

Anna Korshun

postgraduate

(the Dnipropetrovsk State University of Internal Affairs)

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INTERNALLY DISPLACED PERSONS' RIGHT TO HOUSING IN UKRAINE: PROBLEMS OF ENSURING REALIZATION

Коршун Г. ПРАВО ВНУТРІШНЬО ПЕРЕМІЩЕНИХ ОСІБ НА ЖИТЛО В УКРАЇНІ: ПРОБЛЕМИ ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ. На основі проблем внутрішнього конфлікту, який був викликаний військовою окупацією територій України, особи, які переїхали з окупованих територій так і не отримали житло, що було гарантовано їм Конституцією України. На жаль, більшість ВПО, що змушені були переїхати з окупованих територій мають труднощі з доступом до гідного житла, яке повинна надати держава. У цій статті досліджено проблеми реалізації права на житло внутрішньо переміщеними особами в Україні. Тематична актуалізація пов'язана з тим, що саме від реалізації права на житло залежить нормальне функціонування демократичної держави. Реалізація права на житло серед ВПО є особливо важливим, оскільки житло є необхідним для кожної людини. Необхідно, щоб законодавство змогло реалізувати права на житло, за допомогою якого внутрішньо переміщені особи можуть отримати соціальне житло. Зарубіжна практика свідчить, що реалізація права на житло для внутрішньо переміщених осіб може відрізнитися. Проаналізовано зміст існуючих законопроектів, які покликані забезпечити ефективну реалізацію права на житло внутрішньо переміщених осіб. Досліджено зарубіжний досвід в цій сфері. Сформульовано авторські пропозиції щодо вирішення проблеми.

Ключові слова: *внутрішньо переміщені особи, переселенці, житло, правова держава, міжнародні стандарти.*

Problem statement. The need for realization of the right to housing is conditioned by the fact that the terrorist events on the territory of Eastern Ukraine caused the forced migration of the population and the emergence of a special category of internally displaced persons. As of February 5, 2018, according to the data of the structural units of the social protection of the population of the oblast and Kyiv city state administrations, 1 493 057 internally displaced persons were registered. Since internally displaced persons are the most vulnerable in the population, the issue of realization of the right to housing is relevant.

Ukrainian public opinion is increasingly aware of the scale of the socio-political catastrophe that manifests itself in the violent migration of the population in the East of Ukraine and the Crimea. In forced migration there is a human drama of countless consequences. People from the East of Ukraine and the Crimea are forcibly leaving their history and their land. Displaced persons have to be in uncertainty in which they do not know when they return.

Status of the research: At the present stage, many domestic scientists pay attention to the problems of internally displaced persons, namely: N. Andrusyshyn, T. Gnatiuk, N. Gusak, I. Danylova, V. Diachenko, M. Kobets, K. Krakhmalova, V. Mikhailovskyi, O. Ryndzak, U. Sadova, T. Semygina, S. Trukhan, D. Tsvigun, and others.

The purpose and tasks of the article are to outline the current problems of legislation on the realization of the right to housing and to research possible ways to solve them.

Description of the main material. This article analyses the problems of realization of the internally displaced persons (IDPs – further) right to housing. In addition examples of foreign countries' practice in solving the issue of realization of the right to housing and the suggested trends in the formation of national policy in this area are considered.

In Ukraine, internal displacement of people has economic, social and political reasons. The reason that caused the greatest number of internal migration in Ukraine was the violence committed by armed groups against the civilian population, caused by the interests of mass occupation of the country's territories, and also because the militants did not share the political positions of the population, which forced people to leave the occupied territories.

Housing is one of the main material conditions of human life. The need for a person in the home arises from the moment of his birth, is maintained throughout his life and ceases after death. Hence, meeting the needs of people in housing is an important social task.

Realization of the IDPs right to housing is especially important as housing is neces-

sary for every person.

The Constitution of Ukraine states: «Citizens in need of social protection shall be provided with housing by the state and local self-government bodies free of charge or at an affordable cost to them in accordance with the law [1]». Consequently, we can conclude that satisfying the housing needs of Ukrainian citizens is an important social task of the state. Based on the problems of the internal conflict those who have moved from the occupied territories have received the status of internally displaced persons and one of the most important problems facing these citizens has become the problem of realization of the right to housing, guaranteed by Article 47 of the Constitution of Ukraine. Unfortunately, the majority of IDPs forced to leave the occupied territories have difficulties with access to decent housing, which should be provided by the state.

Among the large number of rights that are violated daily against the internally displaced persons, the right to housing is important since other types of rights requiring equal restitution, such as the right to health and education, have the same importance as housing for a person, because this is one of the most important needs where IDPs should have exclusive rights and guarantees, precisely because of their vulnerability.

We must start with the recognition that the decision should not just be the construction of new homes, but also a multitude of alternatives that range from special mortgage credit to renting.

However, it is clear that the full realization of the right to housing for the entire displaced population can not occur in the short-term or even in the medium term. Therefore, it is necessary to develop various alternatives to address the unreliable housing situation of displaced persons by analysing the various forms of safe ownership that can be provided, always with the prospect of turning them into long-term solutions with sustainable ability.

The first attempt to correct the realization of the internally displaced persons right to housing was the Resolution of the Cabinet of Ministers of Ukraine «On approval of the integrated state program for support, social adaptation and reintegration of Ukrainian citizens who moved from the temporarily occupied territory of Ukraine and areas of anti-terrorist operation to other regions of Ukraine for the period up to 2017».

The purpose of the Program was to solve the main problems of internally displaced persons and reduce the level of social tension among them and in society; promotion of integration and social adaptation of such persons at the new place of residence; assistance in ensuring the creation of proper conditions for life, rights and implementation of the potential; provision of social, medical, psychological and material support; creation of prerequisites for compensation for property (material) and moral damage caused to them; creation of favorable conditions for voluntary return to places of previous residence (subject to full actual cessation of hostilities in areas where the state authorities temporarily do not exercise their powers) [2].

The next step was the presentation of the new «Strategy of the IDP integration and implementation of long-term solutions to internal displacement for the period till 2020» from the Ministry for Temporary Occupied Territories and Internally Displaced Persons.

Submitted by the Ministry for Temporary Occupied Territories and Internally Displaced Persons within the Forum, «Strategy of the IDP integration and implementation of long-term solutions to internal displacement for the period till 2020» should replace «The integrated state program for support, social adaptation and reintegration of Ukrainian citizens who moved from the temporarily occupied territory of Ukraine and areas of anti-terrorist operation to other regions of Ukraine for the period up to 2017» approved by the government in 2015 [3].

The aim of the Strategy is social and economic integration of internally displaced persons and implementation of long-term solutions to the realization and protection of their rights, freedoms and legitimate interests, increasing their self-sufficiency and independence, taking into account the interests of host territorial communities, establishing effective interaction of internally displaced persons with host territorial communities, state authorities and local self-government bodies on the basis of partnership, the result of which is the achievement of social unity [4].

On January 17, 2018, the government issued Resolution No. 20 «On amendments to the procedures» approved by the Resolution of the Cabinet of Ministers of Ukraine on March 31, 2004 No. 422, in which internally displaced persons are classified in the category of citizens entitled to receive premises from the housing stock for a temporary residence, as well as determine the necessary for this list of documents [5].

Prior to the publication of this Resolution, the problem of realization of the right to housing was not regulated at all, given that according to the legislation of Ukraine, IDP is not included in the list of categories of citizens who have the right to social housing. In some cases,

when the local council was able to allocate social housing for IDPs, the provisions of the laws «On local self-government in Ukraine» and «On social fund housing» were applied.

The Norwegian Refugee Council has carried out an analysis of three projects in the cities of Donetsk oblast, namely, in Bakhmut, Kramatorsk and Slaviansk for provision of social housing for internally displaced persons in the Donetsk region. Based on the example of projects in these cities, we see that the process of providing housing was too complicated for local councils, due to the lack of rights to social housing in the IDP, but in some cases the right to housing was provided by references to Articles 9 and 11 of the Law of Ukraine «On ensuring rights and freedoms of internally displaced persons» and Article 26 of the Law of Ukraine «On local self-government», which provides for the exclusive competence of local councils on the alienation, transfer of use and other utilization of communal property, these projects were passed to IDPs [6].

The foreign experience of the post-Soviet countries allows us to analyse the general conditions for the provision of housing to solve housing issues in this category of persons in order to make appropriate recommendations for Ukraine on the way of policy formation in this area. So, let us look at the example of Azerbaijan and Georgia, which Ukraine can take into account.

The internal displacement of people in Azerbaijan began after the conflict with Armenia through the territory of Nagorno-Karabakh. The conflict began during the Soviet era in 1988, when nationalist aspirations appeared in Nagorno-Karabakh, and the Soviet government agreed to pass on the territory to Armenia. In Azerbaijan, there is a program for improving living standards and creating jobs for refugees and IDPs. Thanks to this program, 82 temporary settlements were constructed in Azerbaijan with schools and medical centers for 40,000 families, that is, for 180,000 internally displaced persons. The positive aspect of this program is that the IDPs were able to realise their right to housing for a long-term free of charge. However, the negative point was that the quality of housing in these temporary settlements was not satisfactory, therefore, in a short time the buildings needed repairs.

To date, Georgia has about 259,247 IDPs, which is about 6% of the population of Georgia. The procedure for providing housing for internally displaced persons was carried out in the following ways:

- 1) IDPs could privatise housing in which they live for a long time;
- 2) transfer of IDPs to restored and newly built houses, or the provision of one-time compensation of 10,000 dollars USA;
- 3) purchase of housing in rural areas for IDPs;
- 4) redemption of private property and transfer of ownership to IDPs;

It is noteworthy that the Georgian authorities transferred housing to the private property of the IDPs in order to secure their long-term resettlement and created opportunities for free disposal of property (purchase, sale, lease, etc.).

The negative point was that, as well as in Azerbaijan, most of the buildings were constructed with defects, and this entailed the need for repairs of the newly built dwelling. Another problem was that the IDPs were not involved in previous consultations and did not participate in the distribution of housing. There have also been cases where the IDPs took a lump sum payment and since the confirmation of their applications, they still could not get their money for a long time.

Proceeding from the necessity of developing proposals in the context of the problem of realization of the internally displaced persons right to housing, we propose analytical development of appropriate actions for the realization of the IDPs right to housing.

On the basis of the problems of the internal conflict, which was caused by the military occupation of the territories of Ukraine, those who moved from the occupied territories did not receive housing, which was guaranteed by the Constitution of Ukraine. Unfortunately, most of the IDPs who were forced to leave the occupied territories have difficulty in accessing decent housing, which should be provided by the state.

Therefore, a number of suggestions are presented below as recommendations for state policy which can be taken into account to help overcome the weak performance of the state in regulating the realization of the internally displaced persons right to housing.

Conclusions. The tentative approach aimed at resolving the right to housing should be aimed at the development and harmonization of state policy, which under the leadership of the state will allow quantitative and qualitative overcoming the current situation.

It is also necessary to recognise that today's housing policy was mainly focused on creating a new home, and although other alternatives have been proposed, they are either not

encouraged or implemented to a lesser degree. Among the decisions that should be considered as alternatives to the internally displaced persons, the following proposals that can be applied are listed:

- 1) purchase of new housing;
- 2) purchase of used housing;
- 3) state program of housing assistance on the site belonging to the internally displaced persons;
- 4) improvement of the current housing (there are cases where the internally displaced persons lease or buy a long-term home in a state of emergency, in the case of which the state may help to rebuild housing with the condition of residence for a certain term);
- 5) adaptation of abandoned buildings that can be structurally transformed into residential buildings;
- 6) reconstruction of urban old housing stock;
- 7) design of rural settlements;
- 8) one-time compensation from the state;
- 9) special loan conditions, mortgages for IDPs.

By synthesising the results of the analysis, one can conclude that the realization of the right to housing for internally displaced persons in Ukraine is of special importance today, since the realization of the IDPs rights is a legal guarantee of the inviolability of the rights and freedoms established by the Constitution. At the current stage, the urgent issues are the introduction of amendments to domestic legislation, which must comply with international standards and ensure the effective realization of the right to housing for internally displaced persons. Ways of effective development of realization of the right to housing are a promising direction for further research.

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Summary

On the basis of the problems of internal conflict, which was caused by the military occupation of the territories of Ukraine, those who moved from the occupied territories did not receive housing, which was guaranteed by the Constitution of Ukraine. Unfortunately, the majority of IDPs who were forced to leave the occupied territories have difficulties with access to decent housing, which should be provided by the state. This article explores the problems of the realization of the internally displaced persons right to housing in Ukraine. The content of the existing bills which are intended to ensure the effective realization of the right of internally displaced persons to housing is analysed. The foreign experience in this field is studied. The author's suggestions for solving the problem are formulated.

Keywords: *internally displaced persons, settlers, housing, rule of law, international standards.*