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Abstract

The article deals with some problems of realization and political-legal consequences of such form of direct democracy as referendum. Along with the existing advantages, the article's objective is to identify and theoretically and methodologically substantiate the political and legal risks of the formation of new referendum legislation of Ukraine and its possible negative impact on the steadfastness of the constitutional order of the state.

The author has analyzed a retrospective of some facts of referendums, as a result of which democratic freedoms were narrowed and in some cases liquidated and international mechanisms for their protection were revised.

The attention has been paid to the debatable provisions of the draft law of Ukraine "On People's Power through an All-Ukrainian Referendum" in terms of amending the Constitution of Ukraine regarding the rules on the constitutional order foundations.

Keywords: *referendum, democracy, abuse, constitutional order, draft law, amendments.*

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PROBLEMS OF IMPLEMENTING THE RIGHTS TO HOUSING AND HEALTH PROTECTION OF INTERNALLY DISPLACED PERSONS IN UKRAINE: THEORETICAL AND PRACTICAL ASPECTS

Наталія Ісаєва. ПРОБЛЕМИ РЕАЛІЗАЦІЇ ПРАВА НА ЖИТЛО ТА ПРАВА НА ОХОРОНУ ЗДОРОВ'Я ВНУТРІШНЬО ПЕРЕМІЩЕНИМИ ОСОБАМИ В УКРАЇНІ: ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ. Досліджено проблеми забезпечення державою таких соціально-економічних прав і свобод внутрішньо переміщених осіб, як право на житло та право на охорону здоров'я та сформульовано пропозиції щодо оновлення чинного законодавства в цій сфері. Визначено, що постійний збір та обробка даних про потреби внутрішньо переміщених осіб впливають на ефективність національного законодавства в практичній його реалізації щодо соціально-економічних прав і свобод внутрішньо переміщених осіб та гарантій їх реалізації. В Україні відсутній Єдиний державний реєстр державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Акцентовано увагу, на необхідності запровадження та ведення Єдиного державного реєстру державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Такий реєстр надав би можливість державі оперативно та повноцінно вирішувати потреби на житло внутрішньо переміщених осіб, пропонуючи таким особам різні варіанти в різних областях та місцевостях, оскільки такі особи мають право на вибір та свободу пересування, а таким особам змогу реалізувати своє конституційне право на житло обираючи для себе відповідний варіант.

Наголошено на низькому рівні забезпечення медичними послугами внутрішньо переміщених осіб. Визначені причина цього та надані рекомендації щодо виправлення такої ситуації у сфері охорони здоров'я. Так, для отримання медичних послуг внутрішньо переміщеними особами уряду необхідно належним чином фінансувати цю сферу, з урахуванням потреб внутрішньо переміщених осіб.

Ключові слова: *внутрішньо переміщені особи, право на житло, право на здоров'я, медичні послуги, реєстр, житло, кредит.*

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Relevance of the study. The problem of socio-economic and cultural rights and freedoms of internally displaced persons and guarantees of their implementation is one of the most urgent and disputable in current legal science. Since 2014, it has been crucial for Ukraine to develop new legislation and update existing one with a view to effectively ensuring the socio-economic and cultural rights of internally displaced persons. Revision of historical development may result in the reform of national legislation to resolve the existing problems with regard to implementation of socio-economic and cultural rights and freedoms of the displaced.

The pressing issue for Ukraine is this state's inability to fully ensure implementation of socio-economic and cultural rights and freedoms of internally displaced persons. The absence of proper mechanism, legal nihilism, and conflicts of law are the main indicators of the stated problem.

Recent publications review. The necessity of scientific research on the stated problem has emerged due to exacerbation of the issues that deal with exercising the socio-economic and cultural rights of internally displaced persons. Among foreign and domestic scholars whose sphere of research involves socio-economic and cultural rights of internally displaced persons are: V. Airapetov, O. Amosha, M. Andrusishin, I. Annitova, V. Antoniuk, I. Basova, S. Belikova, N. Beresovska, I. Bezzub, O. Bogatyryova, K. Bodvig, V. Goshovsky, I. Grytsai, O. Ishenko, T. Zhvaniya, O. Kaitanskyi, M. Kravchenko, L. Kysil, Y. Koller, I. Lagutina, O. Laptinova, L. Logachyova, B. Mykhailovskyi, F. Macdonald, N. Maksymovska, M. Mendzhul, L. Nalivaiko, O. Novikova, O. Pervomaiskyi, N. Prokusheva, O. Rogach, O. Ryndzak, M. Savchyna, U. Sadova, K. Stepanenko, O. Khandii, I. Khomishina, G. Khrystova, G. Chanyшева, L. Shamileva, and others.

Discussion. At present, Ukraine is facing up to the reality of not only a political but also a social crisis. Although some positive outcomes of certain reforms concerning internally displaced persons have been discerned, still there is no full realization of these persons' socio-economic and cultural rights and freedoms.

The realization of socio-economic and cultural rights and freedoms of internally displaced persons is grounded, first and foremost, in regulating their status.

The constitutional socio-economic rights include: the right to work (art. 43 of the Constitution of Ukraine); the right to rest (art. 45 of the Constitution of Ukraine); the right to strike (art. 43 of the Constitution of Ukraine); property rights (private) (art. 41 of the Constitution of Ukraine); the right to entrepreneurial activity (art. 42 of the Constitution of Ukraine); the right to health protection (art. 49 of the Constitution of Ukraine); the right to social protection (art. 46 of the Constitution of Ukraine); the right to housing (art. 47 of the Constitution of Ukraine); the right to an adequate standard of living (art. 48 of the Constitution of Ukraine); the right to a safe environment (art. 50 of the Constitution of Ukraine).

This article's objective is to study the problems of state-regulated provision of such socio-economic rights and freedoms of internally displaced persons as their right to housing and their right to health protection and to make proposals for updating current legislation in this field.

It is a generally recognized and fully grounded assumption that the social purpose of rights and freedoms of citizens in a genuinely democratic society is, firstly, to ensure satisfaction of individual needs and interests, namely, creating favorable opportunities for individual maintenance of certain social benefits, and, secondly, to provide opportunities for direct and active participation of citizens in all spheres of public life [1, p. 152-153].

As internally displaced persons remain inside the country, in compliance with the guiding principles of international law they are eligible for state protection and support. Basic human rights are universally applied for internally displaced persons, hence the scope of rights for internally displaced persons should be determined by general norms – international law norms that protect human rights. The measures taken to ensure effective compliance with such norms refer to the sphere of human rights protection [2, p. 13].

In order to protect socio-economic and cultural rights and freedoms of internally displaced persons, an effective legislative system to ensure realization of power by all branches of government and eliminate conflicts of law should be enforced. This requires regular data collection about internally displaced persons, in particular data by their number, place of residence, conditions or special needs and vulnerabilities, as well as further categorization of such data by age, gender and other demographic indicators.

These indicators are necessary for effectively addressing the needs of internally displaced persons by developing and implementing legislation and policies aimed at their special needs. It is essential to update such data with a view to registering changes in the needs of in-

ternally displaced persons. Data collection should begin from the moment of displacement and continue till essential decisions are made [3, p. 8]. It is regular data collection and data processing of the needs of internally displaced persons that influence effective national legislation with regard to the realization of socio-economic and cultural rights and freedoms of internally displaced persons and the guarantee of their implementation.

Currently, the specialized Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” is in force in Ukraine; it ensures a guaranteed observance of the rights, freedoms, and legal interests of internally displaced persons.

Today, it is possible to single out such socio-economic problems of internally displaced persons as: provision of housing, obstacles to the organization of entrepreneurial activity, provision of social benefits and pensions, and provision of quality medical services.

As paragraph 1 of article 14 of the Guiding Principles underlines, “Every internally displaced person has the right to freedom of movement and freedom to choose his or her place of residence” [4].

In accordance with art. 3 of the Constitution of Ukraine, establishment and maintenance of human rights and freedoms is the main duty of the state. In order to provide the needs of citizens for housing the state is obliged to perform a whole range of actions: develop the construction industry, implement the program of building regularized housing, provide fair distribution of housing, safeguard the housing fund, and the like; then arise legal relations – the state – the person, the citizen. The right to housing is the human right to have shelter and to be protected by the state in the part of housing interests [5, p. 194].

The state, regional, and district programs are run to provide internally displaced persons with housing. Every region of Ukraine implements different programs. Some of them are budget funded – these national programs address housing provision of internally displaced persons, while others are funded by local budgets, being initiated by local authorities that take responsibility for their further funding.

The following specialized state programs on providing internally displaced persons with housing are in action: 1) the program “Affordable housing”, in accordance with the Resolution of the Cabinet of Ministers of Ukraine of August 10, 2018 № 819 “Some issues of providing citizens with affordable housing”; 2) the program of monetary compensation for purchasing housing by the internally displaced persons who defended Ukraine’s sovereignty in accordance with the Resolution of the Cabinet of Ministers of Ukraine of April 18, 2018 № 280 “The issue for providing housing for internally displaced persons that defended independence, sovereignty, and territorial integrity of Ukraine”; 3) “Own house” in pursuance of the Resolution of the Cabinet of Ministers of Ukraine of October 5, 1998 № 1597 “On the statement of rules granting long-term credits for individual housing construction in the rural area”; 4) “Social housing» is enforced by the Law of Ukraine “On housing funding for social purposes”, in accordance with the resolution of the Cabinet of Ministers of Ukraine of July 23, 2008 № 682 “Some issues of implementing the Law of Ukraine “On social housing” and the resolution of the Cabinet of Ministers of Ukraine of February 7, 2007 № 155 “On the statement of the Procedure for calculating payment for social housing”; 5) “Temporary housing” is implemented in accordance with the Housing Code of the Ukrainian SSR; the resolution of March 31, № 422 “On the statement of the Procedure for formation of housing funds for temporary residence and the Order of provision and use of housing from housing funds for temporary residence”; the resolution of the Cabinet of Ministers of Ukraine of June 26, 2019 № 582 “On the statement of the Order of provision of housing funds for temporary residence of internally displaced persons”; the order of the State Housing and Communal Services of May 14, 2004 № 98 “On the statement of forms concerning inhabited housing from housing funds for temporary residence”; 6) the lending program at 3 percent, in compliance with the resolution of the Cabinet of Ministers of Ukraine of November 27, 2019 № 980 “On the statement of Order of spending funds, provided in the state budget for the provision of privileged long-term state loan to internally displaced persons, participants in the anti-terrorist operation (ATO and/or participants in the Joint Forces Operation (JFO) for purchasing housing”.

According to the press-service of the Ministry of Regional Development, in 2016 the state budget provided UAH 40 million for implementing the program “State privileged crediting for individual rural developers to build (reconstruct) and purchase housing” (“Own house”). Local budgets funded 63,8 million to implement this program. According to the data provided by the public organization “Donbas SOS”, the program is designed for the ATO participants and internally displaced persons that live in a rural area or settle there for permanent

residence [6]. It is worth noting that the resolution of the Cabinet of Ministers of Ukraine “On the statement of Order providing long-term credits for individual developers of rural housing” has been enacted since 1998, but only in 2020 the government introduced changes in this specified normative-legal act to attract IDPs for living in rural areas.

These programs can be divided by purpose: formation of housing funds for further transfer of ownership to internally displaced persons, formation of housing funds for further transfer of use to internally displaced persons (purchasing flats on the secondary market and provision for temporary use; social housing; temporary housing). To illustrate the point, specified procedures to regulate provision of housing to the displaced are developed for every category mentioned above.

The Donetsk region serves as an example of formation of housing funds and provision of such real estate objects. In accordance with the Procedure and conditions for providing state budget subvention to local budgets as measures to support the territories that were affected as a result of an armed conflict in eastern Ukraine, approved by the resolution of the Cabinet of Ministers of Ukraine of October 4, 2017 № 769, in 2017-2019 the region’s government authorities purchased 224 flats, namely: 183 flats in the city of Mariupol, 18 flats in the town of Pokrovsk, 2 flats in the town of Lyman, 10 flats in the city of Slovyansk, 11 flats in the Velykonovoselkivskiy district, all providing temporary housing for internally displaced persons [7].

From this research, Ukraine lacks the Unified registry of state, communal, and private property with which internally displaced persons can be provided. Every region accumulates such information separately, which, in turn, deprives the state of fully providing the housing needs of internally displaced persons, holding upgraded real-time information, and exercising the right to housing by internally displaced persons.

Formation and maintenance of the Unified registry of state, communal, and private property for housing provision of internally displaced persons would be able to timely and effectively address their housing needs, offering such persons different options in different regions and localities, as such persons have the right to choose and freedom of movement, as well as an opportunity to realize their constitutional right to housing by choosing an adequate option.

Highlighting the right to housing in art. 47 of the Constitution of Ukraine, the legislator has created the constitutional basis for sustainable use of housing which is of allowing (the ability to satisfy the need for housing, as well as its provision by the state in cases provided by law on preferential or free terms), binding (government state and local authorities are to create all necessary conditions to implement, secure, and protect the right to housing) and prohibitive (prohibition to deprive of or violate the human right to housing) nature [8, p. 21-29].

Rural construction and encouragement to relocate from urban to rural areas should be accompanied not only by allocation of funds for individual construction on credit to internally displaced persons but also by assuring their access to healthcare facilities, which is in accordance with paragraph 2 article 7, articles 18 and 19 of the Guiding Principles.

The Constitution of Ukraine (articles 3 and 49) states that life and health are values and a primary, initial prerequisite for every human life activity. Hence, from the numerous rights provided by the Basic Law one can distinguish the human right to health protection as the right that guarantees each person’s physical wellbeing and conditions provision of all other human rights.

The right to health protection is regulated by: the Constitution of Ukraine; the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”; the Law of Ukraine “Fundamentals of Ukraine’s Legislation on Health Protection”; the resolution of the Cabinet of Ministers of Ukraine of August 17, 1998 № 1303 “On the procedures for free and preferential provision of medicines with doctors’ prescriptions in cases of outpatient treatment of specific population groups and with regard to certain categories of diseases” and the like.

The decision of the European Court of Human Rights in the case “Cyprus vs. Turkey” stipulates that special complaints, submitted by the Government-applicant with regard to the obstacles to medical care access, are the elements to be considered in the contextual analysis of housing conditions of the population of concern from the perspective of their influences on the right of each person to respect his or her private and family life.

Currently, the program “Large-scale construction” is in progress in Ukraine; its aim, among others, is improvement of a rural infrastructure. Although the state uses credits to encourage people for individual construction in rural areas and internally displaced persons acquire credits to migrate from urban to rural areas, the problems concerning provision of medi-

cal, social, and educational services remain unresolved. As a result, the state is unable to fully provide internally displaced persons that obtain credits within this program with constitutionally guaranteed socio-economic and cultural rights. Thus, the right to safe living conditions and health of internally displaced persons, enshrined not only by article 9 of the specialized Law but also the Constitution of Ukraine, is violated.

Every citizen of Ukraine has the right to health protection, which involves a standard of living, including food, clothing, housing, health care and social care and provision that are vital to maintaining human health [9].

Guarantees of equal human rights are fundamental to the development of a democratic state. It is inherent to the constitutional principle of equality of human rights and freedoms to ensure their legal equilibrium, balancing the needs and interests of specified persons, social groups and the whole society, developing mechanisms to prevent potential conflicts of interests and resolve them in case they arise [10, p. 30-35].

The difficulty of treating seriously ill patients is that many of them have no required medical documentation which remained on the occupied territory. The mentally ill persons, leaving the anti-terrorist operation zone, are often in an acute psycho-emotional state but they refuse hospitalization in a psychiatric institution. Without their consent, in compliance with current legislation, hospitalization is impossible [11, p. 23].

The Social Insurance Fund of Ukraine provides insured persons, including those accidentally injured at work and diagnosed with occupational diseases, with medical and social services in compliance with the Law of Ukraine "On Compulsory State Social Insurance".

According to the joint operational reporting data given by the working bodies to the Fund management, during a nine-month period in 2020 rehabilitation departments of sanatoriums gave rehabilitation services to 6688 insured persons and members of their families, including 32 internally displaced persons. In 2020, during a nine-month period, health care institutions provided treatment and medical rehabilitation for 5350 persons who were injured at work and suffered from occupational diseases, among the former there were 182 internally displaced persons. 10179 persons acquired medicines and medical devices, including 405 internally displaced persons. During the three quarters of 2020, 732 persons with disabilities resulting from occupational injuries received sanatorium treatment, among them 21 internally displaced persons. During the reporting period, in accordance with the concluded agreements, 2742 persons injured at work were provided with technical and other rehabilitation means (prosthetic-orthopedic devices and others), among them 100 internally displaced persons. 136 persons injured at work were provided with special means of transportation (wheelchairs), including 11 internally displaced persons. Among persons with occupational disabilities, 658 persons received payment for special medical care, 2145 persons obtained payment for regular third-party care, 2632 persons received payment for household services, among them are, correspondingly, 140, 263 and 278 internally displaced persons. Also, 99 injured persons received financing for additional cost of food, including 17 internally displaced persons. 90 injured persons were provided with dentures, eye prostheses, glasses, contact lenses, and hearing aids, among them were 3 internally displaced persons. Besides, 3069 persons with disabilities were compensated for petrol costs, repair and technical services of cars and transport maintenance, including 97 internally displaced persons. The total number of internally displaced persons provided with medical and social services in accordance with the resolution of the Fund Management of 12.12.2018 № 27 "On the statement of Procedures for insurance payment, financing costs of medical and social aid costs, provided at work and for occupational diseases of internally displaced persons" amounts during the reporting period to 939 persons [12].

Such statistics of medical services provided for internally displaced persons reveals: firstly, lack of knowledge about the ability to obtain certain free/preferential medical and social services as healthcare protection; secondly, complexity (bureaucratization) of the procedures for providing internally displaced persons with medical and social services; thirdly, underfunding on behalf of the state; fourthly, doctors and medical staff fail to propose such services, their provision directly depends on dated requirements from internally displaced persons that somehow became aware of prosthetic opportunities, obtaining medicines, and the like.

The health of nation is at the core of every state's wellbeing, economic development, independence and sovereignty, as only healthy people are able to defend their territorial integrity. Healthy highly intellectual youth is a prerequisite for each state's development and its competitiveness on the international arena.

From this research, it can be concluded that all human rights are interdependent, for on-

ly their interconnected realization can be effective. The right to health protection is linked with almost all other rights and freedoms enshrined in the Constitution of Ukraine. Some of them derive from the right to health protection. They determine a degree of securing another right and some of them guarantee another right. Therefore, violation of one right leads to violation of integrity of human rights [13, p. 91]. Thus, all socio-economic and cultural rights of internally displaced persons are closely interconnected.

Conclusion. To sum up:

1. In order to provide the constitutional right to housing it is necessary to introduce the Unified registry of state, communal and private property with a view to registering internally displaced persons. Administration of this registry can be entrusted to the Ministry of Social Policy of Ukraine as the administrator of the Unified Registry of internally displaced persons which will contain up-to-date data concerning the needs of internally displaced persons.

2. Access to the data provided by the Unified registry of state, communal and private property to register internally displaced persons should be available to all social protection and local government bodies. Besides, the internally displaced persons that are such property registered residents should be given priority to purchase this property.

3. With a view to providing internally displaced persons with health protection and provision of medical and social services the government should properly finance such services, meeting the required needs of internally displaced persons.

4. Information campaigns concerning possibilities to obtain medical services and simplify procedural points, including a list of required documentation, should be conducted, as these very issues make it impossible, especially for elderly persons, to effectively implement their right to health protection and acquisition of medical services.

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Abstract

The article studies the problems of state provision of such socio-economic rights and freedoms of internally displaced persons as the right to housing and the right to health protections and proposes updating of current legislation in this area. It is found that Ukraine lacks the Unified registry of state, communal and private property to register internally displaced persons. Special emphasis is laid on the necessity for such registry's provision and maintenance. The low level of medical services provision of internally displaced persons is revealed. The cause of displacement is identified and recommendations concerning improvement of the current healthcare situation are given.

Keywords: *internally displaced persons, right to housing, right to health protection, medical services, registry, housing, credit.*