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# **Internally Displaced Persons and Their Legal Status**

The Ukrainian Context

## **1. Introduction**

The problem of internally displaced persons not only is topical in Ukraine but also has been seen all over the world, in various historical periods. According to research<sup>\*1</sup> cited by the United Nations High Commissioner for Refugees on movements in the world in late 2014, the number of internally displaced persons was 59.5 million then, with 38.2 million of these being internally displaced persons (hereinafter also 'IDPs'). Among the reasons for such movements are natural and manmade disasters / 'acts of God', but most of the displacement is caused by the necessity of escaping armed conflicts in the country of residence. For example, military actions in Georgia in 1992 - 1993 and military aggression of Russia in 2008 (in Abkhazia and South Ossetia) are well-known, with the number of IDPs coming to around 257,989<sup>\*2</sup> in 1991 in Azerbaijan (Nagorno-Karabakh) - about 789,000 people<sup>\*3</sup>; roughly 210,000 people being forced to change their place of residence in the case of Serbia (Kosovo) in 1999; about 130,000 residents<sup>\*4</sup> of Moldova leaving their homes (Transnistria) in the 1990s; etc. The problems of internally displaced persons were addressed in several ways in these countries, from creating the appropriate committees, departments, and individual

<sup>1</sup> UNHCR report 'Global Trends Forced Displacement in 2014', p. 2. Available at <http://www.unhcr.org/556725e69.html> (most recently accessed on 14.4.2017).

<sup>2</sup> The United Nations High Commissioner for Refugees released research on intentions to implement long-term solutions, focusing on the thoughts of internally displaced persons in Georgia, on 1 June 2015. Details are available at <http://www.refworld.org.ru/cgi-bin/texis/vtx/rwmain?page=search&docid=55e575c24&skip=0&query=%D0%B2%D0%BD%D1%83%D1%82%D1%80%D0%B5%D0%BD%D0%BD%D0%B5%20%D0%BF%D0%B5%D1%80%D0%B5%D0%BC%D0%B5%D1%89%D0%B5%D0%BD%D0%BD%D1%8B%D0%B5%20%D0%BB%D0%B8%D1%86%D0%B0&coi=GEO> (most recently accessed on 12.4.2017). The figure comes from p. 9 of these materials.

<sup>3</sup> The figure comes from p. 1 of statistical information on the consequences of the military aggression of Armenia, provided by the Ministry of Defence of the Republic of Azerbaijan in 2017. Available, in Azerbaijani, at <http://mod.gov.az/ru/posledstviya-voennoj-agressii-armenii-statistika-412/> (most recently accessed on 10.4.2017).

<sup>4</sup> O. Horelova, H. Shelar. Title of document goes here ['The costs of the Transnistrian conflict and the benefits of its settlement']. Chisinau, Moldova: Center for Strategic Studies and Reforms 2009, p. 10. Available at <http://www.cisr-md.org/pdf/Report%20RUS%20Master%20Final%20vGS.pdf> (most recently accessed on 10.4.2017) (in language\_name).

legal frameworks, through limiting the making of additions or other changes to the existing regulatory framework, to the adoption of programmes for IDP issues that had not been recognised, and carrying out of regulatory consolidation of these persons' separate legal status. For example, the resolution of IDP-related problems was assigned to the appropriate authority; specific legislation was developed to provide a definition of 'IDP' and the introduction of a distinct terminological framework; provisions on legal, economic, and social guarantees were set forth; and rights and duties for immigrants<sup>\*5</sup> and others in Georgia were specified. In contrast, problems of IDPs in Moldova have not been resolved at the legislative level: a legal status for such persons has not been provided, and social and benefits-related issues have been addressed only sporadically.

The appearance of IDPs in Ukraine has created the need to provide a state system of social protection for this category of people – a necessity for development and implementation of normative legal acts, to give the competence to the relevant bodies. To date, the legal regulation of IDPs has been determined by a self-created legislative base, the provisions of which are developed in account of the norms of recognised principles and standards of international law, along with the experience of other countries that have experienced such a phenomenon.

The main purpose with this article is to examine the problems of displaced people in Ukraine, their legal status and place in the national legal system, the peculiarities of the established norms, and the compliance of the Ukrainian approach with the international requirements. In essence, the article offers a general description of the legal framework for the legal regulation surrounding internally displaced people, the influence of the norms of international law on its formation, the categorical apparatus, intelligence and reference information, and the associated issues of social protection.

## **2. A general overview of the international legal regulation of IDPs**

As noted above, IDP is not a new category for the world, and issues of these persons' international legal regulation have long remained relevant. However, today, within the framework of international co-operation, there is only one international document on IDPs, which, although being recommendatory, is based on the norms of international law, especially in the field of human rights, among them the provisions of international humanitarian law (the International Covenant on Civil and Political Rights<sup>\*6</sup> of the United Nations, from 16.12.1966; the International Covenant on Economic, Social and Cultural Rights<sup>\*7</sup> of the UN, from 16.12.1966; the Convention on the Status of Refugees<sup>\*8</sup>, from 28.7.1951; etc.). The above-mentioned international document serves as a guide for developing a national policy for countries facing the problems of mass forced internal displacement. This document is the main set of guidelines addressing displacement of people within a country<sup>\*9</sup>, developed by the representative of the United Nations General Secretary with regard to internally displaced people and published in 1998 (hereinafter 'the Principles'). The Principles provide a definition for IDP, stipulated rights and guarantees, the forms of protection envisaged for internally displaced people, recommendations for countries facing such a problem, etc. According to paragraph 2 of the introductory part of the Principles, 'internally displaced people are people or groups of persons who were forced to flee or leave their homes or places of usual residence as a result or in order to avoid the

<sup>5</sup> The law of Georgia on 'persons displaced from the occupied territories of Georgia – internally displaced people', dated 6.2.2014, No. 1982. Available, in language\_name, at <http://www.refworld.org.ru/type,LEGISLATION,,GEO,5577019a4,0.html> (most recently accessed on 22.7.2017).

<sup>6</sup> International Covenant on Civil and Political Rights. A UN multilateral treaty (international document from 16.12.1966) available, in Russian, at <http://www.ohchr.org/RU/ProfessionalInterest/Pages/CCPR.aspx> (most recently accessed on 22.7.2017).

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights. A UN multilateral treaty (international document from 16.12.1966) available, in Russian, at [http://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml) (most recently accessed on 22.7.2017).

<sup>8</sup> Convention on the Status of Refugees. Available, in language\_name, at <http://unhcr.org.ua/img/uploads/docs/1951%20convention.pdf> (most recently accessed on 23.7.2017).

<sup>9</sup> See the main guidelines on displacement of people within the country that were published by the Economic and Social Council of the United Nations (ECOSOC) on 22 July 1998. Available, in Russian, at [http://www.un.org/ru/documents/decl\\_conv/conventions/internal\\_displacement\\_principles.shtml](http://www.un.org/ru/documents/decl_conv/conventions/internal_displacement_principles.shtml) (most recently accessed on 10.4.2017).

consequences of a military conflict, mass violence, human rights violations, natural disasters or disasters caused by human activities and those, who have not crossed internationally established state borders'.<sup>\*10</sup> Attention is drawn to protection against discrimination, primarily on the grounds that the latter are IDPs, to ensure their rights and freedoms, in accordance with the norms of international law and national legislation. There are provisions for recognition of the legal personality of IDPs, which should allow them to exercise the rights set forth in the national legislation and take advantage of the guarantees provided therein. For example, in accordance with Principle 20, for national authorities, supplying of all documents necessary for the realisation of the lawful rights of IDPs (a passport, certificate of registration as an IDP, and birth (along with marriage, if relevant) certificate) is envisaged for said authorities. In consequence of this, an IDP should be able to exercise the right to education, employment, pension, etc. The IDP is guaranteed the right to freedom of thought, conscience, belief, and expression; freedom to speak in a language acceptable to him or her; and freedom to take part in public affairs and to exercise electoral rights (to participate in voting). Provisions are specified for guarantees of return or alternative settlement, reintegration, and other actions. According to Principle 3, the responsibility for providing protection and humanitarian assistance to displaced people rests with national authorities, and displaced people, in turn, have the right to request and receive such protection, humanitarian aid, and charitable help.

However, a question arises as to the legal force of such an international document. First of all, its binding nature for countries experiencing the phenomenon in question should be considered. In the author's opinion, the Principles are legally binding, since they are elaborated upon and adopted within the powers of the UN bodies, which are defined via the provisions of the UN Charter (articles 10 and 13)<sup>\*11</sup>. The compulsory nature of the provisions of the Principles for countries can be achieved by signing, by ratifying, or by acceding. According to the document, the agreeing country gives its consent to be bound by the provisions of the act; that is, it expresses willingness to the international community to assume its obligations to comply with the document's requirements. Today, this practice does not exist, however; the Principles remain an international document that has the nature of a recommendation in reality. Their content is actively employed by international structures and bodies, international humanitarian organisations, and national authorities, they are the basis of the legal framework for the formulation of a state policy in terms of protection of internally displaced people. Ukraine is one participant in this work. In my view, the Principles represent a successful international decision (as an act) on international legal regulation of issues related to IDPs in the modern world, which has sufficiently substantial content. However, I believe that it would be advisable to give them a mandatory character, thereby, substantially expand the range of problematic issues with specific causes and linked to factors of internal movements of other countries.

### **3. Internally displaced persons for the Ukrainian state: History and contemporaneity**

The problem of mass forced displacements is not new for the Ukrainian state, law, and science. History knows numerous cases of mass forced internal migration among the Ukrainian population from places of permanent residence as caused by political, economic, ecological, technological, and defence factors. Several could be named, among them the construction of the Yavoriv firing range in the Lviv region, which started in the early 1940s; 'exchange of populations' under the agreement between the Government of the Ukrainian Soviet Socialist Republic and the Polish Committee of National Liberation on the evacuation of the Ukrainian population from the territory of Poland and Polish citizens from the territory of the USSR<sup>\*12</sup> from 9.9.1944; the construction of reservoirs for the Dnieper hydro-cascade in the 1950s–1970s; and the accident at the Chernobyl nuclear power plant in 1986. In all these cases, residents who were forced to

<sup>10</sup> *Ibid.*, paragraph 2.

<sup>11</sup> The UN Charter, an international document whose relevant portion is available, in Russian, at <http://www.un.org/ru/sections/un-charter/chapter-iv/index.html> (most recently accessed on 24.4.1017).

<sup>12</sup> Agreement from 9.9.1944. Legislation of Ukraine database, from the Verkhovna Rada of Ukraine. Available, in Ukrainian, at [http://zakon5.rada.gov.ua/laws/show/616\\_065](http://zakon5.rada.gov.ua/laws/show/616_065) (application date: 9.5.2016).

move within the territory of Ukraine (or the Ukrainian SSR, as part of the USSR) actually were internally displaced persons and in need of social protection from the country's authorities. However, the earlier legislation surrounding them did not apply such terms as 'internally displaced persons'. Identical in meaning have been the following designations: forced migrant, exile, evacuated person, person affected by the incident at the Chernobyl nuclear power plant, and others. The framework for legislation related to them consisted of acts adopted for a set term that specified the circumstances of resettlement and measures for security and social orientation. However, in most cases, such measures were not sufficient to protect the rights and freedoms of the migrants or even violated them. While research on forced displacements of Ukrainians in a historical context is engaged in by a significant number of scientists (Y. Slyvka<sup>\*13</sup>, M. Buhai<sup>\*14</sup>, N. Lobas-Danylyha<sup>\*15</sup>, T. Pron<sup>\*16</sup>, N. Horlo<sup>\*17</sup>, and others), scientific study of the problems associated with forced internal displacements in their present form, especially their legal regulation in the system of social protection of Ukraine, remains sparse, with various open and unexplored issues. There are only rare cases of such studies: the work of O. Skrypniuk<sup>\*18</sup> and O. Kudryavtseva<sup>\*19</sup>. Hence, definition of the legal status of IDPs in Ukraine and ways to improve the legal regulation related to them forms one of the main tasks of science considering the right to social security.

The question of IDPs intensified in early 2014 in Ukraine in consequence of military aggression by the Russian Federation, which caused temporary occupation of the Autonomous Republic of Crimea, the city of Sevastopol, and certain districts in the Luhansk and Donetsk regions. Residents of these areas experienced real fear for their life and health, so they were forced to change their place of residence and work. The Ukrainian-government-controlled territories became a second home for many families who witnessed the military aggression from Russia, people who lost their job, documents, and material property acquired over the course of life. According to statistics from the Ministry of Social Policy of Ukraine<sup>\*20</sup>, as of 3.4.2017, there were 1,590.056 migrants or 1,278.204 families from Donbass and the Crimea region registered. Most of the migrants are geographically located in the portions of the Luhansk and Donetsk regions controlled by the Ukrainian government; in territories in the Kharkiv, Dnipropetrovsk, and Kiev regions; and in the city of Kiev itself. A smaller percentage are distributed across regions of western Ukraine.

The appearance of such a large number of persons suffering forced internal displacement has become a challenge for the country, society, and the modern science of law and social security, and it has grown into a key issue in terms of the ability of the country to ensure proper and adequate social protection for this category of citizens. In significant numbers, scientists have carried out historical research on the problems of mass deportation of Ukrainians, but, as noted above, scientific study of the problem of forced internal displacement in its present form, particularly with regard to legal regulation within the system of social protection of Ukraine, is open and scarcely explored. Therefore, determination of the legal status of the people in question and ways to improve legal regulation surrounding internally displaced persons is one of the main tasks of the modern science of law of social security of Ukraine.

<sup>13</sup> Y. Slyvka et al. (eds). *Deportations: Western Lands of Ukraine, Late 30's – Early 50's: Documents, Materials, Memoirs*. Lviv, Ukraine 1996, Vol. 1, p. 380; Vol. 2.

<sup>14</sup> N.F. Buhai. The peoples of Ukraine in the 'Stalin Special Folder'. – *International Russian History*. Moscow: Nauka 2006, p. 115.

<sup>15</sup> N. Lobas-Danylyha. Conditions of resettlement of Ukrainians from Poland to the western regions of Ukraine in 1944–1946. – A.O. Chemerys (ed.). *Effectiveness of Public Administration: Collection of Scientific Works in General*. Lviv, Ukraine 2004 (6th ed.) / 2005 (7th ed.), p. 155.

<sup>16</sup> T. Pron. Soviet–Polish exchange of territories in 1951 in the legends of soldiers of the steppe of Ukraine. Available in a Ukrainian version at <http://dspace.nbu.edu.ua/bitstream/handle/123456789/71094/21-Pron.pdf?sequence=1> (application date: 26.6.2017).

<sup>17</sup> N. Horlo. Payment of compensations to the settlers during the construction of reservoirs of the Dnipro hydroelectric cascade as a manifestation of neglect of the human factor (50–70-ies of the XX century). – H.V. Samoilko (ed.). *Literature and Culture of Polissya: Regional History and Culture in the Ukrainian and Eastern European Context*. Nizhyn, Ukraine 2005. Issue 29, p. 195.

<sup>18</sup> O.V. Skrypniuk. Problems of children's rights and freedoms in armed conflict: New challenges for Ukraine. – *Almanac of Law* 2015/6, pp. 20–24.

<sup>19</sup> O. Kudryavtseva. Constitutional principles of protection of children's rights and freedoms in Ukraine: Experience, problems, perspectives – *Historically* (a legal journal of Constitutional, administrative, informational and financial law) 2014/3 (P.II. 1), pp. 49–53.

<sup>20</sup> See the Ministry of Social Policy of Ukraine's statistics on internally displaced person in Ukraine as of 3.4.2017. Available, in Ukrainian, at <http://www.msp.gov.ua/news/12860.html> (most recently accessed on 3.4.2017).

The Ukrainian legislator is guided by the principles and provisions of international legal agreements in the development of state policy pertaining to honouring of the rights and freedoms of internally displaced persons, the members of which are Ukraine, in line with the relevant conventions, UN Security Council resolutions, and Parliamentary Assembly of Council of Europe (PACE) documents. The set of fundamental documents applied should include the International Covenant on Civil and Political Rights<sup>\*21</sup> (from 16.12.1966); the International Covenant on Economic, Social and Cultural Rights<sup>\*22</sup> (from 16.12.1966); the Convention on the Rights of the Child<sup>\*23</sup> (of 20.11.1989); the optional protocol to the latter on the involvement of children in military conflicts<sup>\*24</sup>, from 23.6.2004; the PACE resolution titled 'The Humanitarian Situation on Ukrainian Refugees and Forced Migrants'<sup>\*25</sup>, from 27.1.2015; and the above-mentioned guiding principles on internally displaced people<sup>\*26</sup>, from 1998. The following elements are among the key provisions found in these: the freedom of political and civil rights for the person; free exercise of social, economic, and cultural rights; a non-discriminatory attitude towards people, regardless of their race, skin colour, gender, political or other opinions, national or social origin, birth, and property; respect for the honour, dignity, etc. of the person; determination of measures to ensure protection and care for children affected by military conflict; the obligation of adherents (countries and others) to promote physical and psychological recovery; social reintegration of a child who has become a victim of military conflict; and prohibition of children being involved in / participating in military activities and armed conflict. A separate role is stipulated by the Principles, in accordance with which the concept of IDP in Ukraine has been formulated. On the basis of their content, Ukraine has formed its provisions on legal personality so as to include rights and freedoms of the latter; addressed issues of guarantees of return, alternative resettlement, reintegration, receiving of social assistance, and participation in society; determined the nature of co-operation with international humanitarian organisations; etc.

## **4. The issue of legal status and legal regulation for internally displaced persons in Ukraine**

As mentioned above, legal regulation of IDPs is carried out in accordance with the new legal framework. Its foundation is the law of Ukraine titled 'On Ensuring the Rights and Freedoms of Internally Displaced Persons'<sup>\*27</sup>, from 20.10.2014 (No. 1706) – hereinafter also 'the Law'. Some issues have been identified via the following resolutions of the Cabinet of Ministers of Ukraine: that on registration of internally displaced persons<sup>\*28</sup>, from 1.10.2014 (No. 509); that on certain issues of realisation of social-benefit payments to internally displaced persons<sup>\*29</sup>, from 8.6.2016 (No. 365); the resolution on certain issues related to financing of budgetary institutions, the implementation of social-benefit payments, and provision of financial

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<sup>21</sup> International Covenant on Civil and Political Rights of 16.12.1966 (see Note 6).

<sup>22</sup> International Covenant on Economic, Social and Cultural Rights of 16.12.1966 (see Note 7).

<sup>23</sup> Convention on the Rights of the Child, of 20.11.1989. Available, in Ukrainian, at [http://zakon5.rada.gov.ua/laws/show/995\\_021](http://zakon5.rada.gov.ua/laws/show/995_021) (most recently accessed on 4.4.2017).

<sup>24</sup> Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in military conflicts, from 23.6.2004. N 1845. Available, in Ukrainian, at [http://zakon3.rada.gov.ua/laws/show/995\\_795](http://zakon3.rada.gov.ua/laws/show/995_795) (most recently accessed on 4.4.2017).

<sup>25</sup> Yevropeyska pravda's commented translation of the PACE resolution titled 'The Humanitarian Situation on Ukrainian Refugees and Forced Migrants', from 27.1.2015. Available at <http://www.eurointegration.com.ua/articles/2015/01/28/7030164/> (most recently accessed on 12.4.2017) (in Ukrainian).

<sup>26</sup> Paragraph 25 of the guiding principles on internally displaced people, as published by the Economic and Social Council of the United Nations on 22 July 1998 (see Note 9).

<sup>27</sup> The law of Ukraine on 'ensuring the rights and freedoms of internally displaced persons', from 20.10.2014, No. 1706. Available, in Ukrainian, at <http://zakon2.rada.gov.ua/laws/show/1706-18> (most recently accessed on 5.4.2017).

<sup>28</sup> The resolution of the Cabinet of Ministers of Ukraine on registration of internally displaced persons from 1.10.2014, No. 509. Available in Ukrainian, at <http://zakon3.rada.gov.ua/laws/show/509-2014-%D0%BF> (most recently accessed on 5.4.2017).

<sup>29</sup> The resolution of the Cabinet of Ministers of Ukraine on certain issues of realisation of social-benefit payments to internally displaced persons from 8.6.2016, No. 365. Available in Ukrainian, at <http://zakon3.rada.gov.ua/laws/show/365-2016-%D0%BF> (most recently accessed on 5.4.2017).

support to private enterprises and other organisations from the Donetsk and Luhansk regions<sup>\*30</sup>, from 7.11.2014 (No. 595); and the one providing monthly targeted assistance to internally displaced persons to cover living expenses, including payment for housing and communal services<sup>\*31</sup>, dated 1.10.2014 (No. 505).

With the law of Ukraine On Ensuring the Rights and Freedoms of Internally Displaced Persons<sup>\*32</sup>, for the first time in Ukraine's history there was formulated a definition of IDP, along with grounds for obtaining the legal status of IDP, specification of the rights and obligations of citizens falling into this category, and a set of guarantees for their social protection and support. Other new elements included provisions dealing with the order and terms for consideration of requests for registration, renewal and extension of social-benefit payments to internally displaced persons; provision of them with social and medical services; and others. Principle 25<sup>\*33</sup> is reflected in the national legislation via Article 18 of the Law, which stipulates that Ukraine co-operates with other countries and with international organisations on the protection and honouring of the rights and freedoms of internally displaced persons and accepts international humanitarian, charitable, technical, and other irretrievable assistance provided to IDPs that has a special purpose and is distributed in accordance with the needs of the persons for whom it is of primary importance (disabled people, women and children, pensioners, and elderly people).

According to Article 1 of the Law, an internally displaced person is a citizen of Ukraine, foreigner, or stateless person who is in the territory of Ukraine on solid legal grounds and has the right of permanent residence in Ukraine, where that person has been forced to leave his or her place of residence in consequence of or in order to avoid the negative effects of military conflict, temporary occupation, widespread violence, human rights violations, and emergencies arising from natural or manmade disaster. This concept is consistent with the definition given in the Principles, sharing certain core features. There are differences, though. For example, whereas in the Principles the subject structure has a generalised notation – individual-linked and without reference to the grounds for the stay (residence) in the country – the Ukrainian legislator provides certain clarifications in this respect: a citizen of Ukraine, a foreigner, and a stateless person all are covered, and legality of the stay and residence in the national territory is a condition. In my opinion, the fact of the Ukrainian legislator's appeal to international acts (first of all, the Principles) determines their significance for the legal system of Ukraine.

So the legal definition specifies internally displaced persons as a category of persons who initially require social protection because the circumstances that resulted in their forced movement appeared suddenly; led to change in their usual way of life; and caused a need for material assistance, housing, employment, and restoring of the benefits they normally gained from society. At the same time, however, the legislator does not provide privileged status with reference to other categories of citizens, including those who need special attention (invalids, orphans, pensioners, etc.).

The primary and most fundamental prerequisite for implementation of the law on social protection with regard to a citizen, a stateless person, or a foreigner who reluctantly changed place of residence for reason of the above-mentioned circumstances and truly is an internally displaced person is acquiring the status of IDP (the Georgian legislator refers to such persons as applicants for the status of IDP<sup>\*34</sup>).

A displaced person obtains the status of internally displaced person with effect from the moment at which the legal fact arises – internal displacement with the grounds stated by the law (armed conflict, temporary occupation, manifestations of violence throughout the country, violations of human rights, or emergency situations stemming from natural or manmade disaster), confirmed by receiving a certificate of

<sup>30</sup> The resolution of the Cabinet of Ministers of Ukraine on certain issues of financing of budgetary institutions, the implementation of social-benefit payments, and provision of financial support to private enterprises and organisations of the Donetsk and Luhansk regions from 7.11.2014, No. 595. Available in Ukrainian, at <http://zakon3.rada.gov.ua/laws/show/595-2014-%D0%BF> (most recently accessed on 5.4.2017).

<sup>31</sup> The resolution of the Cabinet of Ministers of Ukraine on providing monthly targeted assistance to internally displaced persons to cover living expenses, including payment for housing and communal services, from 1.10.2014, No. 505. Available in Ukrainian, at <http://zakon2.rada.gov.ua/laws/show/505-2014-%D0%BF/paran21#n21> (most recently accessed on 5.4.2017).

<sup>32</sup> The law of Ukraine on 'ensuring the rights and freedoms of internally displaced persons', from 20.10.2014, No. 1706 (see Note 28).

<sup>33</sup> See the guiding principles on internally displaced people as published by the Economic and Social Council of the United Nations on 22 July 1998 (see Note 9).

<sup>34</sup> The law of Georgia on 'persons displaced from the occupied territories of Georgia – internally displaced people', dated 6.2.2014, No. 1982 (see Note 5).

registration as an internally displaced person (hereinafter ‘registration certificate’), which is valid indefinitely except when conditions have arisen that terminate its validity (as will be explained below) and being registered in the unified-information database on IDPs. It is interesting that Ukrainian legislation specifies the establishment of the fact of forced displacement as taking place by court decision.\*<sup>35</sup>

In my opinion, with regard to acquisition of the status of IDP, it is important to take into account the age limit. Under the terms of the Law, IDP status may be obtained not only by a person who has reached the age of 18 but also by a child, even one who arrived without parents or other legal representatives. Therefore, the presence of IDP status for a child (or minor) entails receiving all of the designated state guarantees, especially those of security and social welfare. An example of this can be found in the provisions of the resolution of the Cabinet of Ministers of Ukraine on providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and communal services\*<sup>36</sup>, from 1.10.2014 (No. 505), paragraph 3 of which provides for cash payments (starting for six months, with the possibility of renewal on the grounds specified in the resolution) for disabled persons (of pension age and children) in the amount of 884 UAH (equivalent to 31 euros) per person (family member), SPECIFY THE AMOUNT HERE for able-bodied persons, and 442 UAH (equivalent to 15.5 euros) for an adult but non-pension-age disabled person, with the total amount of payments per month for a given household not to exceed 2,400 UAH (equivalent to 84.2 euros). However, the indicated sums of payments are not enough for both ensuring human life and also meeting the other immediate needs of the migrants. Hence, according to Article 7 of the law of Ukraine ‘On the State Budget of Ukraine for 2017’\*<sup>37</sup>, from 1.5.2017, the subsistence minimum per able-bodied person is set at 1,684 UAH (about 57 euros), for children under six years old at 1,426 UAH (around 48 euros), and for children 6–18 years old at 1,777 UAH (approx. 60 euros); at the same time, there is no increase in the amount of monthly targeted assistance for the IDP. In May 2017, the International Organization for Migration investigated issues related to the needs and provision status of IDPs, and, according to the results cited, it was found that the average monthly income of a forced migrant in Ukraine is approximately 1,990 UAH (quoted at 75 USD or 70 euros), which comes to approximately 2.50 USD or 2.30 euros per day.\*<sup>38</sup> And the price policy is significantly higher than the amounts provided. In contrast, Article 11 of the International Covenant on Economic, Social and Cultural Rights\*<sup>39</sup> of 16.12.1966 (of which Ukraine is a signatory state) provides for the right of everyone to have an adequate standard of living for self and family, encompassing sufficient food, clothing, and housing, and for the steady improvement of living conditions. The covenant also refers to taking measures to ensure the implementation of this right.

Along with offering the definition of the grounds on which acquisition of the status of IDP is possible, the Law indicates the conditions under which said status is to be terminated. According to Article 12 of the Law, these are\*<sup>40</sup> 1) application for a statement of rejection of the registration certificate; 2) commission of a crime wherein the actions were aimed at violent change, overturning of the Constitutional order, or the seizure of state power; infringement of territorial integrity and the inviolability of Ukraine; involvement in the commission of a terrorist act; public appeals for carrying out a terrorist act; the creation of a terrorist group or terrorist organisation; facilitation of the commission of a terrorist act; financing of terrorism; or implementation of genocide, crimes against humanity or war crimes; 3) return to the abandoned place of permanent residence; 4) departure for a permanent place of residence abroad; 5) and knowing submission of false information. Upon termination of said status, the person immediately becomes no longer entitled to receive targeted social assistance or temporary accommodation but shall still enjoy the rights and exercise responsibilities under the law of Ukraine on a general basis. In the Ukrainian judiciary, there exists the practice of appeal against the actions of state authorities with regard to unlawful termination of payments

<sup>35</sup> The Decision of Novoaydarskyi district court, of the Luhansk region, from 28.3.2017 in Case 419/3478/16-II, proceedings for No. 2-0/419/31/2017.

<sup>36</sup> The resolution of the Cabinet of Ministers of Ukraine on providing monthly targeted assistance to internally displaced persons to cover living expenses, including payment for housing and communal services, from 1.10.2014, No. 505 (see Note 32).

<sup>37</sup> Article 7 of the law of Ukraine ‘On the State Budget of Ukraine for 2017’, from 21.12.2016. Available in Ukrainian, at <http://zakon3.rada.gov.ua/laws/show/ru/1801-19> (most recently accessed on 24.7.2017).

<sup>38</sup> UN News Centre. Title of document goes here [‘Ukraine: Internally displaced persons live on 2.50 USD a day’], 16.5.2017. Available at <http://www.refworld.org.ru/docid/591c4e194.html> (most recently accessed on 22.7.2017) (in Ukrainian).

<sup>39</sup> Article 11 of the International Covenant on Economic, Social and Cultural Rights, of 16.12.1966 (see Note 7).

<sup>40</sup> The law of Ukraine on ‘ensuring the rights and freedoms of internally displaced persons’, from 20.10.2014, No. 1706 (see Note 28).

for IDPs, and positive decisions have been made on these. For example, by the decision of the Management of Social Welfare body, payment of monthly targeted assistance of Ukraine was denied to displaced people from the city Irmino, in the Luhansk region, on the basis of the registration certificate's expiry and the absence of location registration in the Migration Service system, which confirms the status of IDPs. The Court recognised the illegality of the decision by the state body, and the payment of monthly targeted assistance was restored (with payment of the justified assistance amounts that had not been received)<sup>\*41</sup>.

## **5. Social protection of internally displaced persons in Ukraine: Legal regulation of social benefits and housing provision**

The issue of rights and obligations, as well as protections of rights and freedoms of IDPs, is regulated by the above-mentioned national law on ensuring the rights and freedoms of internally displaced persons' and by other normative and legal acts. Under Article 14 of the Law<sup>\*42</sup>, IDPs have the same rights and freedoms as other citizens of Ukraine residing permanently in the territory of Ukraine. In accordance with Principle 20, IDPs in Ukraine have the right to recognition of their legal personality. National authorities issue identity documents confirming Ukrainian citizenship or identity documents confirming their special status (passports, registration certificates, and birth and/or marriage certificates). For persons residing in territories not currently under the control of Ukrainian authorities, the realisation of said right is possible via a court decision. For example, to obtain a Ukrainian birth certificate for a child born in temporarily occupied territory, the parent(s) or other legal representative(s) must apply to any court in the territory controlled by the Ukrainian authorities, with the application form, necessary documents, and payment of court fees. The case is considered promptly, and a decision based on its results is made on the satisfaction of the application, its return for resubmission, or refusal to satisfy it. In our opinion, this provision is a positive step towards the realisation of rights not only for those who were forced to move to the territories that remain under Ukrainian control but also for those left to live in temporarily occupied territories. For IDPs, the law specifies the right to work and to receive pension, compulsory state social insurance, education, housing, medical care, and the right to vote.

At the same time, this act of law defines certain responsibilities for IDPs. Hence, Article 9 of the Law<sup>\*43</sup> obliges them to observe the Constitution and laws of Ukraine and other legislative acts; report any change of place of residence to the government unit charged with social protection of the citizens of the district (part of the City of Kiev's state-level administrations), to executive bodies of the relevant city, and (when one exists) to the council of the district within the city associated with the new place of residence within 10 days from the date of arrival in that new place of residence; and fulfil other obligations. Frequently, the issue of this reporting is a source of dissatisfaction among IDPs, because, in their view, the latter violates their personal rights. While failure to perform this reporting may result in the termination of benefits, jurisprudence accepting the IDPs' arguments exists in the Ukrainian legal process. For example, in the city of Pavlohrad, in the Dnipropetrovsk region, the Court satisfied the claim of a displaced woman whose pension payments were discontinued by the Pension Fund of Ukraine, which had referred to Resolution 365 of the Cabinet of Ministers of Ukraine on certain issues of social benefits to internally displaced persons<sup>\*44</sup> (from 8.6.2016). While the latter provides an opportunity for termination of pension payments in cases of cancellation of

<sup>41</sup> Title of document goes here ['News for displaced people: Displaced people began to recover payments by the court, Ukraine']. Available at <http://www.idps.in.ua/2016/06/16/pereselentsyi-nachali-vosstanavlivat-vyplatyi-cherez-sud/> (most recently accessed on 24.7.2017) (in Ukrainian).

<sup>42</sup> Article 14 of the law of Ukraine on 'ensuring the rights and freedoms of internally displaced persons', from 20.10.2014, No. 1706 (see Note 28).

<sup>43</sup> *Ibid.*, Article 9.

<sup>44</sup> The resolution of the Cabinet of Ministers of Ukraine on certain issues of realisation of social-benefit payments to internally displaced persons from 8.6.2016, No. 365 (see Note 30).

an IDP certificate's validity for reason of prolonged absence (i.e., absence of more than 60 days) from the registered place of residence. Payment of the woman's pension was reinstated<sup>\*45</sup>.

The issue of social protection is crucial for persons who are forced to move within the country and also for the country itself, as a guarantor of the implementation of such protection. The issue is primarily associated with the initiation, renewal, and payment of social benefits, but providing temporary housing for migrants, paying them cash benefits and other compensation, supplying social and medical services, and providing other social protection are important too.

Institution (and recovery) of social benefits for IDPs is regulated by an order on 'appointment' (or recovery) of social benefits for internally displaced persons, an order approved via the above-mentioned resolution of the Cabinet of Ministers from 8.6.2016 on various issues related to social benefits for IDPs<sup>\*46</sup>. That order specifies the mechanism for initiation or recovery of pensions (in the form of a monthly lifetime financial allowance), lifetime state grants, all other kinds of social benefits and compensation, financial security, provision of social services, and subsidies and benefits from the state budget and from funds linked to compulsory state social insurance to internally displaced persons. In order for social benefits to be assigned or reinstated for IDPs, in the cases determined by law, its legal representative shall submit the corresponding application to the body that makes social payments in the territory. This is done where the relevant person is registered, at the place where he or she actually resides / is staying, irrespective of the fact of the place of registration/stay. Upon receipt of such an application, the competent state authorities verify the authenticity of the information provided (on IDP status, residing or staying at the specified address, etc.). In line with the findings, an approval decision or a decision to refuse is taken. Such a complicated procedure was developed to reduce the number of cases of unlawful payments.

In my opinion, the real issue is granting and receiving of pensions and other social benefits for residents who have continued living in temporarily occupied parts of the Donetsk and Luhansk regions and in annexed Crimea. According to Article 1 of the law of Ukraine on ensuring the rights and freedoms of citizens and the legal regime of the temporarily occupied parts of Ukraine<sup>\*47</sup> (No. 1207), from 15.4.2014 (specified by the normative act), the temporarily occupied territories within Ukraine are an integral part of the territory of Ukraine covered by the Constitution and laws of Ukraine. In other words, citizens living in these territories remain citizens of Ukraine and have the same rights as citizens of Ukraine living in territories controlled by the Ukrainian authorities. In contrast, however, specified by the normative act establishes a special legal regime; defines peculiarities of the activity of public bodies, local authorities, enterprises, institutions, and other organisations in terms of this regime; and addresses the honouring and protection of rights and freedoms of the person or citizen, alongside the rights and legitimate interests of entities in these territories, on this basis. For example, peculiarities are aligned with geographical limits of the temporarily occupied territory, with a special procedure for ensuring the rights and freedoms of citizens of Ukraine residing in that temporarily occupied territory, for performing deeds, such as conducting elections and referenda, and for the realisation of other rights and freedoms of the person and citizen.

The provisions of the law to ensure the rights of persons residing in the temporarily occupied territory and on employment, pensions, compulsory state social insurance, social services, etc. seem important. According to Article 7 of the Law<sup>\*48</sup>, implementing of the above-mentioned rights for such residents is carried out in accordance with the laws of Ukraine. But today complexity is visible in the fact that the temporarily occupied territories have no structural units of the relevant bodies of the state government of Ukraine and are missing the departments of financial institutions and other enterprises/organisations that once carried out accumulation and distribution of the funds and ensuring of enforcement of the citizens' rights to receive a pension and other mandatory social payments. In these territories, delivering such funds for some categories of citizens is dangerous and inappropriate, because they could be used instead for other

<sup>45</sup> Title of document goes here ['The right for protection: Advocacy and legal assistance for internally displaced persons']. Available at <http://vpl.com.ua/uk/news/3172/> (most recently accessed on 24.7.2017) (in Ukrainian).

<sup>46</sup> The resolution of the Cabinet of Ministers of Ukraine on certain issues of realisation of social-benefit payments to internally displaced persons from 8.6.2016, No. 365 (see Note 30).

<sup>47</sup> The law of Ukraine on 'ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine', dated 15.4.2014, No. 1207. Available, in Ukrainian, at <http://zakon5.rada.gov.ua/laws/show/1207-18> (most recently accessed on 12.4.2017).

<sup>48</sup> Article 7 of the law of Ukraine on 'ensuring the rights and freedoms of internally displaced persons', from 20.10.2014, No. 1706 (see Note 28).

purposes by the occupying power's authorities. Therefore, in order to ensure the rights specified by the Constitution and laws of Ukraine on social security, which is shown as well as initiation (or recovery) and payment of cash benefits, the legislator entered certain limitations into law. Hence, Resolution 595 of the Cabinet of Ministers of Ukraine, from 7.11.2014, on various issues of financing for budgetary institutions, the implementation of social payments, and provision of financial support to private enterprises and other organisations in the Donetsk and Luhansk regions<sup>\*49</sup>, specified a temporary scheme of financing for budgetary institutions, the implementation of social-benefit payments, and provision of financial support to the relevant organisations in those regions. In accordance with Clause 2 of the above-mentioned order, for state authorities that are based in the temporarily occupied territory and not exercising their powers, expenditures from the state budget, the budget of the Pension Fund of Ukraine, and budgets of other funds for obligatory state social insurance are to be disbursed only after the return of said territory to the control of public authorities. In other words, all cash payments that the law dictates for payment to citizens of Ukraine (pensioners, single mothers, the disabled, and others) residing in the temporarily occupied territory while it remains occupied are credited to their personal accounts and can be paid in accordance with the conditions defined by the legislation of Ukraine. The main conditions are 1) the individual departing to territories controlled by the Ukrainian government, for temporary or permanent residence; receiving the status of IDP in accordance with the requirements of applicable law; and registering with the relevant department of the social-protection body (the terms and conditions for initiation or resumption of social benefits are described above) and 2) the relevant parties completing the anti-terrorism operation in certain districts of the Luhansk and Donetsk regions and restoring the structural units of the authorities of the state government of Ukraine, branches of financial institutions, and other enterprises/organisations. Therefore, the citizens of Ukraine living in the temporarily occupied territory are not deprived of the right to be assigned and receive pension and other social benefits; instead, they have a specially defined procedure for the implementation of their rights. Upon completion of the anti-terrorism operation in the districts in the Luhansk and Donetsk regions in question and once the above-mentioned structural units of the authorities of the government of Ukraine, branches of financial institutions, and other enterprises or other organisations are restored, the special legal regime can be changed or eliminated. However, in my opinion, the procedure and mechanism for obtaining social benefits is quite complex, especially for persons of retirement age. Therefore, it needs to be simplified. One step already made in this direction is simplification of the way of obtaining old-age pension payments for Ukrainians residing in the temporarily occupied territories in the Luhansk and Donetsk regions and who were granted such a pension before 20.2.2014 (in line with Article 1 of the law of 15.4.1207 on ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied areas of Ukraine (No. 1207), the date on which the temporary occupation began. In order for these persons to receive the payments, it should be enough for the latter to arrive in territory controlled by the Ukrainian authorities and, at the appropriate department of the Pension Fund of Ukraine, present a passport and a pension certificate.

One of the key real-world issues still affecting IDPs is housing. This issue is regulated by the regulations of the Cabinet of Ministers on providing monthly targeted assistance to internally displaced persons to cover living expenses, including housing and communal services<sup>\*50</sup> (No. 505), from 1.10.2014 (the provisions of which were analysed above), and on providing temporary accommodation for families who migrated from the Autonomous Republic of Crimea and the city of Sevastopol<sup>\*51</sup> (No. 213), from 25.6.2014 (its provisions too were analysed above). The content of both resolutions sets forth details of a financial allowance intended to cover payments for accommodation. Repayment periods are set at six months, with the possibility of renewal under the conditions specified by this regulatory act. It specifies one authorised bank, the State Savings Bank of Ukraine, as the immediate source of such assistance; that bank is to open and maintain current accounts for receiving the financial allowance. In accordance with Clause 3 of the

<sup>49</sup> The resolution of the Cabinet of Ministers of Ukraine on certain issues of financing of budgetary institutions, the implementation of social-benefit payments, and provision of financial support to private enterprises and organisations of the Donetsk and Luhansk regions from 7.11.2014, No. 595 (see Note 31).

<sup>50</sup> The resolution of the Cabinet of Ministers of Ukraine on providing monthly targeted assistance to internally displaced persons to cover living expenses, including payment for housing and communal services, from 1.10.2014, No. 505 (see Note 32).

<sup>51</sup> The regulation of the Cabinet of Ministers of Ukraine titled 'Providing Temporary Accommodation for Families Who Migrated from the Autonomous Republic of Crimea and the City of Sevastopol', from 25.6.2014, No. 213. Available, in Ukrainian, at <http://zakon3.rada.gov.ua/laws/show/213-2014-%D0%BF> (most recently accessed on 12.4.2017).

above-mentioned order<sup>\*52</sup>, which was approved via Resolution 213 of the Cabinet of Ministers, the amount of the financial allowance is determined by a rate setting it at up to 75% of the cost of accommodation per day but not more than 200 UAH (approx. 7 euros) for each family member. It is paid by means of a non-cash transfer by the authorities, as specified in the prescribed manner, to the accounts of places where temporarily displaced persons are housed sanatoria and other health institutions, agencies, and establishments for social protection of the population, along with hostels. For IDPs, Article 9 of the law of Ukraine on ensuring the rights and freedoms of internally displaced persons<sup>\*53</sup> from 20.10.2014 (i.e., No. 1706) also provides the possibility of free temporary residence (when the person has made payment in the value of the associated communal services) for six months from the date of registration as an IDP; this term can be extended for large families, the disabled, and the elderly.

The issue of resettlement of displaced residents has been addressed thus: the disabled, pensioners, and low-income families were placed in sanatorium facilities and other health institutions or social-security institutions, other categories of people were accommodated in hostels, hotels, and specially constructed modular towns. However, for most IDPs, who live in residences they have found themselves, the financial assistance provided under the Ukrainian legislation is not enough in the current economic conditions. According to internal research on resolving housing issues for IDPs<sup>\*54</sup>, as of September 2016, 95.5% of migrants were living in rented flats. Another issue now being raised in Ukrainian society is that of discriminatory attitudes towards IDPs. There are cases wherein people who seek to rent a home are denied it on the grounds that they are IDPs. Refusal to hire occurs also, on the same grounds. This position is unacceptable and in contradiction with Principle 1 and with Article 5 of the law of Ukraine on ensuring the rights and freedoms of internally displaced persons<sup>\*55</sup> (No. 1706).

The progress toward resolving the housing issue is seen most strongly in the construction of individual housing units for IDPs, such as construction of residential complexes for migrants that are designed for 500 flats each, and expressions of desire to develop these areas. Nonetheless, this matter could create social conflict, because, alongside IDPs, who definitely need help at the level of the country, there are other categories in Ukrainian society – such as the disabled, Chernobyl victims, and ‘mother-heroines’ – who need residence. Also, ordinary citizens should not be forgotten here; they are no exception to the phenomenon of facing long-term queues for a place of residence.

Hence, the issue of legal regulation of housing for IDPs and the real-world provision of that housing has been important for the Ukrainian legislator and remains so. In my view, for that issue’s resolution, it would be appropriate to provide allowance for places in new public housing stock could be provided, from which the IDP can buy a flat through partial payment of its value – for example, 25% of the total cost. In my opinion, the latter proposal is appropriate for repair or reconstruction of abandoned, empty buildings that are on state or municipal property with the involvement of foreign investors and the use of innovative technologies. This housing can be put to good use for the temporary settlement of migrants.

## 6. Conclusions

Today, the issue of the status of IDPs and the legal regulation related to them constitutes a key concern not only for Ukraine but also for the whole world. An important component of state policy in protecting the rights and freedoms of forced migrants in Ukraine is to create an effective foundational legal framework and an effective mechanism for its implementation. The legislative framework for legal regulation surrounding IDPs in Ukraine is based on the norms of international law. The 1998 guidelines on internally displaced

<sup>52</sup> Clause 3 on the procedure for using funds from the state budget reserve fund to provide cash assistance for the temporary residence of families who have moved from the Autonomous Republic of Crimea and from Sevastopol. See <http://zakon3.rada.gov.ua/laws/show/213-2014-%D0%BF> (most recently accessed on 25.7.2017) (in Ukrainian).

<sup>53</sup> Article 9 of the law of Ukraine on ‘ensuring the rights and freedoms of internally displaced persons’, from 20.10.2014, No. 1706 (see Note 28).

<sup>54</sup> I. Shevchenko. Title of document goes here [‘The housing issue of displaced people: Two years of searching for a home place’], 7.9.2016. Available via the UNIAN news agency at <https://www.unian.ua/society/1508883-kvartirne-pere-selentsiv-dva-roki-mitarstv.html> (most recently accessed on 12.4.2017) (in Ukrainian).

<sup>55</sup> The law of Ukraine on ‘ensuring the rights and freedoms of internally displaced persons’, from 20.10.2014, No. 1706 (see Note 28).

people have particular importance – many provisions of the Principles are reflected in the national legislation on forced displacement and are sufficiently effective. Examples are the principles on legal personality, the responsibility of the national authorities for assistance to IDPs, assistance in obtaining humanitarian assistance from international organisations, obtaining of medical assistance, and others. But there are highly relevant fields in which state assistance and legal improvements are needed. These are evident in cases of discriminatory attitudes toward IDPs on the grounds that the latter are IDPs, insufficiency of financial assistance, housing constraints, etc. Issues of social protection of IDPs – particularly linked with the initiation, restoration, and payment of social benefits and pensions, including those for people who live in areas of Ukraine not controlled by the national authorities – remain open too. In my opinion, if we are to resolve the IDPs' problems, it is important to improve the existing norms in accordance with the emerging needs of IDPs and to cease the actions that are not relevant, simplifying the mechanisms for obtaining social benefits. For example, the mechanism for obtaining old-age pensions for Ukrainian citizens could be simplified in the manner outlined above.

Implementation of innovative approaches to solve the problems faced by IDPs and borrowing solutions from the experience of other countries that have encountered problems of massive forced internal displacements should create an effective system of protection of the rights and freedoms of internally displaced persons in Ukraine.