



UDC 342.722

CONCEPT AND THE ESSENCE OF THE CONSTITUTIONAL AND LEGAL STATUS OF INTERNAL TRANSFER PERSON

Larisa NALIVAYKO,

Doctor of Law, Professor, Honored Lawyer of Ukraine, Vice-Rector of Dnepropetrovsk State University of Internal Affairs, Academician of Academy of Sciences of Higher Education of Ukraine

Maksim ROMANOV,

Student of the Faculty № 1 of Yaroslav Mudryi National Law University, member of the All-Ukrainian Non-Governmental Organization Association of Ukrainian Lawyers

SUMMARY

The article analyzes the approaches to understanding the concept of the constitutional and legal status of the internally displaced person and on the basis of scientific opinions, the provisions of the current national and international legislation, and also taking into account the results of the author's sociological research, his essence has been outlined and an attempt has been made to formulate the significance of such a status for modern Ukraine.

Key words: internally displaced person, constitutional-legal status, sociological research, provision of rights of internally displaced person.

ПОНЯТИЕ И СУЩНОСТЬ КОНСТИТУЦИОННО-ПРАВОВОГО СТАТУСА ВНУТРЕННЕ ПЕРЕМЕЩЕННОГО ЛИЦА

Лариса НАЛИВАЙКО,

доктор юридических наук, профессор, Заслуженный юрист Украины, проректор Днепропетровского государственного университета внутренних дел, академик Академии наук высшего образования Украины

Максим РОМАНОВ,

студент факультета № 1 Национального юридического университета имени Ярослава Мудрого, член Всеукраинской общественной организации «Ассоциация Украинских юристов»

АННОТАЦИЯ

В статье проанализированы подходы к пониманию понятия конституционно-правового статуса внутренне перемещенного лица, и на основании научных взглядов, положений действующего национального и международного законодательства, а также учитывая результаты авторского социологического исследования, очерчены его сущность и предпринята попытка формулировки значение такого статуса для современной Украины.

Ключевые слова: внутренне перемещённое лицо, конституционно-правовой статус, социологическое исследование, обеспечение прав внутренне перемещенного лица.

Theme actuality. Modern Ukraine is a member of the international community in which all civilized countries are democratic that in the first place depends on the level of security of human rights and freedoms in each of them.

Today, in our country there are a number of problems through which its democracy can be questioned, and therefore they need an urgent solution. One of the possible ways of solving this problem is the adoption of normative legal acts regu-

lating them, and since no such act can be adopted without the appropriate level of research and the existing scientific basis, these issues are closely interrelated and extremely relevant.

Several years ago, in our country there started processes of mass internal displacement of people which were in the first place provoked by the armed aggression of the Russian Federation. This fact created uncertainty in the legal field and showed that the legislation on the protection of the rights and freedoms of internal-

ly displaced persons in Ukraine is absent at all and needs to be elaborated.

That is why the subject matter mentioned by the authors is extremely relevant since the definition of legal content and the characteristics of the specified status depend on the level of democracy, and the specified element, in turn, is a pass for Ukraine into the civilized world.

State of development of the declared topics. Problems of the constitutional and legal status of internally displaced persons have repeatedly become the object of scien-



tific research of both domestic and foreign lawyers. Among them are M. Baimaturov, I. Gozhii, Y. Grabova, I. Kozynets, O. Khasrvi, M. Malyha, A. Monaenko, Y. Martyniuk, B. Pirotskyi, M. Sirant, N. Tyshchenko, L. Shestak, and many others.

The purpose of the article is to analyze the approaches to the definition of the concept of internally displaced persons and to clarify the content of their constitutional and legal status. Basing on current normative legal acts of national and international jurisdiction opinions of scientists and thinkers, and the results of the author's sociological survey, our aim is to argue conclusions on optimizing the functioning of such a status in Ukraine.

The set goal has determined the necessity of solving a number of **research tasks** among which there are: to analyze approaches to understanding the concept of internally displaced person, on the basis of the results to outline the essence of the constitutional and legal status of internally displaced persons for Ukraine, and also guiding by the results of the author's sociological research to outline main issues and develop some recommendations for the possible improvement of the relevant status for the Ukrainian community in particular and the country as a whole.

The object of this research is the social relations in the field of ensuring the rights and freedoms of internally displaced persons in Ukraine.

The subject of the study is the constitutional and legal status of the internally displaced person as a guarantee of the consolidation of democracy and the development of the rule of law in Ukraine.

Presentation of the main research material. In the context of solving the question one must focus on the polarity of approaches to understanding the concept of "internally displaced person". A significant number of scientific sources and normative definitions in this field cause an acute scientific discussion.

In our opinion, first of all, in this issue it is necessary to pay attention to the relevant normative legal act regulating the status of the above persons. The Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" was adopted by the Verkhovna Rada of Ukraine on October 20, 2014. It is in this document that Article 1 deals with the concept of internally displaced person who is a citizen of Ukraine, a stateless

person or a foreigner legally residing in Ukraine who were forced to leave their homes or places of usual residence, in particular as a result of/or in order to avoid the consequences of an armed conflict, occupation of widespread manifestations of violence, human rights violations, natural or man-made disasters, and which have not crossed the internationally recognized border of Ukraine [1].

From the specified legal act it becomes clear that the status of an internally displaced person is a special status, which is provided only under certain conditions and which (from the moment of receiving it) provides citizens who have received it with additional rights, duties and guarantees.

At the same time the representative of the Secretary-General of the United Nations on internally displaced persons provided a working definition of internally displaced persons, as persons who were suddenly and unexpectedly forced to leave their homes suddenly and unexpectedly due to armed external and internal conflicts, systematic violations of human rights, environmental or human-made catastrophes and who are in the territory of their country of origin [2].

Analyzing a number of interpretations we can talk about the homogeneity of the causes of relocation. And in national legislation and in the views of representatives of the European space there are identical causes of forced resettlement which include armed conflicts, environmental disasters and systematic violations of human rights. But along with this, a filter appears in the form of "a significant number" of individuals, which indicates the mass of this phenomenon and confirms the reality of the threat to human rights in a particular territory.

At the same time one should give an example, almost identical concept provided by Goodwin Hill, who claims that internally displaced persons are those who are forced to flee suddenly from their homes in large quantities as a result of armed conflict, internal hostility, systematic violations of rights human or natural disaster and are in the territory of their own country [3].

Commenting on this definition it should be noted that it is almost the same as the preceding one, and their difference lies only in the criterion of "sudden fleeing" which was added by the last author, but analyzing all these concepts in the

general context, it becomes clear that due to the legal and scientific arguments indicated variations and criteria could be part of a legislative definition.

Along with the above-mentioned interpretations attention should be paid to the concept on the transfer of persons in the middle of the country given in the guidelines of the Office of the United Nations High Commissioner for Refugees. These principles interpret the notion of internally displaced person as a person or group of people who were forced to flee or leave their homes or place of residence because of, or in order to avoid the consequences of an armed conflict, situations of general violence, human rights violations or natural disasters/man-made catastrophes, and those who have not crossed the internationally recognized state border of the country [4].

Based on the above, the mentioned notion should be distinguished as the broadest in content from all proposed. Taking into account objective factors, such an interpretation can not be final, but based on the above definitions, it should be noted that international experience in defining the concept does not appeal to terms such as "widespread violence" that exists in national legislation.

In turn, the authors should note that the concept of "widespread" has a number of similar meaning in words, but has no exact interpretation, in particular such examples are "in every place", "everywhere", "all over the place" [5]. A separate provision is the definition given in the Guidelines on the movement of persons in the middle of the country, namely "general manifestations of violence", which in turn does not fully reflect the essence of the concept as it has the following semantic load, as "one that applies to everybody, everything, and falls on everybody and everything". And given that such formulations are inadmissible for the framework of legal science, as well as the language of normative legal documents, in our opinion, this provision of national legislation requires additional research and replacement with a more acceptable option.

Together with the aforementioned, one must justify the position that internally displaced persons are individuals or groups that under certain circumstances (systematic violations of human and civil rights and freedoms, armed aggression outside or inside the country, natural dis-



asters or man-made disasters) are forced in a short time to leave their places of residence, not crossing the internationally recognized state borders of the country.

In addition to the definition of the concept of internally displaced persons, the authors announced research and clarification of the essence of the constitutional and legal status of internally displaced persons in general.

It has to be argued that the essence of the constitutional and legal status of the internally displaced person as one of the special statuses, summarizing all its elements, is that the latter seeks to provide in every possible way the most vulnerable social group with the corresponding rights and freedoms that through objective circumstances may be violated if the state does not interfere in time. To reveal the essence of the specified status means to distinguish what causes its objective necessity and to comprehend that the country and society will suffer considerable losses if they exist and try to develop without introducing productive changes into the legislation.

One of the substantive parts of this status is that upon its acquiring a person receives a set of rights and freedoms that are essential to life in conditions that are made up of each particular person or group of individuals immediately before it is received.

In the process of its development any state was being improved and its needs changed from time to time, as well as the needs of its citizens changed, and in turn, they could emerge not only through the rapid development of society, but also through tragic situations. One of these situations is the armed aggression in eastern Ukraine which caused legal inaccuracy, and the need for a new constitutional-legal status that would meet the needs of those individuals who were forced to leave their homes.

At the same time, referring to the scientific interpretations of the concept of “the constitutional and legal status of the internally displaced person” it should be noted that although Ukrainian science does not know the exact definition of the above definition, but based on the interpretation of the concept of “the constitutional and legal status of a person and a citizen”, one can isolate the elements necessary for interpretation narrowing it by the subjective criterion.

As a rule, the constitutional and legal status of a person and a citizen is the system of legal parameters established by the Constitution of Ukraine and other laws which defines the actual position of a person and a citizen in a society at a particular stage of the socio-political development of the state [6].

Furthermore, based on the fact that the constitutional and legal status as a category of modern constitutional law can be interpreted as a system of fundamental and inalienable rights, freedoms and responsibilities of a person and a citizen, enshrined in the Constitution and laws of Ukraine, as well as a set of powers of state authorities and local self-government, their officials and officers in various spheres of public relations regulated by the branches of public and private law [7], it is necessary to conduct a series of parallels with the aforementioned constitutional and legal status.

Thus, the above status is a system of rights, freedoms and duties, as well as their guarantees and principles, which are intended to determine the legal and factual situation of internally displaced persons, in order to equalize them with the rights of other citizens.

On the other hand, the essence may also be disclosed in the elements of the constitutional and legal status itself, which today amounts to a sufficiently large number, namely guarantees of observance of rights, freedoms and responsibilities. In addition, the system of specific principles of the specified constitutional and legal status is referred to its elements. The question as to the membership of the concept to the elements of the specified status remains open.

Specifying these elements, it should be noted that rights are compulsory, formally determined rules of conduct, established or authorized by the state as a regulator of public relations [8] which in this case are defined by the Constitution of Ukraine and the standard legal act, the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”.

Among the rights of internally displaced persons, only in this category are the following: the right to register an internally displaced person; the right to provide technical and other means of rehabilitation; the right to continue obtaining a certain educational level at the expense

of the state budget; the right to unity of the family; the right to free temporary residence (subject to payment of utilities) within 6 months after registration; the right to assistance in the return of their movable property; the right to assistance in returning to their previous place of residence, as well as others.

In general, all of the rights given and granted by the Law of Ukraine form the basis for the proper functioning of a specific constitutional and legal status, but at the same time they stipulate the creation of new, inherent principles that are in particular defined in the Guiding Principles on the question of the transfer of persons in the middle of the country [9] which include: the principle of equality of rights of internally displaced persons and other citizens, the principle of free movement and freedom of choice of place of residence; the principle of free search for safe living conditions in other parts of the country or abroad; the principle of humanity, non-discrimination and exclusively targeted use of humanitarian assistance, as well as others.

Besides the above, Article 2 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” provides guarantees for the observance of their rights and freedoms, in order to prevent the emergence of conditions for forced displacement of persons, protection of observance of the rights and freedoms of such persons, creation of conditions for their voluntary return to the abandoned residence or integration into a new place of residence.

In addition to things mentioned above, one should focus on the sociological study “Level of Awareness on the Legal Status of Internally Displaced Persons in Ukraine” conducted in November 2017, which contains 10 questions on awareness of the problems of internally displaced persons.

In the course of the survey, about 500 people (students, teachers and staff) were interviewed by such higher educational institutions as Taras Shevchenko National University of Kyiv, National University of Kyiv-Mohyla Academy, National Academy of Internal Affairs, Yaroslav the Wise National Law University, Dnipropetrovsk State University of Internal Affairs, Ivan Franko National University of Lviv, Lviv State University of Internal Affairs, V.N. Karazin Kharkiv



National University, National University “Odessa Law Academy”.

In turn, without claiming the completeness of objectivity, but taking into account the results of the study, one can argue the following conclusions:

- during the study, it turned out that 38.3% of respondents believe that today in Ukraine there are more than 1.5 million internally displaced persons, and in contrast 8.5% of respondents choose the variant with the smallest number of such persons – 50 thousand;

- according to 66% of respondents, the greatest difficulties arise with the realization of social rights, and the smallest – with labor rights, which was noted by 5% of respondents. In addition to the above, there are also other options, namely 21.3% – political rights and 8% – the group of personal rights;

- among the bodies and organizations that can most effectively solve the problems of internally displaced persons, the figures were distributed as follows: 36.2% – Ministry for Temporary Occupied Territories and Internally Displaced Persons; 25.5% – local self-government bodies; public associations and organizations, as well as regional state administrations, received 14.9% of the respondents' replies; the lowest result, according to the opinion poll, was with the Verkhovna Rada of Ukraine, which is 8.5%;

- only 4% of respondents note that the rights of internally displaced people in Ukraine are fully provided, in turn 47.8% believe that the latter were partially provided, while 37% stated that the rights were not fully provided and 10.6% generally believe that the rights of the said individuals in Ukraine are not secured;

- the question of whether the legal status of internally displaced persons is of a temporary nature, or the internal displacement and full security of all the benefits is intended to leave the permanent place of such persons, the respondents answered as follows: 68.8% consider that this status is temporary, and 31.3% stated that it aims to leave for permanent residence;

- at the same time during the survey it turned out that among 100% of respondents 10.4% are internally displaced persons, while 89.6% are not;

- when assessing the attitude towards internally displaced people, the percentages were distributed as follows: 68.8% are friendly and willing to meet the latter,

31.3% are tolerant, and it is positive that none of the respondents mentioned intolerance towards such persons;

- among the steps to be taken by the Ukrainian authorities to improve the level of security of the rights and freedoms of internally displaced persons, respondents first determine the return of people to their place of residence (by settling an armed conflict in the east in the interests of the Ukrainian nation) (54.2%), adoption of the collection normative legal acts (39.6%), but at the same time believe that the current level of protection of the rights and freedoms of internally displaced persons does not require additional legislative regulation (6.3%);

- the most useful solution to the problem identified by the authors is the question of the activities of the Ministry for Temporary Occupied Territories and Internally Displaced Persons, namely 71% of those polled can not call any initiatives and examples of the Ministry's activities at all, and 29% respondents also determine that under the auspices of the said ministry, conferences, round tables are organized and held to cover the issue, as well as regulations are being developed to ensure the rights and freedoms for internally displaced persons;

- in response to the proposal to express their opinion on ways to improve the level of security of rights and freedoms of internally displaced persons in Ukraine, the following options were proposed by respondents: “by activating non-indifferent members of society for this problem, adopting a number of legal acts and amending existing ones with the aim of extending the rights and freedoms, as well as guarantees of internally displaced persons”; “the stimulation of employment, lending for the purchase and/or rental of housing, providing targeted assistance for the most vulnerable categories. The targeting of assistance and support should be extended”, “accounting for such persons in order to be able to control the situation regarding the number of such persons. It is also necessary to adopt the relevant legal acts, which would provide guarantees for such persons in relations with public authorities”.

Conclusions. Thus, on the basis of the analyzed scientific views and developed complex investigations, normative legal acts of various levels and jurisdictions conducted by the author's sociological

search, an attempt is made to substantiate the conclusions on the essence of the set goals and objectives.

1. The position on the necessity of amending the effective Law of Ukraine “On the Guaranteeing of the Rights and Freedoms of Internally Displaced Persons” was first defined in part 1 of the article, namely the introduction of corrections to the concept of internally displaced persons and the replacement of the following interpretation: “internally displaced person is a person or group that in certain circumstances (systematic violation of human and civil rights and freedoms, armed aggression outside or inside, natural disasters or man-made disasters) were forced to leave in a short time their place of residence without crossing the internationally recognized state borders of the country”.

2. It is further argued that the constitutional and legal status of internally displaced persons is a system of rights, freedoms and responsibilities, as well as their guarantees and principles, which are intended to determine the legal and factual situation of internally displaced persons, in order to equalize their rights with others citizens.

3. There has been further development of the provision that all elements of the content of the constitutional and legal status are not fully disclosed, which is why they require additional research and clarification in connection with its specificity.

4. It was determined that the attitude towards internally displaced persons by respondents is more characterized as positive (respondents are ready to go to the meeting and help). At the same time, 10.4% of the total number of respondents identified themselves as internally displaced persons.

Also, the majority of respondents believe that the rights of internally displaced persons in Ukraine are partially provided and the status indicated is temporary and the most expedient solution to the problem created is the return of such persons to their places of initial residence at a time when it becomes possible. The problem is the fact that not all respondents are guided by the number of internally displaced persons and indicate in the responses “500 thousand” and “1 million”, when today this figure is close to 2 million.

A significant percentage of respondents note that the greatest difficulties encountered by these individuals arise from



the realization of social rights, and the most effective way in dealing with all issues is with the relevant ministry, local self-government bodies, public organizations and associations, while the last positions are held by the Verkhovna Rada of Ukraine, the National Police Ukraine and others.

5. The further development of the provision for the more intensive and massive coverage of the work of the Ministry for Temporary Occupied Territories and Internally Displaced Persons in general and the particular problems and difficulties of such persons in particular has been further developed.

References:

1. Закон України «Про забезпечення прав і свобод внутрішньо переміщених осіб» Верховна Рада України; Закон від 20.10.2014 № 1706–VII. – [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/1706–18>.
2. Mooney E. The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern [Electronic resource] / E. Mooney // Refugee Survey Quarterly. – 2005. – Issue 3. – Vol. 24. – Mode of access: <http://www.brookings.edu/~media/research/files/articles/2005/9/fall-human-rights-mooney/9.pdf>.
3. Гудвін-Гілл Г.С. Статус біженця в міжнародному праві / Г.С. Гудвін-Гілл. – М., 1997. – С. 314.
4. Внутрішньо переміщені особи [Електронний ресурс]. – Режим доступу: <http://unhcr.org.ua/en/2011-08-26-06-58-56/news-archive/2-uncategorised/1293-vnutrishno-peremishcheni-osobi>.
5. Словник української мови: в 11 томах. – Том 6, 1975. – Стор. 695. – [Електронний ресурс]. – Режим доступу: <http://sum.in.ua/s/povsjudy>.
6. Шукліна Н.Г. Конституційно-правове регулювання прав і свобод людини і громадянина в Україні (проблеми теорії і практики): монографія / Н.Г. Шукліна. – К.: Центр навч. л-ри, 2005. – 312 с.
7. Кравчук В.М. Конституційно-правовий статус: питання дефініції / В.М. Кравчук // Науковий вісник Волинського національного університету імені Лесі Українки [Електронний ресурс]. – Режим доступу: http://esnui.eunu.edu.ua/bitstream/123456789/4822/3/nv_vnu2010_25.pdf, с. 22–26.
8. Юридична енциклопедія: В 6 т. / Редкол.: Ю.С. Шемшученко (голова редкол.) та ін. – К.: «Укр. енцикл.», 1998. ISBN 966–7492–00–1 Т. 5: П-С. – 2003. – 736 с.: іл. – ISBN 966–7492–05–02. – С. 560.
9. Руководящие принципы по вопросам о перемещении лиц внутри страны [Електронний ресурс]. – Режим доступу: http://www.un.org/ru/documents/decl_conv/conventions/internal_displacement_principles.shtml.

INFORMATION ABOUT AUTHORS

Nalivayko Larisa Romanovna – Doctor of Law, Professor, Honored Lawyer of Ukraine, Academician of Academy of Sciences of Higher Education of Ukraine, Vice-rector of Dnipropetrovsk State University of Internal Affairs;

Romanov Maksim Yuryevich – Student of the Faculty № 1 of Yaroslav Mudryi National Law University, member of All-Ukrainian Non-Governmental Organization Association of Ukrainian Lawyers

ИНФОРМАЦИЯ ОБ АВТОРЕ

Наливайко Лариса Романовна – доктор юридических наук, профессор, Заслуженный юрист Украины, академик Академии наук высшего образования Украины, проректор Днепропетровского государственного университета внутренних дел

larisa-nalivayko@ukr.net

Романов Максим Юрьевич – студент факультета № 1 Национального юридического университета имени Ярослава Мудрого, член Всеукраинской общественной организации «Ассоциация Украинских юристов»

police_14@ukr.net