



SOCIAL RIGHTS IN UKRAINE IN TIMES OF WAR

Report on the
needs assessment



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Acronyms

Anti-terrorist operation	ATO
The Supreme Court	SC
Internally Displaced Persons (person)	IDP
The European Committee of Social Rights	ECSR
The European Social Charter	ESC
The European Court of Human Rights	ECtHR
The Universal Declaration of Human Rights	UDHR
The Cabinet of Ministers of Ukraine	CMU
The Labour Code of Ukraine	LCU
The Convention for the Protection of Human Rights and Fundamental Freedoms	ECHR, Convention, European Convention on Human Rights
The Constitutional Court of Ukraine	CCU
The Ministry of Social Policy of Ukraine	MSPU
The Ministry of Community and Territorial Development	The Ministry of the Region
The International Covenant on Economic, Social and Cultural Rights	ICESCR
The Temporarily Occupied Territories	TOT
The Pension Fund of Ukraine	PFU
The United Nations High Commissioner for Refugees	UNHCR

Introduction

After having joined the Council of Europe on November 9, 1995, Ukraine ratified the European Convention on Human Rights in 1997 and the Revised European Social Charter (hereinafter - the “European Social Charter” or ESC) on December 21, 2006, accepting 76 of 98 paragraphs of the European Social Charter. It has not accepted the system of collective complaints introduced by the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

Between 2008 and 2022, Ukraine has submitted 13 reports on the implementation of the European Social Charter.

On the night of 23 to 24 February 2022, Russia launched a military offensive in Ukraine. The attack is considered to be a violation of the territorial integrity and sovereignty of Ukraine by international organisations and European and non-European countries, including both the United Nations¹ and the Council of Europe². According to the Office of the High Commissioner for Human Rights, as of 1 August, 12584 civilian casualties were recorded, including 5327 deaths, the actual figure can be significantly higher. Tens of millions of people are in “potential danger of death”³.

” During emergency situations, such as armed conflicts, the protection of civil, political, economic, social and cultural rights is crucial. Displacement and destruction of social infrastructure caused by conflicts often significantly undermine access to education, work, health care or other services necessary for livelihood. Neglect of economic, social and cultural rights during conflicts and other emergency situations may lead to further violations of human rights and, in turn, further conflict.⁴

International armed conflict is regulated by the Geneva Conventions of 1949 and Additional

1. See: United Nations General Assembly, Resolution of 1 March 2022, Aggression against Ukraine, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/272/27/PDF/N2227227.pdf?OpenElement>

2. See CoE, Statement on the War in Ukraine, available at: <https://www.coe.int/en/web/portal/-/council-of-europe-leaders-make-joint-statement-on-the-aggression-of-the-russian-federation-against-ukraine>

3. See: <https://www.ohchr.org/en/news/2022/08/ukraine-civilian-casualty-update-1-august-2022>

4. United Nations Human Rights Office of the High Commissioner, Protection of economic, social and cultural rights in conflict, p.2. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E-2015-59.pdf#:~:text=During%20emergency%20situations%2C%20such%20as%20armed%20conflicts%2C%20the,health%20care%20or%20other%20services%20necessary%20for%20livelihood>

Protocol I of 1977, as well as customary international law. Ukraine agreed to the Four Geneva Conventions in 1954 and to the Additional Protocols in 1990. This means that Ukraine is bound by these Conventions, not only as a “High Contracting Party” but also as a matter of customary international law.

Furthermore, both international human rights law and international humanitarian law apply in situations of armed conflict. The International Court of Justice affirmed the applicability of international human rights law during armed conflicts in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons,⁵ wherein the Court observed that the International Covenant on Civil and Political Rights did not cease to apply in times of war. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court confirmed the applicability of international human rights law to situations of military occupation and noted that, in the territories under its occupation, the occupying Power was bound by the human rights provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter – ICESCR) and of the Convention on the Rights of the Child, inter alia. The Court found a range of provisions in the Convention and the ICESCR that were relevant to the right to an adequate standard of living, the right to food, clothing and housing, the right to health, and the right to education⁶.

Considering that the current crisis caused by the Russian Federation’s military aggression against Ukraine should not have as a consequence the reduction of protection of the rights recognised by the European Social Charter, both within Ukraine and beyond its borders, and that the States Parties to the European Social Charter are bound to take all necessary steps to ensure that the European Social Charter rights are effectively guaranteed at all times, including, where necessary, through international assistance and cooperation⁷, the Council of Europe launched a project to assess the situation in Ukraine from the perspective of social rights’ protection. This report presents findings of the research conducted within the project of the Council of Europe “Continued support to promoting social human rights in Ukraine”.

The report seeks to identify the key areas in which the Council of Europe standards with regards to social rights can contribute to strengthening the economy of Ukraine and ensure it is placed on the most sustainable path both in times of war and after its end. It does not offer to cover the full range of social rights guaranteed under the European Social Charter, rather, it highlights those areas in which the legislative reform or other action is imminent or most urgent, recalling the applicable standards and challenges that Ukraine faces.

The report provides an assessment of the priority areas concerning social rights, on which the future cooperation between the Council of Europe and Ukraine should focus. An initial version of the report was prepared on the basis of a desk research as well as a number of discussions led during the meetings organised online in August and September 2022, which the Council of Europe's Office in Ukraine facilitated. The group of consultants met representatives of relevant authorities of national level (Deputy Minister of Social Policy, Representatives of the Office of the President of Ukraine, Representative of the Cabinet of Ministers of Ukraine), the Office of the Ukrainian Parliament Commissioner for Human Rights, local self-government bodies

5. International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226: “The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency”. (para. 25)

6. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E-2015-59.pdf#:~:text=During%20emergency%20situations%2C%20such%20as%20armed%20conflicts%2C%20the,health%20care%20or%20other%20services%20necessary%20for%20livelihood.>

7. Statement by the European Committee of Social Rights of 24 March 2022, available at: <https://rm.coe.int/statement-ecsr-war-ukraine-23march2022-final-en/1680a5f20b#:~:text=Statement%20by%20the%20European%20Committee%20of%20Social%20Rights,refugees%2C%20asylum%20seekers%20and%20others%20fleeing%20the%20conflict%3B>

(Nedryghailivska community, Sumy region, Director of the Institution for Children, Zhovkva community), international partners and civil society (Free Legal Aid System, Organisation for users of psychiatric support "User"; NGO „ZMINA“, Association of Blind Lawyers, Right to Fight, Labour Initiatives, Ukrainian Helsinki Group).

The group of consultants express their gratitude to the team of the Project and particularly the Senior Project Officer Ms Siuzanna Mnatsakanian for all the support provided and excellent organisation of the fact-finding mission.

Substantive areas of concern

The right to housing in times of war in Ukraine

GENERAL OVERVIEW

International standards

Under international human rights law, governments have an obligation to ensure people's right to an adequate standard of living, so that everyone enjoys the rights necessary to live in dignity, including the rights to adequate food and nutrition, health and well-being, water and sanitation, and housing. Countries need to ensure equal access to these rights for all, without discrimination on different grounds including sex, race, ethnicity, age, disability or sexual orientation.

The right to housing is enshrined in international documents of the United Nations and the Council of Europe. In the law of the United Nations, the right is set out in the Universal Declaration of Human Rights (hereinafter - UDHR), in para. 1 Article 25⁸ and further developed in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The United Nations Committee on Economic, Social and Cultural Rights has issued several General Comments explaining the components of this right including the right to adequate housing (General Comments 4 and 7) and has underlined that the right to adequate housing should be seen as the right to live somewhere in security, peace and dignity.⁹

In the law of the Council of Europe, the European Social Charter (Revised) establishes the right to housing in point 31 (part I). In Article 31 (Part II), with a view to ensuring its effective exercise, the European Social Charter obliges the Parties:

- to promote access to housing of an adequate standard (§1);
- to prevent and reduce homelessness with a view to its gradual elimination (§2);
- and to make the price of housing accessible to those without adequate resources (§3).

8. Pursuant to para. 1 Art. 25 UDHR, „Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

9. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

Pursuant to the case-law of the European Committee of Social Rights (hereinafter the ECSR), the effective enjoyment of the right to housing requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right. As stated in the "Autism-Europe" decision¹⁰, the measures taken must meet the following three criteria: (i) a reasonable timeframe, (ii) a measurable progress and (iii) a financing consistent with the maximum use of available resources.

In times of war, the rights guaranteed under Article 31 of the European Social Charter have become even more crucial to the right-holders. The Russian Federation's military aggression has highlighted the importance of the key tenets of:

■ Article 31§1, notably that: the notion of adequate housing must be defined in law¹¹; ownership of dwellings must have the secure tenure guaranteed and supported by the law; and be as safe as possible from all dangers, especially from military actions, including from the sanitary and health point of view (i.e. have all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity); and that they must not be overcrowded (i.e. the size of dwellings must be suitable in light of the number of persons and the composition of the household)¹². It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone¹³;

■ Article 31§2, notably that: homeless persons are those who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1¹⁴; such persons must be offered shelter as an emergency solution and to ensure that the dignity of the persons sheltered is respected. Shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings¹⁵; States shall foresee sufficient places in emergency shelters¹⁶; evictions from shelters without the provision of alternative accommodation must be prohibited¹⁷; individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness¹⁸;

■ Article 31§3, notably that: an adequate supply of affordable housing must be ensured for persons with limited resources. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent in advance), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which

10. ECSR, *Autism-Europe v. France*, Complaint 13/2002, decision on the merits of 4 November 2003, § 53.

11. ECSR, *Digest of the Case Law of the European Committee of Social Rights*, December 2018, p. 226.

12. ECSR, *Digest...*, p. 226.

13. ECSR, *Conclusions 2003*, France.

14. ECSR, *Conclusions 2003*, Italy; *Conference of European Churches (CEC) v. the Netherlands* Complaint No. 90/2013, decision on the merits of 1 July 2014, §135; *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands* Complaint No. 86/2012, decision on the merits of 2 July 2014, §106.

15. ECSR, *Conference of European Churches (CEC) v. the Netherlands* Complaint No. 90/2013, decision on the merits of 1 July 2014, §§138; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62.

16. ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107-109

17. ECSR, *Conclusions 2015*, Statement of Interpretation on Article 31§2.

18. ECSR, *Conclusions 2003*, Italy; *Conference of European Churches (CEC) v. the Netherlands* Complaint No. 90/2013, decision on the merits of 1 July 2014, §140.

the household is located¹⁹. States Parties must: adopt appropriate measures for the provision of housing, in particular social housing²⁰ and the social housing should target, in particular, the most disadvantaged²¹; adopt measures to ensure that waiting periods for the allocation of housing are not excessive; judicial or other remedies must be available when waiting periods are excessive²²; introduce housing benefits at least for low-income and disadvantaged sections of the population bearing in mind that housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal²³.

Ukrainian regulations and practice of implementation

General overview

A characteristic feature of any war is large-scale destruction and damage, including civilian residential buildings, and as a result, the loss/damage of housing for a large part of the population. Ukraine has faced the challenge of ensuring this right since 2014 after the annexation of Crimea and the occupation of parts of Donetsk and Luhansk regions. The largest officially registered number of Internally Displaced Persons (hereinafter - „IDP”) reached 1.8 million and was about 1.5 million at the beginning of 2022. Considering one of the state reports on Ukraine's fulfilment of its obligations under Article 31 of the ESC, the European Committee of Social Rights emphasised that it had studied the measures Ukraine is taking to ensure the right to adequate housing for vulnerable population groups, especially internally displaced persons, Roma, etc. The statistics of 7% of IDPs living in housing provided by the national authorities raised questions for the next report on the measures taken to ensure this right to housing for IDPs. Thus, even before the start of a full-scale Russian war on February 24, 2022, the problem of providing housing for IDPs, starting from 2014, remained quite acute and relevant, despite the active actions of the state, housing programmes, credit programmes, compensation and other measures implemented by the government.

However, the amount of destruction since February 24, 2022 on the territory of Ukraine is catastrophic, as is the number of IDPs. Millions of people became homeless, according to data provided on July 2 by the deputy head of the parliamentary committee on the organisation of state power, Olena Shulyak, more than 15 million square meters of housing were destroyed by the occupiers, more than 800,000 people were left without housing or their housing is in need of repair. With the help of the "DIIA" application, more than 220,000 people applied for the restoration of houses and apartments. However, according to the analytical report of the Kyiv School of Economics, prepared together with state authorities, the Ministries of Reintegration and Regional Development (hereinafter - The Ministry of the Region), as of May 25, more than 44 million square meters of housing were damaged, destroyed or lost due to the war, and the total amount of housing losses exceeded \$39.3 billion. According to data for mid-June 2022, it was noted that the largest share of the total amount of direct losses was made up of residential buildings - 38% or \$36.6 billion. As a result of hostilities, almost 121 thousand residential buildings, in which about a million families lived, have already been destroyed and damaged. Mandatory evacuation from the Donetsk region began in August, with the onset of the autumn-winter period, the number of displaced persons will also increase due to the impossibility of starting the heating season in some areas.

19. ECSR, FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72. Conclusions 2003, Sweden.

20. ECSR, Conclusions 2003, Sweden.

21. ECSR, International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100

22. ECSR, International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 131

23. ECSR, Conclusions 2003, Sweden

In any case, an accurate count is currently impossible, and the number of destroyed houses increases every day. It is obvious that the amount of funds allocated, even for the quick repair of partially damaged apartments and houses, is clearly insufficient. Therefore, providing victims with housing will be one of the key issues and challenges of the government of Ukraine both in the short-term perspective and in the post-war period.

National legislation and practice

According to Article 47 of the Constitution of Ukraine, everyone has the right to housing. It is provided that citizens in need of social protection are provided with social housing by the state and local self-government bodies free of charge or at an affordable fee. In addition, provision of housing is also included in the content of the right to a sufficient standard of living in Article 48 of the Constitution.

The right of IDPs to housing was declared among the rights of IDPs in the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons".

From the very beginning of internal displacement in 2014, the CMU Resolution "On providing monthly targeted assistance to internally displaced persons to cover living expenses, including payment of housing and communal services" was adopted. On March 20, 2022, this Resolution, together with the amendments, became invalid as a result of the adoption of the new Resolution "Some Issues of Housing Allowance Payments to Internally Displaced Persons" No. 332 of March 20, 2022, which approved the Procedure for Providing Housing Allowance for Internally Displaced Persons and the Procedure for Use funds from the state budget to provide accommodation assistance to internally displaced persons.

Thus, Ukrainian legislation provides that housing assistance can be received by all displaced persons from the territorial communities located in the territories of hostilities, temporarily occupied territories (hereinafter - the "TOT") and surrounded territories, which are included in the list approved by the CMU.²⁴ IDPs, who received targeted monthly targeted assistance in accordance with Resolution No.505 as of March 1, automatically continue to receive it.

According to the Procedure for providing housing assistance to IDPs dated March 20,

” starting from May 2022, assistance is provided to internally displaced persons who moved from the territory of Ukraine temporarily occupied by the Russian Federation, the territory of territorial communities located in the area of military (combat) operations or who are in temporary occupation, surrounded (blocked), as well as internally displaced persons whose housing is destroyed or uninhabitable due to damage and who submitted an application for compensation for the corresponding losses by May 20, 2022, in particular through the Unified State Web Portal of Electronic Services, or on condition of submission of documentary confirmation from local self-government bodies of the fact of damage/destruction of immovable property as a result of hostilities, acts of terrorism, sabotage caused by the military aggression of the Russian Federation.

²⁴. Decree of the CMU No. 204 dated 6 March 2022

Moreover, the funds, including for arranging places of accommodation for citizens who left their place of residence/residence (for forced migrants) in connection with the conduct of military (combat) operations, are provided within the framework of humanitarian and other assistance to the civilian population in the conditions of martial law in Ukraine in accordance with the Procedure approved by Resolution No. 220 of the CMU of March 7, 2022.

In addition to the mentioned assistance, the issue of directly providing people with housing arises. Thus, in cases where housing is destroyed or damaged, when persons have moved from the territories of active hostilities or territories occupied by Russia, they have the right to temporary housing, which IDPs lacked even before February 24.

As a crisis response, temporary accommodation points were organised in schools, stadiums, kindergartens, hostels, sanatoriums, etc., volunteer and humanitarian organisations and centers played and continue to play an important and main role. Temporary accommodation was provided on a free basis or with payment of utility bills and for different periods of time. Given the continuation of the war and the extent of the destruction, it is necessary to start solving this issue not only in a crisis situation, but also in medium and long-term perspectives.

Therefore, to improve the critical situation that arose after the start of the full-scale invasion of Russia, the government of Ukraine has already developed and implemented several new mechanisms.

Thus, in April, the Government took several measures to create additional mechanisms for providing housing to persons who were forced to relocate to safer areas. On April 19, the Resolution of the CMU "Some measures for the formation of housing funds intended for the temporary residence of internally displaced persons" was adopted, which approved the Procedure for the formation of housing funds intended for temporary residence, registration and provision of such housing for the temporary residence of internally displaced persons, the Procedure for redemption, construction housing for the purpose of transfer for temporary residence of internally displaced persons and the Procedure and conditions for providing subvention from the state budget to local budgets for purchase, construction of housing for the purpose of transfer for temporary residence of internally displaced persons. The Ministry of the Region plans to involve international partners and organisations for the rapid construction of housing using new technologies, on April 18, the Minister signed a Memorandum of Understanding with The United Nations High Commissioner for Refugees (hereinafter – UNHCR). At the end of March, the financing of the programme "Shelter" began, within the framework of which, over the course of 6 months, UNHCR, in coordination with the Ministry of the Region, will provide support to 10,000 households that have temporarily accommodated IDPs. The total amount of additional monthly support is over \$500,000. The system of assistance to households that sheltered Ukrainians was also introduced in many European countries.

One of the ways to solve the problem of providing housing can be the construction of modular shelters. However, the experience of their construction since 2014 as temporary ones is not exemplary, both in terms of the number, the desire to live there, and in terms of the quality and time for which they are designed, because in some buildings, built for a few years at most, people still continue to live.

According to information from persons with disabilities, modular shelters are inaccessible for them, in the first place, for handicapped persons. Thus, in addition to the very small space in the house itself, there are no wheelchair ramps, accessible bathrooms and toilet facilities. Therefore, persons with disabilities cannot actually reside in modular shelters. Moreover, the location of such shelters should also be considered since difficulty getting to the health care facilities, educational

establishments and social protection institutions can add up to inaccessibility in the housing itself.

At present, there is no information on accessible housing needs of persons with disabilities among the IDPs. Moreover, there is no understanding at the national and community level that provision of accessible housing requires more resources, which must be estimated during the housing need assessment.

According to the public as persons with disabilities cannot reside in inaccessible schools, kindergartens and stadiums, they are offered assisted living facilities. However, that means assignment of the status of the care recipient in the respective facility to the internally displaced person with disabilities rather than provision of temporary accommodation or social services. Institutionalisation of the persons with disabilities who agree to that only due to lack of accessible housing is inadmissible. It is now extremely important to trace how many persons with disabilities have found themselves in the respective facilities.

The survey conducted among the IDPs with disabilities confirms the tendency of minimum provision of the housing by the state:

” In connection with the war, 90 persons (42.5 %) have been displaced to the housing of their relatives/friends/acquaintances, 56 persons (26.4 %) — to the rented accommodation, and 31 persons (14.6 %) — to the transit centre etc.²⁵

Another way of solving housing issues is the conversion of existing premises and the existing housing stock, various funds, structures, in particular the State Property Fund, with the help of the actions of local authorities, the public sector. A national policy on this issue has not been developed, a mechanism for the transfer of dormitories and non-residential premises for conversion by public organisations has not been developed, which sometimes entails a certain bureaucracy and opposition from local authorities. According to the Law of Ukraine "On the Legal Regime of Martial Law" (para. 2 (13) Article 15), military administrations must provide assistance in the repair and reconstruction of residential premises, in this area their powers include:

” providing assistance to owners of apartments (houses) in their reconstruction in case of damage as a result of hostilities, acts of terrorism, sabotage; organizing with using their own funds and on a joint-stock basis for the construction, reconstruction and repair of communal and social facilities, residential buildings, as well as roads of local importance; execution or delegation on a competitive basis to the general construction organisation (contracting organisation) of the functions of the customer for the construction, reconstruction and repair of housing, other objects of social and production infrastructure of communal property.

As for the lease and ownership of residential premises, the legislation of Ukraine did not change during the war. Decree of the President of Ukraine No. 64/2022 of February 24, 2022 "On the introduction of Martial Law in Ukraine" and Decrees of March 14, April 18, May 17, 2022 "On extending the period of Martial Law in Ukraine", which were approved by the Verkhovna Rada

25. Analytical report on the survey on access of the persons with disabilities to different types of assistance, services at their permanent of residence during the martial law. – Kyiv, The National Assembly of Persons with Disabilities of Ukraine, 2022. – P. 7

by the relevant Laws of Ukraine, do not contain any restrictions on the right to housing, that is, no one can be forcibly deprived of housing, other than on the basis of the law and by a court decision. Therefore, the rental of residential premises is carried out in accordance with the Civil Code of Ukraine, the transfer of housing for rent on a free basis is not established by the Code. However, Article 818 of the Civil Code provides for the accommodation of temporary residents with the landlord by mutual consent, if necessary, with prior notification of the landlord and mutual consent without charging a rent fee. Such temporary residents have not any rights of ownership and use of housing, in addition, they must vacate the housing after the expiration of the period of residence agreed with them or no later than 7 days from the day of the tenant or landlord presents to them a demand to vacate the housing. At the same time, significant problems in the field of housing rental during the war appeared and exacerbated the previously existing ones. So, among the main problems, the independent analytical Center Cedos includes, in particular: price fluctuations; insufficient amount of rental housing, especially in cities where the rental sector was underdeveloped before the beginning of the war; prejudice and discrimination; illegal evictions and violation of contract terms. To this can be added the traditional reluctance of landlords to enter into written tenancy agreements due to a number of circumstances, the main of which are sufficiently high personal income taxes. Lack of registration will not allow such IDPs to apply for some benefits.

Part of these problems can be solved due to active actions and intervention of the state authorities at the national or regional level, including mainly the mechanism of compensating the landlord for the full or partial cost of housing for displaced persons or persons who have lost their housing, at the expense of the state. In order to implement a compensation mechanism for landlords, on March 19, the CMU Resolution approved the Procedure for compensation of costs for temporary accommodation of internally displaced persons who moved during the martial law period. The compensation is related to the free temporary accommodation of those IDPs who, during the martial law, moved from the territory of the administrative-territorial area where military (combat) operations are conducted and which is specified in the list approved by the order of the CMU dated March 6, 2022 No. 204 "On approval of the list of administrative-territorial units, on the territory of which assistance is provided to insured persons within the framework of the "eSupport" Programme. The amount of compensation was approved at the level of UAH 14.77 per day per person and increased to UAH 30.00 from October 1, 2022. This is definitely a positive step towards solving the problem of providing housing and an effective mechanism for stimulating the development of housing rental, however, the amount of compensation is unlikely to really stimulate landlords and owners to provide housing for this category of people, because we are talking about providing such housing on a free basis and meager compensation.

One of the elements to stimulate landlords to provide housing to the displaced persons could be cancellation of the income tax or income for them for such housing.

At the same time, one of the efficient measures being discussed in the Ukrainian society could be involvement of the foreign partners, donors, international organisations to finance the residence of the persons affected by the armed aggression of Russia in health resorts in Ukraine. It must mainly be financing of such residence as a social service for the especially vulnerable social groups, including persons with disabilities, the elderly, those who have lost their accommodation and stay in shared accommodation centres etc. The search for partners and donors is getting especially applicable before the autumn and winter period. Such financing of residence in health resort facilities would provide certain categories of persons with the housing, meals and treatment they need. On the other hand, financing of such housing would also support health resort facilities by keeping the jobs of the staff. Therefore, the supported residence programmes for the health resort facilities at least for the winter period of 2022-2023, various activities to involve and stimulate international, foreign and national donors could be an efficient way to resolve the evident

pressing challenge, which involves not only accommodation, but also complex support of various vulnerable social groups, and a prompt resolution of the existing problem whereas engagement of the international donors into housing reconstruction and repairs, save for minor repairs of the housing suitable for living, will be effective in the mid and long term.

In the specified order, it is also determined that if compensation is provided by an international organisation or foundation, a charitable organisation based on the results of the analysis of information received from the regional military administrations, the Kyiv City Military Administration, then they must inform these state structures about the amount of payments made. At the same time, in the Resolution introducing housing allowance, receiving other types of assistance is not a reason for refusal.

Despite the absence of an article of the Constitution, which enshrines everyone's right to housing in the list of those that may be restricted during the period of martial law in accordance with the Presidential Decree "On the introduction of martial law in Ukraine" dated February 24, 2022, some restrictions may be related to the right to housing. Thus, Article 30 of the Constitution, which enshrines the inviolability of housing, and Article 41 regarding the right to own, use and dispose of one's property are subject to restrictions. The Law of Ukraine "On the Legal Regime of Martial Law" provides, in particular, the possibility of forced alienation of property (para. 4, Article 8), if necessary, to conduct an inspection of citizens' homes (para. 7, Article 8), to establish a ban or restrictions on the choice of a place of stay or places of residence of persons in the territory where martial law is in effect (para. 10, Article 8), to establish for individuals and legal entities a military housing obligation to provide shelter for military personnel, members of the rank and file of law enforcement agencies, personnel of the civil defence service, and the evacuated population and placement of military units, units and institutions (para. 17, Article 8), etc.

So far, the "housing obligation" enshrined in legislation is not used to solve the problem of housing for displaced persons and those whose housing has been destroyed or damaged. However, experts draw attention to this provision, at least in the context of the need to provide housing for hundreds of thousands of people in the autumn-winter period of this year. In particular, we can be talking about ready-made apartments of developers that have not been sold, etc.

Quite important aspect of the right to housing is its security component and requirements, which are stipulated by both international legal treaties, in particular the ESC, and national legislation. We are talking about the safety of structures, as well as sanitary and hygienic requirements, availability of heating, electricity supply, water supply, etc. On August 1, the President signed Law of Ukraine No. 7398 "On Amendments to Certain Legislative Acts of Ukraine Regarding Ensuring Civil Protection Requirements During Planning and Development of Territories", which contains a rule on the availability of engineering and technical means for evacuating citizens with reduced mobility in houses where they live permanently more than 50 people and in buildings that can temporarily accommodate more than 100 people. However, whether such a legislative step will be able to produce positive results before the end of the war remains open.

The case law in the area of protection of the right to housing still has not been established as of the beginning of the autumn, after the start of the war, although the quantity of complaints submitted by the citizens of Ukraine both to various authorities, entities, the Ukrainian Parliament Commissioner, the free legal aid system and to the court keeps growing day by day. However, there is a certain case-law that related to internally displaced persons, military families, including those who died or left the service. Thus, the cases related to forced eviction of IDPs from self-occupied housing, housing whose owner changed, from temporary housing that was provided to serviceman and his family after his retired; issues of recognition of the right to housing, use

of housing in cases of temporary residence, in particular sanatoriums²⁶. In the Resolution of the Grand Chamber of the Supreme Court dated July 4, 2018 in case No. 653/1096/16-ts, it was stated that "eviction of a person from housing without providing another living space is possible under the conditions that such interference with the right of a person to respect for housing is provided for by law, pursues a legitimate aim defined in para. 2 of Article 8 of the Convention of Human Rights, and is necessary in a democratic society...".²⁷ In one of the cases, after deciding on the forced eviction of IDPs, the court adopted a separate decision directed to the Kyiv City State Administration, Sviatoshynska District State Administration in the city of Kyiv to take appropriate measures to ensure the rights and freedoms of IDP defendants who are deprived of housing from independent for these reasons, and therefore are persons who need state assistance and protection of their rights to guaranteed housing by the state.²⁸

Overall, judges very often referred to the practice of the ECtHR in resolving housing disputes, in particular to the decisions in the cases "Kryvytska and Kryvitskyi v. Ukraine", "Dakus v. Ukraine", "Sadovyak v. Ukraine".

SPECIFIC ISSUES

International standards

Under international human rights law, States Parties must guarantee the right to housing to everyone. In times of war, the promotion and provision of this right is especially important with regard to different groups of vulnerable persons, such as e.g. low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems, individuals and families suffering exclusion and poverty.²⁹ Therefore authorities must pay particular attention to the impact of their policy choices on these most vulnerable groups³⁰.

States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with Article 31 of the European Social Charter, in particular as regards to the balance to be struck between the general interest and the interest of specific groups and the choices which must be made in terms of priorities and resources.³¹ The need to prioritise is especially strong, visible and inevitable in times of war.

In terms of the right to housing, States Parties must take action to prevent categories of vulnerable people from becoming homeless. In times of war the housing policy shall be directed especially at all disadvantaged groups of people to ensure them with access to social housing.³²

Pursuant to the responsibilities undertaken under the European Social Charter, State Parties are obliged to provide protection to refugees in Europe, to treat them with dignity, and to guarantee their fundamental rights.

” The right to emergency shelter and to other emergency social

26. In particular, see Resolution of the Supreme Court in case No. 460/2545/17 dated 18 March 2020

27. Resolution of the Supreme Court dated 4 July 2018, case No. 653/1096/16-ts (Grand Chamber)

28. <https://reyestr.court.gov.ua/Review/99046139>

29. ECSR, Conclusions 2003, Italy.

30. ECSR, Digest..., p.226.

31. ECSR, European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, § 35. See mutatis mutandis most recently European Court of Human Rights, Ilascu and others v. Moldova and Russia, judgment of 8 July 2004, § 332.

32. ECSR, Conclusions 2005, Lithuania; Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §136.

assistance is not limited to those belonging to certain vulnerable groups, but extends to all individuals in a precarious situation, pursuant to the principle of upholding their human dignity and the protection of their fundamental rights. The Committee considers that certain social rights directly related to the right to life and human dignity are part of a “inalienable” of rights which protect the dignity of all people. Those rights therefore must be guaranteed to refugees, and should be assured for all displaced persons. (...) to the fullest extent possible.³³

Under Article 31§2 of the the European Social Charter, States Parties are required to provide adequate shelter both to children and adults unlawfully present in their territory for as long as they are in their jurisdiction³⁴. Eviction from shelter of persons present within the territory of a State Party in an irregular manner should be prohibited as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity. State Parties are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation³⁵.

Protection of specific categories of people

The Law of Ukraine "On the Legal Regime of Martial Law" did not provide for separate provisions on the protection of the right to housing of vulnerable categories of the population, nor was there a provision on the introduction of procedures or duties for the transfer/evacuation of children and other persons living/staying in institutions of various types. In contrast, for example, to the provision about the CMU's elaboration the procedure for determining enterprises whose production facilities are subject to relocation (evacuation) from the combat zone, on a separate provision among the measures of the legal regime of implementation

” in the order determined by the Cabinet of Ministers of Ukraine, mandatory evacuation of detained persons in temporary detention centers; suspects, accused persons, in respect of whom a preventive measure has been applied - detention, who are in pretrial detention centers; phasing of convicted persons...

In part 2para.15, Article 15 of the above mentioned Law, the powers of military administrations in particular include "management of educational institutions, health care, cultural, physical education and sports institutions, social service providers that belong to territorial communities or transferred to them, youth, juvenile institutions at the place of residence; organisation of their material, technical and financial support; organisation of their provision of services, including social services...". Thus, the Law does not provide for special provisions on the protection of the rights of vulnerable categories, persons who are in the institutions, their evacuation, provision of housing. The protection of persons residing in facilities provided for in the para.15 is entrusted to

33. ECSR, Statement of Interpretation on the rights of refugees under the European Social Charter of 8th October 2015, available at: <https://rm.coe.int/1680489511>, FEANTSA v. the Netherlands, Complaint No. 86/2012, Decision on the Merits of 2 July 2014

34. ECSR, Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 47; Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§128-129; European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §61.

35. ECSR, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands Complaint No. 86/2012, decision on the merits of 2 July 2014, §60,110.

military administrations, the protection of housing rights of vulnerable categories of people who are not in state institutions is not clearly defined, as there are no the priorities for evacuation and provision of housing. After a month of the beginning of the war, it was adopted the Resolution of the CMU on “Some issues of temporary relocation (evacuation) of children and persons who live or are enrolled in institutions of various types, forms of ownership and subordination for 24-hour stay, in conditions of martial law”, which approved the Order for temporary relocation (evacuation) and provision of conditions for stay on the territory of Ukraine, where hostilities are not taking place, or outside of the territory of Ukraine, for children and persons who live or are enrolled in institutions of various of various types, forms of ownership and subordination of 24-hour stay.

The Order provides for the temporary relocation of various types of institutions, the list of which is given in para. 2 of the document:

” The Order applies to institutions of various types, forms of ownership and subordination, such as children's homes (including specialised ones), centers for medical rehabilitation and palliative care for children; institutions of preschool and general secondary education (including orphanages, sanatoriums, special, specialised institutions of general secondary education with boarding houses (boarding houses) in their composition); small group houses; shelters for children, centers of social-psychological rehabilitation of children, centers of social support for children and families, stationary services (departments) of centers of social services that carry out social-psychological rehabilitation of children, stationary services (departments) of social-psychological rehabilitation of children (providing services with social -psychological rehabilitation for children who are in difficult life circumstances) centers for the provision of social services; schools and vocational schools of social rehabilitation; orphanages-boarding houses of the system of social protection of the population; residential homes for elderly persons and persons with disabilities, specialised homes for war and labour veterans, elderly persons and persons with disabilities, other institutions that provide temporary accommodation and provision of social services to adults, families with children who are in difficult life circumstances; other institutions (including those established by public, charitable and religious organisations) in which children and persons are accommodated or are provided with 24-hour stay.

The specified Order also establishes the relevant state structures for ensuring the needs and security of those institutions that remain in the territories where hostilities are not taking place:

” Regional, Kyiv city military administration in the territory where hostilities are not taking place, in order to meet the needs of temporarily displaced (evacuated) children and persons, ensures the preparation of organisations, institutions for their

accommodation, in particular:

...timely preparation and arrangement of protective structures of civil defence, basements or other premises suitable for sheltering children and persons and personnel and safe stay there...

The Order also provides for a mechanism for moving abroad. According to para. 9, a decision on the temporary transfer (evacuation) of children and persons outside of Ukraine is made on the condition of providing justification for such transfer (evacuation) and the impracticality of its implementation within the borders of Ukraine, as well as the possibility of creating appropriate conditions for their placement, taking into account the needs of special care conditions. The head of the institution can contact the state authorities, inform them about the need to leave, and also has the right to independently receive an invitation from the host party and inform the state authorities about it, and for the transfer they must obtain the written approval of the relevant authorities and the National Service. A record is kept of all children who have left Ukraine.

However, this Order does not resolve a number of evacuation challenges. Thus, the human rights defenders are concerned about the following:

” The Order does not establish the procedure for interaction of the governmental and local authorities with the foreign partners, and it only introduces the obligation of consular registration of children and adults abroad; it does not contain requirements for organisation of affordable evacuation and requirements for organisation of the accessible stay of children and adults with disabilities and/or the ones who are in need of accessibility and permanent care; it does not establish the procedure for relocating the legally incapable person in ward of the special facility abroad; it does not specify the procedure for formation of the state or local budget for such evacuations.³⁶

It is also provided that those displaced outside Ukraine

” are granted temporary protection as a form of international protection within the meaning of Article 9 of the Convention on the Status of Refugees, ratified by the Law of Ukraine, dated January 10, 2002.

This provision on the form of temporary protection as international is rather debatable, as it will be determined rather by the national legislation of the host country, and within the EU in compliance with the requirements of Directive 2001/55/EC.

In general, the implementation of the Resolution of the CMU of March 27 and the situation in general remain difficult. People with disabilities faced and continue to face enormous risks when trying to evacuate on their own, there is no adequate information and assistance at train stations. Help is often provided by volunteers, other people, there have been cases of help even by the paramilitary train guard for the access of a person in a wheelchair to the evacuation train.

36. I. Fedorovych, K. Avtukhov, M. Tarasova, O. Prashko, O. Temchenko Preliminary Review: Custodial Facilities in Ukraine during the War. Kyiv. – 2022. – 43 p.

On March 13, the CMU simplified the border crossing procedure for people with disabilities of groups I and II and their companions. The issue of military tickets for men with disabilities aged 18 to 60 (who did not have military tickets or did not have a military stamp due to lack of their need before February 24) was arisen. At the border, such persons, including those in wheelchairs, completely blind, were sent to the medical board. The list of possible documents for departure has been expanded, it is also provided for the accompaniment of one adult (who can accompany was also provided for). It turned out that some checkpoints on the border were still not barrier-free, which made it impossible to overcome all obstacles for persons with lack of mobility without assistance, and the border guards are not obliged to provide such assistance and, as a rule, do not provide it. Over time, local administrations began to help evacuate and take separate steps to evacuate various vulnerable categories of persons. However, there are no evacuation places for people with lack of mobility, they have to make their own arrangements both with the organisation of the departure and with the fact that they will be admitted to the appropriate facility upon arrival in case of such need.

Alongside with the above-mentioned issues, lack of the evacuation system and clear actions of the governmental authorities, operations of the Ukrainian Railways must be appreciated: with the help of the state entities, it purchased wheeled chairs, wheelchairs, organised separate evacuation cars for persons with disabilities, formed the groups etc.

In general, the evacuation and provision of housing for vulnerable categories of the population is not sufficiently organised at the national level, the evacuation from the TOT and the territories of active hostilities of orphanages, homes for the elderly people, people with disabilities, etc. is also not appropriately organised by the state. It is carried out mainly with the help of volunteer organisations, activists, sometimes with the participation of state bodies, ministries, and local authorities.

SUMMARY

The Ukrainian housing legislation is quite outdated and required reforming and amendments even before the start of full-scale armed aggression by Russia. The main document that regulates housing relations had the old Soviet title until 21 April 2022, when a number of articles, title and preamble of the Housing Code referring to the communist society and Leninist ideas were amended.³⁷ Issues of the development and adoption of a new Housing Code have been repeatedly raised in Ukrainian society. Even Decision of the Constitutional Court of Ukraine No. 12-p/2019 dated 20 December 2019 stated that the Housing Code existed in Soviet times before the adoption of the Constitution of Ukraine, and, accordingly, a number of the provisions of the Code

”negate the essence of constitutional rights and contradict the constitutional principles of the social, economic development of Ukrainian society and the state, so they should be brought in line with the requirements of the Basic Law of Ukraine.”³⁸

Therefore, after the end of the war, this legislative area will need modernisation and bringing in line with the international and European standards.

37. Law of Ukraine No. 2215-IX dated 21 April 2022 “On the Desovietisation of the Ukrainian Legislation” Link: <https://zakon.rada.gov.ua/laws/show/2215-20#n145>

38. Decision of the Constitutional Court of Ukraine No. 12-p/2019 dated 20 December 2019 in the case based on the constitutional submission of 49 People’s Deputies of Ukraine regarding the conformity of the provisions of Article 135(2) of the Housing Code of the Ukrainian SSR to the Constitution of Ukraine (constitutionality). Case No. 1-26/2018(2572/17). Link: <https://zakon.rada.gov.ua/laws/show/v012p710-19#n2>

The Ukrainian government has been facing the issue of providing housing for internally displaced persons from the temporarily occupied territories of the Donetsk and Luhansk regions and the annexed Crimea since 2014. Despite numerous programmes of financing, lending, provision of temporary and social housing, government initiatives offering compensation for damaged and destroyed housing, the measures taken and the funds allocated were clearly insufficient to solve the problem due to the large number of persons in need of such housing. However, several months into the war, the objective impossibility to provide millions of displaced persons with housing, even emergency and temporary housing, especially in the autumn and winter period, has already become obvious. At the moment, Ukraine will not be able to independently solve this issue without the active involvement of international organisations and international partners in both financial, technical and other aspects. Given the threat to 2022-2023 heating season, active steps, the development of a crisis housing programme and construction should be started at least with the help of international humanitarian organisations.

Vulnerable categories of persons, who are often unable to move to safer areas or go abroad on their own without support and assistance, need the most attention and protection from the state. Therefore, the issue of evacuation arose acutely in the first months of the war and may arise at any moment depending on the situation at the front lines and the provision of electricity and heat to the relevant areas or individual institutions. The state is responsible for the support of all persons in state institutions, such as homes for the elderly, orphanages, assisted living facilities, etc.; the state must be responsible for their timely evacuation, provision with everything necessary. According to volunteers and human rights activists, the responsibility for the evacuation of institutions is actually assigned to local authorities with very limited capabilities, and about 6,000 institutions had not been evacuated by the end of March.³⁹

39. T. Matiash. About 6,000 wards of assisted living facilities remain in the occupied territories, human rights activists report. 31 March 2022. Link: https://lb.ua/society/2022/03/31/511818_okupovanih_teritoriyah.html

The right to social protection in times of war in Ukraine

GENERAL OVERVIEW

International standards

The formal legal and normative framework for social protection in conflict-related situations consists of elements of international law (human rights law, international humanitarian law, refugee law), national constitutional, statutory and common law and existing national or sub-national policy and regulatory frameworks. The concept of social protection is broad and encompasses social security, social assistance and welfare programmes.

The right to social protection is enshrined in international law of the United Nations and the Council of Europe. In the law of the United Nations, the right is set out in the UN's core human rights conventions, including inter alia, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. It is, however, most explicitly articulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights, which oversees States' implementation of the ICESCR, has over the years developed the notion that, States are legally obligated to establish social protection systems, and that this duty flows directly from the right to social security, as enshrined in Art. 22 of the UDHR and Art. 9 of the ICESCR.

In the law of the Council of Europe, the European Social Charter (Revised) guarantees the right to social protection in many of its provisions, especially by establishing the right to social security in Article 12, the right to social and medical assistance in Article 13, the right to benefit from social welfare services in Article 14, the right of employed women to protection of maternity in Article 8, the right of the family to social, legal and economic protection in Article 16, the right of children and young persons to social, legal and economic protection in Article 17 and the right to protection against poverty and social exclusion in Article 30. The said provisions require positive action from the state both in times of peace and prosperity and in times of armed conflict and war.

While some of the above-mentioned regulations give rise to specific entitlements to welfare assistance, they may be difficult or impossible to enforce in times of war. Moreover, the normative provisions are limited. There is, for example, no universal legal entitlement to relief assistance. The Geneva Conventions⁴⁰ make specific provision in the case of armed conflict, though even here the duty to allow provision of relief by third parties is limited and permission for particular relief actions is generally made conditional on the consent of the warring parties⁴¹.

In the wartime, the social protection agenda has to take account not only of the risks encountered in everyday life but also, or even with the primary focus, of conflict-related forms of insecurity. It must be seen as part of a wider human security agenda that encompasses protection from intimidation and coercion. In many cases, it shall include the restoration of access to basic commodities and services for whole communities. Apart from this, there are a number of demographic effects that typically result from the armed conflict. In particular, an increase in numbers of female-headed households and of orphaned children, as well as the loss of male labour capacity. These factors have a direct bearing on household dependency ratios, on form of vulnerability and so shall be

40. The four Geneva Conventions of 1949: protecting the wounded and sick members of armed forces on land (First Convention), wounded, sick and shipwrecked members of armed forces at sea (Second Convention), prisoners of war (Third Convention), and individual civilians and civilian populations (Fourth Convention).

41. See: for example, Additional Protocol II of 1977, article 18. The general rule is that consent is not to be withheld.

taken into consideration in the social protection agenda⁴².

Following the obligations arising from the UN Conventions and the European Social Charter, States Parties in accordance with their obligations to provide adequate social security benefits (Article 12 of the ESC) and social and medical assistance to persons in need (Article 13 of the ESC) shall allocate budgetary resources towards income replacement and other assistance and support for persons and families affected by war. The resources shall adequately reach the poorest and most vulnerable groups. Access requirements must not be unnecessarily complex, bureaucratic and exclusionary (e.g., requiring formal links to the labour market, proof of fixed abode, age limits or excluding certain categories of workers)⁴³. The amounts of the various benefits shall be adequate and they shall not be too limited in duration⁴⁴.

Ukrainian regulations and challenges of implementation

A wide range of social rights is provided for by the Constitution of Ukraine, in particular, the right to social protection, which includes the right to support in case of total, partial or temporary loss of working capacity, loss of a breadwinner, unemployment due to circumstances independent of the individual, as well as in old age and other circumstances under the provisions of the law. This right is guaranteed by mandatory state social insurance at the expense of insurance contributions of citizens, enterprises, institutions and organisations, as well as budgetary and other sources of social security; creation of a network of state, communal, private institutions for the care of the disabled. Pensions, other types of social payments and assistance, which is the main source of livelihood, must ensure a standard of living not lower than the subsistence minimum established by the law (Article 46).

Since 2014, after the occupation of part of the Donetsk and Luhansk regions, the annexation of Crimea, monthly targeted assistance to internally displaced persons was introduced in Ukraine to cover living expenses, including the payment of housing services, as the main financial assistance to those who have moved within Ukraine. The mentioned Resolution became invalid with the adoption of the new Resolution of the CMU "Some Issues of Housing Allowance Payments to Internally Displaced Persons" No. 332 of March 20, 2022.

Apart from social housing allowance, there were no other special state social benefits and payments provided during the war, however, after the beginning of the war, additional social support measures were actively offered by international organisations and foundations. Thus, in order to provide social support to the most vulnerable categories of the population, the Government of Ukraine, together with international partners, developed an assistance programme for vulnerable families with children who suffered due to the war in Ukraine and need financial support. UNICEF, together with the Ministry of Social Policy, started the implementation of the multi-purpose programme "Together or Spilno", which will be financed by the EU, the Italian government, the Swedish International Development Agency SIDA and the Central Emergency Response Fund CERF.⁴⁵ Cooperation within the framework of the new programme is enshrined in the CMU Resolution No. 405 of April 5, 2022 "On the implementation of a joint project with the United Nations International Children's Emergency Fund (UNICEF) on additional social support measures

42. See more: J. Darcy, Conflict and Social Protection: Social Protection in Situations of Violent Conflict and its Aftermath, Available at: <https://cdn.odi.org/media/documents/1704.pdf>

43. ECSR, Statement on COVID-19 and social rights adopted on 24 March 2021, p. 7.

44. ECSR, Statement on COVID-19 and social rights adopted on 24 March 2021, p. 8.

45. UNICEF — to Ukrainians: a programme of monetary assistance Spilno. URL: <https://www.unicef.org/ukraine/spilno-cash-transfers>

for the most vulnerable categories of the population."⁴⁶ This assistance is provided regardless of the status of the IDP, the region of residence of the family, regardless of other benefits, including assistance for the residence of the IDP. The only actual restriction is receipt of other monetary assistance from UNICEF or another international humanitarian organisation after February 24, 2022. Assistance from UNICEF is provided once in the amount of UAH 2,200 per family member per month, but not more than 5 people for a period of 3 months.

Two categories of families can receive this assistance: families with three or more children, of which at least one child is under the age of two, and families with two or more children, of which at least one the child has a disability. However, on the official web portal of UNICEF, it is stated that families with three or more children under the age of 18 and families with at least one child with a disability under the age of 18 can receive assistance in the 2nd stage of the programme from June 15. Thus, the requirements for families, prominent in the Decree of the CMU and on the official website of UNICEF Ukraine, have certain differences. However, the number of submitted applications exceeds the maximum processing capacity, which again led to the suspension of the application process from August 15. As of August 10, UNICEF has already provided assistance to more than 112,000 families raising 331,000 children, including 33,000 children with disabilities. In general, UNICEF plans to provide assistance to 265,000 families within the specified programme of cash assistance to families.⁴⁷

However, financial assistance in the amount of UAH 2,200 per month can be obtained not only from UNICEF, but also from other UN agencies that implement the specified programme. As of the end of August, such organisations include, in particular, the UNHCR, the UN World Food Programme, and the International Organisation for Migration (hereinafter – IOM). Each agency has its own criteria for obtaining assistance. For example, pregnant women, single parents raising children, families with two or more children, households with people with disabilities, and elderly people (65+) can apply for help from IOM. In addition, unlike UNICEF, various UN agencies offer financial assistance in different regions of Ukraine. Thus, the World Food Programme provides monetary aid in Rivne and Vinnytsia regions, while UNHCR covers Vinnytsia, Dnipro, Zakarpattia, Lviv, Ternopil, Khmelnytskyi, Chernivtsi and Ivano-Frankivsk regions. Such a distribution, in particular, was made at the request of the Ukrainian Government to cover vulnerable categories of persons on a larger territory of the state. Aid is provided only once, as it is considered one type of aid implemented by various UN agencies. On the pages of the official websites of the relevant organisations in Ukraine, it is emphasised that IDPs who have already submitted their data for inclusion in the programme of monetary assistance from the UNHCR will receive their payments, provided that they have not received monetary assistance from another organisation. Other international organisations that are not part of the UN family, such as the Norwegian Refugee Council, can also join the Programme. Another monetary assistance in the amount of UAH 2,500 can be obtained from the Mission of the International Committee of the Red Cross in Ukraine and the Red Cross Society of Ukraine.

Thus, a number of international organisations and UN agencies provide financial assistance to war-affected people in Ukraine. For the first time, international organisations work in close coordination with state structures, formalising cooperation through the conclusion of the special memorandums and, even, in some cases, through the adoption of Resolutions of the CMU. The government provides the necessary information, verifies the data that a person provides when applying for financial assistance.

46. Resolution of KМУ "On the implementation of a joint project with the United Nations International Children's Emergency Fund (UNICEF) on additional social support measures for the most vulnerable categories of the population" No. 405 of April 5, 2022 URL: <https://zakon.rada.gov.ua/laws/show/405-2022-%D0%BF#Text>

47. UNICEF — to Ukrainians: a programme of monetary assistance Spilno URL: <https://www.unicef.org/ukraine/spilno-cash-transfers>

The international organisations, funds and national civil and volunteer organisations also provide humanitarian aid in kind and charitable aid in various regions of Ukraine. These matters are governed by the Law of Ukraine "On the Humanitarian Aid"⁴⁸, the Law of Ukraine "On Charity and Charitable Organisations"⁴⁹. In order to simplify delivery and transfer of the goods that are not provided for by the Law "On the Humanitarian Aid", but are needed by Ukraine, the amendments were adopted in March 2022 during the martial law, the CMU may declare certain categories of goods, including excisable ones, to be humanitarian aid without the procedure for recognising such goods to be humanitarian aid in each specific case. On 7 March 2022, the Resolution "On Approving the List of Categories of the Goods Recognised to Be Humanitarian Aid without the Procedure for Recognising Such Goods to Be Humanitarian Aid in Each Specific Case, for the Period of the Martial Law, and Amending Certain Resolutions of the Cabinet of Ministers of Ukraine on the Humanitarian Aid"⁵⁰ was adopted, the annex thereto contains the list of the goods recognised to be humanitarian aid. In most cases, humanitarian aid is granted as food packages, personal hygiene products, medicines, clothes, mattresses, household appliances etc.

At the same time, considering that the international assistance is mostly directed at financial assistance and assistance in kind, international donors must be directed and engaged to finance the programmes for consumption and provision of respective social accommodation services, in particular, in health resort facilities, for the persons with disabilities, the elderly whose housing has been destroyed or damaged, who have been displaced, who have been or are supposed to be evacuated etc.⁵¹

Along with the need to introduce assistance to a wide range of war-affected persons, the issue of continuing to receive the designated social benefits, assistance, and pensions was and remains extremely relevant. On March 7, 2022, the Resolution of the CMU No. 214 "On some issues of providing state social assistance during the period of martial law" was adopted, the main purpose of which was to settle this issue, that is, to continue the appointment and payment of social assistance and benefits after the introduction of martial law. It was also provided for the extension of all previously assigned payments to persons with disabilities, children with disabilities in the event of deadlines for reviewing such payments for the entire period of martial law and one month after its termination or cancellation.

Despite the continued payment of all the social allowances, it is difficult to receive social payments and pensions in the area of military (combat) operations, temporarily occupied territories and surrounded (blocked) territories since it can only be done via banking institutions. Where it was possible, the post officers kept effecting payments or transferring funds to the recipients' bank accounts. However, it is clear that it is practically impossible to pay social payments and pensions in the area of hostilities, temporarily occupied territories and surrounded territories. At the same time, the executives of the state care facilities, assisted leaving facilities that are located in the occupied territories refuse from Russian assistance as they realise that such actions can be interpreted as cooperation with the aggressor and result in criminal liability. Actions of the executives of such facilities in connection with the Russian humanitarian aid must be explained for such a controversial situation when the children, the elderly and the persons with disabilities are practically left without minimum food.

On March 30, 2022, another important Resolution of the CMU was adopted "On making changes to some resolutions of the Cabinet of Ministers of Ukraine regarding the period of re-examination

48. Law of Ukraine "On the Humanitarian Aid" dated 22.10.1999 No. 1192 – XIV as amended

49. Law of Ukraine "On Charity and Charitable Organisations" dated 05.07.2012 No. 5073-VI

50. Resolution "On Approving the List of Categories of the Goods Recognised to Be Humanitarian Aid without the Procedure for Recognising Such Goods to Be Humanitarian Aid in Each Specific Case, for the Period of the Martial Law, and Amending Certain Resolutions of the Cabinet of Ministers of Ukraine on the Humanitarian Aid" dated 07.03.2022 No. 224

51. The applicable proposals are described in more detail in the section on the right to housing.

of persons with disabilities and extending the validity of certain medical documents under martial law".⁵² According to the provisions of the Decree, the period of re-examination of a person with a disability is postponed, and the recognition of the presence of a disability and the degree of loss of working capacity is extended not only until the end of martial law, but also for a maximum of six months after that. Thus, until the end of this period, the period for re-examination is extended, and all benefits and social benefits are preserved for the relevant category of persons. In addition, in accordance with the Resolution of the CMU No. 225, individuals have the right to apply to the medical commission (MSEC) to establish disability in absentia and regardless of their place of residence or stay. Therefore, if a person cannot come to the medical commission, the commission has the right to make a decision on establishing disability in absentia on the basis of a referral from a health care institution.

Access to all information for those who need such help remains an extremely urgent issue. In order to generalise information about organisations that provide financial assistance to IDPs, war-affected people, consolidated tables were prepared by the Ministry of Reintegration of the TOT and the Ministry of Social Policy. However, such tables are more useful for specialists and for understanding the general situation than for the use of persons in need and submission of applications.

In order to receive assistance to war-affected persons and persons forced to leave their place of stay/residence as a result of Russian aggression, a common digital platform "eSupport" was created.⁵³ The platform collects information in three main areas: monetary assistance from the state, providing and receiving assistance from volunteer organisations, and assistance from international organisations. As for international organisations, the platform, accordingly, in the section "Assistance from international organisations" contains complete information about the conditions and criteria for providing assistance for payments within the framework of all organisations that have relevant memorandums and cooperate with the Ukrainian authorities. The information about the amount of funds that the organisation are allocated, important links, phone numbers and other data about each provider - international organisation, international donor is also included. It is also possible to apply for assistance within the platform.

Extremely useful is the section of the platform with complete and detailed information on state social assistance to war victims, starting with clear and understandable instructions on how to obtain IDP status and benefits provided for IDPs. Separate sections are devoted to receiving compensation for the entrepreneur for the employment of IDPs, reporting on damaged property. As of the end of August, a section with information on assistance to residents of recently deoccupied territories and those who left is being in process of filling, which will include information on the possibility of receiving assistance from Ukrzaliznytsya (Ukrainian Railways), as well as a section for Ukrainians living on the TOT. There is a section called "How to get a pension or subsidy on a bank card", which is obviously designed for people who received social security payments in cash through post offices. The impossibility of continuing cash payments at TOT was indicated and advice was given to open a bank card at Privatbank or A-Bank. A section with answers to the most common questions is provided separately. For example, there are questions and answers about the set of documents that person needs to have for obtaining IDP registration, steps in case of not receiving formal assistance, etc.

So, a lot of information about giving and receiving state social assistance will still be added, but a

52. Resolution of the CMU was adopted "On making changes to some resolutions of the Cabinet of Ministers of Ukraine regarding the period of re-examination of persons with disabilities and extending the validity of certain medical documents under martial law" No.390 of March 30, 2022.

53. The Platform was created by the Ministry of Social Policy with support of the Ministry of Digital Transformation and UNDP with the financial support of Sweden.

lot of useful information is already collected on the platform, which can help war-affected persons understand the types of assistance they can claim, get all the necessary advice and, in some cases, immediately submit/apply for this or that aid, for example, from international organisations, apply for volunteer aid.

At the same time, the obvious matter is lack of the financial capacity of the state to perform its social duties. In particular, it includes housing assistance for the IDPs without any criteria except for the fact of displacement. The amount of such assistance was materially increased in comparison with the monthly targeted assistance that used to be paid to the IDPs. Therefore, such support was absolutely necessary during the first months of the war for all the categories of persons, with account of the inability of the governmental authorities to keep the respective information. At present, it is critically necessary to set the clear criteria and periods of the respective assistance. The need to introduce such balanced approaches is emphasised not only by the representatives of the governmental authorities, but also the experts of human rights defence, non-governmental organisations, including the experts of the Human Rights Centre ZMINA. The centre and the other human rights defence organisations have also prepared and published the list of the key problems in the area of defence of rights of those affected by the aggression of the Russian Federation, including without limitation the need of proper registration of the IDPs and their needs⁵⁴. The point is that if there is no information and understanding of needs of the IDPs, those affected by the armed aggression, it is practically impossible for the state to develop the clear system for social assistance and social payments to such categories of persons.

SPECIFIC ISSUES

International standards

In times of war the threats posed to human security are often generalised threats, however it is important to distinguish between the systems that shall be designed to help vulnerable individuals and households to cope with loss of income or other shocks related to armed conflict and the systems designed to assist the whole populations, communities or groups to survive and recover from different war-related shocks.

Levels and types of vulnerability during the war and in its aftermath depends in large part on the nature and duration of the conflict, its effects on people and structures, and the way in which the conflict has ended. Conflict creates new forms of poverty and social exclusion and so new vulnerable groups of society that need increased protection and assistance. One of such groups are demobilised soldiers who may come to constitute an underclass and a source of potential insecurity⁵⁵. According to the International Labour Organisation (hereinafter – ILO) (1995), the major problems faced by demobilised combatants relate to alienation from civilian life; inadequate information and counselling; problems of land availability and allocation; and problems of finding stable livelihood and employment options.⁵⁶ Successful reintegration of ex-combatants is said to depend on the motivation of the individual, the acceptance and support of the community, and measures provided for employment and income generation. Progress on other areas of public policy, and particularly land reform issues, may be key to determining the success of reintegration

54. The coalition of the non-governmental organisations that defend rights of those affected by the armed aggression of the Russian Federation has been resolving issues in the area of defence of rights of the Ukrainians affected by the aggression of the Russian Federation since 2014. 10 August 2022 Link: <https://zmina.ua/event/klyuchovi-problemy-u-zahysti-prav-postrazhdalych-vid-vijny-rishennya-vid-pravozahysnykiv/>

55. J. Darcy, Conflict and Social Protection in Situations of Violent Conflict and its Aftermath, p.12. Available at: <https://cdn.odi.org/media/documents/1704.pdf>; see more: T. Pietz, Demobilisation and Reintegration of Former Soldiers in Post-war Bosnia and Herzegovina. An assessment of External Assistance, 2004, available at: <https://ifsh.de/pdf/publikationen/hb/hb135.pdf>

56. ILO, From war to peace: Socio-economic reintegration of ex-combatants in the DRC, available at: <https://www.ilo.org>

programmes⁵⁷. Various specific social protection measures, including vocational skills training and demobilisation allowances, are likely to be essential to successful reintegration⁵⁸.

Another key vulnerable group in the situation under consideration are refugees and internally displaced people, as they return to their country or places of origin. Here the issues of social exclusion are likely to relate to the original reasons for flight, the conditions on return, and whether people are able to return to their original home and land⁵⁹.

Apart from the above-mentioned groups, targeted assistance shall focus on the social protection needs of such groups as widows, orphaned children, and people disabled by war or by landmines. Levels of disability in particular are frequently very high in the aftermath of conflict, and the consequences for the individuals concerned are likely to include limited employment and livelihood options, and various manifestations of social exclusion. In some cases rehabilitation services and compensation schemes shall be available, especially to disabled ex-combatants (ILO, 1995).

Protection of specific categories of people

Older persons, IDPs

The procedure for awarding a pension to IDPs without proper documents, missing information about the periods of insurance experience, labour activity, during the period of martial law in Ukraine and within 180 calendar days after its termination has been significantly simplified. Pensions will be assigned on the basis of information available in:

- the state register of natural persons of taxpayers;
- the unified state register of legal entities, individual entrepreneurs and public organisations;
- to the mandatory state pension insurance system;
- the register of policyholders and the register of insured persons of the State Register of mandatory state social insurance;
- the information system of the State Migration Service and the Ministry of Internal Affairs;
- single information database on internally displaced persons.

During the period of martial law, it is also provided for the appointment or continuation of the payment of a previously appointed pension in case of loss of a breadwinner to children aged 18 to 23 who are studying full-time in professional (vocational-technical), professional pre-higher and higher education institutions, without providing a certificate educational institution based on data on full-time education in 2022, obtained by the Pension Fund of Ukraine from the Unified State Electronic Database on Education.⁶⁰

Various aspects of pension for IDPs have already been the subject of court proceedings after 2014, including the formation of certain legal positions of the Supreme Court regarding the payment of pensions to persons who did not receive the status of IDPs or this status was revoked, or they remained on the TOT. On May 3, 2018, one of the landmark decisions was adopted in the exemplary case regarding the pension provision of internally displaced persons to whom old-age pension payments have been suspended. In this decision, the Supreme Court emphasised

57. See more: J. Darcy, Conflict and Social Protection: Social Protection in Situations of Violent Conflict and its Aftermath, p.12. Available at: <https://cdn.odi.org/media/documents/1704.pdf>

58. See more: J. Darcy, Conflict and Social Protection: Social Protection in Situations of Violent Conflict and its Aftermath, p.12. Available at: <https://cdn.odi.org/media/documents/1704.pdf>

59. See more: J. Darcy, Conflict and Social Protection: Social Protection in Situations of Violent Conflict and its Aftermath, p.12. Available at: <https://cdn.odi.org/media/documents/1704.pdf>

60. Ibid. Як і в посиланні 63

that the registration of a person as an internally displaced person does not deprive him/her of the constitutional rights, does not narrow their scope, is not a separate constitutional and legal status of a person, but enables state bodies to take into account his/her special needs and provide additional protection. Among such special needs are access to adequate housing and legal aid, access to special state social programmes, including targeted programmes for internally displaced persons, etc. In this decision, the Supreme Court also concluded that it is impossible to link between receiving the pension and permanent residence in Ukraine. Such a position is extremely important in the context of the leaving by large number of Ukrainian citizens the territory of Ukraine after the beginning of the full-scale invasion of Russia.

The Administrative Court of Cassation of the Supreme Court also considered the issue of necessity of taking into account by Ukrainian state bodies documents confirming working experience issued at the TOT. The Court emphasised the importance of the Namibian exceptions and referring to the relevant practice of the The European Court of Human Rights (hereinafter – EctHR) in such cases, except the cases on matters of establishing the fact of birth or death.⁶¹ The Supreme Court underlined that in exceptional cases, the recognition of the acts of the authority in TOT in the limited context of protecting the rights of residents of the occupied territories does not legitimise them in any way.

At the end of 2020, an Overview of the judicial practice of the Supreme Court in cases arising from legal relations in the field of protection of the social rights of internally displaced persons and practice regarding the application of the provisions of the European Social Charter (revised) of May 3, 1996 was published, which included decisions adopted until October 1, 2020.⁶²

However, despite the national legislation developed since 2014 and judicial practice, in the summer of 2022, applications began to be received about the refusal of the authorities of the Pension Fund of Ukraine (hereinafter – PFU) to pay pensions to persons living in the TOT of Crimea and the city of Sevastopol. On August 12, the Coalition of organisations dealing with the protection of the rights of war affected persons by the Russian aggression against Ukraine addressed an open letter to the Ministry of Social Policy and the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine with demands for immediate measures and amendments to the legislation of Ukraine.⁶³ The Office of the Ukrainian Parliament Commissioner for Human Rights has also drawn attention to the pensions that have not been granted to the persons displaced from Crimea. In response to the request, the Ministry of Social Policy refers to the Agreement on the Guarantees of Rights of the Citizens of the Member States of the Commonwealth of Independent States in Pension Support dated 13.03.1992, the members of which both Ukraine and Russia are. It is stipulated in the Agreement that the support shall be effected in accordance with the legislation of the state where the person lives; when a pensioner moves, payment at the place of residence is terminated and granted at the new place. The Ministry of Social Policy claims that the pensioners who have moved to Ukraine and have been registered with the Russian pension authorities are admitted by the authorities of the PFU provided that they furnish the completed pension files, including the documents on termination of payment of the pension in the Russian Federation. They also inform that it is impossible to obtain information and pension files from the pension authorities of Russia due to severance of diplomatic relations as a result of the armed aggression of Russia. In this regard, the mechanism of receiving the pension for the citizens of Ukraine who

61. In particular, see.: Resolusion of the Supreme Court of July 17, 2019 in case № 302/757/17-a <http://reyestr.court.gov.ua/Review/83070460>

62. Overview of the judicial practice of the Supreme Court in cases arising from legal relations in the field of protection of the social rights of internally displaced persons and practice regarding the application of the provisions of the European Social Charter (revised) dated May 3, 1996 (Decisions entered to the USRCD for the period from January 1, 2018 to October 1, 2020) URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Ogliad_VS.pdf

63. The request of the Coalition of organisation dealing with the protection of the rights of war affected persons by the Russian aggression against Ukraine URL: <https://www.donbasssos.org/pensii-krym-zverennia/>

reside in the Autonomous Republic of Crimea and Sevastopol or have moved from this territory is being developed. This response demonstrates that the mechanism has not been developed since 2014, and the communication with the aggressor state had continued, and the clauses of the international treaties on the pension matters of the citizens of Ukraine in the TOT of Crimea had been applied before the full-scale invasion of Russia.

Lack of necessary funds and the issues of financing of all the payments and assistance within the social protection system deteriorates the situation in many directions. Another obvious challenge is payment of the compensation for social services, especially for the IDPs. Social services cannot practically be received in case of displacement because the hosting communities have not allocated funds, but financing is effected from the local budgets. There is no mechanism for paying for and financing such social services, which prevents resolution of issues in the communities with a large number of displaced persons. The Ministry of Social Policy has informed of reorganisation of the social insurance fund and is considering centralised procurement of social services.

Persons with disabilities

Considering the large flow of people at the border crossing points, special skip-the line access was provided for children with disabilities and persons with disabilities of the 1st group at border crossing points.

During the period of martial law, the procedure for establishing and extending disability has been significantly simplified. As already mentioned above, in order to receive social benefits, persons with disabilities do not need to undergo a repeated examination to confirm their disability. Children and adults with disabilities will continue to receive all social benefits, bonuses, rehabilitation services and aids, educational services, etc.

Individual rehabilitation programmes were also extended during the period of martial law. For enterprises and organisations of public associations of persons with disabilities, the right to use tax benefits has been extended for the period of martial law and for two calendar quarters after its termination or cancellation, if the term of such permission expired after February 24.⁶⁴

According to the survey conducted by the National Assembly of Persons with Disabilities of Ukraine among the persons with disabilities,

” The largest number of respondents during the survey (approximately the beginning of July) received the monetary housing assistance for the IDPs (132 persons or 62.3%), the non-recurring financial assistance for the persons whose work (economic activity) has been temporarily suspended (22 persons or 10.4%), vouchers (certificates from the Ukrainian Red Cross Society (13 persons or 6.1%)), whereas 28 persons or 13.3% still have not received the assistance. The remaining respondents have received financial transfers from the national and international public institutions, humanitarian assistance, medicines etc.⁶⁵

64. Resolution of the CMU „Some issues of using tax benefits for enterprises and organisations of public associations of persons with disabilities in the conditions of martial law on the territory of Ukraine” No. 323, of March 19, 2022. URL: <https://zakon.rada.gov.ua/laws/show/323-2022-%D0%BF#Text>

65. Analytical report following the survey among the women and men with disabilities and legal representatives of legally incapable persons and children with disabilities regarding issue of the certificate and assistance for the internally displaced persons. – Kyiv, the National Assembly of Persons with Disabilities of Ukraine, 2022. P. 7 -9.

The data of this survey also demonstrate that the need to re-register the place of residence to receive payments could cause a delay in such payments.

” 168 persons (79.2 %) informed of no difficulty receiving the disability pension/assistance. At the same time, 44 respondents (20.8 %) noted that the principal challenge was a delay in payments, in particular, due to the need to be re-registered at the new place of residence etc.⁶⁶

At the same time, the persons with disabilities claim that their financial position is getting worse.

” Expenses for rental of accommodation, food, medicines, personal hygiene products, medical and rehabilitation services, utility services grew in the vast majority of cases and made 10 to 40% on average. Only 27 persons (12.7%) said that no expenses had grown. This situation corresponds to the information received in response to the question on lower expenses. The survey demonstrated that no expenses had increased for 124 respondents (58.5%)/ The expenses went down by 10 to 40% only for 50 persons (23.6%) since they limited themselves in food costs (14 persons) and clothes (12 persons), stopped paying for food since they had access to free meals (8 persons), personal hygiene products (3 persons), medical and rehabilitation services (2 persons), transportation (1 person) etc.⁶⁷

The considerable share of the persons with disabilities rely on humanitarian aid.

” The humanitarian aid has been and still is one of the key types of assistance: it has been granted to 179 respondents (84.4%), including 150 women. The overwhelming majority of the respondents surveyed (90 persons or 42.5%) received such aid from volunteers, 65 persons (30.7%) — from public associations of persons with disabilities, 57 persons (26.9%) — from the public authorities, 46 persons (21.7%) — from the humanitarian centre, and 40 persons (18.9%) — from other non-governmental organisations and friends/relatives/acquaintances.⁶⁸

Another separate matter is the legally incapable persons whose guardians have left them for other regions of Ukraine or other countries. The Office of the Ukrainian Parliament Commissioner for Human Rights has already started the respective monitoring, which can be the first step on the way to resolve this issue.

Children

Children who moved within the borders of Ukraine with their parents, guardians, relatives or

66. Ibid. P.9.

67. Ibid. P.9.

68. Ibid. P.9.

institutions in which they stayed after the start of the full-scale armed aggression of Russia are internally displaced persons and can be officially registered and receive an IDP certificate. Children - IDPs have the right to receive housing allowance, which, like for persons with disabilities, amounts to UAH 3,000, i.e. it is higher compared to other persons. Children who are registered as IDPs are also provided with state targeted support, in particular, with free baby food for children under one year of age and free food for some other categories of children, they have preferential payment for accommodation in student dormitories, such children are also entitled to social scholarships, priority the right to enrol in kindergartens and schools, etc. However, human rights organisations underlined the problem of enrolling IDP children in higher education institutions in case of the absence of documents.⁶⁹

In addition, children have the right to financial assistance from international organisations, which was mentioned above, and children, as a rule, is one of the main criteria for receiving such additional financial assistance. In general, children continue to receive the social benefits and benefits that were previously assigned.

After February 24, 2.3 million children left the territory of Ukraine (according to data at the end of June), there were almost 700,000 school-age children abroad, of whom 30,000 returned to Ukraine.⁷⁰ According to information as of June 1, 4,177 children from institutions were evacuated outside Ukraine, including 2,382 orphans and children deprived of parental care.⁷¹

Since 2014, a certain judicial practice has been formed regarding the registration and/or receipt of payments upon the birth of a child. Thus, missing the deadlines for registration of child birth assistance was the subject of consideration by the Supreme Court. The Supreme Court stated that

” ...benefit at the birth of a child by its nature is help to the child itself, not to its parents. The impossibility of one of the parents applying in a timely manner to the body that assigns assistance at the birth of a child leads to a violation of the child's interests.⁷²

In the first months of the war, the Government of Ukraine simplified the procedure for taking children abroad and allowed crossing the border using internal passports, birth certificates, without the notarised permission of the other parent, etc. The procedure for the departure of groups of children abroad for recovery and recreation during martial law was also simplified. A significant number of children received temporary protection status in EU countries and even started schooling in host countries. In order to obtain more information about the stay of children, the Government plans to conduct additional monitoring of consular records of children. At the same time, parents are not obliged to register their children at consulates.

According to the human rights defenders:

” Despite the assurances of the Ministry of the Social Policy of Ukraine on 23 February 2022 that there had been evacuation plans since 2018, and that those plans were annually updated and submitted to the State Emergency Service as classified information, and that

69. Key problematic issues of protecting the rights of victims of armed aggression against Ukraine 05.08.2022. URL: <https://www.donbasssos.org/zahyst-postrazhdalyh-vid-agresii/>

70. There are 640,000 Ukrainian children abroad. 04.08.2022/Olena Cherkasets/Ukraine Moloda/ URL: <https://umoloda.kyiv.ua/number/0/188/168438/>

71. <https://www.ukrinform.ua/rubric-presshall/3496685-zahist-prav-ditej-pid-cas-vijni-protidia-nasilstvu.html>

72. See. Resolution of the Supreme Court of February 14, 2018 in case № 591/610/16-a

the social protection system was ready for any developments, those institutions were not evacuated in a timely manner. The Ministry promised that, in case the situation was aggravated, in particular, in Donetsk and Luhansk Regions, there would be organised evacuation of the people under the care at the assisted living facilities for mentally handicapped persons and geriatric departments as well as patients of the inpatient departments of the territorial social service centres in the first place. However, after the full-scale invasion had started, only residents of some assisted living facilities in Luhansk Region were relocated to the other regions of the country in a timely manner.⁷³

According to the survey conducted among the executives of the facilities on assessment of the needs and problems on activities of the social protection facilities and facilities providing psychiatric aid in Kyiv, Sumy, Chernihiv Regions and Kyiv City, which was conducted from 28 February for two months, the material need of certain facilities for the medicines was established:

” It was also found out that some of the facilities had not equipped their shelters for two months of the war (3 out of 15 respondents), and only 5 out of 15 facilities had partly equipped their shelters. Only 3 out of 15 facilities had the food stock for more than two months. 6 out of 20 facilities said that the problems of adequate supplies were caused by disruption of the supply chains. Humanitarian aid was granted to 14 out of 20 facilities by their request after the territories had been deoccupied.⁷⁴

The experts have summarised the following challenges faced by the facilities in the above-mentioned regions:

” lack of shelters with enough space for all persons under care and staff; lack of strategic food, personal hygiene and medical stock, which can without limitation result from inefficient planning and budgeting; lack of staff; lack of backup technologies for no electric power and water supply and disconnection of the Internet; formal safety and evacuation plan that cannot be implemented in practice. Moreover, the issue of timely and inclusive distribution of humanitarian aid still has not been resolved. The data of the survey confirm the assumption of the problems associated with collection and processing of data on humanitarian needs, which must be effected by the local and military administrations.⁷⁵

Other categories of persons

On April 6, 2022, the Constitutional Court of Ukraine made a decision in the case of enhanced social

73. I. Fedorovych, K. Avtukhov, M. Tarasova, O. Prashko, O. Temchenko Preliminary Review: Custodial Facilities in Ukraine during the War. Kyiv. – 2022. – 43 p.

74. Ibid.

75. Ibid.

protection of military personnel based on the constitutional complaint of Serhiy Oleksiyovych Polishchuk.⁷⁶ In the decision of the Constitutional Court of Ukraine, it was noted that the Constitutional Court takes into account the realities of today regarding Russia's armed aggression, the role of the Armed Forces of Ukraine and other military formations in the defence of the Ukrainian state, its sovereignty, independence and territorial integrity. The Constitutional Court recognised that the constitutional obligation of the state to ensure enhanced social protection of military personnel (Articles 17, 46 of the Constitution of Ukraine) is more significant than any goals, the achievement of which was defined by the legislator as the basis for introducing a restriction on the right to receive one-time monetary assistance in an increased amount in the case of a change in the disability group, an increase in the percentage of the loss of working capacity by time frame. Accordingly, the limitation on the payment of a one-time cash benefit in connection with recognition of disability or the degree of loss of working capacity without such a recognition of disability, provided for by the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families", is recognised as not in conformity with the Constitution of Ukraine.

After the adoption of the aforementioned decision, the Verkhovna Rada of Ukraine adopted amendments to the relevant article by the Law of Ukraine "On Amendments to the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" Regarding the Appointment and Payment of One-time Cash Assistance." (July 29, 2022).⁷⁷

In addition to making amendments to the provision of servicemen, guarantees of social and legal protection provided by the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" were extended to other categories of persons: participants in territorial defence, members of voluntary formations of territorial communities during their participation in events preparation of voluntary formations of territorial communities, as well as during their performance of territorial defence tasks.⁷⁸

SUMMARY

Proper functioning of the social protection system and support of persons affected by the war remains a challenge for Ukraine amidst an extremely difficult economic situation caused by Russia's armed aggression. Since the beginning of Russia's full-scale invasion of Ukraine, the social protection system has had the two main tasks: maintenance of social payments, benefits and pensions stipulated by the current legislation, provision of social services, as well as support to internally displaced persons and persons affected by the armed aggression.

Thus, no radical changes or innovations in the social protection system have been introduced, except for the transformation of the monthly targeted aid for IDPs into housing assistance and de facto abolition of the previous criteria for the receipt thereof. The national legislation has been successfully and promptly amended to maintain the payments of previously granted social payments, aids, benefits as well as extend the terms of certain medical documents such as a certificate confirming the disability group. In addition, the Ukrainian government managed to build a system of the distribution of international aid to affected persons aimed at maximum coverage of vulnerable categories of the persons in all regions and limiting the possibility of

76. The Decision of the Constitutional Court of Ukraine (the Second Senate) in the case on the constitutional complaint of Serhiy Oleksiyovych Polishchuk regarding compliance with the Constitution of Ukraine (constitutionality) para. 4 Article 163 of the Law of Ukraine «On Social and Legal Protection of Servicemen and Members of Their Families» (the case of enhanced social protection of military personnel) of April 6, 2022, case № 3-192/2020(465/20), procedure № 1-p(II)/2022 URL: <https://zakon.rada.gov.ua/laws/show/v001p710-22#Text>

77. The Law of Ukraine „On Amendments to the Law of Ukraine „On Social and Legal Protection of Servicemen and Members of Their Families” regarding the appointment and payment of one-time cash assistance No.2489-IX of July 29, 2022. As of August 23, it has not entered into force.

78. Ministry of Economy: Information on the field of labour relations under martial law.

URL: <https://www.kmu.gov.ua/news/minekonomiki-informaciya-shchodo-sferi-trudovih-vidnosin-v-umovah-voyennogo-stanu>

receiving aid from one UN agency only. Despite certain duplications and inconsistencies in the criteria and categories of recipients, this is the first time this level of coordination is ensured.

In order to ensure that the information reaches persons affected by war, a unique electronic platform, „eDopomoga“, has been developed, which already allows receiving a full range of information and advice on social support and benefits, as well as registering and applying for them. This points to the country's continued digitisation course, even during the war, can be noted.

However, there is still a large number of issues. In particular, there are cases when the Pension Fund of Ukraine refuses to pay pensions to persons on the TOTs of the ARC, despite the previously adopted legislation and court practice. Similarly, Ukrainian citizens abroad face issues with continuing receipt of pensions and social benefits. The state's policy regarding the financing/evacuation of institutions for the stay or permanent residence of children, persons with disabilities, elderly persons, etc., is unclear. Any measures will be complicated with the beginning of the autumn and winter period. The limitation of the period of granting monetary aid by international organisations (usually 3 months) also raises concerns.

The right to equality and protection against discrimination in times of war in Ukraine

GENERAL OVERVIEW

International standards

Discrimination and related intolerance are not just problems that individual nations and the international community need to address in peacetime. It is equally important to address them in times of war as well, as inequality and exclusion are one of the root causes of conflict and, very often, one of its consequences.

The Geneva Conventions⁷⁹ provide for the humane treatment of civilians „without any adverse distinction based, in particular, on race, nationality, religion or political opinion“. The humane treatment of civilians without adverse distinction based on race and any other similar criteria is also recognised under customary international law, which is reflected under common Article 3 of the Geneva Conventions. This states that “persons taking no active part in the hostilities (...) shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”⁸⁰. This includes the equality of treatment while crossing the borders of the state to safety.

Protection against discrimination is also guaranteed under all human rights treaties, including UN’s International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); International Convention on the Elimination of All Forms of Racial Discrimination (1965) and Convention on the Elimination of All Forms of Discrimination against Women (1979). In the system of law of the Council of Europe it is established by both the European Convention on Human Rights and the European Social Charter. In the latter document, Article E, which draws its inspiration from Article 14 of the European Convention on Human Rights, prohibits all forms of discrimination. It confirms the right to non-discrimination which is established implicitly or explicitly by a large number of the European Social Charter provisions.

The principle of equality underlying article E implies not only that all people in the same situation must be treated equally but also that people in different situations must be treated differently. The Parties fail to respect the the European Social Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are different. In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, Article E is considered not only to prohibit direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all⁸¹.

In times of war it is especially important to pay attention that retrogressive measures cannot be introduced or applied in a discriminatory manner whether directly or indirectly, or in a formal or substantive manner.⁸² This principle requires that any discriminatory practices related to laws or

79. For instance, article 13 of the Fourth Geneva Convention 1949.

80. The case of Mucić et al decided by the International Criminal Tribunal for the former Yugoslavia (ICTY) held that common article 3 also applies to international armed conflict and it has become a part of customary international law (which was alluded to in the decision of Akayesu by the International Criminal Tribunal for Rwanda (ICTR)).

81. ECSR, Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52; European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36.

82. See: Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

policies that distinguish between groups on grounds of protected characteristics such as e.g. sex, race, ethnicity or religion shall be eliminated immediately.

Furthermore, the prohibition of discrimination extends beyond a mere negative duty to avoid overtly discriminatory practices. It requires respect for all groups and individuals and, when resources are limited, the State has a duty to adopt measures to protect those most at risk.⁸³ As the Committee on Economic, Social and Cultural Rights has emphasised “policies and legislation should not be designed to benefit already advantaged social groups at the expense of others”⁸⁴

Ukrainian regulations and challenges of implementation

The general prohibition of discrimination is enshrined in Article 24 of the Constitution of Ukraine, which establishes the equality of constitutional rights and freedoms of citizens and equality before the law. The prohibition of privileges or restrictions on the basis of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics is also defined. Foreigners and stateless persons have the same rights and freedoms as citizens of Ukraine in accordance with Article 26 of the Constitution of Ukraine.

Constitutional anti-discrimination provisions were detailed in the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" dated September 6, 2012, which clearly prohibits both direct and indirect discrimination, as well as oppression, which is defined as a form of behaviour that degrades human dignity or creates a tense, hostile, offensive or disparaging atmosphere as a form of discrimination/incitement to discrimination, aiding discrimination, harassment.

The mechanism for liability for the offences related to discrimination remains inefficient. Refusal from reasonable adaptation as a form of discrimination remains at the level of draft laws. It is still necessary to expand the list of the protected attributes discrimination on the basis of which is forbidden.

After the start of a full-scale Russian invasion in Ukraine, new issues and problems regarding discrimination can and will arise, IDPs, war-affected persons and other categories of people can experience discrimination in many areas of life, including in the search for housing and employment, evacuation, social protection etc. The most spread form of discrimination against IDPs and persons affected by the war is the so-called inversion (indirect) discrimination, when it comes to the application of the same rules to persons who are in a significantly different situation.⁸⁵

One of the first issues raised was the question of discriminatory treatment of foreigners during evacuation, in particular the refusal of students from African countries to get on evacuation trains because of their skin colour. However, the Ukrainian Helsinki Human Rights Union, the ZMINA Human Rights Center and a number of other human rights organisations conducted their investigations and published statements in early March about the absence of racial and other discrimination during the evacuation and border crossing of foreign students and foreigners in general. Due to the general tense situation and huge queues, especially on the Ukrainian-Polish border, the infrastructure cannot withstand, priority is given to women with children, pregnant women, and elderly people. Children with disabilities and persons with disabilities of the 1st

83. See: Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 13.

84. See: Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 11.

85. Enhancing the National Legal Framework in Ukraine for Protecting the Human Rights of the Internally Displaced Persons. Revised Baseline Analysis./S. Zayets, O. Lunova, A. Fedorova, K. Korkelia, G, Khrystova. Kharkov: Pravo – 2019. P.34

group are allowed at the borders out of turn.⁸⁶ For all other persons, the usual queue rules apply. However, human rights organisations received information about several cases of discrimination, which can indeed occur not only in relation to foreigners, but there were also reports about the impossibility of getting on evacuation trains for people with lack of mobility, people in wheelchairs, about not giving priority to women with children, etc. that "may arise in the conditions of military evacuation, a difficult humanitarian situation, general stress and fear among many evacuees, but it has nothing to do with the official rules or policies of the Ukrainian authorities."⁸⁷ In addition, there is no separate green corridor for foreigners at the borders and railway stations and was not planned. However, separate hotlines were organised for foreigners to make inquiries and organise assistance. *Therefore, certain cases of violations of the established rules, manifestations of discrimination against different categories of persons during evacuation are caused by fear and the human factor, the inability of the system and infrastructure to withstand large flows of people, are isolated and not related to the official rules established by the state.*

Certain cases of violations of established rules, manifestations of discrimination against different categories of persons during evacuation and settlement may take place. More often, such discrimination is experienced by marginalised vulnerable categories of the population. However, participation in discriminatory actions or blatant disregard of statements regarding discrimination by representatives of the authorities should be grounds for appropriate response and prosecution.

SPECIFIC ISSUES

International standards

Armed conflicts and situations of instability exacerbate pre-existing patterns of discrimination against different vulnerable groups of society, exposing them to heightened risks of violations of their human rights.

One of such groups are women. War has devastating and disproportionate impacts on women and girls who are at heightened risk of abuse, trafficking and violence. Access to essential services such as health care, including sexual and reproductive health services can be disrupted, with women and girls being at a greater risk of unplanned pregnancy, maternal mortality and morbidity, severe sexual and reproductive injuries and contracting sexually transmitted infections, including as a result of conflict-related sexual violence⁸⁸. Internally displaced women can be disproportionately affected by the loss of livelihoods during displacement. They may for example not be able to practice their livelihoods due to loss of land and livestock.

In 2000, the UN Security Council adopted resolution No.1325 on Women, Peace and Security, which calls for the increased participation of women and the incorporation of gender perspectives in all UN peace and security efforts (including participation of women in decision-making and peace processes, gender perspectives in training and peacekeeping and gender mainstreaming in UN reporting systems). Since then, the UN Security Council has adopted a number of resolutions on women, peace and security. In October 2020, the UN Human Rights Council (Resolution A/HRC/RES/45/28⁸⁹) recognised the crucial role of women in the prevention and resolution of conflicts and in peacebuilding and confidence-building, the importance of their full, equal and meaningful

86. Myrnyi M. Evacuation of foreigners from Ukraine: is there really racial discrimination? URL: <https://zmina.info/articles/evakuacziya-inozemcziv-z-ukrayiny-chy-spravdi-ye-rasova-dyskryminacziya/>

87. Human rights activists call on the states neighboring Ukraine to open their borders for citizens of all countries who are forced to escape from the war. March 1, 2022. URL: <https://zmina.ua/statements/pravozahysnyky-zaklykayut-susidni-z-ukrayinoyu-krayiny-vidkryty-kordony-dlya-gromadyan-usih-krayin-yaki-zmusheni-ryatuvatysya-vid-vijny/>

88. See: more OHCHR, Women's human rights and gender-related concerns in situations of conflict and instability, available at: <https://www.ohchr.org/en/women/womens-human-rights-and-gender-related-concerns-situations-conflict-and-instability>

89. Available at: <https://undocs.org/en/A/HRC/RES/45/28>

participation and full involvement in all efforts for the maintenance and promotion of peace and security. It called the High Commissioner to report to the Human Rights Council on the current state of play of the mainstreaming of the human rights of women and girls in conflict and post-conflict situations in the work of the Council.

Another groups highly exposed to the risks of violations of their human rights in the time of war are the elderly and people with disabilities. The lack of delivery of essential services to the population experienced during conflict and situations of strife and instability can have a disproportionate impact on these two groups of the population, again, often building on pre-existing situations of discrimination. During conflicts, many challenges arise for all civilians affected. These challenges are heightened for the elderly and people with disabilities, as institutional, attitudinal, and environmental barriers and risk factors are exacerbated in crisis or conflict situations. Therefore, it must be taken into consideration that the elderly and persons with disabilities can be at higher risk of harm during fighting and may require support from others to flee. They might also struggle to flee and seek shelter without assistance and access to assistive devices.

Last but not least, in times of war the risk of discriminatory treatment of non-nationals of the warring countries rises. Therefore, it must be stressed that, in time of war and in its aftermath all the rights must be enjoyed by all people without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. This includes the right to access to safety for all, regardless their legal status, nationality and race as well as access to asylum for those who want to seek asylum.

Protection of specific categories of people

Special attention should be paid to evacuation of social welfare institutions, boarding schools, institutions and centers in which people were on a permanent basis. Including geriatric institutions, psychoneurological dispensaries, children's homes – boarding schools and other institutions, deserves special attention. There was no clear order, organisation and evacuation plans, as it was not foreseen and the procedure (the corresponding legal act was adopted only in April) of mass evacuation of children and adults with disabilities.⁹⁰ Thus, the human rights defenders note that the state has not overcome the challenges associated with evacuation of persons with disabilities in the custodial facilities either for eight years since the start of the war or for several months since the beginning of the full-scale invasion, in particular:

” assessment of the condition of supply and development of safe shelters for artillery shelling or missile strikes in custodial facilities; evacuation plans for each custodial facility, implementation of implementability thereof in 2022; standards for support of adults in the custodial facilities, including persons with disabilities; standards for possible relocation of persons from custodial facilities abroad, including legally incapable persons under care of the facility; lack of the specialised or at least minimally adapted evacuation vehicle; lack of financing to organise and carry out evacuation; lack of financing to organise hosting of the evacuated persons in the safe regions and institutions; budgeting of the institutions hosting persons evacuated from the custodial facilities

90. I. Fedorovych, K. Avtukhov, M. Tarasova, O. Prashko, O. Temchenko Preliminary Review: Custodial Facilities in Ukraine during the War. Kyiv. – 2022. – 43 p.

action plans for the event of actual seizure or surrounding of the facilities...⁹¹

The experience of evacuation of persons with disabilities since 2014 would encourage the government to develop and introduce the laws and regulations that would allow considering the matter of disability during evacuation. In fact, it has been provided for since 2016 that the public evacuation plan has to contain separate section on planning evacuation of persons with disabilities and other social groups with limited mobility⁹². The respective section of the Evacuation Activity Planning Guidelines⁹³ describes in detail what needs to be done to plan the evacuation. Despite the details, the human rights defenders had emphasised impossibility of implementation of those laws and regulations before the full-scale invasion.

” For instance, it is actually impossible to collect data on persons with disabilities (place of residence/stay, type of disability, ability to move around on their own, need for accompaniment or medical support etc.). Firstly, no public authority has such detailed information, and they do not interact; secondly, such data can change all the time, so they need to be updated on a regular basis; thirdly, some of the information is personal data processing of which requires consent, and personal information, including the one on disability, needs to be protected. ‘Provision of vehicles with special equipment to get on/off the vehicle and carry persons with disabilities’ also seems unrealistic since there are few vehicles available, especially at the level of district centres.⁹⁴

The experience of evacuation during the full-scale invasion confirms that persons with disabilities could rely on their family resources or volunteers’ support.⁹⁵ The survey conducted by the National Assembly of Persons with Disabilities confirms the tendency of minor state support.

” The evacuation assistance was mostly granted by friends/relatives/acquaintances (53 persons or 25%), volunteers (32 persons or 15.1%), public authorities (11 persons or 5.2 persons) and public associations of persons with disabilities (eight persons or 3.8%). 88 persons surveyed (41.5%) evacuated/left themselves.⁹⁶

The declarative nature of one more document was revealed by the full-scale invasion. In 2018, the Procedure⁹⁷ for identifying and accompanying persons with disabilities who reside in the area of

91. I. Fedorovych, K. Avtukhov, M. Tarasova, O. Prashko, O. Temchenko Preliminary Review: Custodial Facilities in Ukraine during the War. Kyiv. – 2022. – 43 p.

92. Resolution of the Cabinet of Ministers of Ukraine dated 30.10.2013 No. 841 “On Approving the Evacuation Procedure in Case of Threat or Occurrence of Emergencies” // <https://zakon.rada.gov.ua/laws/show/841-2013-%D0%BF>

93. Order of the Ministry of Internal Affairs of Ukraine dated 10.07.2017 No. 579 “On Approving the Methodology for Planning the Evacuation Actions” // <https://zakon.rada.gov.ua/laws/show/z0938-17>

94. Alternative Report on Ukraine’s Implementation of the Convention on the Rights of Persons with Disabilities of the UN Committee on the Rights of Persons with Disabilities, 2015-2020. – Kyiv, Fight For Right NGO, 2020. – 34 p.

95. Iryna Vyratosu. Evacuation of Persons with Disabilities: Test Failed by the State. <https://zmina.info/articles/evakuacziya-lyudej-z-invalidnistyu-provalenyj-derzhavoyu-ispyt/>

96. Analytical report following the survey among the women and men with disabilities and legal representatives of legally incapable persons and children with disabilities regarding issue of the certificate and assistance for the internally displaced persons. – Kyiv, the National Assembly of Persons with Disabilities of Ukraine, 2022. P. 6.

97. Resolution of the Cabinet of Ministers of Ukraine dated 18.04.2018 No. 282 “On Approving the Procedure for Identifying the Persons with Disabilities and Other Social Groups with Limited Mobility Residing in the Area of an Emergency or Possible Impact, and Organising Their Accompaniment” // <https://zakon.rada.gov.ua/laws/show/282-2018-%D0%BF>

an emergency or possible impact was approved. This procedure provides for identification of the respective category of persons by attending their place of residence, assessing their vital needs and determining the type of assistance they need.

The war-affected persons, displaced persons have the same rights and freedoms as the rest of the population of Ukraine. However, they may need additional state activities to exercise their rights. The prohibition of discrimination against IDPs based on their displacement is enshrined in Article 14 of the Law of Ukraine "On Ensuring the Rights and Freedoms of IDPs". However, since 2014, there have been rare cases of discrimination against IDPs, especially in the host community in spheres such as housing and employment. These spheres are still relevant today. IDP women and children, who often become objects of sexual violence, human trafficking need special protection and attention.

The human rights defenders had emphasised inaccessibility of shelters before the full-scale invasion. Despite the existing laws and regulations, they have practically not been implemented. Moreover, there is no clear mechanism for monitoring and controlling accessibility of shelters.⁹⁸ Obstacles on the way to shelters are also confirmed by persons with disabilities. "When asked whether there was an accessible shelter/bomb shelter near their home, only 283 respondents (21.5%) gave positive answer; 965 respondents (73.3%) said shelters were absent. 29 persons informed that such premises were located far away, and 23 persons did not know whether there were any."⁹⁹

Persons affected by the war, who have moved, have the same rights and freedoms as the rest of the population of Ukraine, however, they may need additional state measures to exercise their rights. The prohibition of discrimination against IDPs on the basis of their displacement is enshrined in Article 14 of the Law of Ukraine „On Ensuring the Rights and Freedoms of IDPs”¹⁰⁰. However, since 2014, there have been reported cases of discrimination against IDPs, especially in the host community in areas such as housing and employment. These areas are still relevant today. Women and children of IDPs, who often become objects of sexual violence, need special protection and attention.

In addition, certain discrimination can be detected in the system of providing and charging certain types of social assistance, especially one-time benefits, to those who first registered, leaving a significant number of recipients, who meet the established criteria, without appropriate payments. Thus, in the first weeks of the war, only those who registered on the web-portal and had smartphones were able to introduce support through the DIIA (eSupport) portal and provide, in particular, a one-time payment of UAH 6,500 to workers in the territories where active hostilities were taking place. The government quickly cancelled the programme of such support, spending more than UAH 20 billion. Even only a third of registered people received the benefit mentioned. Such positive actions of the state are rather a manifestation of failure to assess the number of potential recipients and the available funds for the corresponding payments.

The civilians whose health has been affected as a result of the aggression of the Russian Federation need protection and state support. The rules in effect before the full-scale invasion did not consider an aggregate of the affected persons whose health had deteriorated. Thus, in pursuance of the amendments to para. 4 of part 2 of Article 7 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection", in 2017, persons with disabilities as a result of the

98. Alternative Report on Ukraine's Implementation of the Convention on the Rights of Persons with Disabilities of the UN Committee on the Rights of Persons with Disabilities, 2015-2020. – Kyiv, Fight For Right NGO, 2020. – 34 p.

99. Analytical report on the survey on access of persons with disabilities to different types of assistance, services at their permanent of residence during the martial law. – Kyiv, The National Assembly of Persons with Disabilities of Ukraine, 2022. – P. 13.

100. The Law of Ukraine "On Ensuring the Rights and Freedoms of IDPs" <https://zakon.rada.gov.ua/laws/show/1706-18#Text>

war included the civilians who had developed a disability as a result of wounds or other health injuries <...> from explosives, ammunition and military weapons in the territory of the anti-terrorist operation, actions taken to ensure national security and defence, to repulse and contain the armed aggression of the Russian Federation in Donetsk and Luhansk Regions before 1 December 2014, and starting from 1 December 2014 — in the territory of the anti-terrorist operation, actions taken to ensure national security and defence, to repulse and contain the armed aggression of the Russian Federation in Donetsk and Luhansk Regions where the public authorities exercised their powers and in the settlements located at the front line.¹⁰¹ According to the human rights defence organisations:

” Unfortunately, such approach does not fully represent the position of the civilians. Firstly, the proposed rules exclude the population of certain areas of Donetsk and Luhansk Regions where the government does not exercise its authority. Secondly, they obviously fail to consider the health impairments developed as an indirect result of the injury. For instance, that could be effects of the post-traumatic stress disorders, freezing while hiding from the shelling.¹⁰²

Moreover, the affected persons who had not been assigned a disability had difficulty getting rehabilitation services and rehabilitation means.

In times of war, vulnerable categories of persons become even more vulnerable. Representatives of the Roma minority complained of discrimination, however, these complaints and claims of discrimination were mostly related to their treatment abroad. Careful checking by migration services of EU countries were often found Hungarian citizenship, which they did not mention when submitting documents for temporary protection status and financial assistance. In the Czech Republic, due to the influx of Ukrainian Roma, changes were made to the rules for providing assistance and registering temporary protection. The presence of citizenship of one of the EU states was interpreted as a reason for denying them assistance and temporary protection. At the same time, Hungary directly did not provide such persons (in fact, its citizens) with either a separate status or assistance, which is why many Roma returned to Ukraine. At the same time, it must be taken into account that the Roma population was often discriminated against and faced with xenophobia even before the war, as evidenced by the reports of both national and international organisations.

Representatives of the LGBT community and public organisations talk about several possible discrimination factors that they can come across, including the lack of identity documents and the inconsistency of documents with their gender identity both when displaced within the country and when leaving its borders¹⁰³, the risk of persecution in mass accommodation centers, shelters, access or limited access to essential HIV therapy or lifelong hormone replacement therapy.¹⁰⁴ At the same time, as of the end of August, no mass violations of the principle of non-discrimination

101. Subpara. 3 of para. 4 of Part 2 of Article 8 of the Law of Ukraine “On the Status of the War Veterans, Guarantees of Their Social Protection”.

102. Rehabilitation of the victims of the conflict. Does the government offer anything but a disability and crutches? / B. Boisa, under the editorship of O. Pavlichenko, O. Martynenko / Ukrainian Helsinki Human Rights Union. — K., 2018. — 64 p.

103. The mass media reported on the case when due to the active military actions of the Russian Federation on the territory of Ukraine and the threat to her own safety, a transgender woman, who has the gender marker „M” in her passport, was unable to cross the border of Ukraine, because during the period of martial law in Ukraine, the travel of citizens abroad is temporarily restricted Ukrainian males aged 18 to 60 years. See det. Ensuring the rights of the LGBT community in conditions of armed conflict. URL: https://helsinki.org.ua/articles/zabezpechennia-prav-lhbt-spilnoty-v-umovakh-zbroynoho-konfliktu/#_ftn2

104. IDAHOT: LGBT persons fleeing war face special risks and protection. Office of the Council of Europe in Ukraine. News and events. May 16, 2022.

against this category of persons were reported.

Save for discrimination and possible displays thereof, some of the professionals note positive phenomena as well: less gender discrimination, which means active involvement of women into all the social processes, including service with the Armed Forces of Ukraine and participation in the territorial defence.

In general, the analysis of the situation based on public materials and reports of non-governmental, human rights organisations does not contain information about mass manifestations of discrimination of one or another group of people in Ukraine since the beginning of the full-scale Russian invasion or the discriminatory policy of the authorities. There is also no judicial practice on this issue. However, those problems that took place before February 24, can obviously be aggravated due to the general difficult situation in the state.

SUMMARY

The issue of discrimination of internally displaced persons appeared in Ukraine with the beginning of Russia's aggression in 2014, including employment and pension provision discrimination, restriction of the access of IDPs from Crimea to bank accounts, etc. However, proactive measures of state authorities together with the public sector enabled positive shifts in overcoming the stigmatisation and discrimination of this category of persons.

To prevent the discrimination of IDPs and persons affected by Russia's armed aggression, the state should ensure that they have access to all rights on an equal basis with other citizens, while understanding the vulnerability of IDPs and their need for additional protection and special benefits.

Analysis of the situation based on open-source materials and reports of NGOs and human rights organisations since the beginning of the full-scale war on 24 February 2022 indicates numerous cases of discrimination against certain groups of persons in Ukraine or discriminatory policy of the authorities. No court practice on the matter is available. However, the problems that existed before 24 February can obviously be aggravated due to the overall difficult situation in the country.

Employment and labour rights in times of war in Ukraine

GENERAL OVERVIEW

International standards

Employment and labour rights are fundamental human rights enshrined in core international human rights instruments and the ability to exercise these rights in the workplace is prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.

In the law of the United Nations, employment and labour rights are set out in core human rights conventions, including inter alia, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966). They are most explicitly articulated in the conventions of International Labour Organisation (ILO), the expert branch of the UN in the field of labour and employment rights.

In the law of the Council of Europe, the European Social Charter (Revised) establishes employment and labour rights in the majority of its provisions, though the European Convention on Human Rights (ECHR, 1950) and the European Convention on the Legal Status of Migrant Workers (ETS No. 093) must also be mentioned while discussing employment and labour rights from the perspective of the Council of Europe conventions. The rights enshrined in the ESC are of utmost importance, their protection and provision must be perceived as basic duty of each state in all times, including the time of emergency such as war.

The impact of the military aggression on employment poses a serious challenge in terms of the obligation on States Parties laid down by the ESC in its very first provision on the right to work, Article 1§1 of the ESC, namely to maintain a high and stable level of employment with a view to realising the objective of full employment. Pursuant to the case-law of the ECSR, employment policy measures must be key elements of the response to the crisis. Article 1§1 of the ESC requires that States Parties apply a mix of “active” and “passive” labour market measures which are conducive to creating and preserving jobs, while adequately assisting in finding and/or qualifying for jobs. It further requires that such measures be adequately funded, notably as a function of unemployment levels.¹⁰⁵

Pertinent active labour market measures in the current crisis include facilitating flexible working arrangements, notably teleworking and work-sharing, up- and/or re-skilling measures to enhance workforce adaptability, and increased use of digital delivery of employment services (also Article 1§3 of the ESC). Passive measures that shall be applied by States Parties to the ESC since the outbreak of military conflict include innovative uses of unemployment benefit systems and other income replacement schemes (furloughs, short-time work, wage subsidies, basic/minimum income provision, etc.).

Article 3 of the ESC guarantees the right of every worker to a safe and healthy working environment. The war is an agent posing high risk to health and safety at work. A response in terms of national law and practice, covering both preventative and protective measures, is required if the rights set out in Article 3 are to be secured.¹⁰⁶ This involves the introduction of immediate health and safety

105. See Conclusions 2002, Article 1§1, Italy

106. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §224. See also Conclusions XIV-2 (1998), Statement of interpretation on Article 3§2 of the Charter (Article 3§1 of the 1961 Charter).

measures at the workplace such as e.g. the procedures of evacuation and personal protective equipment.

Other labour rights are also implicated in the current situation. Article 2 of the ESC guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3), and weekly rest periods (Article 2§5). Pursuant to the case-law of the ECSR on what constitutes reasonable working hours, it must be recalled that the defined outer limits must not be exceeded except in situations of force majeure.¹⁰⁷ In this respect, the ECSR also highlights that overtime work must be paid at an increased rate of remuneration pursuant to Article 4§2 of the ESC.

Protection against termination of employment without a valid reason guaranteed under Article 24 of the ESC must also not be overlooked during the war-time and in its aftermath. The case-law of the ECSR emphasises in this respect that termination of employment for certain reasons is explicitly prohibited under Article 24 as well as in the context of other provisions of the ESC, in particular, discrimination (Article 1§2, 4§3, 15 and 20), trade union activities and participation in strikes (Articles 5 and 6§4, see below), maternity (Article 8§2), family responsibilities (Article 27), worker representation (Article 28). The filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations (Article 24, Appendix para. 3.c), or temporary absence from work due to illness or injury (Article 24, Appendix para. 3.f) also do not constitute valid reasons for termination of employment.

Ukrainian regulations and challenges of implementation

The guarantee of labour rights during the war, for the entire population especially including vulnerable categories of persons, is essential for the ability of the population to provide themselves with livelihood, to integrate into the host community and to maintain and support the economy of the country.

Labour rights are enshrined in the Constitution of Ukraine: Article 43 fixes the right of everyone to earn a living in a freely chosen profession, the right to proper, safe and healthy working conditions; Article 44 – the right to strike, Article 45 – the right to rest. At the same time, according to Art. 64 on the possibility of restricting constitutional rights and freedoms, almost all labour rights are subject to restriction. Para. 3 of the Decree of the President of Ukraine No. 64/2022 of February 24, 2022 "On the imposition of martial law in Ukraine"¹⁰⁸ confirms the possibility of restricting human labour rights permitted by the Constitution:

” Due to the imposition of martial law in Ukraine, the constitutional rights and freedoms of man and a citizen, provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, may be temporarily restricted during the period of the legal regime of martial law, and temporary restrictions on the rights and legitimate interests of legal entities will also be imposed to the necessary extent and to the extent to ensure the possibility of introducing and carrying out measures of the legal regime of martial law, which are provided for by the first part of Article 8 of the Law of Ukraine «On the Legal Regime of Martial Law.

107. See for example Conclusions XIV-2 (1998), Article 2§1, Norway.

108. <https://www.president.gov.ua/documents/642022-41397>

In the Law of Ukraine «On the Legal Regime of Martial Law in Ukraine»¹⁰⁹, among the measures that can implement the military command together with the military administrations (in case of their formation), local authorities include «the introduction of compulsory labour for employable persons not involved in work in the defence sector and protection of critical infrastructure and not reserved for enterprises, institutions and organisations...». The nature of the work, the performance of which may involve said persons, is defined in the Law. In particular, this is the work of a defensive nature, socially beneficial works, etc. In order to implement this legislative provision, a separate Order was adopted. The procedure for involving employable persons in socially useful works under martial law was approved by Resolution of the CMU No. 753 of July 13, 2011, which was amended, in particular, in June 2022.¹¹⁰ This order not only determines the legal and organisational principles of involving employable persons for socially useful works in the conditions of martial law, but also the issue of social protection of such persons. The Order provides a definition of labour obligation as a short-term labour obligation during the period of martial law for the purpose of performing works of a defensive nature, as well as liquidation of man-made, natural and military emergency situations that arose during the period of martial law and their consequences, which do not require the mandatory consent of the person in respect of whom such labour obligation is introduced. When making a decision on the involvement of employable persons, selection criteria, types of work, and the approximate number of persons are determined. Moreover, a wide range of people can be involved, including the unemployed, IDPs, etc. Provisions on minimum wages, maximum working hours, job retention, etc. must be observed for socially useful works as part of compulsory labour during martial law.

In addition to the provision on labour obligation, after the beginning of the war, there was no special regulation of labour relations during the war, which caused certain problems, for example, with the possibility of taking long unpaid vacations, because during the year the employee had the right to only 15 days of such vacation. However, changes to the labour legislation were developed and adopted quickly enough. The main features of the regulation of labour relations during martial law were enshrined in the Law of Ukraine "On the Organisation of Labour Relations During Martial Law"¹¹¹ of March 15, 2022.

Thus, in the conditions of martial law, a probationary period can be established for all categories of persons upon employment, i.e., a wide list of persons, including IDPs, for whom probation is prohibited under Art. 26 Labour Code, could not be applied. Furthermore, in order to overcome the shortage of personnel and quickly attract the necessary employees, employers can conclude fixed-term employment contracts during the period of martial law or for the period of replacing a temporarily absent employee, they can transfer the employee to another job not stipulated by the employment contract, to which the employee has no contraindications due to his/her health condition. It is allowed to involve women in heavy, dangerous and underground work with their consent (Art. 9).

Changes have been made to the regulation of termination of employment both at the initiative of the employee, who does not have to work a two-week period, and at the initiative of the employer, who has obtained the right to dismiss the employee during the period of temporary incapacity or vacation, specifying the date of dismissal, which is the first working day, the next after the end of temporary incapacity for work specified in the document on temporary incapacity for work, or on the first working day after the end of the vacation. Along with the termination of labour relations, suspension of labour contracts at the initiative of one of the parties to the labour contract for

109. The Law of Ukraine "On the Legal Regime of Martial Law" 12.05.2015 № 389-VIII (with changes). URL: <https://zakon.rada.gov.ua/laws/show/389-19/ed20220401#Text>

110. Resolution of the CMU „The procedure for involving employable persons in socially useful works under martial law” No. 753 of July 13, URL: <https://zakon.rada.gov.ua/laws/show/753-2011-%D0%BF#Text>

111. The Law of Ukraine "On the Organisation of Labour Relations During Martial Law" No.2136-IX of March 15, 2022 with changes dated July 19, 2022 URL: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

the period of martial law is also allowed. At the same time, according to the explanations of the Ministry of Economy¹¹²,

” the main condition for the suspension of the employment contract is the absolute impossibility of the employer providing and the employee performing the relevant work.

Reimbursement of wages, guarantee and compensation payments to employees during the suspension of the employment contract is fully entrusted to the state that carries out military aggression¹¹³.

However, according to the professionals of NGO „Labour Initiatives”, before the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine on Optimisation of Employment Relations”¹¹⁴ dated 1 July 2022 that described the procedure for suspending the employment contract in detail was adopted, employers had abused the possibility of suspending employment contracts with their employees, sometimes used it to punish active employees (trade union activists, corruption identifiers) and often suspended employment contracts with their employees instead of redundancy or introduction of the part-time work or remote work. It was sufficient for the employer to specify “military aggression against Ukraine” as a cause of suspension of the employment contract, without any other specific actual causes that would make it impossible to work, even at the enterprises located outside the area of hostilities that still had other working employees who performed the labour functions equivalent to those whose contracts had been suspended. There was also information on the employees’ and trade unions requests to the State Labour Service to challenge the unlawful suspension of the employment contract and the possibility of the State Labour Service to adopt the de jure order on cancelling such suspension, but also on failure to approve the format of the order, which made it practically impossible to challenge the suspension of the employment contract.

Ukrainian legislation allowed the temporary transfer of an employee to distance and home work in accordance with Articles 601 and 602 of the Labour Code, among the reasons for which the threat of armed aggression was indicated. No new changes were made to the provisions of these articles, however, employers began to apply them extensively after February 24, 2022.

The Resolution of the CMU “Some Issues of Organising the Work of the Staff of Economic Operators in the Public Sector of Economy during the Martial Law” dated 26 April 2022 provided for the possibility of remote work of the staff of economic operators in the public sector of economy where there was organisational and technical capacity for performance of their official duties; outside Ukraine, it was possible in case of the business trip documented in accordance with the established procedure. When it drew attention to the legislative clauses on the remote work, NGO „Labour Initiatives” emphasised that the staff of the economic operations in the public sector of economy were made to choose: either to return to Ukraine to work or to resign although there was technical capacity for remote work abroad, as Resolution No. 481 was perceived as a “ban on working abroad”, which was confirmed by the lack of desire of many executives to document business trips for those employees who were outside Ukraine and could work remotely from abroad. Moreover, the employer’s right rather than obligation to make a decision on the remote work is prescribed by Article 602 of the Labour Code of Ukraine. Therefore, it was proposed to initiate legislative prescription of the list of the situations in which remote work (and work from home) had to be a mandatory alternative where it was actually possible to perform it out of the

112. https://ips.ligazakon.net/document/ME220171?an=141&snippet_id=snippet_79975

113. Worker’s rights during martial law// Labour protection and fire safety.

URL: <https://oppb.com.ua/articles/prava-pracivnykiv-pid-chas-voyennogo-stanu>

114. Law of Ukraine “On Amending

work place, in particular, in case of the active hostilities, military operations and threat of missile strikes, if the company had no safe shelter.¹¹⁵

With the beginning of the war, one of the main issues for both employers and employees was the issue of dismissal in the event of an employee's failure to be present at the workplace (including cases of moving to other regions of Ukraine, evacuation or going abroad). Before the adoption of the indicated above Law "On the Organisation of Labour Relations during Martial Law", there was no answer to this question, because non-appearance at workplace is absenteeism. On the other hand, there was no answer to the question of whether this can be considered a valid reason for non-appearance. Specialists of the State Labour Service explained that moving an employee from their place of residence is a valid reason for absence from work and there is no reason to fire such employee for absenteeism. But there is also no reason to pay such employee a salary/average salary or a part of it. The employer, in turn, has the right to record absenteeism at work, properly issue and demand for the employee to provide written explanations for absence at the workplace.

Currently, employers have several ways to resolve the issue in the event that an employee does not appear at work, such as suspending employment relations, issuing unpaid leave.

Unpaid vacations are provided for in Art. 12 of the Law "On the Organisation of Labour Relations under Martial Law". Para. 3 and 4 of the mentioned Article are quite similar at first glance: at the request of the employee, in the event of going abroad or receiving the status of an IDP during martial law, the employer must grant unpaid leave for the period specified in the application, but with a maximum duration of 90 days. At the same time, such leave can be granted without limitation of the period established by para. 1 of Article 26 of the Law of Ukraine "On Vacations".

The representative of the Office of the Ukrainian Parliament Commissioner for Human Rights informed of a large number of requests in connection with suspension of employment contracts and forcing of the employees to submit applications for an unpaid leave. A number of webinars were conducted, and the information was published on the official website in order to improve the situation.¹¹⁶

The professionals draw most attention to the fact that the Ukrainian legislation does not provide for the person's registration with the employment service and payment of the unemployment assistance in case of suspension of the employment contract. In fact, this situation leaves the employees whose employment contract has been suspended beyond the market without any subsistence means.

It is not established whether an employee can be dismissed after this period has expired, and the procedure for the employer's actions in case the employee does not appear at work is also not defined. Thus, the employer does not have the right to dismiss an employee without his application due to non-attendance because of hostilities, even if any contact with the employee has been lost, there are grounds to believe that the person has left the borders of Ukraine, they will be considered having their main place of work in Ukraine. Therefore, as of the beginning of August, a clear and unambiguous answer regarding the dismissal of such employees was not provided for in the national legislation.

Despite the provisions on the return of civil servants to the territory of Ukraine in the event that they

115.The proposals of Labour Initiatives NGO were transferred to the expert group during the meetings within the need assessment preparation.

116.Suspension of the Employment Contract during the Martial Law. Explanations dated 22 August 2022/Ukrainian Parliament Commissioner for Human Rights. Link: https://ombudsman.gov.ua/uk/news_details/prizupinennya-diyi-trudovogo-dogovoru-v-umovah-voyennogo-stanu

went abroad regarding the war, it is possible to take into account the clarification of the National Agency of Ukraine for Civil Service Issues, which was provided regarding the non-appearance of civil servants employee:

” In case of absence of a civil servant at the workplace, this fact must be recorded by different markings depending on the type of absence in the work time control document... If the reason for the public servant's absence is related to the need to protect himself or others from armed aggression, the threat of attack, or is otherwise related to the avoidance of danger to his life or health, such circumstances, especially in the conditions of martial law, should definitely be considered respectable.¹¹⁷

Therefore, even with regard to non-attendance of a civil servant, judge, etc., the procedure and grounds for dismissal are not clearly defined, and state authorities have clarified that an employee's absence from work in connection with hostilities cannot be qualified as absenteeism without a valid reason. Therefore, before finding out the reasons for the employee's absence and receiving written explanations from him, it is advisable to register him as an employee who is absent for unexplained or other reasons. This provision is also relevant under the conditions of an employee's absence from work in connection with hostilities, while at the same time the employer is able to provide the employee with working conditions in accordance with the terms of the employment contract.

With martial law, the length of working time and rest time also underwent changes. Working hours for employees of critical infrastructure facilities can be increased to 60 hours, and for employees with reduced working hours up to 40 hours per week. The day off on public holidays and non-working days are cancelled. The duration of weekly rest can be reduced to 24 hours, and annual leave to 24 calendar days.

Changes were also made in the area of wages. Employers are exempted from liability for violation of payment terms as a result of hostilities or other force majeure circumstances; even payment of remuneration after the resumption of the enterprise is allowed. However, the employer is not exempted from the obligation to pay it. Nevertheless, the bigger problem is the past-due salary to the employees of the companies located in the occupied territories. Such matters are resolved in certain cases.

Chapter III-B on the simplified regulation that has been added by the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine on the Simplified Regulation of Employment Relations in Small and Medium-Sized Businesses and Reducing the Administrative Burden upon the Entrepreneurship” dated 19 July 2022 contains the clauses in Article 495 that the employers that apply the simplified conditions do not have to keep some HR records and to draw up certain local acts on the matters to be covered by the employment contract. In particular, it includes documents on the work schedule, leisure time and leaves. However, in the opinion of NGO „Labour Initiatives”, all the actions by the employer or the employee must be recorded in supplemental agreements to the employment contract, which is an additional burden both for the employee and the employer and the HR department, which fails to simplify regulation of employment relations.

117. NAUCS Answers to questions about the effect of certain provisions of in the wording of the Law before July 19, 2022) of March 15, 2022 № 2136 URL: <https://nads.gov.ua/vidpovidi-na-aktualni-pitannya-roboti-derzhavnoyi-sluzhbi-u-voyennij-period/vidpovidi-na-zapitannya-shchodo-diyi-okremih-polozhen-zakonu-ukrayini-vid-15-bereznia-2022-r-2136-pro-organizaciyu-trudovih-vidnosin-v-umovah-voyennogo-stanu>

In addition to the mentioned changes in the labour legislation, certain changes related to the suspension of labour contracts, the right of the employer not to notify the employee two months in advance of a change in essential working conditions, the suspension of certain provisions of the collective labour agreement, restrictions on the activities of trade unions, banning of strikes. For example, the provision on the minimum deduction of 0.3% of the wage fund for the benefit of trade unions (for cultural and mass, health work) has been suspended.

SPECIFIC ISSUES

International standards

Armed conflicts and situations of instability are likely to deepen pre-existing inequalities in the labour market due to increase in the unemployment rates and pushing people into unprotected informal sectors of the economy. In this context is it worth noticing that in Ukraine, even before the war, although the situation was gradually, though slowly, improving, still women's employment was low (51 % , compared to 62 % for men in 2020, according to national statistics) and older women and single mothers still comprised the majority of Ukraine's poor.

Due to the above-mentioned occurrences it shall be stressed that the war must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the conflict. Indications are that women's employment has been placed at greater risk than men's by the war. Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate the European Social Charter rights such as non-discrimination in employment (Article 1§2), equal pay for women and men for work of equal value (Article 4§3), equal opportunities in employment, including in respect of working conditions, dismissal protection, vocational training and career development (Article 20) and reconciliation of work and family life, notably through non-discrimination of workers with family responsibilities, childcare provision and the granting of parental leave arrangements (Article 27).

Protection of specific categories of people

The implemented restrictions of most labour rights enshrined in the Constitution of Ukraine, the possibility of compulsory labour for employable persons and other changes also affect the labour and labour rights of vulnerable categories of persons. Thus, in accordance with the legislation of Ukraine in the pre-war period, it was forbidden to engage pregnant women, women with children under three years old, and persons with disabilities to work at night only in the absence of medical contraindications and with their consent. The introduced changes leave the ban on attracting pregnant women and women with a child under one year old. There are no exceptions for minor employees. As for persons with disabilities, the provision on the possibility of their involvement has been radically changed:

” during the period of martial law, the following persons shall not be engaged in night work without their consent: ... persons with disabilities, for whom such work is contraindicated according to medical recommendations.

That is, if there are contraindications, it is still possible to involve, but with consent.

The possibility of using women's labour in harmful, dangerous, heavy work, underground work is provided with their consent. Exceptions are, as in the case of night work, pregnant women and

women with children under one year old.

An increase in working time and a decrease in rest time are formulated in the Law "On the Organisation of Labour Relations in the Conditions of Martial Law" as a general norm for employees employed at critical infrastructure facilities (in the defence sector, the sphere of ensuring the life support of the population, etc.), any clarification regarding different categories of workers are absent, with the exception of minors.

The possibility of transferring an employee to another job, not determined by an employment contract, without his consent (except for transfer to another area where active hostilities are ongoing), was established, although only to avert or eliminate the consequences of hostilities, as well as other circumstances, which impose or may impose a threat to people's lives or normal living conditions, with wages for work performed not lower than the average remuneration for previous work. The only requirement is that the employee has no contraindications due to his health. Thus, the transfer can be applied to absolutely all employees, including persons with disabilities, minors, women with children.

On June 3, 2022, a draft law was registered "On Amendments to the Law of Ukraine "On Collection and Accounting of a Single Contribution to Mandatory State Social Insurance" and some other Laws of Ukraine, on the protection of the rights of individuals during martial law and simplifying the accounting of workplaces for persons with disabilities" , which specifically provides for:

■ a change in the approach to calculating the number of jobs for the employment of persons with disabilities, within the framework of which employers will no longer submit a report on the occupation and employment of persons with disabilities¹¹⁸, however, there is no provision for the possibility of adjustments and changes by employers either,

■ two weeks period between receiving the information on compliance with the standard and the deadline for paying a fine for non-compliance with the standard, which is a short period,

■ new grounds for State Labour inspections are established,

■ improving the effectiveness of measures to control employers' compliance with the quota for employment of persons with disabilities. The introduction of various measures is necessary, since the situation with the employment of persons with disabilities has worsened in recent years. Radical changes in approaches to the employment of persons with disabilities¹¹⁹, increasing the level of employment was already recognised as one of the strategic goals in 2021. However, business, including the European Business Association, is strongly against the bill.¹²⁰

The regulation of labour relations with mobilised workers, workers who became members of territorial defence groups also deserves special attention. Starting from July 19, 2022, employers were released from the obligation to pay the average salary to mobilised employees, however, at the beginning of August, a draft law regulating this issue was registered in the Verkhovna Rada, in particular, it provides for the total amount such employees can consider as debt of the state, for which the employer can reduce tax payments.

118. Draft of Law "On Amendments to the Law of Ukraine "On Collection and Accounting of a Single Contribution to Mandatory State Social Insurance" and some other Laws of Ukraine, on the protection of the rights of individuals during martial law and simplifying the accounting of workplaces for persons with disabilities" No.7433 of June 6, 2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39749>

119. Business against changes in approaches to employment of persons with disabilities during martial law. July 27, 2022. URL: <https://www.kadrovik01.com.ua/news/8188-vropeyska-bznes-asotsatsya-prosit-viklyuchiti-polojennya-shchodo-sanktsiy-za-nevikonannya>

120. Ibid.

The issue of access to work of internally displaced persons has become quite acute in the field of employment. Employment of IDPs is carried out on a general basis. However, often the IDP remains officially employed at the previous place of work, there is no record of dismissal from the previous place of work due to hostilities, but only a record of starting the work, or no employment book at all. All these issues were resolved after 2014, in particular in the Law of Ukraine "On ensuring the rights and freedoms of IDPs". It is possible to terminate the employment relationship by sending a notarised employee's resignation letter to the employer by registered letter. In case of impossibility of such a way, a judicial procedure is provided. The court's decision can immediately be the basis for hiring at the main place of work, because in the absence of confirmation of dismissal from the main place of work, a person can be employed under the relevant employment contract. In case of impossibility of obtaining the original work record book, it is possible to obtain a duplicate.

Therefore, the limitation of labour guarantees was provided for almost all vulnerable categories of workers, in some cases the same as for the all employable population of Ukraine. Internally displaced persons are the only category of workers for whom sufficiently developed national legislation has already been adopted, because Ukraine has started solving issues, including in the field of labour and employment, actually since 2014.

SUMMARY

Labour legislation and labour rights underwent significant amendments under martial law, given that they are not absolute in nature and, accordingly, the possibility to introduce various restrictions, including labour obligation. Separate articles and provisions have been amended, and special laws and regulations have been adopted (e.g. the Law of Ukraine "On the Organisation of Labour Relations under Martial Law") affecting almost all the main institutions of the labour law. The introduced amendments mostly resulted in deterioration of the employment conditions, such as the possibility of establishing a trial period for almost all categories of employees, increasing working hours to 60 hours for certain categories of employees, reducing the duration of annual vacation leave, speeding up and simplifying the procedures for employment or dismissal of employees and introducing greater liberalisation of labour relations.

Some of the new provisions have been vague, such as the provision on the suspension of the employment agreement leading to arbitrary suspension of employment agreements by employers and, on the other hand, absolute insecurity of their employees. The dismissal of an employee in case of their departure abroad or to a region of Ukraine other than the permanent place of residence and work and submission of a statement for an unpaid vacation leave during martial law is similarly cause for concern.

In general, limitations of labour guarantees were stipulated for almost all vulnerable categories of employees, in some cases as part of those applicable to the entire labour force in Ukraine.

At the same time, a significant number of labour and employment-related issues faced by internally displaced persons, which arose after the beginning of Russia's full-scale armed aggression, have been already solved earlier, since Ukraine actually began to address the issue of protecting the rights of IDPs, including in this area, in 2014. This applies to the renewal of documents, formalisation of dismissal if the place of work is in the temporarily occupied territories or regions affected by active hostilities as well as other issues, so there is a sufficiently developed national legislation already in place for this category of employees.

Recommendations

Conclusions

Since the outset of Russia's full-scale armed aggression, the issue of the protection of social human rights has become especially urgent, given the forced displacement of millions of persons, the need to organise an evacuation, the loss of homes, property, employment and means of livelihood by many people, damage to physical and psychological health, etc.

One of the challenges faced by Ukraine amidst extremely difficult economic situation caused by Russia's armed aggression is the proper functioning of the social protection system and support of persons affected by war. Since the beginning of Russia's full-scale invasion of Ukraine, the social protection system has had the two main tasks: maintenance of social payments, benefits and pensions stipulated by the current legislation, provision of social services as well as support to internally displaced persons and persons affected by the armed aggression.

Thus, no radical changes or innovations in the social protection system have been introduced, except for the transformation of the monthly targeted aid for IDPs into housing assistance and de facto abolition of the previous criteria for the receipt thereof. The national legislation has been successfully and promptly amended to maintain the payments of previously granted social payments, aids, benefits as well as extend the terms of certain medical documents such as a certificate confirming the disability group. In addition, the Ukrainian government managed to build a system of the distribution of international aid to affected persons aimed at maximum coverage of vulnerable categories of the persons in all regions and limiting the possibility of receiving aid from one UN agency only. Despite certain duplications and inconsistencies in the criteria and categories of recipients, this is the first time this level of coordination is ensured.

In order to ensure that the information reaches persons affected by war, a unique electronic platform, „eDopomoga”, has been developed, which already allows receiving a full range of information and advice on social support and benefits, as well as registering and applying for them. This points to the country's continued digitisation course, even during the war, can be noted.

However, there is still a large number of issues. In particular, there are cases when the Pension Fund of Ukraine refuses to pay pensions to persons on the TOT of the ARC, despite the previously adopted legislation and court practice. Similarly, Ukrainian citizens abroad face issues with continuing receipt of pensions and social benefits. The state's policy regarding the financing/evacuation of institutions for the stay or permanent residence of children, persons with disabilities, elderly

persons, etc., is unclear. Any measures will be complicated with the beginning of the autumn and winter period. The limitation of the period of granting monetary aid by international organisations (usually 3 months) also raises concerns.

The issue of providing internally displaced persons and persons affected by Russia's armed aggression with appropriate permanent or temporary housing is even more urgent. In fact, the Ukrainian government has been facing the issue of providing housing for internally displaced persons from the temporarily occupied territories of the Donetsk and Luhansk regions and the annexed Crimea since 2014. Despite numerous programmes of financing, lending, provision of temporary and social housing, government initiatives offering compensation for damaged and destroyed housing, measures taken and positive steps by the state, this was clearly not enough to solve the problem due to a large number of persons in need of such housing, and the allocated funds were insufficient.

However, several months into the war, the objective impossibility to provide millions of displaced persons with housing, even emergency and temporary housing, especially in the autumn and winter period, has already become obvious. At the moment, Ukraine will not be able to independently solve this issue without the active involvement of international organisations and international partners in both financial, technical and other aspects. Given the threat to 2022-2023 heating season, active steps, the development of a crisis housing programme and construction should be started at least with the help of international humanitarian organisations.

Vulnerable categories of persons, who are often unable to move to safer areas or go abroad on their own without support and assistance, need the most attention and protection from the state. Therefore, the issue of evacuation arose acutely in the first months of the war and may arise at any moment depending on the situation at the front lines and the provision of electricity and heat to the relevant areas or individual institutions. The state is responsible for the support of all persons in state institutions, such as homes for the elderly, orphanages, assisted living facilities, etc.; the state must be responsible for their timely evacuation, provision with everything necessary. According to volunteers and human rights activists, the responsibility for the evacuation of institutions is actually assigned to local authorities with very limited capabilities, and about 6,000 institutions had not been evacuated by the end of March.¹²¹ Thus, the right to housing will remain one of the most problematic in terms of the realisation thereof in the current situation and will require joint active actions of Ukraine together with international partners.

In general, the Ukrainian housing legislation is quite outdated and required reforming and amendments even before the start of full-scale armed aggression by Russia. The main document that regulates housing relations had the old Soviet title until 21 April 2022, when a number of articles, title and preamble of the Housing Code referring to the communist society and Leninist ideas were amended.¹²² Issues of the development and adoption of a new Housing Code have been repeatedly raised in Ukrainian society. Even Decision of the Constitutional Court of Ukraine No. 12-p/2019 dated 20 December 2019 stated that the Housing Code existed in Soviet times before the adoption of the Constitution of Ukraine, and, accordingly, a number of the provisions of the Code

” negate the essence of constitutional rights and contradict the constitutional principles of the social, economic development of

121.T. Matiash. About 6,000 wards of assisted living facilities remain in the occupied territories, human rights activists report. 31 March 2022.

Link: https://lb.ua/society/2022/03/31/511818_okupovanih_teritoriyah.html

122. Law of Ukraine No. 2215-IX dated 21 April 2022 “On the Desovietisation of the Ukrainian Legislation”

Link: <https://zakon.rada.gov.ua/laws/show/2215-20#n145>

Ukrainian society and the state, so they should be brought in line with the requirements of the Basic Law of Ukraine.¹²³

Therefore, after the end of the war, this legislative area will need modernisation and bringing in line with the international and European standards.

The war leads to inevitable labour and employment changes, which will certainly affect the exercise of labour rights. Labour legislation and labour rights underwent significant amendments under martial law, given that they are not absolute in nature and, accordingly, the possibility to introduce various restrictions, including labour obligation. Separate articles and provisions have been amended, and special laws and regulations have been adopted (e.g. the Law of Ukraine “On the Organisation of Labour Relations under Martial Law”) affecting almost all the main institutions of the labour law. The introduced amendments mostly resulted in deterioration of the employment conditions, such as the possibility of establishing a trial period for almost all categories of employees, increasing working hours to 60 hours for certain categories of employees, reducing the duration of annual vacation leave, speeding up and simplifying the procedures for employment or dismissal of employees and introducing greater liberalisation of labour relations.

Some of the new provisions have been vague, such as the provision on the suspension of the employment agreement leading to arbitrary suspension of employment agreements by employers and, on the other hand, absolute insecurity of their employees. The dismissal of an employee in case of their departure abroad or to a region of Ukraine other than the permanent place of residence and work and submission of a statement for an unpaid vacation leave during martial law is similarly cause for concern.

In general, certain limitations of labour guarantees were stipulated for almost all vulnerable categories of employees, in some cases as part of those applicable to the entire labour force in Ukraine.

At the same time, a significant number of labour and employment-related issues faced by internally displaced persons, which arose after the beginning of Russia’s full-scale armed aggression, have been already solved earlier, since Ukraine actually began to address the issue of protecting the rights of IDPs, including in this area, in 2014. This applies to the renewal of documents, formalisation of dismissal if the place of work is in the temporarily occupied territories or regions affected by active hostilities as well as other issues, so there is a sufficiently developed national legislation already in place for this category of employees.

In addition, with the outset of the full-scale war, fears were expressed about the spread of discrimination, including discrimination of internally displaced persons, as was the case in Ukraine with the beginning of Russia’s aggression in 2014, including employment and pension discrimination, restriction of the access of IDPs from Crimea to bank accounts, etc. However, proactive measures of state authorities together with the public sector enabled positive shifts in overcoming the stigmatisation and discrimination of this category of persons.

To prevent the discrimination of IDPs and persons affected by Russia’s armed aggression, the state should ensure that they have access to all rights on an equal basis with other citizens, while understanding the vulnerability of IDPs and their need for additional protection and special benefits.

123. Decision of the Constitutional Court of Ukraine No. 12-p/2019 dated 20 December 2019 in the case based on the constitutional submission of 49 People’s Deputies of Ukraine regarding the conformity of the provisions of Article 135(2) of the Housing Code of the Ukrainian SSR to the Constitution of Ukraine (constitutionality). Case No. 1-26/2018(2572/17). Link: <https://zakon.rada.gov.ua/laws/show/v012p710-19#n2>

Analysis of the situation based on open-source materials and reports of NGOs and human rights organisations since the beginning of the full-scale war on 24 February 2022 indicates numerous cases of discrimination against certain groups of persons in Ukraine or discriminatory policy of the authorities. No court practice on the matter is available. However, the problems that existed before 24 February can obviously be aggravated due to the overall difficult situation in the country.

Recommendations on “The right to housing”

It is advisable to immediately develop a crisis mechanism for the implementation of the housing obligation provided for by the Law of Ukraine "On the Legal Regime of Martial Law " and make an assessment of the potential number of such temporary housing which are available and its needs for vulnerable categories of persons. Priority for its provision to vulnerable categories of persons shall be provided.

Given the lack of sufficient financial resources to provide housing for IDPs, persons whose homes have been destroyed or damaged, it is advisable to immediately implement mechanisms for attracting international donors, including Development Bank of the Council of Europe, for the rapid construction of temporary housing.

It shall be advised to analyse the expediency and possibility of introducing the maximum amount of rent in comparison with the prices that existed in the period until February 24 and measures to encourage owners to provide part of their housing/vacant housing to IDPs and persons whose housing was destroyed or damaged. To encourage the highest possible number of owners some incentives like e.g. the cancellation of the tax paid for the rent might be considered.

It shall be advisable to enshrine in national legislation guarantees for the protection of IDPs from forced eviction from temporary housing without providing adequate alternative housing.

The possibility to use health resort facilities for several categories of persons, including persons with disability, the elderly people and persons who are or were placed in the specialised institutions shall be immediately analysed. In case of insufficient financial or human resources to provide the assessment immediately attracting international donors to get involved in the process of assessment and afterwards adjusting the sanatoriums (short-time projects) might be considered.

It is advisable to immediately analyse/make an assessment of the readiness of temporary houses (including modular houses and towns) to winter conditions. In case of insufficient level of preparation it might be advisable to consider attracting international donors to get involved in the process of adjusting the housing to low temperatures (complex assistance during the winter time - international partners engagement in the form of short-time projects).

Given the information that the level of availability of temporary houses and vacant housing in different areas of the country is differentiated, it's advisable to design and launch an online database/platform for exchanging the information on current vacant housing , including information on the accessibility of temporary houses and vacant housing for persons with disabilities.

Immediate assessment of the damaged property is needed and shall be recommended to allow prioritisation and indicating those buildings which shall be reconstructed or at least safeguarded immediately to avoid their further devastation due to weather conditions. Given the large scale of the damaged property in the whole country it's advisable to attract the attention of NGOs/international organisations to help in this process. Considering possible future court appeals, the need to collect not only data but also evidence shall be taken into consideration.

In the process of rebuilding/reconstructing/renovating the damaged properties the needs of persons with disabilities shall be taken into consideration.

Recommendations on “The right to social protection”

■ It is advisable to immediately consider the possibility of evacuation/financing of boarding houses, institutions of permanent stay or residence of children, persons with disabilities, elderly persons, etc.

■ It shall be advisable to organise dissemination of the necessary information about possible social assistance and obtaining IDP's status to persons whose apartments were destroyed/damaged in partially destroyed multi-story buildings.

■ It shall be advisable to ensure the payment of pensions and social benefits, which were scheduled until February 24, to persons in the TOT AR Crimea and the city of Sevastopol, to persons who left the territory of Ukraine.

■ Reconstruction of the social benefits system is immediately needed to make it clear, transparent and predictable and to avoid double enjoyment of assistance by some persons or groups of persons on one hand and lack of support provided to the others on the other. It is advisable to revise the approach used to establish the system and change the current status-based approach to the needs-based one which will allow to adjust the support to the real needs of the supported person. To introduce the changes needs assessment research shall be conducted to determine the needs of particular persons. Coordination of payments needed at international level. Concluding bilateral agreements with countries to which Ukrainian citizens migrated escaping from war shall be advised to avoid double payments and reassure all persons receive essential support.

■ Revisions of the system of payments for IDPs shall be advised. Regulations shall define the period of time within which the benefit will be provided and the conditions in which it will be taken away.

■ Institutions such as boarding houses, institutions of permanent stay or residence of children, persons with disabilities, elderly persons, etc. on the territories of active hostilities and current military actions shall be evacuated. Evacuation process shall be prepared in advance and also – where possible (e.g. boarding schools, children's homes) – trained in advance. Evacuated persons and their families shall be well informed about the destination they are being taken and the possible future steps.

■ To conduct any process of evacuation smoothly there shall be a guideline/an instruction of evacuation developed that will be ready to use in case of any further emergency. The guideline shall be based on experiences of institutions that have already been evacuated, which shall be collected and written down becoming a guideline and a code of good practice.

■ Coordination of the process of evacuation of institutions is needed from the part of the state authorities. As the evacuation process has been conducted without any coordination so far it is advisable to conduct assessment of the current state of affairs to determine the places where people remain not evacuated in conditions of military actions, the places to which evacuation has been directed so far and the other places to which the evacuation might be directed in the future. In such cases it is inevitable to assess the situation from the point of view of the number of staff and the level of financing.

■ Given the high number of persons with disabilities and the elderly it is advisable to analyse the expediency of creating a hotline for submitting requests for help in the process of evacuation.

It's inevitable to start the process of reduction of the number of persons placed in the institutions such as boarding houses, institutions of permanent stay or residence of persons with disabilities, elderly persons, etc. - the process of shifting such persons from institutional settings to the "community," with assistance by those in the formal sector, shall be started immediately. To begin with, the needs assessment shall be conducted in the institutions to reassess the needs and possibilities of the people who are placed there to indicate those who can be moved to community care. It shall be advisable that the process shall be assisted by developing strategic action plan for disability community care, consisting of at least 4 directions: 1. Creating positive community attitudes and behaviours towards people with disability and their carers; 2. Supporting liveable communities for people with disability and carers; 3. Encouraging meaningful employment of people with disability and carers; 4. Promoting equitable access to mainstream services for people with disability. Local authorities shall be encouraged to develop community support services programmes and compile disability-inclusive events as part of those programmes. In addition local authorities shall take care to provide useful information on inclusiveness, strategic directions and disability support services on their websites, information shall be accessible for persons with disabilities.

It shall be advisable to immediately conduct the needs assessment also in terms of persons with disability and elderly persons who are under the legal guardianship of another person, not in the specialised institutions, to indicate those left by their legal guardians who moved to another region or country without persons under their guardianship and provide them with adequate protection.

It's inevitable to introduce the system of coordination of international donors support provided to Ukrainian citizens to eliminate multiple assistance provided to some categories of persons while other categories are not eligible to any support.

Given the obvious influence that the war has had on the whole society it is inevitable to consider that in the nearest future there will be very high demand for psychological support and psychiatric assistance and prepare proper mechanism to address this issue that will enable the national health system handle the increased demand. To achieve this goal, three main areas for action shall be considered the most needed, following the recommendations of the International Committee of the Red Cross, i.e.

- ▶ investing in providing the full spectrum of mental health and psychosocial support services. This ranges from basic psychosocial support such as psychological first aid, psychoeducation, awareness-raising, community-based activities or other activities to specialised mental health such as counseling, group therapy, or psychiatric or psychological assessments and treatments.
- ▶ ensuring people have access to these mental health and psychosocial support services. In places of armed conflict, people often cannot access these services due to conflict, stigma, legal status, cost, or other reasons. Additionally, mental health and psychosocial support professionals are still few and far between in conflict settings.
- ▶ integrating mental health and psychosocial support services into broader Health Systems Strengthening strategies, to help bring about longer-term improvements to people's health and access to healthcare.

Given the huge increase in the number of IDPs since the full-scale Russian aggression, new strategies of IDPs integration shall be developed and the system of financial assistance connected with the status of IDPs shall be revised. It is advisable to consider defining the period of time in which IDPs are eligible to obtain payments connected with their status and reducing this period to the time necessary for their adaptation. After this time, only social payments shall be granted provided the IDP meets their conditions.

■ Given the increased demand for funding from the Social Security Fund (hereinafter - SSF) and at the same time substantial decrease in the level of contributions supplying the fund it is advisable to immediately reconsider the way of the SSF's operating and consider transferring funds for the SSF directly from the state budget (following the method chose in case of the Pension Fund).

■ Given the way of operating of the system of social assistance payments, the mechanism for transferring funds for social assistance from State Budget to local budgets shall be elaborated and immediately launched. The system shall use the needs-based approach in deciding on the level of financial support provided for each particular local community (e.g. the level of support shall depend on amount of IDPs in the particular community).

■ Given the increase in the number of persons with disabilities since the full-scale Russian aggression it shall be advisable to create conditions for proper protection of civilians who became persons with disability due to the war. To this end, amending the legislation on social protection of such persons, and implementing programmes for rehabilitation and social services for such persons shall be advisable.

■ As part of the long-term recovery planning, including the involvement of donors and international organisations, it shall be advisable to continue to implement the National Strategy for the Reform of Institutional Care, Education, and Upbringing, including the deinstitutionalisation of children in special boarding schools and ensuring inclusive education. long-term solutions and strategies to provide services to adults in the community (deinstitutionalisation) shall also be developed and implemented.

Recommendations on “The right to equality and protection against discrimination”

■ It shall be advisable to analyse the expediency of creating a single hotline for appeals on issues of discrimination together with public and human rights organisations. The expediency of highlighting the consequences of the authorities' response to appeals regarding manifestations of discrimination shall also be analysed.

■ Given the fact that states of emergency, including war, usually make vulnerable persons even more vulnerable it is advisable to carefully analyse all the cases of reported discrimination and support victims of discrimination in seeking redress at national level. Apart from that increasing the public awareness on discrimination and hatred, and encouraging the involvement of NGOs in supporting victims of discrimination shall also be advisable.

■ Given the fact that states of emergency, including war, usually make vulnerable persons even more vulnerable it is advisable to consider fact finding research on the influence of war on the most vulnerable groups of society, which will allow to determine the most needed steps that shall be taken to support those groups of society.

Recommendations on “Employment and labour rights”

■ It is advisable to analyse the feasibility of elaboration of a list of socially useful works, where certain vulnerable categories of the population can be involved within obligatory labour service.

■ It shall be recommended to consider the possibility of the state taking on the obligation to pay wages debts to employees (at least at the level of the minimum wage) of those enterprises whose debts arose in connection with the war, with further reimbursement by the employers to the state.

■ It shall be advisable to analyse the feasibility of clarifying the provision regarding the imposition on the state - aggressor of compensation in the full amount of remuneration, guaranteeing the compensation payments to employees during the suspension of the employment contract, and the creation of a corresponding register or database.

■ Immediate regulation of the status of suspension of the employment contract shall be advisable and providing legal basis for the employees in time of suspension to be eligible for financial support from the state. Reimbursement of the support may be latter on fully entrusted to the state that carries out military aggression.

■ Given the important changes introduced by the Law „On the Organisation of Labour Relations under Martial Law” in the regulation of labour relations and still low awareness about the changes themselves and about their consequences it is advisable to analyse the expediency of creating a hotline for questions connected with the newly introduced provisions, their interpretation and implementation in practice that will be supported/coordinated by the Labour Inspectorate of Ukraine.

■ Given the high number of persons relocated within the country and placed in temporary housing it shall be recommended to conduct a needs assessment survey to determine the demand of local labour market and the supply of work by IDPs hosted by the particular local community, with separate attention being paid to the demand and supply of work force by persons with disabilities. While conducting the assessment, the willingness of particular persons to return to their „home” communities or stay in the new communities shall be taken into consideration.

■ Given the strong need to enhance the economy of the country and decrease the number of persons needing state’s financial support it shall be advisable to take actions directed at encouraging people, especially IDPs, to return to active life and work by:

- ▶ raising the awareness, especially among IDPs, of their rights but also opportunities, especially to find the job and earn their living;
- ▶ supporting the employers eager to train/retrain, especially the vulnerable persons, to provide them with employment. To encourage the employability of the most vulnerable it is advisable to consider differentiating the level of subsidy by the level of vulnerability;
- ▶ reexamining the vocational centres and adjusting their offer - courses/trainings - to the demand of the current local labour market;
- ▶ involving the unemployed who receive unemployment benefit in socially useful services regardless of their qualifications;

■ Given limited financial resources it is advisable to attract international donors who can finance or participate in financing of vocational training and retraining;

■ Trainings for legal professionals shall be adjusted to the current needs and shall include the

components discussing issues which emerged or became more common or visible in times of war such as e.g. war crimes, international judicial cooperation in civil and criminal matters (in civil cases especially laying the emphasis on cooperation with countries with the highest number of Ukrainian citizens) etc.

■ It is advisable to consider immediate publishing of the clarification or amendments concerning the right to unpaid leave that must be obligatory given by the employer for maximum 90 days and employer's actions after this period.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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