

LEGAL REGULATION OF FORCED INTERNAL DISPLACEMENTS OF THE POPULATION OF UKRAINE



Zinaida Smutchak

*Ph.D. (Economics), as. prof.
as. prof. of the department of management, economics, law
and tourism,
Flight Academy of National aviation University*



Jozef Zató

*Dr.h.c. mult. JUDr., MBA, Honor. Prof. mult.
President ICOCRIM Slovak Bureau,
President EEDA – Eastern European Development
Agency, Director*

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Abstract. The result of the study was to highlight the existing problems of ensuring the rights and freedoms of internally displaced persons in Ukraine and the prospects for improving the legislation on regulation and ensuring the legal status of these persons. The effective provisions of the national legislation on the legal protection of the status of persons who are forced to leave their place of residence are singled out. The analysis of intra-regional and interregional migration of the population of Ukraine during the years of its state independence (1991 – 2017). A number of problems were identified in the area of ensuring the rights and freedoms of internally displaced persons in Ukraine, their employment and adaptation, and suggested ways to overcome them. Prospects for further research in this regard relate to the resources of the state migration policy of Ukraine on the regulation of migratory space and the regulation of migratory movements of the population.

Keywords: *forced displaced persons, internally displaced persons, social adaptation, legal protection, observance of the rights and freedoms of internally displaced persons.*

Introduction

The general definition of the issue and its connection with important scientific or practical tasks. The analysis and taking into account the current migratory trends in our state is considered as one of the important factors in the formation of our own national policy in the context of Ukraine's participation in the European and global migratory space. This problem is directly and

indirectly in the plane of national security of Ukraine. The complicated political processes in Ukraine in recent years have led to the emergence in the legal doctrine of a new category of subjects that require legal safeguards and social protection on the part of the state – internally displaced persons. Today, the problem of the emergence of a significant number of internally displaced persons in the regions of Ukraine due to the annexation by the Russian Federation of Crimea, the prolonged anti-terrorist operation and military conflicts that continue in the eastern part of Ukraine are particularly marked. It should be noted that due to these reasons, the most urgent problem for Ukraine was the rapid growth of internal (resettlement) migration, as well as emigration.

Analysis of the latest researches and publications. Thorough research of the category of «internally displaced persons» by scientists began in recent years. In the majority of cases, the attention was focused on the study of the problem of legal regulation of migratory processes in general, or the protection of the rights and freedoms of refugees in particular. It should be noted that the specifics of migratory processes were covered in their publications by such native scholars as: O.O. Bandurka, S.P. Britchenko, I.B. Kovalishin, O.V. Kuzmenko, O.A. Malinovskaya, M.D. Romanyuk, S.O. Mosiond, V.I. Olefir, O.I. Piskun, Yu.I. Rymarenko, M.M. Sirant, V.M. Snigur, N.P. Tindik, S.B. Chekhovich

The purpose of the article is to study the peculiarities of the legal regulation of the category of internally displaced persons and their characterization by analyzing the circumstances that contribute to the emergence of this phenomenon provided by independent international observers; coverage of existing problems of ensuring the rights and freedoms of internally displaced persons in Ukraine and analysis of prospects for improving legislation on regulation and ensuring the legal status of these persons.

Presentation of the main research material. Internal migration, that is, moving within the borders of individual states, is no less important for economic and social development than intergovernmental. It does not affect the size and composition of the population as a whole, but it causes changes in its placement, the sex-age structure of the inhabitants of certain regions, is a consequence and an important factor of regional differences, is directly related to the processes of industrialization and urbanization, and the depopulation of the village. In terms of volume, internal migration is far superior to international [15].

According to United Nations estimates, native migrants are persons, living in their own countries, but not in the regions where

they were born, have at least 12% of the world's populations, while the international ones are slightly more than 3%. It is caused, in general, by the same reasons as international migration, has a similar motivation, that is, the improvement of living and working conditions, and is therefore directed mainly from depressed regions to those that are dynamically developing from rural to city and industrial centers. Internal migration can lead to the desertification of certain territories and excessive concentration of population in others. At the same time, as well as migration abroad, it contributes to increasing household incomes, reducing poverty, gaining new knowledge and experience, that is, the accumulation of human capital. Moreover, the influence of internal migration on development is obviously greater than the international migration [14, 15].

At the same time, it does not cause loss of labour and intellectual potential of the country. For countries that are labour donors for the international labour market, namely, this group belongs to Ukraine; internal migration is a significant alternative to going abroad.

Thus, internal migration deserves the proper attention of the authorities and society, taking into account in the development of social and economic programs, adequate political design. Particularly urgent, the development of measures for its regulation is gaining momentum in modern Ukraine as a result of events that caused massive involuntary displacements of the population, which have serious challenges for the state [14, 15].

To define the phenomenon of internal migration, we turn to Article 1 of the Law of Ukraine «On the Protection of the Rights and Freedoms of Internally Displaced Persons» of 10.20.2014 [8]: an internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who is in Ukraine on a legal basis and has the right to permanent

residence in Ukraine, which was forced to leave or leave his or her place of residence as a result or in order to avoid the negative consequences of an armed conflict, temporary occupation, widespread manifestations of violence, human rights and natural or man-made emergencies.

Also, this law gives the characteristics and circumstances that contribute to the emergence of internal displacement. Thus, these circumstances are considered to be well-known and no need to prove if the information contained therein is contained in the official reports (communications) of the United Nations High Commissioner for Human Rights, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross and the Red The Census, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, posted on the websites of the said organizations, or if, in such circumstances, appropriate decisions have been made by the authorized state authorities.

International observers of the UN Mission in their reports have repeatedly emphasized the violation of human rights, the harassment of local people, committed by armed groups as a result of armed aggression in eastern Ukraine. The mission received reports of murders, torture and ill-treatment, as well as cases of unlawful imprisonment, forced labour, looting, foreclosure requirements and extortion of money in areas under the control of armed groups. The persecution and intimidation of people suspected of supporting the Ukrainian armed forces or territorial integrity of Ukraine remain widespread. Occasionally, the Mission's access to places where reported human rights abuses were restricted by armed groups or was impossible for security reasons [2]. All this led to the intensification and growth of internal movement across the territory of Ukraine.

Since April 2014 – since the beginning of fighting actions in the Donbass from Donetsk and Luhansk oblasts, according to the United Nations, more than 2 million people left, of which 1 million 750 thousand people moved to other regions of Ukraine, and more than 300

thousand people emigrated to the Russian Federation. Of the annexed Crimea, immigrants to mainland Ukraine have become almost 25 thousand people. The largest number of internally displaced persons from the Donbass is located in the Donetsk region – 660 thousand, Lugansk – 249 thousand, Kharkiv – 2010 thousand, Kiev – 123 thousand, Zaporizhya – 116 thousand, Dnipro – 76 thousand, Kiev – 48 thousand, Odessa – 36 thousand people [1].

These data are approximate to real ones, since it is impossible to accurately calculate in the context of fighting actions and conduct of an anti-terrorist operation. The main reason for stimulating the high intensity of the migratory movement in Ukraine was the annexation of the Crimea, hostilities in the Donbass, terrorism and the attack on the territorial integrity and sovereignty of the country [1].

The urgency of the problems associated with massive migratory processes is the most intensified against the backdrop of the general demographic crisis that has spread to Ukraine since 1991, which has also largely led to the migratory crisis, which in modern conditions manifests itself in reducing the intensity of migrations in the middle of the regions, greatly increased due to the conflict in the Donbass on the interregional level and the intensive flows of foreign labor migrants (Fig. 1)

At the intra-regional and interregional levels, migratory activity is reduced. So, if in 1991 in the regions of the country changed the place of residence 594,2 thousand people, then in 2000 – 461,9 thousand, in 2007 – 435,8 thousand people, in 2014 - only 273,7 thousand people (59% less). Also, the intensity of the exchange of population between the regions of the country decreased: in the year of 1991 354,8 thousand people left their permanent residence to other regions, and 385,8 thousand people came in, in 2000 these figures amounted to 274.9 thousand people in relation to arrivals and departures, in 2007 -276,0 thousand people, and in 2014 - 211,1 thousand persons (by 38% less).

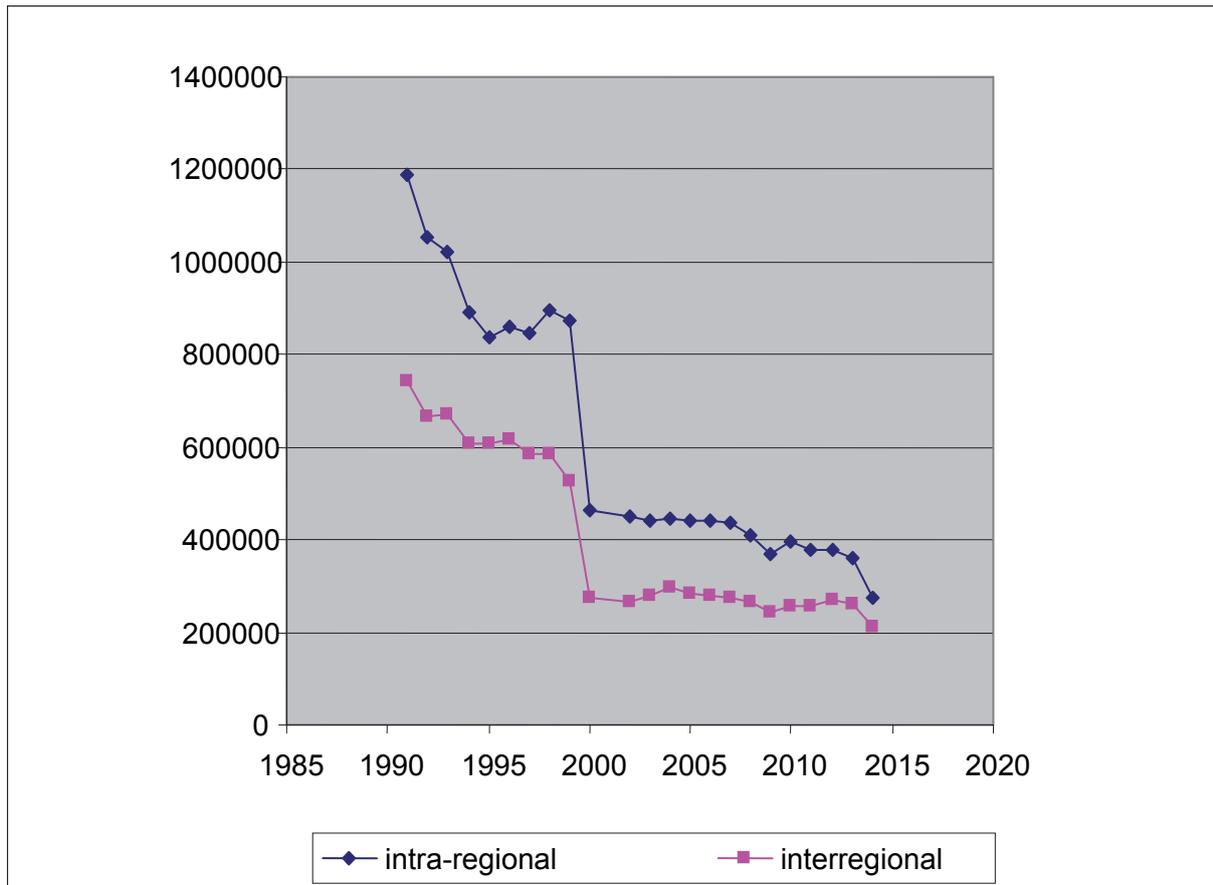


Fig. 1. Migration of the population of Ukraine during the years of state independence (1991 – 2016 years), persons. compiled by source [13]

The Concept of Migratory Policy of Ukraine states that it is aimed at ensuring good governance migration, creating conditions for sustainable demographic and social and economic development, improve national security by preventing uncontrolled migration and elimination of their consequences, harmonization of national legislation the sphere of migration with international standards, the strengthening of social and legal protection of Ukrainian citizens who are in danger respect or work abroad, adhere to the principles of protection of Ukraine's interests, as well as the fact that the threat to the national security of Ukraine is made up of: illegal migration; aggravation of the demographic crisis; leaving Ukraine scientists, specialists, skilled labour [10]. Moreover, the current legislation of Ukraine guarantees the observance of the rights and freedoms of internally displaced persons. Ukraine takes all possible measures envisaged by the Constitution and laws of Ukraine, international treaties, the consent of which is binding on the Verkhovna Rada of Ukraine,

regarding the observance of the rights and freedoms of internally displaced persons, the creation of conditions for the voluntary return of such persons to the abandoned residence or integration of the new place of residence in Ukraine [8, art. 2].

In April 2014, the Law «On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine» was adopted in Ukraine [9], in addition, at a different time, a number of subordinate normative acts were adopted that regulate the issues of temporary placement and assistance to citizens. Ukraine, which are internally displaced persons [6]. In October 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On ensuring the rights and freedoms of internally displaced persons» [8].

The Law of Ukraine «On ensuring the rights and freedoms of internally displaced persons» not only supplemented the content of the definition of internally displaced persons, specified the guarantees of observance of the rights and freedoms of internally displaced

persons, but also introduced changes in the validity period of the certificate on the registration of internally displaced persons, improved the mechanism of provision the realization of the rights of registered interconnected persons to employment, etc.

Also, a number of Decrees of the Cabinet of Ministers of Ukraine "On the provision of monthly targeted assistance to internally displaced persons to cover residential expenses, including for payment of housing and communal services, was adopted by the Cabinet of Ministers of Ukraine in order to ensure the accounting of relocation, social protection and regulation of the mechanism for the provision of monthly targeted assistance to internally displaced persons dated 10.01.2014, No. 505 (with amendments and supplements dated 18.12.2015) [11], «Procedure for issuing and issuing a certificate on the registration of internally displaced persons» dated October 1, 2014, No. 509 (with changes and amended on 11.06.2016) [5] «On peculiarities of the rights of certain categories of persons on obligatory state social insurance» from October 1, 2014 r. number 531 (amended on 09.22.2016). [12]

Despite the continued work of legislators in improving the rights and freedoms of internally displaced persons, there are a number of pressing issues. Quite important today is the problem of employability of able-bodied persons from this category of persons. Based on the results of the survey «Assessment of the needs of internally displaced persons in Ukraine and services for them», which was held in January 2015 by the NGO «Social Initiatives on Occupational Health and Safety», the priority needs of this category of persons are: financial (the need for employment) – 69,5%; humanitarian (food and clothing) – 65,7%; residential – 62,8%; medical – 49,8%; social – 13,5%; psychological – 11%; legal – 11%; cultural – 7,3%; political – 6,2% [4].

The responses of internally displaced persons regarding their needs, which are satisfied at low or insufficient level, were distributed as follows: financial (employment) – 45%; residential – 41,2%; humanitarian (food, clothing) – 34,5%; medical – 28,3%; social (participation in community life, tolerant attitude of citizens, equal access to benefits and opportunities in society) – 17%; political (participation in political life of the state, decision-making, legislative activity) – 14,2%; legal (protection of rights, representation of

interests in court, legal advice) – 13,4%; psychological and cultural – by 9,7% [4].

Moreover, the results of the survey «Assessment of the needs of internally displaced people in Ukraine and services for them» found that 45% of respondents were not satisfied with their material situation and employment. This indicator calls on local authorities and non-governmental organizations to make serious efforts and an integrated approach to support the employment of forced migrants and provide them with affordable housing. The government should develop a national strategy to ensure the economic and social rights of internally displaced persons, with the broad involvement of all local, national and international resources [4].

The problem was the registration of internally displaced persons, as indicated by human rights organizations that provide legal assistance to this category of persons. First of all, this is a massive denial of internally displaced persons due to the incorrect definition of the territory from which the internal movement takes place. Resettlements from some areas of the antiterrorist operation, which are controlled by the Ukrainian authorities of settlements, are denied registration. This despite the fact that there were artillery shellings in these and other settlements, housing, infrastructure, and so on were destroyed.

The next reason is the refusal to register individuals who do not have a passport of a citizen of Ukraine indicating that their registered place of residence is currently a populated area in the areas of the antiterrorist operation. As well as the provision of additional documents not provided for in the Cabinet of Ministers of Ukraine Cabinet of Ministers Nos. 505 and 509 - for example, certificates from the residential managements confirming the fact of residence, the contract for renting a house, etc.

The Ukrainian Helsinki Human Rights Union also identifies additional obstacles in obtaining targeted assistance. For example, in early 2015, queues for the previous record of coupons, which indicated the date of registration, were lining up to the departments of social protection of the population. In January 2015, such coupons were issued in Kharkiv and Donetsk regions as early as March 2015.

In some departments of social protection for married people, but only one family member has moved, they refuse to register

until the second spouse moves in, basing it on the fact that the assistance is allegedly allocated only to the family. The problems with the definition of the appropriate labour and social protection of the population who are authorized to keep records of displaced persons and to provide targeted assistance to the settlers are fixed [3].

The adopted Law of Ukraine «On Amendments to Some Laws of Ukraine on the Strengthening of the Guarantee of Compliance with the Rights and Freedoms of Internally Displaced Persons» [7], taking into account the proposals of the President of Ukraine, is fully in line with international standards today and provides for strengthening the guarantees of observance of the rights and freedoms of internally displaced persons, simplifying the procedure accounting for such persons.

The law takes into account the proposal of the President of Ukraine regarding the

determination of the body (officials), which will be based on the identification of the facts of the absence of internally displaced persons at the place of residence and confirmation of information about their movement within Ukraine, as well as the mechanism for checking such information and the fact of the long absence of internally displaced persons at the place residence. Now citizens who lived in the temporarily occupied territories before occupation, but were not registered there, will also be able to become internally displaced persons by expanded procedure. The certificate issued to internally displaced persons will operate indefinitely, and migrants will not have to undergo a re-registration to prolong the certificate and register with the State Migration Service of Ukraine. This law also helps to register internally displaced persons in the labour market and find work.

Conclusions and perspectives of further research in this area.

Particularly urgent today is the problem of implementing measures for the arrangement and employment of forced migrants from the annexed Crimea, Donetsk and Luhansk oblasts covered by the hybrid war, support of Ukrainians living in the CIS, Baltic and foreign countries, settlement of the status of the Crimean Tatar people, cooperation with international organizations in countering and combating illegal migration, the development of borders, bringing Ukrainian migratory legislation in line with requirements international norms and principles of migration, regulation of intensive flows of external labour migration, social and legal protection of Ukrainian citizens who work abroad and prevent the outflow of intellectual potential. Problems related to the discrimination of internally displaced persons as a result of the shortcomings of the above-mentioned laws and regulations and administrative practice remain unresolved; providing housing for migrants, their employment. The decisive role in regulating labour migratory processes as a whole in Ukraine and in its regions belongs to the management of socio-economic factors, that is, such conditions of life and work of people who may change in the result of the redistribution of state budget funds, wages, social forms consumption. Under current conditions, the migration policy of the state should closely monitor migration processes, their current trends and phenomena respond promptly to changes and control them in order to subordinate to national and regional interests, the personal needs of migrants and in general promote the national security of Ukraine [1].

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