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Preventive activities of the National Police of Ukraine regarding violations of rights and freedoms of internally displaced persons

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ABSTRACT

The purpose of the investigation is to make a theoretical generalization in terms of revealing the essence of the preventive activities of the National Police aimed at the exclusion of violations of the rights and freedoms of internally displaced persons. Main content. It should be noted that today Ukraine has been faced with an unknown problem - the need to solve problems related to forced migrants, which requires the development of effective mechanisms for the realization of the right to social protection of this category of the population, as part of the activities of the National Police. Methodology: The dialectical method of scientific knowledge is the methodological basis of the investigation. Conclusions. It has been established that the protection of the rights and freedoms of internally displaced persons within the activities of the preventive police forces is carried out by observing the following norms: the principle of supremacy of the law; preventive police forces guarantee the protection of the rights and freedoms of internally displaced persons regardless of their political beliefs and party affiliation.

KEY WORDS: Human Rights, human freedom, protection, security, police, preventive function.

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Actividades preventivas de la Policía Nacional de Ucrania con respecto a violaciones de derechos y libertades de los desplazados internos

RESUMEN

El propósito de la investigación consiste en realizar una generalización teórica en cuanto a develar la esencia de las actividades preventivas de la Policía Nacional dirigidas a la exclusión de violaciones a los derechos y libertades de los desplazados internos. Contenido principal. Cabe señalar que hoy Ucrania se ha enfrentado a un problema desconocido: la necesidad de resolver los problemas relacionados con los migrantes forzosos, lo que requiere el desarrollo de mecanismos efectivos para la realización del derecho a la protección social de esta categoría de población, como parte de las actividades de la Policía Nacional. Metodología: El método dialéctico del conocimiento científico es la base metodológica de la investigación. Conclusiones. Se ha establecido que la protección de los derechos y libertades de los desplazados internos dentro de las actividades de las fuerzas policiales preventivas se realiza mediante la observación de las siguientes normas: el principio de supremacía de la ley; las fuerzas policiales preventivas garantizan la protección de los derechos y libertades de los desplazados internos independientemente de sus creencias políticas y afiliación partidaria.

PALABRAS CLAVE: Derechos Humanos, libertad humana, protección, seguridad, policía, función preventiva.

Introduction

On the path of Ukraine's integration into the European community, one of its priority tasks is to ensure realization of the rights and freedoms of persons and a citizens defined by the Fundamental Law of Ukraine. Improving domestic legislation on social protection and bringing it into line with international legal standards of human rights is one of the most important tasks of our democratic legal state.

The social and economic situation in Ukraine, the status of ensuring human rights in the social sphere, and the development of legal regulation of social policy during the years of independence were interpreted mainly as political categories adopted mostly for quick response to direct threats in the social sphere, and not for overcoming systemic disparities formed in the state and society. In addition to that, today our state has faced an unknown

problem - the need to resolve issues related to forced migrants which were not relevant before.

The armed conflict started on 24 February, 2022 by the Russian Federation on the territory of Ukraine and the annexation of Crimea led to the fact that many people left their homes and moved to safer regions of the country. The negative character of the mass phenomenon of internal migration processes is connected with the fact that when leaving the specified territories citizens lose their housing, work, property, financial resources, and documents. Under these conditions, it is important to support the state, which is expressed in various forms, including assistance and social security.

The number of internally displaced persons has now increased significantly. As of December 2020, according to the United Information Database on internally displaced persons, about 8 million migrants were registered. That is why it is essentially important to create effective laws as well as to form mechanisms for their implementation, since internally displaced persons need proper assistance, in particular, in form of activities performed by the National Police of Ukraine.

Of course, financial resources are needed for social protection of this category of citizens of Ukraine. But the economic situation in Ukraine does not contribute to the improvement of social security of persons who have moved to permanent residence from the territory occupied by the Russian Federation. The situation is also complicated by the need to allocate additional funds to fight the pandemic caused by the COVID-19 (Oliinyk et, 2021).

The above indicates the need for timely development of scientific approaches to solving the problem, i.e. transferring the issues we have identified to the plane of science for the purpose of analyzing their essence and features; and this also points to the urgent need to research issues of preventive activities of the National Police aimed at excluding violations of rights and freedoms of internally displaced persons.

The purpose of the research is to carry out a theoretical generalization and perform a complex scientific and applied task as to revealing the essence of the preventive activities of the National Police aimed at excluding violations of rights and freedoms of internally displaced persons.

1. Literature review

Y. Artiukh defined the concept of social security of forced migrants, characterized its features and forms and analyzed positive foreign experience of legal regulation of social security of forced migrants (Artiukh, 2017). I. Basova described legal status of an internally displaced person as a subject of the social security right, and also considered international standards of social protection of internally displaced persons for compliance with the acts of national legislation of Ukraine in this sphere (Basova, 2019). T. Semyhina analyzed the experience of social work with temporarily displaced persons and provided suggestions on the forms of such work (Semyhina, 2015). O. Iliashko highlighted the range of social rights of temporarily displaced persons and analyzed the practice of realization of such rights (Iliashko, 2019).

Researcher O.V. Negodchenko believes that the mechanism of ensuring (enforcement of) human rights and freedoms in activities of the NPU includes the following elements: legal norms and legal acts as forms of their presentation; individual legal documents; legal facts; legal relations; subjective rights and legal obligations; forms and methods used to organize exercising of subjective rights and legal obligations (Nehodchenko, 2003).

According to S.D. Gusariev, the phenomenon of the legal status of an individual determines relationship between this individual and the law used by the state to outline limits of possible activities for the subject, his/her position in relation to other subjects and, taking into account individual or typical characteristics of the subject the law reflects the full legal position of this individual, his/her certain unification or limitation (Husariev, 2005).

The concept of “mechanism of protection of human rights” and the concept of “mechanism of legal regulation” partially coincide. The latter covers legal norms - official rules with the model of human behavior; legal facts ensuring the validity of the rule of law; legal relations - specific models of behavior for subjects based on norms and legal facts; acts of realization of subjective rights and legal obligations in the form of observance, execution and use of the right; acts of application of legal norms; elements of legal awareness and legal culture (Nehodchenko, 2003).

2. Materials and methods

The research is based on works by foreign and Ukrainian researchers concerning revealing the essence of preventive activity of the National Police aimed at excluding

violations of rights and freedoms of internally displaced persons.

The role of the National Police of Ukraine in the system of ensuring rights of internally displaced persons was clarified with the help of the epistemological (gnoseological) method; the conceptual apparatus was deepened thanks to the logical-semantic method, and the essence of the concepts “protection” and “defense” was defined. Constituent elements of such a mechanism for protecting rights and freedoms of internally displaced persons within activities of the National Police were investigated by using a system-based structural method. Structural-logical method was used to define the main directions for optimized protection of rights and freedoms of internally displaced persons in activities of the National Police of Ukraine.

3. Results and discussion

Effectiveness of the principle of the rule of law established by Art.8 of the Constitution of Ukraine (Law of Ukraine, 1996) is conditioned by legal laws, the exercise of the state power on the basis of its division into legislative, executive and judicial ones, as well as by the equality of legal entities before the law and the court, the responsibility of the state to a person, and not only that of a person to the state, recognition of personality, his/her life and health, honor and dignity, inviolability and security. In the context of implementing the conceptual idea of the rule of law and international standards of human rights in Ukraine, actualized is the problem of filling with real content the rights and freedoms of a person and citizen established by the Constitution of Ukraine, giving them a real declarative status. Since the “reality of rights and freedoms of citizens” (its essence) is highlighted with the help of a system of interconnected material and procedural aspects of the mechanism of providing this reality (implementation, protection, defense).

Also actualized is the problem of determining the role of the state, its bodies, in particular the National Police of Ukraine (hereinafter referred to as the NPU), in the provision of human rights and freedoms, as well as the limits of their interference and responsibility. The NPU, which is the central body of executive power that serves society by means of ensuring protection of human rights and freedoms, counteracting crime, maintaining public safety and order (Law of Ukraine, 2015) is the closest to the population in terms of their competences. Activities of NPU representatives are subject to the requirement of legality which is within the limits of the rule of law and consists in preventing

arbitrariness in relation to a person. According to the type of legal regulation, the NPU should adhere to the principle of prohibition: “anything not directly permitted by the law is prohibited.” Therefore, procedures (processes) of implementing prescriptions of legal norms concerning protection and defense of human rights and freedoms are significant, which requires clarifying the specifics of professional activities of each unit in these processes.

The NPU faces important tasks in the context of Ukraine’s orientation towards joining the European Union, the leading one of these tasks consists in strengthening the authority of its employees among the population, transforming them into real servants of people, ready to provide timely assistance and guarantee protection of rights and freedoms to citizens of Ukraine.

Nowadays, every person increasingly understands that the essence of his/her rights and freedoms consists not so much in their declarative proclamation but faster in ensuring their implementation as well as in material, legal and other guarantees provided by the state and its bodies for their consistent and comprehensive implementation. Special law enforcement means play an important role among these guarantees. Along with other legal institutions and law enforcement agencies the NPU belongs to the general system of guaranteeing rights and freedoms of individuals by the Ukrainian state. Effectiveness of activities in this direction is conditioned through broad powers provided by the Constitution of Ukraine (Law of Ukraine,1996), the Law of Ukraine “On the National Police” (Law of Ukraine, 2015) and other legislative acts in order to ensure legality and observance of human rights and freedoms by means of initiative (proactiveness), authority among the country’s population as well as by means of accessibility.

The essence of social protection of forced migrants can be described as activity of the state carried out in the following directions:

1. Solving issues related to providing places of residence for forced migrants.
2. Provision of medical assistance to forced migrants.
3. Social support for children of forced migrants in matters of education and science.
4. Providing forced migrants with a full range of social and administrative services by state bodies in accordance with the procedure established by law regarding any issues that concern their rights and interests.
5. Facilitating return of forced migrants to their place of residence according to the

respective state registration.

6. Provision of social benefits and social assistance (Novikova, 2018).

Analysis of legislation on internally displaced persons, as well as scientific literature on this issue gave an opportunity to formulate the definition of social protection of an internally displaced person in Ukraine as a system of organizational, legal, economic, and financial measures aimed at protecting the specified person from negative consequences of armed conflicts, temporary occupation, manifestations of violence, violations of human rights and emergency situations of a natural or man-made nature (Leheza et., 2020).

The legislation of Ukraine defines an internally displaced person as a citizen of Ukraine, a foreigner or a stateless person who is in the territory of Ukraine on legal grounds and has the right to permanent residence in Ukraine but who was forced to leave his or her place of residence as a result of (or in order to avoid negative consequences of) an armed conflict, temporary occupation, widespread violence, violations of human rights, and natural or man-made emergencies (Novikova, 2018).

Article 14 of the Law of Ukraine “On the Protection of the Rights and Freedoms of Internally Displaced Persons” dated 20 October, 2014 No. 1706-VII stipulates that internally displaced persons shall enjoy the same rights and freedoms in accordance with the Constitution of Ukraine, laws and international treaties of Ukraine as others citizens of Ukraine permanently residing in Ukraine (the Law of Ukraine, 2014).

The special status of an internally displaced person cannot replace any of the legal statuses of a person enshrined in the Constitution of Ukraine and it is not a separate constitutional and legal status of a person. Prohibited is discrimination of such persons during their exercise of any rights and freedoms based on the fact that they are internally displaced persons. However, for an internally displaced person as a special subject of the right to social security, the current legislation of Ukraine provides for a specific exercising his/her right to pension provision, social protection, in case of unemployment. So, in particular, I.S. Basova defined an internally displaced person-pensioner as an internally displaced person who has the status of a pensioner acquired in accordance with the norms of the Pension Legislation of Ukraine, and realizes the right to a pension by going through additional procedures to confirm pension eligibility and legal capacity both at the time of the pension award and during pension payments (Basova, 2019). We fully agree with I.S.

Basova that the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” requires a separate right of internally displaced persons to restore documents as an integral part of exercising their rights in the sphere of social protection (Basova, 2019).

Gaining the status of an internally displaced person has a direct impact on realization of the right to pension provision by a person who has moved from the temporarily occupied territories of Donetsk or Luhansk regions or the Autonomous Republic of Crimea. For registered internally displaced persons, realization of their right to pension provision, mandatory state social insurance in case of unemployment in connection with temporary loss of working capacity in the result of an accident at work and occupational disease that caused the loss of working capacity, as well as to receiving social services shall be performed in accordance with the legislation of Ukraine (Leheza et al, 2021).

Ensuring human rights within activities of preventive police forces is carried out by means of observing the following standards:

- In their work preventive police forces are guided by the law supremacy principle; according to this principle a person, his/her rights and human freedoms (in particular rights and freedoms of internally displaced persons) are recognized as the highest values and determine content and direction of the state’s activities. The law supremacy principle is applied taking into account the practice of the European Court of Human Rights;

- During fulfillment of their tasks, preventive police forces ensure observance of human rights and freedoms (in particular, rights and freedoms of internally displaced persons) guaranteed by the Constitution and laws of Ukraine, as well as by international agreements of Ukraine recognized by the Verkhovna Rada of Ukraine to be obligatory and promoting realization of such rights and freedoms;

- Preventive police forces ensure the protection of human rights and freedoms (in particular rights and freedoms of internally displaced persons) regardless of political beliefs and party affiliation;

- Restriction of human rights and freedoms is allowed only on the grounds and in the manner determined by the Constitution and laws of Ukraine, in case of an urgent need and to the extent necessary for performance of the respective police tasks;

- Implementation of measures that limit human rights and freedoms (in particular rights and freedoms of internally displaced persons) must be immediately terminated if the purpose of such measures has been achieved or there is no need for their further application;

- Preventive police forces ensure constant informing of the state authorities and local self-government bodies, as well as the public about their activities in the sphere of protection of human rights and freedoms (in particular, rights and freedoms of internally displaced persons) combating crime, ensuring public safety and order. Draft normative-legal acts concerning human rights and freedoms (in particular rights and freedoms of internally displaced persons) must be discussed in a public manner as defined by the Minister of Internal Affairs of Ukraine (Leheza et., 2021);

- When performing their activities preventive police forces must: respect everyone's right to life ; under no circumstances commit, incite or tolerate any form of torture or inhuman or degrading treatment or punishment; perform their tasks fairly being guided, in particular, by the principles of impartiality and non-discrimination; always remember the fundamental rights of everyone such as freedom of thought, conscience, religion, expression of views, peaceful meetings, movement and unimpeded use of one's property; act honestly and with respect for society and with special attention to the situation of persons belonging to the most vulnerable groups; carry out orders lawfully adopted by their management, and to refrain from carrying out orders which are manifestly illegal, and to report on such orders without fear of punishment; use force only when absolutely necessary and only to the extent necessary for achieving a legitimate goal; to oppose all forms of corruption within the police; adhere to the principles that everyone accused of a criminal offense is presumed innocent until proven guilty by a court of law, and that everyone accused of a criminal offense has certain rights, including the right to be promptly informed of the charges against him/her and to prepare his/her defense either personally or with the assistance of legal aid at his/her own choice, etc.;

- Preventive police forces shall not be entitled to refuse to consider or postpone consideration of applications concerning protection of human rights and freedoms (in particular, rights and freedoms of internally displaced persons), legal entities, interests of the society and the state from unlawful encroaching with reference to a day off, a holiday or a non-working day or the end of a working day;

- For protection of human rights and freedoms (in particular, rights and freedoms of internally displaced persons), for prevention of threats to public safety and order or for cessation of their violation preventive police forces shall also apply (within the limits of their competence) police preventive measures and enforcement measures, defined by the Law of Ukraine “On the National Police” (Leheza ect., 2018).

Conclusions

Therefore, effective preventive activity of the National Police of Ukraine in ensuring the rights and freedoms of internally displaced persons depends to a certain extent on the mechanism of proper legal regulation of this activity with the help of laws and other normative legal acts.

Our analysis of certain issues of social protection of internally displaced persons in the preventive activities of the police makes it possible to state that the status of social protection of this category of Ukrainian citizens of Ukraine is currently in need of improvement. Despite the fact that measures are being taken in the country to restore social rights of internally displaced persons, preventive activities of the police forces need to be improved. Decisions of courts in favor of migrants are in most cases not implemented. In order to prevent discrimination of this category, it is necessary to strengthen responsibility of officials concerning violations of constitutional rights of internally displaced persons; we consider it necessary to bring the legislation of Ukraine on social protection of internally displaced persons into compliance with the Constitution of Ukraine and international standards.

The conducted research does not exhaust all problematic issues regarding social protection of internally displaced persons in the preventive activities of the National Police of Ukraine and further research is needed.

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