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## THE ROLE OF NATIONAL AND INTERNATIONAL INSTITUTIONS IN GUARANTEEING RIGHTS AND FREEDOMS OF INTERNALLY DISPLACED PERSONS

The article examines the role of national and international institutions in guaranteeing the rights and freedoms of internally displaced persons in Ukraine. The activities of the entities ensuring effective implementation and protection of rights and freedoms of internally displaced persons are defined and characterized. It is emphasized that, despite the considerable number of subjects which ensure the rights and freedoms of internally displaced persons, the lack of coordination in their activities leads to a violation of their work in the context of achieving a single goal. The attention is paid to the fact that the specifics of the functioning of state authorities and local self-government in the field of guaranteeing the rights and freedoms of internally displaced persons is that a significant part of the state tasks are realized through cooperation with public organizations, both national and international.

**Keywords:** internally displaced persons, legal status, guarantees, organizational and legal (institutional) guarantees, realization of rights, provision of rights, protection of rights.

**Problem statement.** The legal framework for the status of internally displaced persons in a modern legal state should be based on effective legislation, which should be in line with international standards. However, even perfect legislation will not be efficient without effective safeguards for its provision. In the context of this an important element of the mechanism for ensuring the legal status of internally displaced persons is their guarantors. In view of the fact that general guarantees determine the readiness of the state and society to exercise the rights and freedoms, they have a significant impact on the realization of the rights and freedoms of internally displaced persons. General guarantees are determined by the level of development of the main spheres of social and public life, namely social, economic, political, cultural (spiritual), etc. Thus, even the most perfect legal mechanism for ensuring rights and freedoms is ineffective if the level of political and socio-economic development of the state and society is low.

In the scientific literature, the system of guarantees of human rights and freedoms, including internally displaced persons, is represented by general and special (legal) ones. Special legal guarantees of the rights and freedoms of internally displaced persons can be divided into normative and legal and organizational and legal (institutional).

Normative and legal guarantees of the rights and freedoms of internally displaced persons to the established norms of the law of the current legislation (the Constitution of Ukraine, laws, subordinate legal acts), which set and establish the basic rights and freedoms, define the principles and ways of their realization.

Organizational and legal (institutional) guarantees are represented by the system of the main subjects of law, which are empowered to determine the basic rights and freedoms of internally displaced persons, establish mechanisms for their implementation, and carry out judicial and extrajudicial protection in the event of their violation.

**Analysis of recent research and publications.** As a general scientific category, the guarantees were investigated by: V. Averianov, Y. Bytiak, O. Zaichuk, A. Kolodii, V. Lemak, L. Nalyvaiko, O. Petryshyn, V. Pogorilko, P. Rabinovych, A. Skakun, V. Tatsii, Yu. Todyk, O. Frytskyi, Yu. Frytskyi, V. Tsvetkov, M. Tsvik, V. Shapoval, Y. Shemshuchenko and others. However, the problem of the effective functioning of national and international institutions in the field of guaranteeing the rights and freedoms of internally displaced persons remains relevant and almost unexplored.

**Description of the main material.** To find out the content and conditions for the effective functioning of the institutional (organizational and legal) guarantors of the rights and freedoms of internally displaced persons, it is necessary to analyze their activities in this direction.

The leading place among the institutions that ensure the implementation of the rights and freedoms of internally displaced persons belongs to the **Verkhovna Rada** of Ukraine, whose activities consist

in adopting laws and subordinate legal acts, for example, in the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” the volume of rights and freedoms of internally displaced persons is fixed: the rights and obligations of bodies of public authority in the sphere of realization of rights and freedoms of internally displaced persons are defined, etc.

**President of Ukraine** in accordance with Part 1 of Article 3 of the Law of Ukraine “On military-civilian administrations” forms, if necessary, military-civilian administration. The President implements normative activity by means of: firstly, the development and signing of sectoral laws; secondly, the adoption of national human rights strategies, in particular, aimed at protecting the rights and freedoms of internally displaced persons and improving the institutional guarantees of their implementation. Also, citizens of Ukraine have the right, through submission of proposals, remarks and complaints, to apply to the official website of the Internet Presidential Office of Ukraine on guaranteeing the rights and freedoms of internally displaced persons.

In the system of **executive authorities**, the **Cabinet of Ministers of Ukraine** is an important guarantor of the rights and freedoms of internally displaced persons. The Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” in the sphere of guaranteeing the rights and freedoms of internally displaced persons in Parts 3 and 9 of Article 4, Part 2 of Article 4-1, Paragraph 2, Part 1 of Article 7, Part 8 of Article 7, Part 9 of Article 7, Article 10, Part 2 of Article 17 there are enshrined the powers of the Cabinet of Ministers of Ukraine regarding the establishment of order: receiving a certificate on the registration of internally displaced persons; collecting and processing data, registration and issuance of the certificate on the registration of internally displaced persons; the procedure for the creation, maintenance and access to the information of the Unified information database on internally displaced persons; re-registration of the unemployed, which were subsequently registered as internally displaced persons; provision of technical and other means of rehabilitation, provision of rehabilitation services; financing of the training of the category of persons who were enrolled in educational institutions in the territories where the circumstances specified in Article 1 of the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”, for training at the expense of the state budget, etc.<sup>1</sup>. The aforementioned list of powers of the Cabinet of Ministers of Ukraine is not exhaustive.

It should be noted that there is no adequate securement provided for in Part 2 of Article 17 of the Law of Ukraine “On ensuring rights and freedoms of internally displaced persons” of the provision concerning legal mechanisms regarding the possibilities of refinancing of construction costs or repayment of interest on loans paid to the internally displaced persons who, as a result of occupation or hostilities, the negative consequences of armed conflict, manifestations of violence, mass violations of human rights and natural or man-made emergencies, have been damaged or disabled, either left without a breadwinner or without proper care and care for the age (orphans, single parents and pensioners).

The **central executive authorities** that guarantee the rights and freedoms of internally displaced persons are *the Ministries: on temporarily occupied territories and internally displaced persons, social policy, health care, education and science of Ukraine, etc.* The activity of the Ministry for Temporary Occupied Territories and Internally Displaced Persons, which is the main body in the system of central executive authorities, which provides for the formation and implementation of state policy on temporarily occupied territories in the Donetsk and Lugansk Oblasts and temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, is gaining momentum in today’s conditions.

If you refer to the provisions of the aforementioned Ministries, in addition to the Ministry for Temporary Occupied Territories and Internally Displaced Persons of Ukraine, we can note that they contain a list of their tasks and functions in the general wording, without specifying those that are directly aimed at guaranteeing rights and freedoms of internally displaced persons.

The Law of Ukraine “On ensuring rights and freedoms of internally displaced persons” regulates the powers in the field of ensuring the rights and freedoms of internally displaced persons, in particular implemented by the State Employment Service, the State Migration Service of Ukraine and the State Service of Ukraine for Emergency Situations.

The **judicial authorities** play an important role in protecting the rights and freedoms of internally displaced persons.

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<sup>1</sup> Закон про забезпечення прав і свобод внутрішньо переміщених осіб, 2014 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/1706-18>> (2019, June, 12).

The **Constitutional Court of Ukraine** exercises constitutional justice, the object of which is, for example, the constitutional and legal status of a person and a citizen, including internally displaced persons. In implementing the constitutional control function, the CCU directly affects the guarantee of the rights and freedoms of internally displaced persons in the national legislation, in particular, examines constitutional complaints in order to establish compliance with the Constitution of Ukraine and the laws of Ukraine, which are applied in the final judicial decision.

The result of the implementation of this function of the Constitutional Court of Ukraine is renewal of constitutional rights and freedoms; abolishment of unconstitutional acts of the current legislation or their separate provisions<sup>1</sup>. Thus, the mechanism of protection and restoration of the rights and freedoms of internally displaced persons has been improved and strengthened.

Courts of the judiciary, acting as the guarantor of the stability of public relations, and thereby contributing to sustainable development, play an important role in implementing the function of justice in administrative, criminal, civil and commercial affairs, thus ensuring the rights and freedoms of internally displaced persons. The Law of Ukraine “On the judiciary and status of judges” provides that the courts protect and restore, in particular, the rights and freedoms of internally displaced persons. Given that the practice of the European Court of Human Rights is a part of national law, it should be the main model and source for Ukrainian courts, in particular in the area of guaranteeing the rights and freedoms of internally displaced persons.

With regard to the local level, the part of the powers entrusted to the **local executive authorities** and **local self-government bodies** to ensure the implementation of the rights and freedoms of internally displaced persons in accordance with Article 11 of the Law of Ukraine “On ensuring rights and freedoms of internally displaced persons” are common. For example, local executive authorities and local self-government bodies provide temporary residence (temporary stay) and provision of temporary use of housing for internally displaced persons; provision of medical and psychological services; placement of children in educational institutions, etc.

Legal protection of rights and freedoms is accessible for internally displaced persons, which in the present conditions is used inefficiently. In particular, this problem is solved in accordance with its authority by, for example, law enforcement and human rights agencies – the prosecutor’s office, advocacy, police, ombudsman, and others. These bodies are independent elements of institutional (organizational and legal) guarantees of the rights and freedoms of internally displaced persons.

Ukraine has an **ombudsman** – the Ombudsman of the Verkhovna Rada of Ukraine, which in turn is an important element of the institutional subsystem of the mechanism for the protection of the rights and freedoms of internally displaced persons. It should be emphasized that the ombudsman is endowed with a wide range of powers, which in turn gives him the opportunity to protect the rights and freedoms guaranteed by the constitution and the citizen, for example, the implementation of the guaranteed rights and freedoms of internally displaced persons requires special attention.

The **prosecutor’s office** plays an important role in ensuring human rights and freedoms through the functions of supporting the state prosecution in court, the organization and procedural guidance of the pre-trial investigation, while guaranteeing the equality of everyone before the law. The participation of the prosecutor in criminal proceedings in relation to the rights and freedoms of internally displaced persons should be aimed at guaranteeing the principles of the rule of law, legality and justice.

The law-enforcement capacity of the bar association in the area of guaranteeing the rights and freedoms of internally displaced persons consists in two groups of its functions: private (the functions of a lawyer as a human rights defender) and public (the functions of the advocacy as a human rights institution).

Legislation regulating the legal status of a lawyer provides sufficient powers to protect the rights and freedoms of internally displaced persons<sup>2</sup>. In practice, lawyers guarantee the rights and freedoms of internally displaced persons, mainly through the protection of individuals. However, citizens are not always ready to defend their violated non-property rights and interests, therefore they do not resort to the services of a lawyer, taking into account the payment conditions for the provision of his services.

<sup>1</sup> Федоренко, В.Л. (2016). *Конституційне право України*: підручник. Київ: Ліра-К, 492.

<sup>2</sup> *Закон про адвокатуру та адвокатську діяльність, 2013* (Верховна Рада України). *Відомості Верховної Ради України*, 27, 282.

The implementation of the public functions of the advocacy of Ukraine has a comprehensive impact on social relations, and therefore, ensuring the rights and freedoms of internally displaced persons at the national level should take place through this institution in particular. The public functions of the advocacy include the function of professional and legal control over the provision of the system of public authority constitutional rights and freedoms; media function; educational function; educational function; norm-making; the function of the legislative initiative<sup>1</sup>. In today's conditions, the implementation of the above-mentioned functions for the Ukrainian society is actualized in the context of guaranteeing the rights and freedoms of internally displaced persons.

According to Article 5 of the Law of Ukraine "On the bar and legal practice" of 5 July, 2012, the bar is independent of the bodies of state power, local self-government, their officials and officers. The law does not impose the duty to guarantee the rights and freedoms of internally displaced persons on the institution of the advocacy, since in any sphere its activity is voluntary.

In the context of activating the participation of the bar association in the sphere of guaranteeing the rights and freedoms of internally displaced persons, it is necessary to carry out informative and educational work that can be implemented on the basis of the National Bar Association of Ukraine and the Councils of Advocates of the Regions.

**International organizations** are guarantors who play one of the crucial roles in helping internally displaced persons to reinstate violated rights and freedoms.

International organizational and legal (institutional) guarantees include, firstly, international intergovernmental organizations, such as the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration, the UN Population Fund in Ukraine, etc.; secondly, international non-governmental organizations – the International Federation of Red Cross and Red Crescent Societies, the International Renaissance Foundation, etc.

It is necessary to analyze the status of leading international institutional guarantors, one of whose activities is the exercise of the rights and freedoms of internally displaced persons. For example, the Office of the United Nations High Commissioner for Refugees is a global organization dedicated to saving lives, protecting rights and building a better future for refugees, displaced persons and stateless persons. Since 2014, UNHCR has closely cooperated with the government of Ukraine and the public in response to a new problem of the forced displacement of 1.6 million internally displaced persons from the East of Ukraine and the Autonomous Republic of Crimea. UNHCR in Ukraine provides individuals with legal, material and social support under their care independently and in partnership with other international and local organizations. UNHCR focuses its activities on protecting the rights and freedoms of IDPs, improving their living conditions and finding long-term solutions for them<sup>2</sup>.

The IOM representation in Ukraine provides assistance to internally displaced persons (IDPs) and people affected by conflict, countering trafficking in human beings, assists the government in counteracting unregulated migration and improves the management of migration processes, and develops a health policy that would take migrants into account. At the same time, the IOM representation in Ukraine is involved in the use of the potential of migration development, dissemination of information on migration, promotion of cultural diversity and countering xenophobia and intolerance<sup>3</sup>. During the years of its activities in Ukraine, IOM has been providing assistance to about 500,000 migrants (Ukrainians and representatives of other nationalities), displaced persons, potential migrants affected by trafficking in human beings and representatives of other vulnerable groups. Starting from 2015, the International Organization for Migration (IOM) has successfully implemented **projects for social cohesion of the population** in 61 communities, mainly in the East of Ukraine – in Donetsk (on the territory under the control of the government), Lugansk (on the territory under the control of the government), Kharkiv, Dnipropetrovsk, Zaporozhzhia, Odesa regions.

From the first days of the civil strife in the country, the Red Cross Society of Ukraine, in accordance with its mandate, provides internally displaced persons from the Crimea, Donetsk and Lugansk oblasts, hospitals, as well as citizens living in the eastern regions, with material assistance, food aid, detergents,

<sup>1</sup> Вільчик, Т.Б. (2017). Функції інституційної адвокатури. *Форум права*, 2, 28.

<sup>2</sup> Офіційний сайт Управління Верховного комісара ООН у справах біженців. <<http://www.unhcr.org/ua/durable-solutions#>> (2019, June, 12).

<sup>3</sup> Офіційний сайт Представництва Міжнародної організації з міграції в Україні. <<http://iom.org.ua/ua>> (2019, June, 12).

blankets, bed linen, clothes, footwear, medicines, etc. Thanks to the financial and material support from our international partner organizations, the National Committee and the subordinate organizations of the Association carry out more than 20 programmes to assist victims of armed conflict in the East, internally displaced persons and the most needy categories of local population in all regions of Ukraine, including residents, located in the uncontrolled government of the territory of the Donetsk and Lugansk regions<sup>1</sup>.

In the context of social constructivism, we can focus on the active participation of civic organizations in the process of collecting, summarizing and disseminating information on the protection of the rights and freedoms of internally displaced persons. In their activities, public organizations organize seminars, trainings, round tables, conferences, which support discussions on the effective enforcement of the rights and freedoms of internally displaced persons; collect, summarize and disseminate information in the form of informational and educational, methodological and scientific materials, etc.

Public organizations in their activities cooperate with state authorities and local self-government, civil society institutions, specialized institutions and structures, including scientific, scientific and practical ones. In particular, it should be emphasized that the National Academy of Legal Sciences of Ukraine accumulates the creative potential of both academic institutions and educational law institutions. Also, the scientific institution is actively involved in reforming our legal system and legislation, which in turn promotes, among other things, the safeguarding of the rights and freedoms of internally displaced persons.

In the context of the aforementioned, an important event in the comprehensive improvement of the mechanism for the practical guarantee of the rights and freedoms of internally displaced persons and the development of the scientific potential of the Dnipropetrovsk region is the creation of the Educational and Scientific Laboratory for the Study of the Legal Status of Internally Displaced Persons and Ensuring Gender Equality.

In accordance with Clause 2 of the Regulations on the Educational and Scientific Laboratory of the Study of the Legal Status of Internally Displaced Persons and the Ensuring of Gender Equity on 9 February, 2017 its tasks are: carrying out fundamental and applied research on the actual problems of the legal status of internally displaced persons; drafting legal acts and proposals on improving the current legislation; conducting legal expert examinations of normative legal acts, including those concerning internally displaced persons; assistance in implementing the results of scientific research into the practical activities of state authorities and local self-government bodies in order to protect the rights and freedoms of man and citizen, the rights of internally displaced persons, both in the past and in times of conflict.

To carry out the above-mentioned tasks, the Laboratory performs the following functions: conducts joint research on the legal status of internally displaced persons; develops proposals to existing normative legal acts and those projects being developed, as well as to methodical recommendations in this area; provides scientific-legal conclusions on the requests of individuals and legal entities on the legal status of internally displaced persons; participates in the organization and holding of scientific and practical conferences, seminars, roundtables, etc., joint with scientific institutes of the National Academy of Legal Sciences of Ukraine; carries out informational and analytical analysis of the national legislation, activities of state authorities, local self-government bodies, law enforcement and judicial bodies, as well as the achievements of domestic and foreign studies on the identified issues; prepares research results in the form of current and final reports, proposals to the current legislation and drafts of normative acts, methodical recommendations.

In the context of institutional guarantees of the rights and freedoms of internally displaced persons, the interaction of power with the media is relevant. Given that journalists are not always aware of the specific rules of coverage of the rights and freedoms of internally displaced persons and the lack of Ukrainian media journalists who have the proper qualifications and knowledge necessary to cover the problematic aspects of protecting the rights and freedoms of internally displaced persons, it is appropriate to pay attention to the recommendations on coverage of sensitive issues in the media contained in the results of the comprehensive sociological study "Media in the conflict: reporting disturbing issues through the media"<sup>2</sup>.

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<sup>1</sup> *Офіційний сайт Міжнародної Федерації Товариств Червоного Хреста і Червоного Півмісяця*. <<http://redcross.org.ua/principles/>> (2019, June, 12).

<sup>2</sup> Школа журналістики УКУ (2015). *Комплексне соціологічне дослідження «Медіа в конфлікті: донесення дражливих питань через ЗМІ»* <<http://journalism.ucu.edu.ua/wp-content/uploads/2015/11/Konflikt-v-media-i-media-v-konflikti-Fama-Serpen-Veresen-2015.pdf>> (2019, June, 12).

**Conclusions.** Consequently, based on the comprehensive study of the functioning of national and international institutions on the rights and freedoms of internally displaced persons, we can draw the following conclusions:

1. In the context of the study, the following are proposed to the institutional guarantors who ensure the effective implementation and protection of the rights and freedoms of internally displaced persons: the Verkhovna Rada of Ukraine; President of Ukraine; Cabinet of Ministers of Ukraine, central and local executive bodies; military-civilian administration; the authorities of the Autonomous Republic of Crimea, the Constitutional Court of Ukraine and the system of courts of general jurisdiction; local governments; Commissioner of the Verkhovna Rada of Ukraine on Human Rights; prosecutor's office; bar; institutes of civil society, etc. However, despite the significant number of subjects that ensure the rights and freedoms of internally displaced persons, attention should be paid to the lack of coordination in their activities, which leads to a violation of their work in the context of achieving a single goal.

2. The specifics of the functioning of state bodies and local self-government bodies in the area of guaranteeing the rights and freedoms of internally displaced persons is that a significant part of the state tasks are implemented through cooperation with public organizations, both national and international. Cooperation of the state with public organizations is effective, first of all because, firstly, in the present situation, the majority of public organizations are created to solve the problems of internally displaced persons; secondly, the activities of public organizations in certain practical cases may be more successful and effective than the activities of state authorities and local self-government. Strengthening a democratic state depends, in particular, on the formation of a modern civil society, the content of which is the modern forms of civilized participation of citizens in public life, including through public organizations.

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