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INTERNATIONAL RESPONSIBILITY FOR INTERNAL DISPLACEMENT: A CONTRADICTION IN TERMS?

The phenomenon of internal displacement may not be recognized as a new type of migratory movements. Nevertheless, the long history of people being displaced from their homes is characterized by a rather low attention to the movements within the borders of the same country. However, it should be noted that the scale of migration and displacement has significantly augmented during the past decade. It is hard to name the exact number if internally displaced persons (hereinafter IDPs) in the world, given the complications arising from identification of IDPs in urban areas, but the comparison is usually made to the number of refugees, which is resulting in the IDPs that outnumber the refugees by approximately two and a half times.

The causes for displacement and migration are numerous and currently are being vividly discussed both by practitioners and in academia. For the hereby thesis it would be appropriate to accept the theory of migration-displacement nexus, which states on the position, that the clear distinction between the economic, political or climate displacement is not possible to set in the current reality [7, 3]. The only group of the displaced persons, that has an international legal framework are refugees. The 1951 Refugee Convention and 1967 Protocol relating to the status of refugees contain a clear definition of person entitled to obtain a refugee status. Unlike, refugees, the IDPs have no binding international legal framework that would provide a clear definition and instruments of protection of IDPs rights and responsibility for their violation. Therefore, given the limited capacity of the hereby thesis, only the issue of international responsibility for internal displacement will be discussed.

The importance of the topic is also justified by the record number of IDPs not only in the world, but also in Europe. While Africa became a pioneer in adopting a binding legal instrument African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),

Europe, despite operating with a set of human rights protection instruments is facing a new challenge of protection the rights of IDPs. The particular example to this challenge is Ukraine, that currently holds around 1,6 mln of IDPs. It is known to be the newest and most numerous example of internal displacement due to the conflict after the fall of Yugoslavia and the Soviet Union.

With a set of international human rights law and international humanitarian law norms it is particularly important to highlight the problem of international responsibility for forced displacement, and in this case – for internal displacement. The issue at stake is of a complicated nature since it requires to question the limits of national sovereignty. In other words – can state be held accountable for displacement of persons within their own borders? And more importantly, are there international legal norms that enforce a certain responsibility for the internal displacement.

Guiding Principles despite being non-binding and only international document on the internal displacement is based on the humanitarian and human rights law. Therefore, the aim is to find out whether there is a binding norm corresponding to the p. 1 of principle 6 stating that «every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence» [4].

First of all, the prohibition of forced displacement is presented at the level of customary international humanitarian law. Forced movement, regardless of whether it has a mass or individual character under Art. 59 of the The Geneva Convention relative to the Protection of Civilian Persons in Time of War constitutes a violation of humanitarian law. Moreover, thanks to the Second Supplementary Protocol, such a ban extends not only to international armed conflicts, but also to internal armed conflicts [5, 13].

Second of all, in article 7, paragraph (d) of the Rome Statute of the International Criminal Court, crimes against humanity include deportation or forced displacement of the population. Article 7 (2) states that «deportation or forcible transfer of the population» means the forcible transfer of persons who have been subjected to eviction or other coercive actions from the area in which they are lawfully present, in the absence of grounds permitted under international law». Moreover, war crimes under article 8 (2) (a) (VII) of the Rome Statute include the illegal deportation of «or the movement or illegal deprivation of liberty» [1, 3].

The Convention from Kampala includes regulations aimed at criminalizing arbitrary movements. Article 7 (4) states that «members of armed groups are held criminally responsible for their actions, which violate the rights of internally displaced persons in accordance with international law and national law» [2, 9]. Despite the fact that according to the Convention from Kampala, arbitrary displacement is not a criminal offense, article 4 specifies a norm requiring Member States to punish «acts of arbitrary displacement that constitute genocide, war crimes or crimes against humanity» [2, 6]. Individual countries have also included a provision on criminal liability for arbitrary transfers to their national legislation, but the problem of implementing such norms at both the national and international levels remains urgent.

Walter Kälin in his last report stressed that responsibility should be manifested not only through criminal sanctions, but also through other legal means, such as reparations, restitution (returning individuals their status before relocation) or compensation [8, 105]. Such legal instruments should protect the interests of

displaced persons not selectively, but taking into account the principle of equality before the law. In turn, Bogumił Terminski noted that arbitrary displacement is closely related to the right to adequate housing [6, 156]. The legal basis for the restitution and real estate of IDPs is presented in the Principles on restitution of housing and property of refugees and displaced persons. This document is based on the principles of equal rights for men and women and non-discrimination. Moreover, article 5 of the document states that «everyone has the right to be protected from arbitrary displacement from his home, from his land or place of habitual residence» [3, 10].

The report of former Representative of the United Nations' Secretary-General on the Human Rights of Internally Displaced Persons speaks not only of responsibility after the fact of displacement, but also of the obligation to prevent forced relocations, as in the case of natural or man-made disasters. The European Court of Human Rights (hereinafter ECHR) recognized that countries have positive obligations to create a legal framework for the effective protection of the right to life in the understanding of Article 2 of the European Convention of Human Rights (hereinafter ECHR).

In conclusion to the decision in the case of Öneryildiz v. Turkey The ECtHR confirms Turkey's blame for the explosion caused by human activities, as local authorities knew the risks of such a situation and did not provide conditions for its prevention. The decision of the ECtHR in the case of Budayeva v Russia concerns the prevention of the consequences of a natural disaster. The ECHR acknowledged that, in spite of considerable freedom of countries in choosing methods to protect the rights of their citizens, «the main duty of the state is to create a legislative and administrative framework designed to ensure effective deterrence from threats of violation of the right to life» [9]. Despite the large number of discussions on this decision, it constitutes a powerful precedent, including for the subsequent interpretation of the actions of countries in the context of internal displacement.

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ПРАВОВЕ РЕГУЛЮВАННЯ ІНФОРМАЦІЙНОГО ЗАБЕЗПЕЧЕННЯ ДІЯЛЬНОСТІ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ

У сучасних умовах глобалізованого світу із розвитком інноваційних технологій та мережі Інтернет питання доступу до інформації та питання інформаційного регулювання діяльності органів державної влади потребує нового підходу до правового регулювання, який би охоплювало усі наявні питання, що стосуються цієї сфери.

Найбільший об'єм інформації, що регулює питання державного управління інформаційною сферою міститься в підзаконних нормативно-правових актах, зокрема, у постановах Кабінету Міністрів України, актах міністерств, державних комітетів, інших центральних органів виконавчої влади, місцевих державних адміністрацій тощо. Як результат вторинної форми правового регулювання державного управління ці норми спрямовані на забезпечення дієвості конституційних норм та норм законів. Однак основним законом, що стосується даної сфери є закон «Про інформацію», відповідно до нього інформація – це будь-які відомості та/або дані, які можуть бути збережені на матеріальних носіях або відображені в електронному вигляді. Основними напрямами державної інформаційної політики закон визначає:

- забезпечення доступу кожного до інформації;
- забезпечення рівних можливостей щодо створення, збирання, одержання, зберігання, використання, поширення, охорони, захисту інформації;
- створення умов для формування в Україні інформаційного суспільства;
- забезпечення відкритості та прозорості діяльності суб'єктів владних повноважень;