only legal but also political solutions.

The issue of the statute of limitations is also relevant. Due to the fact that the first illegal actions against destroyed or damaged property were committed in 2014, there is a problem of the expiration of the statute of limitations, which is three years in accordance with the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine. This issue needs to be reviewed at the legislative level.

2. The problem of access to justice of internally displaced persons

The protection of the rights of internally displaced persons in court remains relevant due to the problem of access to justice, i.e. the ability of people to obtain protection of their rights through justice.

7 O. Rogach and Y. Panina, Actual problems of protection of property rights by internally displaced persons, "Implementation and protection of the rights of internally displaced persons": Materials of the second international scientific-practical conference (April 20, 2018, Uzhhorod), pp. 124–130.

First, the hostilities and lack of security led to the impossibility of real protection for persons in the territory temporarily out of Ukraine's control. There are a number of issues related to the protection of human rights, including access to justice. The population living in the Donetsk and Luhansk regions have difficulties accessing courts located in territories controlled by the Ukrainian government, including through the loss or destruction of case materials before and during the process of moving or changing territorial jurisdiction. Persons living in non-government-controlled areas are forced to travel long distances from the conflict zone to file lawsuits or attend court hearings in Ukrainian-controlled areas⁸.

Another issue is the situation when it is impossible to implement or review court decisions made by the courts of the Luhansk or Donetsk regions and the Autonomous Republic of Crimea. It is impossible to demand such cases from the judicial authorities in the territories temporarily not under the control of the Ukrainian authorities for their implementation in the controlled territories. An option to get out of this situation is the procedure provided by procedural law to restore a lost case. Documents or their copies shall be attached to the application for resumption of lost proceedings, even if they are not duly certified, preserved by the applicant or in the case.

Secondly, there are rights protection issues that can be identified depending on the categories of participants, for example, the realization of the protection of children's rights. Children living in the occupied territories are restricted in recognizing or exercising their family rights and freedoms. There are problems not only in deciding on cases of evasion of parental responsibilities, deprivation of parental rights, child abuse, recognition of the child's right to live with one parent or illegal maintenance (relocation) of children, but also in the implementation of such decisions in the occupied territories. Difficulties arise due to the impossibility of carrying out executive actions in the territories temporarily not under Ukraine's control.

Also, one of the problems that arises in protecting the rights of internally displaced persons is the problem of recovering lost documents that are evidence in the case, the subject of the claim, as well as those that can confirm the right to representation in court. These issues are of particular importance in view of the significant deterioration of the property and material situation of internally displaced persons, their loss of property, as well as the threat of loss of the right to inheritance. Thus, starting from December 1, 2014, documents, even those bearing the Ukrainian seal, issued in the territory temporarily not controlled by Ukraine, are considered invalid and have no legal force. However, as an exception such documents may be

8 Thematic report: Access to justice in the context of the conflict in Ukraine, December 2015. OSCE Special Monitoring Mission to Ukraine 2015, <http://www.osce.org/uk/ukraine-sm-m/212321?download=true> (accessed 17.04.2020).

taken into account by the court and assessed together with other evidence in their entirety and interrelation in the proceedings.

In Ukrainian judicial practice, there are already facts of the acceptance of documents issued in the temporarily uncontrolled territory of Ukraine. However, it does not mean that the court recognizes documents issued by the occupying power or legitimizes this power; in this case, these documents are accepted and evaluated together with other evidence as an exception⁹. The panel of judges of the Administrative Court of the Cassation of the Supreme Court ruled that documents issued by the occupying power should be recognized if their non-recognition restricts the rights of citizens (Supreme Court Decision of October 22, 2018 in case no.235/2357/17).

A possible solution to the problem of access to justice for internally displaced persons is to use the latest information technologies in court proceedings. E-justice is beginning to develop in many countries around the world and, depending on the technical and legal level, various possibilities of using Internet resources are allowed, such as electronic filing of applications and other documents in court, court hearings using electronic means (videoconferencing) and other proceedings. With the help of the introduction of a single judicial information and telecommunication system in Ukraine, not only will the registration of applications, complaints and other documents received and sent by the court be carried out, but cases will be divided, as well as the exchange of documents (sending and receiving documents) in electronic form between courts, between the court and the participants in the trial, between the participants in the trial, sending court decisions and other procedural documents to the official e-mail addresses of the participants of the trial and performing other procedural actions in electronic form. But the full implementation of e-justice in Ukraine requires a set of organizational, legislative, technical and political measures not only at the state level but also at the level of citizens. Numerous problems of electronic declaration have revealed technical problems with the existence of documents in electronic form. In addition, the legislation does not specify the mechanism for creation and existence of electronic cases, liability for entering false information or destruction of information. That is, the introduction of e-justice should be based on a comprehensive analysis of the financial feasibility of such implementation; ease of use, not only for judges, but also for participants in the process; development of a mechanism for translating cases into electronic form; determining the mechanism for evaluating evidence, etc. Only the gradual introduction of e-justice will make it possible to improve this mechanism in the light of experience. The introduction of e-justice will ensure the implementation of the

9 O. Zdebsky, G.Yurovska and O. Shapovalova, Problematic issues of protection of the rights of internally displaced persons, http://yurradnik.com.ua/wp-content/uploads/2017/03/Zdebskiy-SHapovalova_YUrovska.pdf (accessed 18.04.2020).

principle of concentration, but will lose the significance of the principle of immediacy, which provides the personal research and evaluation of all evidence by the court.

Conclusions

Based on the analysis, it is possible to conclude that despite the general compliance of Ukrainian legislation with international standards for the protection of the rights of internally displaced persons, as well as the positive changes in the legislation, there are some shortcomings in the legislation that need to be improved or supplemented. At the state level it is required:

- to determine the procedure for payment of pensions and other social benefits to citizens living in the territories of the Donetsk and Luhansk oblasts temporarily not controlled by the government of Ukraine;
- to introduce a program of preferential lending for construction or purchase of housing;
- to determine the forms, methods and procedure for determining the amount of compensation that the state must pay to internally displaced persons in the event of destruction or other damage to property located in the conflict zone;
- to provide access to justice not only to citizens living in the territories of the Donetsk and Luhansk oblasts temporarily not controlled by the government of Ukraine, but also to citizens living in the territory controlled by the government of Ukraine.

BIBLIOGRAPHY

Kozyubra M., *General Theory of Law*. Kyiv, 2015.

Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” (October 20, 2014 № 1706–VII). <http://zakon3.rada.gov.ua/laws/card/1706-18>.

Law of Ukraine “On amendments to certain laws of Ukraine concerning the activities of higher educational institutions, scientific institutions relocated from the temporarily occupied territory and from settlements in the territory of which public authorities temporarily do not exercise their powers” (November 3, 2016 № 1731–VIII). <http://zakon2.rada.gov.ua/laws/show/1731-19>.

Order of the Cabinet of Ministers of Ukraine “On approval of the Strategy for integration of internally displaced persons and implementation of long-term decisions on internal displacement until 2020” (November 15, 2017 № 909). <http://mtot.gov.ua/5891-2/>.

Order of the Ministry of Education and Science of Ukraine “On Approval of the Procedure for Admission to Higher and Vocational Education of Persons Living in the Temporarily Occupied Territory of Ukraine” (May 24, 2016 № 560). http://old.mon.gov.ua/files/normative/2016-06-07/5622/nmon_560.pdf.

Podoliak T., Peculiarities of realization of the right to housing of internally displaced persons in Ukraine, “Scientific notes of NaUKMA”, 2018, vol. 1.

Rogach O., Panina Yu., Actual problems of protection of property rights by internally displaced persons, “Implementation and protection of the rights of internally displaced persons”: materials of the II International scientific-practical conference (April 20, 2018, Uzhhorod).

Thematic report. Access to justice in the context of the conflict in Ukraine. December 2015. OSCE Special Monitoring Mission to Ukraine 2015. <http://www.osce.org/uk/ukraine-smm/212321?download=true>.

Zdebsky O., Yurovska G., Shapovalova O., Problematic issues of protection of the rights of internally displaced persons. http://yurradnik.com.ua/wp-content/uploads/2017/03/Zdebskiy-Shapovalova_Yurovska.pdf.