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THEORETICAL AND LEGAL CHARACTERISTICS OF THE APPROACHES TO THE DEFINITION OF THE CON- CEPT OF INTERNALLY DISPLACED PERSON

Орешкова А. ТЕОРЕТИКО-ПРАВОВА ХАРАКТЕРИСТИКА ПІДХОДІВ ДО ВИЗНАЧЕННЯ ПОНЯТТЯ ВНУТРІШНЬО ПЕРЕМІЩЕНОЇ ОСОБИ. У статті розглядається зміст поняття внутрішньо переміщених осіб у контексті сучасних реалій українського суспільства. Проаналізовано наукові підходи до визначення поняття "внутрішньо переміщена особа" та надано авторське визначення цього поняття.

Ключові слова: внутрішньо переміщені особи, біженці, військовий конфлікт, окупація.

Formulation of the problem. In today's conditions, our country continues to see an increase in local and interstate military conflicts which combined with emergency situations (natural or man-made) force people to leave their place of permanent residence. During the independence, as a result of armed aggression in the East of Ukraine and in the Autonomous Republic of Crimea, our state faced the problem of internal displacement of its citizens for the first time. In the scientific literature there are several synonymous concepts that apply to such a category of persons: "internal refugee", "internally displaced resident", "forced migrant", "internal migrant", "forced settler", etc. In official legal acts of Ukraine, they are defined as "внутрішньо переміщена особа", which corresponds most closely to the English word "internally displaced persons" (hereinafter referred to as the IDP). That definition is enshrined in the UN Guiding Principles on Internal Displacement.

Analysis of publications in which the explanation of this problem began. The concept of internally displaced person is known in the legislation of a few countries, given that it is necessary to clearly identify who should be assigned to the IDP in order to find out their legal status and develop mechanisms for the protection of their rights. Separate issues concerning the legal status of internally displaced persons in Ukraine are devoted to scientific works of such scholars as E. Gerasymenko, R. Goldman, F. Deng, B. Pirotskyi, M. Malyha, V. Mykytenko, E. Mykytenko, I. Kozynets, K. Krakmalova, M. Kobets, L. Shestak, M. Sirant, N. Tyshchenko and others. However, it should be noted that until now, there have been no comprehensive studies of questions concerning the generalization of the historical experience of delineating the definition of internally displaced person.

The purpose of the article is the author's attempt to offer a definition of this general theoretical category on the basis of methodological analysis, taking into account the defined interpretations of the concept of internally displaced person.

Presenting main material. As of March 27, 2017, according to the data of the departments of social protection of the population of the oblast and Kyiv city state administrations, 1 601 806 immigrants or 1 288 399 families from the Donbas and the Crimea were taken into account [1]. The displacement of persons in Ukraine from the occupation zone took place spontaneously, involuntarily, and therefore in its essence more consistent with the concept of refugee, but according to the principles of the Office of the United Nations High Commissioner for Refugees (UNHCR), the difference between an internally displaced person and a refugee is the absence of the fact of crossing the state border in order to leave the zone of armed conflict. In turn, the mechanisms created for refugees did not take into account those who were forced to move within their country. Those persons who, for various reasons, could not or did not want to leave their country, did not fall under international legal protection. The international level of this problem was also hampered by the traditional notion of state sovereignty. The governments of the countries retained the exclusive right to resolve issues related to the situation of their citizens [2, p. 258]. The existing need for a detailed and thorough study of the phenomenon of internal displacement and its delimitation from adjacent terms is confirmed by

the diversity of terminology.

In international law, the only universally accepted term used for such a category of persons is internally displaced persons (IDPs). This concept is part of a wider term which is commonly used in international law, that is, displaced persons who are victims of a phenomenon such as forced migration. The introduction of this term into scientific circulation is attributed by E.J. Jaffe to the famous Russian-American demographer Eu. Kulischer [3, p. 187], which he used for the first time in his work, "The Displacement of the Population in Europe" (1943), concerning persons who were forced to change their pre-war residence as a result of the Second World War. Today, the UN Human Rights Council divides the displaced persons into two subgroups: refugees and asylum seekers, as well as IDPs.

For the first time in Ukraine, the mass phenomenon of internally displaced persons arose in connection with the accident at the Chernobyl Nuclear Power Station. Thus, a large area went to the exclusion zone as a result of radioactive contamination and about 200 thousand people were forced to change their place of residence. However, the situation of this category of persons at the legislative level was regulated only in 1991, namely the adoption of the Law of Ukraine "On the status and social protection of citizens who suffered due to the Chernobyl catastrophe" [4]. There was also adopted the Decree of the Council of Ministers of the RSFSR "On additional measures to strengthen health care and improve the situation of the population residing in the contaminated territories as a result of the Chernobyl accident" of December 14, 1989 [5] and Decree of the Cabinet of Ministers of Ukraine "On the procedure for resettlement and individual cases of resettlement of citizens from the contaminated territories as a result of the Chernobyl accident" of December 16, 1992 [6]. However, the whole range of problems encountered by this category of persons was not possible to be resolved by these normative acts. Despite the fact that in Ukraine's history there have been precedents for mass displacement of people due to the Chernobyl accident, our country still lacks experience related to the effective interaction between the state represented by bodies of state power and local self-government, civil society organizations, international organizations, volunteers for the development and implementation of complex state programs.

The concept of displaced person began to be widely used during the Second World War, resulting in about 10 million people being drawn to forced labor or expelled from countries of primary residence based on racial, religious or political considerations [7].

In 1972, the UN General Assembly expanded the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR), which covered refugees and asylum seekers, that is, people forced to seek a country of residence and seek international protection to persons displaced within their own countries. When investigating the issue of internal displacement, it was established that current international legal norms could not fully regulate the legal status of internally displaced persons, they were fragmented, had gaps and were found in a large number of legal acts. In this context, on the instructions of the General Assembly of the United Nations and the Commission on Human Rights, Guiding Principles on Internal Displacement were developed and adopted in 1998. Paragraph 2 specifies that internally displaced persons should be considered as persons or groups who were compelled or forced to flee or to leave their homes or place of permanent residence, in particular as a result of or in order to avoid the consequences of an armed conflict, persistent manifestations of violence, violation of human rights, natural or man-made disasters, and who have not crossed the internationally specified state borders [8]. The peculiarity of the definition of the concept is the lack of a clear list of reasons for the displacement of the population.

As V. Klein notes, in defining this concept in the Guiding Principles on Internal Displacement two main features can be distinguished: the violent or involuntary nature of the movement and the fact that such movement remains within the state. The act does not apply to those who voluntarily relocate to another place for the sole purpose of improving their financial position [9].

For our country, Guiding Principles on Internal Displacement is a guide for lawmakers in the context in which they should be studied and taken into account in national legislation because, firstly, the document contains conclusions of world political thought in the context of the problems of the category of persons under investigation, and secondly, the norms of international legal documents on the protection of human rights are part of national legislation.

However, despite all the positive international legislation, the domestic law of the state itself, within which the migration processes take place, plays a major role in the protection of the internally displaced persons. Only the application of domestic law relating to human rights and internal displaced persons is an effective means of ensuring the rights and freedoms of the

latter. Besides, it is advisable to pay attention to the normative legal acts of foreign countries. For example, the Azerbaijani government in 1999 adopted the Law "On status of refugees and forcibly displaced (persons displaced within the country) persons" and affirmed that a forcibly displaced person was a person forced to leave their permanent residence as a result of military aggression, a natural and man-made disaster on the territory of the Republic of Azerbaijan, and move to another place (Article 1) [10].

In the Law of Georgia "On internally displaced persons – prosecuted from the occupied territories of Georgia", adopted on March 1, 2014, in accordance with Article 6, internally displaced persons should be understood as citizens of Georgia or stateless persons who were forced to leave their place of residence owing to the occupation of the territory by a foreign state, aggression, military conflict, mass violence and / or mass violation of human rights (the law does not apply to natural disasters and man-made disasters) [11].

The study of the legislation of the African Union is important. Thus, at a special summit in Kampala on November 22, 2009, the Convention on the Protection of Internally Displaced Persons in Africa was adopted. The above-mentioned Convention came into force in 2012, but reflects the norms formulated in 1998 in the Guiding Principles on Internal Displacement and protects internally displaced persons in accordance with the norms of international law.

Standards of Article 1 of The Kampala Convention states that "internally displaced persons" are individuals or groups who have been forced to flee their homes or places of traditional residence or to leave them, in particular, as a result of armed conflict, mass violence, human rights violations, natural or anthropogenic disasters or to avoid such effects, and who have not crossed the internationally recognized border of the state. Besides, this article of the Convention defines the concept of "displacement within the country", which should mean compelled or forced displacement, evacuation or relocation of persons or groups of persons within the internationally recognized borders of the state [12].

In Croatia, instead of the concept of internally displaced person, they use a concept close in content, namely, "exile". Point 1 of Article 2 of the Croatian Law "On the Status of Expellees and Refugees", 1993, gives the definition of "exile" as a person who escaped from one territory of the Republic of Croatia to another territory of the Republic of Croatia [13]. Besides, the aforementioned law up to 1999 divided the IDPs into two categories, namely, "exiled" persons and actually "displaced" persons. This division was carried out according to the criterion of the date of the forced displacement of certain persons [14, p. 6-7]. However, this division of the IDPs distinguished them also on the basis of ethnic origin. "Exiled" persons are mostly ethnic Croats of all age groups displaced outside the Danube area of Croatia. As of February 2000, the number of such persons was 47,000. "Displaced" persons are ethnic Serbs, mainly the elderly and socially disadvantaged groups displaced to the Danube area of Croatia. As of February 2000 their number was 3,000 people [15, p. 39]. In our opinion, the division of the IDP into several categories is discrimination, albeit concealed on grounds of ethnic origin.

In November 1999, the Croatian Government introduced changes to the legislation that was in force at that time, which formally eliminated discrimination in favour of one category of IDPs, that is, "exiled" persons (mostly Croats), at the expense of other displaced persons, mostly Serbs. However, in practice, the discriminatory effects of the law remained: individuals ("the exiled") retained the appropriate status and benefits that they received in accordance with the original law [16, p. 84].

The theoretical and sociological aspect of the definition of the category of internally displaced persons has been studied by a number of scholars. In particular, G. Goodwin-Hill defines IDPs as persons who are forced to flee suddenly from their homes in large quantities as a result of armed conflict, internal hostility, systematic violations of human rights or natural disasters and stay in the territory of their own country [17, p. 314-315]. Identifying the concept of internally displaced person and settler, the author thus emphasises that in fact, the IDP is a person who falls under the definition of compelled settlers, but having left their place of permanent residence, they stay in their own country as citizens of the country.

M. Nikolajchuk observes that "internally displaced persons are a specific target group for the implementation of migration policy, which is characterized by heterogeneous characteristics, determined by special needs, personal characteristics and influences of the environment" [18, p. 109].

Officially, the category of internally displaced person is enshrined in Ukrainian legislation with the adoption of the Law "On ensuring the rights and freedoms of internally displaced persons" of 20 October 2014, the adoption of the aforementioned normative legal act was preceded by 4 bills that were registered in the Verkhovna Rada of Ukraine of the Seventh Convocation, namely, bills: of June 3, 2014, No. 4998 "On ensuring the rights and freedoms of citi-

zens living in or moving from an area of temporary anti-terrorist operation” [19]; of June 19, 2014 No. 4998-1 “On the legal status of persons who are forced to leave their place of residence due to the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol and the circumstances related to the conduct of an anti-terrorist operation on the territory of Ukraine: Proposals” [20]; of August 13, 2014, No. 4490-a “On internally displaced persons” [21] and of October 28, 2014, 4490a-1 “On ensuring the rights and freedoms of internally displaced persons” [22], which subsequently came into force.

According to Point 1 of Article 1 of the above-mentioned law, an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who is legally in Ukraine and has the right to permanent residence in Ukraine, who was forced to flee or leave his place of residence as a result or in order to avoid negative consequences armed conflict, temporary occupation, widespread manifestations of violence, human rights violations and natural or man-made emergencies [23]. An individual acquires the right to be registered as an internally displaced person after he / she begins to meet certain criteria.

The quotation in the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” includes the basic features:

– *being a citizen of Ukraine.* In addition, since December 24, 2015, with the entry into force of the Law of Ukraine “On amendments to some laws of Ukraine on strengthening the guarantees of the observance of the rights and freedoms of internally displaced persons” No. 921-VIII, the right to obtain this status is also fixed by foreigners and individuals stateless [24].

– *permanent residence in the territory that has suffered from the factors listed in the definition.* The concept of place of residence has a private law and public law understanding. The first is based on the provisions of Part 1 of Article 29 of the Civil Code of Ukraine [25], according to which the place of residence of an individual is housing in which they reside permanently or temporarily, and Article 379, which provides that the residential property of an individual is a residential house, apartment, other living space, intended and suitable for permanent or temporary residence. The second is based on Article 3 of the Law of Ukraine “On freedom of movement and free choice of place of residence in Ukraine” [26]: place of residence is housing located on in the administrative territorial unit in which the person lives, as well as specialized social institutions, institutions of social services and social protection, military units.

In accordance with Part 2 of Article 4 of the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”, the ground for the registration of internally displaced persons is residence on the territory where the circumstances specified in Article 1 of this Law arose, at the time of their occurrence [23].

Law of Ukraine “On freedom of movement and free choice of place of residence in Ukraine” in Paragraph 2 of Article 2 states that registration of a place of residence or place of temporary residence of a person or its absence can not be a condition for the exercise of the rights and freedoms envisaged by the Constitution, laws or international treaties of Ukraine, or the reason for their restriction [26]. Registration is the submission of information to the Uniform State Population Register and to the passport document on the place of residence or place of temporary residence of the person with the address of the home. Consequently, when deciding on the issue of permanent and actual residence or non-residence of a person in a certain place, the mark in the passport of registration has no significance. This opinion is confirmed by the position of the Supreme Court of Ukraine in such cases as proceedings: No. 6-1046sv08 dated March 19, 2008, No. 6-15013sv07 dated December 10, 2008, No. 6-27745vs08 dated March 11, 2009, No. 6-7165sv09 dated November 03, 2010 [27, p. 183-185].

– *fleeing the place of previous residence.* According to Part 2 of Article 1 of the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”, the address of place of residence of a person at the moment of occurrence of the circumstances specified in Part 1 of this Article is recognized as the address of the abandoned place of residence of the person [23].

– *leaving the place of residence as a result of the use of violence (the use of unlawful influence on a person due to which a person is completely deprived of the opportunity to control his actions) or forcing (the circumstances that pressed the person to leave his previous place of residence).* Under pressure, according to V. Nadruga, one should understand the absence of positive motivation for moving, as well as changing living conditions, in which it becomes impossible for normal life or there is a real threat to security in the absence of a prospect of normalization of the situation [28, p. 137]. This feature is not absolute, in particular, as in the case of refugees, sometimes it is not possible to return to the affected area, even in the absence

of registration on it. For example, Part 5 of Article 4 of the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” established that students who had acquired a certain educational qualification level and had a residence registration in dormitories, after being discharged, are entitled to receive a certificate on the registration of an internally displaced person in case, if they do not want to return to their previous place of residence due to the circumstances specified in Article 1 of this Law [23].

– *the purpose of leaving the previous place of residence* – to avoid the negative consequences of armed conflict, temporary occupation, widespread manifestations of violence, massive violations of human rights and natural or man-made emergencies, or the potential opportunity (risk) of their occurrence. The list of grounds is exceptional.

In our opinion, the introduction of a closed list of such grounds and failure to take into account other threats to the population may further create the need to amend this Law and its related subordinate legal acts.

This legislative provision does not include subjective elements (for example, fear of becoming a victim), but is limited by objective constituents, conditions prevailing in a certain territory. That is, the danger of further stay at the place of previous residence is considered in the general context of the situation, and its assessment does not require the presence of personal negative experience or loss.

Conclusions. Based on the methodological analysis, taking into account the definite interpretations of the concept of internally displaced person, we can formulate the author’s definition of internally displaced person as a citizen of Ukraine or a citizen of another state / stateless person who is entitled to permanent residence in Ukraine and forced to flee or leave his own home or a place of permanent residence without crossing the internationally specified frontiers if there are such grounds as:

fear of becoming a victim of persecution or lack of opportunity to fully enjoy the guaranteed protection by the current legislation of Ukraine or international treaties, the consent of which is binding on the Verkhovna Rada of Ukraine in the place of its permanent residence;

a threat to his life / members of family, security or freedom;

feeling for himself / members of family the consequences of violence in situations of armed conflict or systematic violation of human rights; external aggression; foreign occupation; Civil War; armed clashes on ethnic, religious, linguistic or other grounds that violate public order in a place of permanent residence;

emergencies of natural or man-made nature.

Thus, a person acquires the right to be registered as an internally displaced person after he / she begins to comply with certain characteristics, in particular:

– being a citizen of Ukraine;

– if being a citizen of another state or a stateless person, he / she must have a legal right to permanent residence in Ukraine;

– the emergence of the need to flee or leave his home or place of permanent residence on the grounds which may concern both the person and family members, in particular:

The possibility of becoming a victim of persecution or the inability to fully enjoy the protection of Ukraine’s guaranteed by current legislation or international treaties, the consent of which is binding on the Verkhovna Rada of Ukraine; the threat to life, safety or freedom; a sense of the consequences of violence in situations of armed conflict or a systematic violation of human rights; external aggression; foreign occupation; Civil War; armed clashes on ethnic, religious, linguistic or other grounds that violate public order; emergencies of natural or man-made nature;

– the purpose of leaving home or place of permanent residence – to avoid a threat to his life or members of family;

– leaving his home or place of permanent residence without crossing the internationally specified frontiers.

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Summary

The article examines the content of internally displaced persons in the context of modern religions of Ukrainian society. The scientific approaches to the definition of the concept of "internally displaced person" are analyzed and the author's definition of this concept is presented.

Keywords: *internally displaced persons, refugee, military conflict, occupation.*