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INTERNATIONAL MECHANISM FOR ENSURING RIGHTS OF INTERNALLY DISPLACED PERSONS AND ITS IMPLEMENTATION BY UKRAINE AT THE REGIONAL LEVEL

Грицай І., Гордієнко Л. МІЖНАРОДНИЙ МЕХАНІЗМ ЗАБЕЗПЕЧЕННЯ ПРАВ ВНУТРІШНЬО ПЕРЕМІЩЕНИХ ОСІБ ТА ЙОГО ЗАПРОВАДЖЕННЯ В УКРАЇНІ НА РЕГІОНАЛЬНОМУ РІВНІ. Розглянуто міжнародний механізм забезпечення прав внутрішньо переміщених осіб. Визначено нинішній стан виконання міжнародного механізму забезпечення прав внутрішньо переміщених осіб Україною на регіональному рівні. Надано пропозиції щодо підтвердження дій органів державної та місцевої влади щодо здійснення міжнародного механізму забезпечення прав внутрішньо переміщених осіб.

Міжнародний механізм забезпечення прав внутрішньо переміщених осіб розглядається як сукупність заходів у просторі та часі міжнародними органами, які, відповідно до норм міжнародних договорів з прав людини, забезпечують права внутрішньо переміщених осіб шляхом спеціальних засобів, методів та процедур. Форми реалізації міжнародного механізму забезпечення прав внутрішньо переміщених осіб на регіональному рівні визначаються як: 1) нормативна форма; 2) інституційна форма та 3) процесуальна форма. Нормативною формою здійснення міжнародного механізму забезпечення прав внутрішньо переміщених осіб на регіональному рівні є забезпечення державними та місцевими органами влади національного законодавства про захист прав внутрішньо переміщених осіб. Інституційна форма реалізації міжнародного механізму забезпечення прав внутрішньо переміщених осіб Україною на регіональному рівні передбачає встановлення державою та місцевою владою відповідних умов для діяльності універсальних та регіональних міжнародних дійових осіб. Процедурна форма передбачає використання відповідних інструментів, методів та процедур, зокрема судових, для ефективного забезпечення прав осіб, які переміщуються всередині країни.

Розглянуто проблемні аспекти реалізації процесуальної форми реалізації міжнародного механізму забезпечення прав внутрішньо переміщених осіб Україною на регіональному рівні органами державної влади та місцевого самоврядування. Визначено конкретні напрями регіональної діяльності у сфері забезпечення прав внутрішньо переміщених осіб, а також пропонується створення регіональної платформи для більш ефективного та цілеспрямованого застосування міжнародних стандартів у сфері захисту прав внутрішньо переміщених осіб.

Ключові слова: внутрішньо переміщені особи, міжнародний механізм забезпечення прав внутрішньо переміщених осіб, міжнародне публічне право, міжнародний захист прав людини, органи державної влади та місцевого самоврядування.

Formulation of the problem. At the beginning of XXI century tension of international relations more frequently results in outbreak of violence, military intervention and massive violations of international humanitarian law. Manifestation of the “New World Order”, under which particular states, contrary to the principles of international law, give effect to their own interests in despicable way, incites an intense growth of internal migration in the modern world. Today the forced internal displacement is assuming considerable dimensions, as evidenced by the UN statistical data, showing that the total number of internally displaced persons (hereinafter – IDPs) in the world has reached 40 million as at December 31st, 2017 [1]. Described tendencies objectively impose the necessity of examination of the international mecha-

nism for ensuring rights of IDPs, development of the most appropriate means of efficient protection of such persons by the states, facing the issue of forced internal migration.

Since the beginning of the year 2014 this perspective is relevant to Ukraine as well. Emergence of forced displacement within the borders of our country has specific causes owing to violation of jus cogens by the Russian Federation – annexation of Crimea and outbreak of hostilities on the territory of Donetsk and Luhansk oblasts. As at February 5th, 2018, according to the Ministry of Social Policy of Ukraine, only the number of registered IDPs in Ukraine amounts to over 1,49 million persons [2]. According to the estimates of the Office of the United Nations High Commissioner for Refugees, in 2018 over 1,8 million persons were forced to leave places of permanent residence and seek refuge in other regions due to the annexation of Crimea and military actions in the East of Ukraine [3]. Ensuring rights of IDPs by Ukraine remains one of the crucial issues among others in the field of human rights. This is due to the lack of experience of protection of persons, who were forced to leave places of permanent residence owing to the military conflict, as well as sluggishness of state and local government bodies regarding the fulfillment of obligations on integration of Ukrainian citizens with IDP status.

Analysis of publications. It should be noted that international mechanism of human rights protection, as a stand-alone object of study, often attracts attention of foreign and Ukrainian scientists, yet they are primarily focused on the legal status of refugees and asylum seekers. Within the framework of international law, the following foreign researchers focused on the issues of internal displacement: C. Beau, N. Van Hear, F. Deng, P. Jennings, S. Castles, R. Cohen, V. Kälin, E. Mooney, B. Stark, R. Wilkinson, J. Hathaway and others.

In national scientific research selected aspects of protection of rights of IDPs in different fields were examined by I. Bezzoub, S. Brytchenko, M. Bouromensky, V. Hrynychak, I. Hyzhy, O. Zadorozhny, M. Kobets, M. Kovtoun, K. Krakhmalova, I. Kozynets, O. Malynovska, V. Nadraha, V. Potapov, A. Solodko, H. Tymchyk, S. Chekhovych, S. Fedorchouk, O. Fesenko and others. Nevertheless, there have been very few studies concentrated on international mechanism for ensuring rights of IDPs in Ukraine, moreover, the issue of its implementation at the regional level has never been considered before. Such situation justifies relevance and timeliness of chosen topic.

The main **objective** of this article is to describe the definition and the structure of the international mechanism for ensuring rights of IDPs, as well as to determine the current condition and the issues on the way of its implementation in Ukraine at the regional level. In order to achieve this objective it's essential to define and carry out the following **tasks**: a) determine the meaning of the definition “international mechanism for ensuring rights of IDPs” and its structure; b) provide an overview of the current condition of implementation of international mechanism for ensuring rights of IDPs in Ukraine at the regional level and draw up recommendations on improvement of activities of state and local government bodies in this area of work.

Presentation of the main material. The issue of ensuring rights of IDPs in Ukraine is just a part of the worldwide problem of forced internal migration. The cause of proliferation of internal migration in a state is often a result of military conflicts and inter-ethnic strife. The necessity of providing assistance to the persons who were forced to spontaneously change the place of residence for objective reasons became particularly acute in the 1970s owing to the civil wars, flaring up in the territory of Angola, Vietnam, Cambodia, Sudan [4, c. 26]. According to the Global Report of the Internal Displacement Monitoring Centre of the Norwegian Refugee Council, as at the end of the year 2017, the majority of IDPs, who left their place of residence due to the military conflict, come from Syria (2,9 million), Democratic Republic of Congo (2,2 million), Iraq (1,4 million), South Sudan (857 thousand), Ethiopia (725 thousand) [5].

Following the increase of cases of involuntary migration, the global community was gradually realizing the necessity of developing joint approach to protection of right of persons, displaced within the territory of their own countries, and providing international assistance to the states in this field. What is at stake today is a certain international mechanism for ensuring rights of IDPs, but it should be noted that the theoretical concept of “mechanism” has a lot of interpretations which may be found in specialized sources. *The international mechanism ensuring rights of IDPs* should be considered as a set of activities of international bodies in space which, according to the provisions of international treaties in the field of human rights, ensure rights of IDPs by means of specific tools, methods and procedures. Different sources provide plenty of perspectives on the structure of the mechanism, including the mechanism of human rights protection, yet the most intelligible is the interpretation of the structure of the mechanism

for ensuring rights of IDPs is the one set forth by the Ukrainian authors [6, c. 158], considering it as the interaction of three components: 1) norms of international law, regulating relations involving IDPs; 2) legal entities – international institutions, implementing the substance of international law and 3) specific tools, allowing to ensure effective protection of rights of IDPs in space and time.

The international mechanism for ensuring rights is, first and foremost, a result of international relations, which is why it's related to the application of the norms of international law, concentrated in *universal* and *special* treaties, regulating the issues of ensuring IDPs rights. Universal treaties, establishing general principles of ensuring IDPs rights, are the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the European Convention on Human Rights, 1950. *Special* international treaties, regulating relations involving IDPs, are the UN Convention Relating to the Status of Refugees, 1951, and the Protocol, 1967, concerning the status of refugees, as well as *the Guiding Principles on Internal Displacement*, elaborated and adopted by the UN General Assembly and the UN Commission on Human Rights in 1998.

The legal entities of the international mechanism for ensuring rights of IDPs have universal and regional scope of activities. Universal legal entities of the mechanism for ensuring IDPs rights are the United Nations and its agencies: ECOSOC, Human Rights Council, International Organization for Migration, specialized committees, dealing with rights of particular categories and others. International judicial authorities should also be distinguished as, for example, the UN International Court of Justice and the European Court of Human Rights. The international body, directly dealing with IDPs issues, is *the UN Refugee Agency*. The UNHCR's mandate was expanded by the UN General Assembly in 1972 to include IDPs component. The International Red Cross used to work in the field of assistance to IDPs and acted as a guarantor of the Geneva Conventions. The international community didn't dare to interfere due to traditional perception of the national sovereignty and the principle that governments have a sole authority to address issues of their own citizens. Nevertheless, the scale of the problem in the end of the last century could not but draw attention of the UN. Joint efforts of member states, for their part, were motivated by an aspiration to withhold the stream of refugees. The UN High Commissioner for Refugees is, thus, the main international institution, fully engaged in issues of ensuring IDPs rights in the world. Since 2014 the UNHCR and its missions in Ukraine have been proactively providing assistance to the citizens affected by the conflict in the East of our country. The UNHCR agency for IDPs in Kyiv cooperate with Ukrainian partner organizations as "CrimeaSOS" (since 2014), "10th of April" (since 2016) and "Right to Protection" (R2P) in the field of protection of rights of IDPs in Central and Western Europe. In 2018 its activities are going to include: protection and work with communities of displaced persons and local communities in 19 regions in Central and Western Ukraine; legal and individual assistance; advocacy at different state levels and cooperation with other relevant organizations in the field of protection of IDPs rights [7].

Regional legal entities of international mechanism of ensuring IDPs rights are concentrated, for a number of reasons, in European system of human rights protection. These include the Council of Europe, the OSCE and other organizations. The fundamental requirements on respect and protection of IDPs rights are set out in the Recommendation (2006)6 of the Committee of Ministers of the Council of Europe to member states on internally displaced persons. The Recommendation of the Committee of Ministers determine 13 substantive principles concerning protection of IDPs rights [8, c. 12]. Certain provisions, for example, on enjoyment of property and possessions, as well as taking one of "sustainable decisions" are detailed in the following two crucial documents of the Council of Europe on internal displacement, namely the Recommendation 1877 (2009) of June 24th, 2009 "Europe's forgotten people: protecting the human rights of long-term displaced persons" and the Resolution 1708 (2010) of January 28th, 2010, "Solving property issues of refugees and internally displaced persons".

The *specific tools*, allowing to efficiently ensure rights of IDPs in space and time are constantly being improved. For example, the international practice has known a so-called "cluster approach" to ensuring IDPs rights as a range of coherent actions, carried out by particular international organizations. In 2011 the UNHCR initiated a major review of the Global Protection Cluster, in 2012 a new program statement and strategy on ensuring comprehensive approach to protection were introduced. Instead of being limited by the humanitarian aid, it has to cover all aspects of displacement and remain operational until all needs and problems of displacement are solved [9, c. 20].

The process of improvement of the international mechanism for ensuring IDPs rights is constantly on the agenda of the UN. Taking into account the actualization of this subject matter in Ukraine, appears an objective necessity of establishing appropriate prerequisites for actions of the components of the international mechanism for protection of IDPs affected by the conflict in Eastern Ukraine. It particularly concerns the regions, where state and local authorities are obliged to fulfill the commitments of Ukraine in this sphere. But, firstly, it would be appropriate to develop the modalities of implementation of the international mechanism for ensuring rights of IDPs at the regional level which correspond with the structure of such mechanism.

The modalities of implementation of international mechanism for ensuring IDPs rights in Ukraine at the regional level are: 1) the normative form; 2) institutional form and 3) procedural form. The normative form modalities of implementation of international mechanism for ensuring IDPs rights in Ukraine at the regional level is about compliance of the state and local authorities with the national legislation on protection of IDPs rights and international standards in this field, which may be applied directly in case of their ratification by the Verkhovna Rada of Ukraine. Institutional form of implementation of international mechanism of ensuring IDPs rights at the regional level implies establishment by the state and local authorities of the appropriate conditions for activities of universal and regional international legal entities, engaged in this perspective. And, finally, procedural form intends to bring into play relevant tools, methods and procedures, including judicial ones, in order to ensure IDPs rights effectively at the regional level in Ukraine. The first and the second form are more or less applied by the local authorities, however, the implementation of procedural form gives rise to complaints.

The regional level of implementation of comprehensive international tools, methods and procedures, aimed at ensuring IDPs rights in Ukraine, involves effective work of governmental authorities, local self-government bodies and non-governmental human rights organizations on protection of civil, political, social rights and freedoms of IDPs in coordination with international organizations. It should be recognized that Ukraine, through the regional level, has already carried out and keeps implementing relevant activities on protection of IDPs rights, yet a lot of issues remain unsolved. A significant part of competencies on implementation of particular activities within the regional programs of implementation of components of international mechanism for ensuring IDPs rights belong to the local self-government bodies, including establishment of comprehensive system of civil protection of citizens, affected by the military conflict, raising awareness of population on the rules of secure approaches to military actions and terrorist threats, shaping zero tolerance to any gender-based violence or discrimination, etc.

It should be noted that in the context of decentralization reform in Ukraine, the role of the local self-government bodies in implementation of international mechanism for ensuring IDPs rights is going to be reinforced. The local executive authorities and the local self-government bodies have to focus joint efforts on development of efficient and accessible system ensuring IDPs rights, as well as women and girls, affected by the conflict, including access to temporary accommodation, medical, social, psychological and legal services, etc. Regional level of implementation of international tools, methods and procedures on ensuring rights of IDPs involves effective work of regions, taking into account their particularities: geography, culture, ethnic difference and others. It concerns implementation of urgent activities according to the following scopes of work at the regional level:

- in the legal and regulatory framework: elaboration of relevant programs on implementation of international mechanism for ensuring IDPs rights (for example, a large-scale campaign on realization of the adopted National Plan on Implementation of the UN Security Council Resolution № 1325 (2000) up to 2020, in the framework of which the local authorities elaborate and carry out regional action plans);

- in the educational framework: carrying out educational activities on ensuring rights of IDPs in Ukraine with necessary recommendations for the rule-making entities (governmental authorities and local self-government bodies) on improvement of organizational and legal conditions of implementation of international standards in this area;

- in the informational framework: expanding the channels of communication concerning the needs of IDPs, including involvement of national and local media;

- in the framework of regional governance: enforcing the methods of state and public control of fulfillment of national and local programs, suggesting the ways of socialization of IDPs in certain regions of the country, protection of their particular rights and freedoms, providing primary legal assistance.

Conclusion. Thus, the international mechanism for ensuring rights of internally dis-

placed persons is regarded as an order of activity in space and time of international bodies that, in accordance with the norms of international human rights treaties, ensure rights of internally displaced persons through special tools, methods and procedures. The international mechanism for ensuring rights of IDPs at the regional level is implemented through normative, institutional and procedural forms. The process of implementation of the international mechanism for ensuring rights of internally displaced persons in Ukraine has not only the lack of efficiency of its separated components, but also a certain disengagement of activities of state and local authorities, divergence of views on implementation of national and regional programs of assistance to IDPs. Taking into account such a situation, a *regional platform* ensuring more efficient and targeted implementation of international standards of IDPs protection should be established in Ukraine. An initiative should be regarded in the context of the decentralization reform. The process of dialogue at the common regional platform will provide an opportunity of conducting effective analysis of particular aspects of implementation of the international mechanism for ensuring rights of internally displaced persons in Ukraine, allow to identify the best modalities and methods for activities of the executive authorities and the self-government bodies in this area. Moreover, establishment of such platform will raise awareness and understanding of practical implementation of international standards in the field of protection of IDPs rights at the regional level, extending institutional instruments of direct participation of representatives of territorial communities in this direction.

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Summary

The article examines the international mechanism for ensuring rights of internally displaced persons. The current state of implementation of the international mechanism for ensuring rights of internally displaced persons by Ukraine at the regional level is determined. Proposals are being put forward to improve the actions of state and local authorities in the field regarding the implementation of an international mechanism for ensuring rights of internally displaced persons.

Keywords: *internally displaced persons, international mechanism for ensuring rights of internally displaced persons, international public law, international protection of human rights, state and local government bodies.*