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ON THE PROVISION OF FREE LEGAL ASSISTANCE TO INTERNALLY DISPLACED PERSONS UNDER THE CONDITIONS OF THE LEGAL REGIME OF MARTIAL STATE

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The article analyzes the provision of free legal aid to internally displaced persons in Ukraine. The relevance of this issue has become particularly acute in connection with the Russian armed aggression against Ukraine and the forced displacement of a significant number of citizens within the country.

It is worth focusing on international standards and regulatory legal acts of Ukraine that regulate the scope of free legal aid, in particular: the Constitution of Ukraine, the Laws of Ukraine, such as: "On Free Legal Aid", "On Ensuring the Rights and Freedoms of Internally Displaced Persons", the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Payment for Services and Reimbursement of Expenses of Lawyers Providing Free Secondary Legal Aid" and others. The importance of implementing the constitutional right of every person to legal aid, guaranteed by the Constitution of Ukraine, is emphasized, and attention is also paid to international documents in this area under the legal regime of martial law.

The features of providing free legal aid to internally displaced persons are analyzed, in particular regarding the grounds and procedure for its receipt. The role of the free legal aid system operating in Ukraine and consisting of primary and secondary legal aid is considered. The types of legal services that can be provided to internally displaced persons within the framework of free legal aid are characterized. The role and powers of centers for providing free secondary legal aid in ensuring the right to legal aid to internally displaced persons are highlighted.

The article emphasizes the current problems that internally displaced persons face in exercising their right to free legal aid, such as: difficulties with document processing, restoration of lost documents, access to social benefits and benefits, etc.

Ways are proposed to improve the current legislation and mechanisms for exercising the right to free legal aid for internally displaced persons, taking into account international experience.

Keywords: lawyer, legal regime of martial law, legal aid, regulatory legal acts, state authorities, information and legal support.

Formulation of the problem. It is worth noting that this problem consists in highlighting a set of legal issues arising in connection with the forced displacement of a significant number of citizens of Ukraine as a result of the prolonged armed aggression of the Russian Federation (hereinafter referred to as the RF) against Ukraine.

It has been established that internally displaced persons are a particularly vulnerable category of the population that requires proper provision and protection of their rights and freedoms, in particular the right to free legal aid, guaranteed by the Constitution of Ukraine. Providing free legal aid to internally displaced persons is an important issue in view of the specific needs and problems that these persons face, such as: restoring lost documents, processing social payments and benefits, implementing housing rights, protecting property and inheritance rights, resolving employment and education issues, access to administrative and judicial procedures, etc.

Internally displaced persons often do not have sufficient funds to pay for legal services, which complicates the realization of their rights and legitimate interests. The issue of providing free legal aid to this category of persons is regulated by a number of regulatory legal acts of Ukraine, in particular: the Laws of Ukraine “On Free Legal Aid” [1], “On Ensuring the Rights and Freedoms of Internally Displaced Persons” [2], the Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Payment for Services and Reimbursement of Expenses of Lawyers Providing Free Secondary Legal Aid” [3], etc.

However, in practice there are certain problems and obstacles in the implementation of the right to free legal aid for internally displaced persons, which requires a thorough analysis and search for ways to improve the current legislation and mechanisms for its application.

From a legal point of view, it is important to study the compliance of national legislation in the field of providing free legal aid to internally displaced persons with international standards and principles of human rights protection enshrined in a number of international documents.

The analysis of the practice of applying current legislation in the provision of free legal aid, identifying gaps and conflicts that arise between citizens (recipients of services) and entities authorized to provide it is relevant.

Analysis of the study of the problem. For the period from 2014 to the present, issues related to the provision of free legal aid to internally displaced persons have become the object of attention both among practitioners in the field of public administration and among scientists.

The results of scientific research devoted to the provision of legal aid to the population and internally displaced persons have been conducted and published, in particular, among them such scientists as: K. S. Basista, N. V. Valkova, M. V. Mendzhul, R. I. Nadzhafgulyeva, L. R. Nalyvayka, M. Nikolaychuka, A. F. Oreshkova, V. M. Tertyshnyk, M. M. Sirant and others. The general opinion is that free legal aid is, first of all, legal aid guaranteed by the state and fully or partially provided at the expense of the State Budget of Ukraine, local budgets and other sources. At the same time, free legal aid is provided by the state and financed from the state and local budgets, as well as possible other sources of financing. The key point is that this legal aid is provided completely free of charge or partially paid for certain categories of persons.

The purpose of the article. To study the legal aspects of the implementation of the right to free legal aid for internally displaced persons in Ukraine, taking into account its theoretical and practical aspects. Given the scale of internal displacement of the population, the issue of proper provision of the rights and interests of internally displaced persons, to analyze the current legislation and the practice of its application in the field of free legal aid.

The aim is also to study international standards in the field of ensuring the right to legal aid for internally displaced persons, enshrined in international documents, as well as to analyze the compliance of

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the current legislation of Ukraine and the practice of its application with them. This will allow formulating scientifically based proposals for the implementation of advanced international experience into the national legal system to increase the level of protection of the rights and interests of internally displaced persons in this area. A comprehensive study of the outlined issues will contribute to the development of an effective system of providing free legal aid to internally displaced persons in Ukraine, which will comply with both national and international legal standards.

Presenting main material. Free legal aid is legal aid that is guaranteed by the state and fully or partially provided at the expense of the State Budget, local budgets and other sources. According to the Law of Ukraine “On Free Legal Aid” [1], there is primary legal aid and secondary legal aid. Legal aid – the provision of legal services aimed at ensuring the implementation of human and civil rights and freedoms, the protection of these rights and freedoms, and their restoration in the event of their violation.

The main regulatory legal acts regulating the provision of legal aid to internally displaced persons, and persons in general, are:

- The Constitution of Ukraine, in particular Article 59, which guarantees everyone the right to professional legal aid and establishes the right to free legal aid for persons defined by law [4].
- The Law of Ukraine “On Free Legal Aid” dated 02.06.2011, which defines the content of the right to free legal aid, the grounds and procedure for its provision, the list of persons entitled to such aid, state guarantees for the provision of free legal aid [1].
- The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” dated 20.10.2014, which in Article 9 guarantees the right of internally displaced persons to free legal aid in accordance with the legislation [2].
- The Law of Ukraine “On the Bar and Advocacy” of 05.07.2012, which defines the legal principles of the organization and activity of the bar and the practice of advocacy in Ukraine, and in Article 25 guarantees the provision of free legal aid by lawyers [5].
- Resolution of the Cabinet of Ministers of Ukraine “Some issues of payment for services and reimbursement of expenses of lawyers who provide free secondary legal aid” of 29.07.2020, which regulates the issue of payment for the services of lawyers who provide free secondary legal aid, in particular to internally displaced persons [3].
- Order of the Ministry of Justice of Ukraine “On Approval of the Procedure for Providing Free Legal Aid to Internally Displaced Persons” dated January 28, 2019, which defines the procedural aspects of providing primary and secondary free legal aid to internally displaced persons [6].
- Orders and regulations of the Coordination Center for Legal Aid, approved by the Ministry of Justice of Ukraine, regulating the activities of the free legal aid system in matters of ensuring the rights of internally displaced persons.

It is worth considering the above-mentioned documents in more detail in order to more deeply reveal some of the legal aspects of these regulatory acts. Let us first consider the Constitution of Ukraine.

It is worth noting that the Constitution of Ukraine is the main state document (law) that determines the state structure, the procedure and principles of the functioning of representative, executive and judicial bodies of power, the electoral system, the rights and obligations of the state, society and citizens [4].

The Constitution of Ukraine is directly related to the provision of free legal aid to internally displaced persons, as it enshrines the fundamental rights and freedoms of man and citizen, including the right to legal aid.

In addition, Article 59 of the Fundamental Law of Ukraine guarantees everyone the right to professional legal aid. At the same time, in cases provided for by law, this assistance is provided free of charge [4].

That is, the Constitution not only proclaims the right to legal aid in general, but also lays the foundation for the existence of a system of free legal aid for certain categories of persons. Internally displaced persons, given their particularly vulnerable state due to forced displacement within the country, belong to such

categories for which the legislation provides for the possibility of receiving free legal aid. This follows from the principles of equality of all before the law and non-discrimination, enshrined in Articles 21 and 24 of the Constitution of Ukraine [4].

In accordance with the principle of the rule of law, the state must create appropriate mechanisms for the implementation of constitutional rights and freedoms, in particular the right to free legal aid. This obligation has found its implementation in the legislation on free legal aid, including for internally displaced persons. It is also important to note that Article 3 of the Constitution defines the provision of human rights and freedoms as the main duty of the state. Providing free legal aid to internally displaced persons is one of the ways to fulfill this constitutional duty to ensure the realization of their rights and legitimate interests.

Thus, the Constitution of Ukraine as the Fundamental Law of the state creates the legal foundations for the existence of a system of free legal aid, including for vulnerable categories of the population, to which internally displaced persons belong. Constitutional rights and principles impose on the state the obligation to create effective mechanisms for the provision of free legal aid to internally displaced persons to ensure proper protection of their rights and interests [4].

The Law of Ukraine “On Free Legal Aid” is directly related to the provision of legal aid to internally displaced persons, as it is the basic regulatory legal act that regulates the organization and functioning of the free legal aid system in the state [1].

According to the Law, one of the categories of persons entitled to free secondary legal aid is internally displaced persons. Thus, the law directly defines internally displaced persons as subjects of the right to receive qualified legal aid at the expense of the state. It is important that the Law defines state guarantees for the provision of free legal aid.

The Law distinguishes free legal aid into primary and secondary. Primary legal aid includes legal information, consultations and clarifications on legal issues, drafting applications and other legal documents (except procedural ones). It is provided to all persons who apply for it. Secondary legal aid provides for a wider range of legal services, including protection, representation of a person’s interests in courts, other state bodies, drafting procedural documents, etc.

In order to implement legal aid in the state, an extensive system of relevant bodies, centers and institutions operates. The law also provides for a mechanism for paying for the services of lawyers who provide free secondary legal aid, in particular to internally displaced persons. Thus, the Law of Ukraine “On Free Legal Aid” is a fundamental regulatory act that enshrines the right of internally displaced persons to receive free legal aid, determines the types of such aid, the subjects of its provision, financing mechanisms and organizational principles of the functioning of the relevant system. It creates the necessary legal basis for the implementation of the constitutional right of internally displaced persons to legal aid [1].

The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” is directly related to the provision of free legal assistance to internally displaced persons, as it is a special regulatory legal act that comprehensively regulates the legal status and rights of internally displaced persons in Ukraine [2].

The Law directly enshrines the right of internally displaced persons to free legal aid in accordance with the legislation of Ukraine. This provision is consistent with the norms of the Constitution of Ukraine and the Law “On Free Legal Aid”, creating legal grounds for the provision of such assistance to internally displaced persons.

The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” defines the status and guarantees for internally displaced persons, including regarding the implementation of their other fundamental rights – housing, property, labor, social, etc. Ensuring these rights often requires the provision of qualified legal aid, which, according to the said Law, must be provided free of charge. The existence of a special Law on the Protection of the Rights of Internally Displaced Persons emphasizes the special attention and care of the state for this vulnerable category of citizens [2].

Providing them with free legal aid is one of the means of properly ensuring their rights and freedoms in difficult circumstances of internal displacement. It is also important to note that this Law was adopted in

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2014, precisely at the time when the armed conflict against Ukraine and the mass forced displacement of citizens within the state began.

Thus, the Law “On Ensuring the Rights and Freedoms of Internally Displaced Persons” is directly related to the provision of free legal aid to internally displaced persons, directly enshrining such a right and creating a legal basis for its implementation in conjunction with other legislative acts, in particular the Law “On Free Legal Aid”. This increases the legal guarantees and the level of protection of the rights of internally displaced persons in Ukraine at the legislative level [1, 2].

It is also worth noting that Article 25 of the Law of Ukraine “On Advocacy and Advocacy” states that lawyers shall provide free legal aid [5]. The article states that the procedure and conditions for involving lawyers in the provision of free legal aid are established by this law, the assessment of the quality, completeness and timeliness of the provision of free primary legal aid by lawyers is carried out upon request of local self-government bodies, and free secondary legal aid – upon request of a body (institution) authorized by law to provide free legal aid, by commissions established for this purpose by the regional bar councils.

Free legal aid includes both legal consultations and representation of interests in court. A lawyer cannot refuse to provide free legal aid if there are grounds for this provided for by law. An important part of providing free aid is a clear definition of the scope of assistance and the procedure for its provision, as well as ensuring confidentiality.

Thus, Article 25 of the Law “On the Bar and Legal Activities” emphasizes the social responsibility of lawyers and guarantees access to justice for certain categories of citizens, including internally displaced persons.

The Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Payment for Services and Reimbursement of Expenses of Lawyers Providing Free Secondary Legal Aid” is directly related to the provision of free legal aid to internally displaced persons, as it regulates the mechanism of financing and payment for the services of lawyers involved in the provision of secondary legal aid, in particular to internally displaced persons [3].

According to the Law of Ukraine “On Free Legal Aid” [1], internally displaced persons belong to the categories of persons who are entitled to free secondary legal aid, which includes defense, representation of interests in court, preparation of procedural documents, etc. Such types of legal services are provided by lawyers.

The aforementioned Resolution of the Cabinet of Ministers specifies the procedure for involving lawyers in the provision of free secondary legal aid, payment for their services and reimbursement of expenses related to the provision of such assistance. It determines the amount of payment for lawyer services depending on the type of assistance provided, as well as the mechanism for transferring funds for payment for such services. The Resolution provides for special conditions for payment of lawyers' services during a special period, martial law or state of emergency.

This is of great importance for ensuring the rights of internally displaced persons to free legal aid under the legal regime of martial law between the Russian Federation and Ukraine. Proper financial support for legal activities is a key condition for the effective functioning of the free legal aid system in general, as well as for proper access of internally displaced persons to secondary legal aid in full. It is important to note that the provisions of this Resolution apply not only to the provision of free legal aid to internally displaced persons, but also to other categories of persons defined by the Law of Ukraine “On Free Legal Aid”.

However, ensuring the right to free qualified legal aid for internally displaced persons is one of its key tasks. Therefore, the aforementioned Resolution of the Cabinet of Ministers of Ukraine is an integral element of the legal mechanism for providing free legal aid to internally displaced persons, as it establishes the procedure for engaging and paying lawyers to provide such assistance, which ensures the realization of their right to receive qualified legal support.

The Order of the Ministry of Justice of Ukraine “On Approval of the Procedure for Providing Free Legal Aid to Internally Displaced Persons” is directly related to the provision of free legal aid to internally

displaced persons, as it details and specifies the procedural aspects of the implementation of the right of this category of persons to receive both primary and secondary legal aid [5].

This subordinate regulatory legal act is based on the provisions of the Law of Ukraine “On Free Legal Aid” [1] and the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” [2], which establish the right of internally displaced persons to free legal aid. The said Order regulates the procedure for internally displaced persons to apply for free primary legal aid, in particular, it defines the circle of entities authorized to provide such assistance (executive bodies, local governments, specialized institutions, etc.). Special attention is paid to the issues of providing primary legal aid to internally displaced persons in remote areas, in places of their compact residence or stay.

The Order regulates in detail the procedure for internally displaced persons to apply for free secondary legal aid, in particular the ways of obtaining it, the list of required documents, the terms of consideration of applications. The powers of centers for providing free secondary legal aid to ensure the rights of internally displaced persons to legal services are outlined.

An important aspect is to establish the procedure and grounds for obtaining secondary legal aid by internally displaced persons in civil, economic, administrative and other categories of cases. The types of legal services that can be provided to internally displaced persons within the framework of secondary legal aid are also determined. Special attention is paid to the features of providing free legal aid to internally displaced persons under the legal regime of martial law or a state of emergency.

Thus, this Order of the Ministry of Justice of Ukraine is a key subordinate legislation that specifies the procedural issues of implementing the right of internally displaced persons to receive free legal aid of various types, determines the mechanisms for its provision, specific entities and types of services. It is an important element of the legal mechanism for providing vulnerable categories of internally displaced persons with proper access to free qualified legal aid [5].

Internally displaced persons can also obtain legal information on a wide range of issues through the mobile application “Free Legal Aid” or “Your Right” [7]. This is a mobile advisor that accumulates answers to the most relevant legal issues along with definitions, explanations, references to relevant regulatory legal acts, algorithms, examples of necessary applications and documents. In the application, the user receives a step-by-step algorithm for actions regarding the protection and restoration of their rights, as well as a maximum of useful information and references to the legislative framework.

In addition, to provide quality legal aid to this category of population, within the framework of the Council of Europe project “Internal Displacement in Ukraine: Developing Durable Solutions” [8], a HELP distance learning course [9] was developed and implemented. It includes international standards, including the case law of the European Court of Human Rights, and national adaptation materials. This course is interesting because it presents the experience of other states on internal displacement issues. The practice, in particular, of the European Court of Human Rights (hereinafter referred to as the ECHR) on this issue provides opportunities to protect the rights of IDPs at the national level in courts. Such arguments with reference to the processes in the ECHR provide an opportunity to defend the client’s position more reasonably and increase the likelihood of the claim being satisfied [8].

You can also get legal assistance for displaced persons on the reference and information platform “WikiLegalAid” [10]. This reference and information platform for legal consultations “WikiLegalAid” was created by the Coordination Center for Legal Aid in order to increase legal awareness and education of the population. On this platform, you can find the necessary information on current legal issues. In addition to legal information and links to current legislation, the platform also provides samples of legal documents and links to court decisions. It is worth noting that the legal consultation database can be used not only by IDPs, but also by practicing lawyers, law students, human rights activists and citizens of Ukraine. Legal information in consultations is presented in such a way as to be understandable to those users who do not have a legal education and a high level of knowledge in the field of jurisprudence. WikiLegalAid is an information platform that operates on the principle of the well-known online encyclopedia “Wikipedia”. A large team of lawyers from the free legal aid system from all over Ukraine, as well as representatives of the legal community, works on creating consultations, editing them, and keeping them up to date. Thus,

WikiLegalAid is the result of the collective work of qualified legal practitioners. In addition, consultants are constantly working on expanding and improving this platform: they create new consultations on relevant topics, supplement existing consultations with new sections, sample legal documents, and references to case law, and ensure that the legal information provided on the platform complies with current legislation [10].

Conclusions. Based on a thorough analysis of the current legislation of Ukraine, international standards in this area, as well as the practice of implementing state policy on ensuring the rights of internally displaced persons to receive free legal aid, it is worth noting that the prolonged armed conflict between Russia and Ukraine and the associated large-scale internal displacement of a large number of citizens within the state necessitate the urgent need to create effective mechanisms for providing free legal aid for such a vulnerable category of the population as internally displaced persons in order to properly protect their rights and legitimate interests. The key regulatory legal act regulating the provision of free legal aid in Ukraine is the Law of Ukraine “On Free Legal Aid”. It defines the content of the right to such aid, types of aid, subjects of its provision, state guarantees of its provision for certain categories of persons, including internally displaced persons. At the same time, the special Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” emphasizes the importance of providing free legal aid to this category of citizens as one of the means of ensuring the implementation of their constitutional rights and freedoms.

Together with subordinate regulatory legal acts, in particular resolutions of the Cabinet of Ministers of Ukraine and orders of the Ministry of Justice of Ukraine, a comprehensive legal mechanism for providing free legal aid to internally displaced persons is being formed, which regulates the procedural issues of implementing their respective rights, subjects of providing assistance, types of legal services, financing of the system, etc.

At the same time, an analysis of the practice of applying current legislation in the field of providing free legal aid to internally displaced persons under the legal regime of martial law has shown the existence of a number of problematic aspects and obstacles to the full implementation of their rights by these persons. Among the identified shortcomings, it is worth noting the difficulties necessary to obtain legal aid, uneven access to it in different regions, lack of proper information about the procedure for obtaining it, an insufficient number of specialists, etc. In addition, the issues of adequate financial support for the system of free legal aid for internally displaced persons, as well as improving the mechanisms for providing such assistance in emergency situations, remain unresolved.

Given the protracted armed conflict and the continuing need for increased attention to protecting the rights of internally displaced persons, further improvement of national legislation and mechanisms for its application in the field of providing free legal aid to internally displaced persons is extremely important for Ukraine.

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**ПРО НАДАННЯ БЕЗОПЛАТНОЇ ПРАВНИЧОЇ ДОПОМОГИ
ВНУТРІШНЬО ПЕРЕМІЩЕНИМ ОСОБАМ
В УМОВАХ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ**

У статті проаналізовано надання безоплатної правничої допомоги внутрішньо переміщеним особам в Україні. Актуальність цього питання набула особливої гостроти у зв'язку з російською збройною агресією проти України та вимушеним переміщенням значної кількості громадян усередині країни.

Варто зосередити увагу на міжнародні стандарти та нормативно-правові акти України, що регулюють сферу надання безоплатної правничої допомоги, зокрема: Конституції України, Законах України, таких як: “Про безоплатну правничу допомогу”, “Про забезпечення прав і свобод внутрішньо переміщених осіб”, Постанові Кабінету Міністрів України “Деякі питання оплати послуг та відшкодування витрат адвокатів, які надають безоплатну вторинну правничу допомогу” та інших. Наголошується на важливості реалізації конституційного права кожної особи на правничу допомогу, гарантованого Конституцією України, а також надається увага міжнародним документам у цій сфері в умовах правового режиму воєнного стану.

Проаналізовано особливості надання безоплатної правничої допомоги внутрішньо переміщеним особам, зокрема щодо підстав та порядку її отримання. Розглянуто роль системи безоплатної правничої допомоги, що функціонує в Україні та складається з первинної і вторинної правничої допомоги. Охарактеризовано види правових послуг, які можуть бути надані внутрішньо переміщеним особам в рамках безоплатної правничої допомоги. Висвітлено роль та повноваження центрів з надання безоплатної вторинної правничої допомоги у забезпеченні права на правничу допомогу внутрішньо переміщеним особам.

У статті наголошується на актуальних проблемах, з якими стикаються внутрішньо переміщені особи у реалізації свого права на безоплатну правничу допомогу, таких як: складнощі з оформленням документів, відновленням втрачених документів, доступ до соціальних виплат та пільг тощо.

Запропоновано шляхи вдосконалення чинного законодавства та механізмів реалізації права на безоплатну правничу допомогу для внутрішньо переміщених осіб з урахуванням міжнародного досвіду.

Ключові слова: адвокат, правовий режим воєнного стану, правнича допомога, нормативно-правові акти, органи державної влади, інформаційно-правове забезпечення.