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## ЗАГАЛЬНОТЕОРЕТИЧНІ ОСОБЛИВОСТІ ПРАВОВОГО СТАТУСУ ВНУТРІШНЬО ПЕРЕМІЩЕНИХ ОСІБ В УКРАЇНІ

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### **Завальний В.В. Загальнотеоретичні особливості правового статусу внутрішньо переміщених осіб в Україні.**

Стаття присвячена поглибленню дослідження проблем загальнотеоретичних особливостей правового статусу внутрішньо переміщених осіб (ВПО) в Україні під час війни як в найгостріший період суспільно-правової аномії, коли усі громадяни держави зазнають негативного впливу воєнних дій.

З'ясовано, що важливим аспектом є надання ВПО психологічної допомоги, що дозволяє людям, котрі потрапили у складні життєві умови емоційно і психологічно стабілізувати свій стан і, як наслідок, уникати певних неправомірних дій самим та не стати об'єктом злочинних посягань правопорушників. ВПО наділені усіма правами громадян України та певними правами які передбачає їх статус. Процедура реалізації громадянами прав за межами свого постійного проживання може ускладнюватися через відсутність у ВПО певних документів, їх втрату, або ж незнання своїх прав у статусі ВПО.

Наголошено на проблемах дотримання прав дітей, що стали внутрішньо переміщеними особами. В Україні дітям, зареєстрованим як внутрішньо переміщені особи, надається державна цільова підтримка. Поряд з вирішенням матеріально-побутових аспектів життєдіяльності також необхідно попереджати прояви неправомірної поведінки серед дітей, булінгу тощо. Профілактична робота органів ювенальної превенції разом з психологічними службами повинна бути спрямована на інтеграцію неповнолітнього у нове середовище на принципах правомірності і дотримання прав дитини.

Зазначено, що важливим аспектом є надання ВПО безоплатної правової допомоги. В містах, що приймають основну кількість ВПО вже у приміщеннях залізничних вокзалів можна отримати кваліфіковану правничу допомогу щодо основних питань процедури реєстрації, тимчасового поселення, харчування, медичної та соціальної допомоги. Важливою є суспільна солідарність і взаємодія усіх громадян.

Держава повинна проявляти максимальну підтримку зазначеній категорії громадян, щоб

не допустити порушення їх прав і свобод, проявів неправомірної поведінки цих осіб і щодо них, а також, з метою уникнення масового біженства українців через недосконалу систему забезпечення основних прав ВПО відповідними службами і владними структурами.

**Ключові слова:** внутрішньо переміщена особа, війна, біженець, права дитини, збройний конфлікт, соціально-правовий захист, психологічно-правова допомога.

### **Zavalnyi V.V. General theoretical features of the internally displaced persons legal status in Ukraine.**

The article is dedicated to the comprehensive study of the problems of the general theoretical features of the internally displaced persons legal status (IDPs) in Ukraine during the war as the most acute period of socio-legal anomie, when all citizens of the state are negatively affected by military actions.

It was found that the provision of psychological assistance to the IDPs is an important aspect, which allows people who live in difficult conditions to emotionally and psychologically stabilize their state and, as a result, avoid certain illegal actions and not become the object of criminal encroachments by offenders. The IDPs have all the rights of citizens of Ukraine and certain rights provided by their status. The procedure for citizens of their rights realization outside of their permanent residence may be complicated by the IDP's certain documents lack, their loss, or ignorance of their rights as the IDPs.

The problems of children rights compliance who have become internally displaced persons are emphasized. In Ukraine, targeted state support is provided to children registered as internally displaced persons. Along with solving the material and household aspects of life, it is also necessary to prevent manifestations of illegal behavior among children, bullying, etc. The preventive work of juvenile prevention bodies, together with psychological services, should be aimed at integrating the minor into a new environment based on the principles of legality and compliance with the rights of the child.

It is noted that an important aspect is the provision of free legal aid to the IDPs. In the cities that host the main number of IDPs, it is possible to get qualified legal assistance in the premises of railway stations regarding the main issues of the registration procedure, temporary settlement, food, medical and social assistance. Social solidarity and interaction of all citizens is highly important.

The state should show maximum support for the specified category of citizens in order to prevent violation of their rights and freedoms, manifestations of illegal behavior of these persons and towards them, as well as, with the aim of avoiding the mass Ukrainian refugees flow due to the imperfect system of ensuring the basic rights of IDPs by relevant services and authority structures.

**Key words:** internally displaced person, war, refugee, child rights, armed conflict, social-legal protection, psychological-legal assistance.

**Formulation of the problem.** Today in Ukraine, significant adjustments are made not only in the processes of state formation and law-making, political and economic processes, but also in social, moral and value relations between members of society.

Russia's war against Ukraine opened many gaps and shortcomings at all levels of the formation and development of domestic and international legislation, as well as the imperfection of a number of domestic and international organizations, the purpose of which is the prevention and resolution of military conflicts in certain regions or the world in general.

Our enemy disregards all international norms and rules of waging war, resorts to genocide of the Ukrainian nation and violations of basic human rights, therefore, an important task after the defense and preservation of the integrity of our state, its sovereignty and independence is the improvement of the population protection system, especially the most vulnerable categories, in particular internally displaced persons facing death, loss of property, torture and psychological violence.

There is an urgent need to improve the legislation on the IDPs. This area of legislation in Ukraine has been significantly developed and improved since 2014, but a full-scale war requires deeper changes in order to ensure that persons who have forcibly changed their place of residence within the state have the opportunity to realise their rights and freedoms as much as possible, as well as a decent level of social security and realization of the right to protection by the state.

**The state of this problem processing.** For a comprehensive analysis and understanding

of the indicated issues, it is advisable to rely on normative legal acts and the theoretical-methodological potential of the works of domestic and foreign legal scholars, namely: the works of N. Bortnyk, I. Harny, I. Hrytsay, S. Husarova, R. Maksakova and others.

Within the legal interpretation of the problem, scientific concepts should contribute to the formation of an axiological approach to ensuring the rights of the internally displaced persons in the state space during the war, as well as to strengthening national unity and the spirit of the nation in the period of socio-legal anomie.

**The purpose of the article** is to deepen the study of the problems of general theoretical features of the internally displaced persons legal status in Ukraine.

**Presentation of the main material.** The socio-legal development in Ukraine during the war directs its vector in the area of activation of the social guarantees provision for citizens affected by military actions, in particular, internally displaced persons (IDPs).

This category of the country's population is extremely vulnerable in terms of ensuring and observing the fundamental rights and freedoms of a person and a citizen.

Ukraine ratified a number of international legal norms regarding IDPs, as well as adopted internal legal regulations on the main aspects of ensuring the rights and freedoms of this category of population.

Regarding the concept of the «internally displaced person», the Law of Ukraine «On Ensuring the Rights and Freedoms of the Internally Displaced Persons» states that an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who is in the territory of Ukraine on legal grounds and has the right to permanent living in Ukraine, who was forced to leave their place of residence as a result of or in order to avoid the negative consequences of armed conflict, temporary occupation, widespread manifestations of violence, violations of human rights and emergency situations of a natural or man-made nature. [1].

Let us note that the term «refugee» is often mistakenly used for such persons.

According to the Convention on the Status of Refugees as of 1951, a refugee is a person who «due to well-founded fear became a victim of persecution on grounds of race, religion, nationality, citizenship (nationality), belonging to a particular social group or political opinion is outside the country of his citizenship and cannot use the protection of that country, or does not want to use this protection due to such fears» [2].

Although, the term «internally displaced person» itself is also not perfect and does not

fully reveal the meaning of this concept, because if we are talking about IDPs during the war in Ukraine, then it is probably more appropriate to use «forcefully displaced person» who was forced to leave the place of residence, saving one's life, avoiding the negative consequences of hostilities in a specific territory.

We do not aim to discuss terminology, but only present a certain point of view, so we will use the term prescribed in the legislation, namely «internally displaced person».

Since 2014, special attention has been paid to the IDPs in Ukraine. However, since the beginning of the full-scale war of Russia against Ukraine, this problem has deepened significantly, and the Verkhovna Rada of Ukraine adopted the Law No. 2417-IX as of 18.07.2022 «On Amendments to the Law of Ukraine «On Ensuring the Rights and Freedoms of Internally Displaced Persons» in order to bring its individual provisions into line to the Law of Ukraine «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine».

From now on, all internally displaced persons, regardless of the region from which they moved, will be able to fully exercise the rights provided by the Law of Ukraine «On Ensuring the Rights and Freedoms of Internally Displaced Persons». Previously, the legislation demarcated internally displaced persons (IDPs) according to the territorial principle and, in fact, made it possible to realize all the rights stipulated by the Law of Ukraine «On Ensuring the Rights and Freedoms of Internally Displaced Persons» only for two categories of IDPs: – persons who moved from the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol; – persons who moved from temporarily occupied territories in Donetsk and Luhansk regions [3; 4].

The IDPs have all the rights of citizens of Ukraine and certain rights provided by their status. The procedure for citizens to exercise their rights outside of their permanent residence may be complicated by the IDP's lack of certain documents, their loss, or ignorance of their rights as an IDP.

An important aspect is the provision of free legal aid to the IDPs. In the cities that receive the main number of IDPs, it is possible to get qualified legal assistance in the premises of railway stations regarding the main issues of the registration procedure, temporary settlement, food, medical and social assistance.

The internally displaced persons have the right: to free movement within the territory of Ukraine in order to seek safety; to protect against forced return or resettlement to places where their life, safety, freedom and/or health would

be in danger; to a voluntary and informed choice regarding return, integration in the territory of relocation or resettlement / relocation to another part of the country; to family unity; to temporary employment in accordance with the procedure established by the legislation of Ukraine; for unimpeded access to health care services; for obtaining all types of services related to documentation at the State Migration Service of Ukraine, including obtaining a passport of a citizen of Ukraine, a foreign passport, entering data about children, etc. at any branch of the State Migration Service of Ukraine; for free legal assistance in accordance with the established procedure; to an application with a request for the allocation of a land plot at the expense of a state loan for housing construction or social housing in places of displacement; to obtain registration at the place of residence or stay in accordance with the legislation [1].

As we can see, the list of rights of the IDPs is quite broad and covers the entire social and legal sphere of human activity. Not always in a critical situation, a person can orientate him/herself in all the legal features of the implementation of the specified rights. Therefore, it is important to involve also legal clinics in the consultation process that operate, for example, at educational institutions and provide free legal assistance.

The IDPs are also provided with psychological assistance, which allows people who have fallen into difficult living conditions to emotionally and psychologically stabilize their condition and, as a result, avoid certain illegal actions themselves and not become the object of criminal encroachments by offenders. A disorganized and psychologically exhausted person is, unfortunately, an easy target for fraudsters and criminals.

It is important to focus attention on the problems of observing the rights of children who have become internally displaced persons.

In Ukraine, state targeted support is provided to children registered as the internally displaced persons in the form of: – full tuition fees for obtaining a certain type of education. Support is provided until the person graduates from the educational institutions, but no longer than until they reach the age of 23; – provision of preferential long-term loans for education in accordance with the procedure established by law – in the case of enrollment for studies in accordance with agreements concluded between a higher educational institution and an individual or legal person, in accordance with the conditions of admission; – social stipends for persons studying under the state or regional order on a full-time basis; – free provision of textbooks – at the expense of the library fund of the relevant educational institution; – free access to the Internet, database systems at the state and communal

educational institutions; – free accommodation at student dormitories – for persons who study on a full-time basis; – accommodation at student dormitories with preferential payment; – provision of free food by educational institutions regardless of subordination, type and form of ownership, etc. [5].

It is worth emphasizing the importance of the work of juvenile prevention bodies with minor internally displaced persons. Along with solving the material and household aspects of life, it is necessary to prevent manifestations of illegal behavior among children, bullying, etc. The preventive work of juvenile prevention bodies, together with psychological services, should be aimed at integrating the minor into a new environment based on the principles of legality and compliance with the rights of the child.

The decision of the Government adopted on October 21, 2022, that students of colleges and institutions of higher education, currently studying on a contract form, will be able to switch to the budget form is important and correct. Prime Minister Denys Shmyhal stated that, firstly, this concerns the children of the fallen defenders of Ukraine, participants in hostilities and their children. Second, it will also apply to the internally displaced persons who have moved from communities under occupation or where hostilities are active. According to the Prime Minister, all students from these categories, who were enrolled in the contract form of study until 2021 inclusive, will be able to continue their education at the expense of the state. This year, the state will allocate UAH 363 million for the corresponding project. In the conditions of the difficult economic situation of the IDPs, as well as the support of Ukrainians who defended and defend Ukraine, the Government considers this project to be a correct and fair decision [6].

In general, compliance with the lawful behavior of IDPs is one of the primary issues to be monitored by relevant services and law enforcement agencies. War as a litmus test reveals a person's latent propensities for illegal or deviant behavior. No perfectly prescribed norm, social services, volunteers are able to influence the formation of lawful behavior in the crisis period of the society development, if the person him/herself does not want it.

In order to reduce cases of the IDP status abuse, the Cabinet of Ministers of Ukraine introduced verification of the actual place of IDPs residence, which was approved by the relevant Resolution No. 1168 «On Amendments to the Procedure for the Accommodation Assistance Providing to the Internally Displaced Persons» [7].

Also an important innovation is the provision that assistance is not provided to the internally

displaced persons who were registered as the internally displaced persons until February 24, 2022, except for persons who received monthly targeted assistance to the internally displaced persons to cover living expenses, including for the payment of housing and communal services, and persons who have re-moved from the territory of Ukraine which is temporarily occupied by the Russian Federation, the territory of territorial communities located in the area of military (combat) operations or who are under temporary occupation, encirclement (blockade) after February 24, 2022. [8].

We should note that in the context of the spatial movement of a person, the term «migration» is often used. The forms of physical persons migration depend on the migration policy of a specific state for a given period of time. Currently, there are different approaches to the division of physical persons into types of migration, and therefore there is no generally accepted classification of it. Depending on which criterion is used as the basis of the classification, appropriate schemes of people's movements differentiation appear, including the escape from war and difficult life situations [9].

**Conclusions.** Therefore, we came to the conclusion that internally displaced persons during the war should be able to fully realize their constitutional rights and obligations, which are guaranteed to them by the state.

In order to ensure the legal status of IDPs, which is a legally fixed position of a person in society in Ukraine, the legislative framework is actively updated, social and psychological services work intensively, legal support and legal consultations are provided, as well as the volunteer-humanitarian movement is also active. During martial law, citizens of the state cannot fully realise all their rights, which is justified by legal acts, but this applies to everyone without exception, not only IDPs.

The state should show maximum support for the specified category of citizens in order to prevent violation of their rights and freedoms, manifestations of illegal behavior of these persons and towards them, as well as, with the aim of avoiding the mass refugees flow of Ukrainians due to the imperfect system of ensuring the basic rights of the IDPs by relevant services and authority structures.

#### REFERENCES:

1. Верховна Рада України. Законодавство України. Закон України «Про забезпечення прав і свобод внутрішньо переміщених осіб» (Відомості Верховної Ради (ВВР), 2015, № 1, ст. 1). Зі змінами і доповненнями. <https://zakon.rada.gov.ua/laws/show/1706-18#Text>.

2. UNHCR Агентство ООН у справах біженців. *Біженці та шукачі притулку*. [https://www.unhcr.org/ua/refugees-asylum-seekers\\_ua](https://www.unhcr.org/ua/refugees-asylum-seekers_ua).
3. Профспілка працівників науки і освіти України. *Однакові права для всіх внутрішньо переміщених осіб: законодавчі зміни*. <https://pon.org.ua/novyny/9666-odnakovi-prava-dlia-vsikh-vnutrishno-peremishchenykh-osib-zakonodavchi-zminy.html>.
4. Верховна Рада України. Законодавство України. *Закон України «Про внесення змін до Закону України «Про забезпечення прав і свобод внутрішньо переміщених осіб» щодо приведення окремих його положень у відповідність до Закону України «Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України»* Відомості Верховної Ради (ВВР), 2022, № 2417-IX). <https://zakon.rada.gov.ua/laws/show/2417-20#Text>.
5. Довідково-інформаційна платформи правових консультацій. *Державна цільова підтримка дітей, зареєстрованих як внутрішньо переміщені особи*. <https://wiki.legalaid.gov.ua/index.php/%D0%94%D0%B5%D1%80%D0%B8>.
6. Урядовий портал. *Діти захисників та ВПО з громад, де ведуться бойові дії, зможуть продовжити навчання на бюджеті*. <https://www.kmu.gov.ua/news/premier-ministr-dity-zakhysnykiv-ta-vpo-z-hromad-de-vedutsia-boiovi-dii-zmozhut-prodovzhyty-navchannia-na-biudzheti>.
7. Кабінет Міністрів України. *Постанова Кабінету Міністрів України «Про внесення змін до порядку надання допомоги на проживання внутрішньо переміщеним особам»* від 14 жовтня 2022 р. № 1168. <https://zakon.rada.gov.ua/laws/show/1168-2022-%D0%BF#Text>.
8. Кабінет Міністрів України. *Постанова Кабінету Міністрів України «Про внесення змін до Порядку надання допомоги на проживання внутрішньо переміщеним особам»* від 19 серпня 2022 р. № 923. <https://zakon.rada.gov.ua/laws/show/923-2022-%D0%BF#Text>.
9. Грицай І.О. Конспект лекцій з дисципліни «Міграційне право» <https://dduvs.in.ua/wp-content/uploads/files/Structure/library/student/lectures/1108/3.1.pdf>.