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## LEGAL REGULATION OF LABOR OF INTERNALLY DISPLACED PERSONS IN UKRAINE

**Purpose.** To study the regulatory and legal provision of labor regulation of internally displaced persons (IDPs) in Ukraine. To identify the impact of changes in legislative norms regarding this issue on the effectiveness of legal regulation of IDP labor. To develop recommendations for clarification of legal provisions and propose directions for reducing potential conflict.

**Methodology.** The following methods are used: analysis and synthesis made it possible to substantiate the importance of regulating labor of IDPs; logical generalization – to indicate that legal regulation in judicial practice should be based on the essential content of the basic citizen rights; comparative analysis – to point out the inappropriate level of imperativeness in the legislation regarding legal protection of IDPs; logical generalization – to propose a tool for pre-trial dispute resolution; formal-legal and special-legal methods – to develop changes to legislative provisions.

**Findings.** Problematic issues of regulating the right of IDPs to work are indicated. It is noted that the regulation of the right to work is much broader than the problems of employment of IDPs. The inappropriateness of the level of imperativeness of legislative norms regulating the right of IDPs to work is indicated. A need is justified for pre-trial consideration of disputes regarding protection of the right to work. It is proposed to introduce an institute of mediator lawyers for this purpose. In order to avoid discrimination of IDPs in employment and defamation in the performance of duties under an employment contract, amendments to the Code of Labor Laws are proposed.

**Originality.** Measures to strengthen the imperative of the norms of the current legislation aimed at regulating the labor of IDPs are proposed. Changes to the provisions of the current Laws of Ukraine and directions for reducing the potential for conflict in this area are proposed.

**Practical value.** The implementation of the proposed recommendations on changes to the provisions of the current legislation will contribute to the legal regulation of the labor of IDPs.

**Keywords:** *legal regulation, the right to work, internally displaced persons, conflict-genicity*

**Introduction.** Ensuring the right to work and decent working conditions for internally displaced persons (IDPs) in Ukraine is a problem that can have significant social, economic and political consequences. Currently, some IDPs are planning to move from their place of residence, and ~23 % of those planning to move want to leave the country [1]. This indicates difficulties with the reintegration of IDPs into communities at the place of stay, and, to a greater extent, difficulties with employment. This creates great risks for the country, first of all: loss of the working population; devaluation of the international image of a country that is unable to fulfill the guarantees given to IDPs and shifts the task of caring for its own citizens to other countries. In the field of human rights protection, problems with the employment of internally displaced persons do not correspond to the current legislation and, even, to the Constitution of Ukraine, according to Article 43 of which the right to work is guaranteed to every citizen. Also, in accordance with Article 43 of the Constitution of Ukraine, a citizen's right to free choice of work and his/her free consent to work cannot be limited. At the same time, IDPs are placed in conditions that limit the effect of the specified article of the Constitution of Ukraine, as internally displaced persons are often forced to work without qualifications and receive payment for performed work that does not correspond to the volume and level of their work.

The above also does not correspond to international treaties, which specify the right to work, ratified by the Verkhovna Rada of Ukraine and the obligation of which is approved by Article 9 of the Constitution of Ukraine. The process of em-

ployment of internally displaced persons must also comply with the guidelines on the problems of IDPs, approved by the Economic and Social Council of the United Nations, and the provisions of international documents regarding the protection of human rights. The specified international documents, in particular, note that both the process of providing IDPs with appropriate workplaces and the legal regulation of the work of internally displaced persons must take into account the peculiarities of IDPs: post-traumatic syndrome; an increase in the level of risks for these citizens in comparison with the local population: the risk of family separation, for example, due to the impossibility of providing all members of the IDP family with decent work in the place of stay, the risk of defamation, the risk of further forced resettlement of the IDP, etc.

Due to the dynamic changes in the situation, the regulatory and legal provision of labor for IDPs requires constant monitoring and research on the state and directions of changes.

**Literature review.** The scientific community pays considerable attention to various aspects of the legal regulation of labor of internally displaced persons in Ukraine. Thus, the article by Shulzhenko I. [2] analyzed and stratified guarantees in the field of labor relations provided to IDPs in view of the norms of constitutional, labor and administrative law. Shulzhenko I. [2] investigated problematic issues of labor regulation of internally displaced persons, in particular, the problem of direct or hidden discrimination of IDPs in employment. Positive changes in the legislation related to this issue have been identified, in particular, regarding the absence of a probation period when hiring and the provision of guarantees in the field of labor relations, which are classified by Shulzhenko I. [2] in the special category. This is used in this article.

The study by Nikolenko L. [3] confirmed the existence of facts of discrimination against IDPs in employment and in the process of performing labor duties. The unevenness of the discriminatory attitude of the local population towards IDPs by territorial-administrative units is indicated. It is noted that the impossibility of finding a job that meets the qualifications of an IDP in the absence of suitable jobs is due to historical disproportions between the regions of Ukraine in the distribution of sectoral productions. It also determines the peculiarities of the legal regulation of labor for this category of citizens or encourages them to move again.

In the article by Yaroshenko I. [4] it is indicated that the conclusion of the regulation of the protection of the right of IDPs to work is due to risks that are not inherent in the legal relations of other categories of citizens. These risks were analyzed, and their impact on the economic and social status of IDPs was investigated. In particular, the risks that determine the peculiarities of the legal regulation of the labor of internally displaced persons have been identified and analyzed. Yaroshenko I. [4] also provided a definition of the legal norm “administrative-legal protection”, indicated the importance of organizational and legal activities of local and regional authorities in protecting the right to work of IDPs, indicated the importance of administrative-legal confirmation of IDPs’ guarantees for work. The legal aspects of these issues are detailed in the presented article.

On the basis of the analysis of the judicial practice of protecting the right of IDPs to work, Krakhmalova K. [5] indicated problems and ineffectiveness of the mechanisms for implementing the specified right of IDPs. Krakhmalova K. [5] identified three main strategies for judicial protection of the right of internally displaced persons to work, analyzed and detailed the specifics of these strategies, in particular, with regard to securitization/desecuritization, contradictions of the regulatory and legal field in this legal sphere, provided comparative analysis of decisions of courts of first instance and appeals to them.

Koshliak N. [6] indicated that the legal regulation of labor issues of internally displaced persons is significantly complicated by the uncertainty of competence and the lack of consistency in the activities of institutional structures, representatives of local and regional authorities in the specified area of protection of the rights of IDPs, the imperfection of IDP registration and determination of their needs; absence of a strategy for financial provision by the state of the indicated area of legal regulation. The need for systematic coordinated work of institutional structures, legislative and judicial branches of government to relieve social tension due to non-settlement of labor issues of internally displaced persons is also indicated.

This is confirmed in the study by Khymynets V. and Holovka A. [7], where it is indicated that the proper regulation of the work of IDPs requires a significant increase in the level of coordination of state regional policy, legislative policy, and legal protection of internally displaced persons. Khymynets V. and Holovka A. [7] also indicated that the legal regulation of labor is significantly complicated due to the low level of registration of forced migrants in the status of IDPs. This makes it impossible to enforce a significant part of the legal acts regulating the right of IDPs to work and narrows the guarantees for IDPs in this area. This, in particular, indicates the legal ignorance of internally displaced persons and determines the complexity of their legal protection.

The article by Byelov D. M. and Bielova M. V. is devoted to consideration of directions of pre-trial settlement of disputes regarding labor issues of internally displaced persons [8]. The mentioned authors indicate that a certain part of the legal regulation of the labor of IDPs can be solved in a pre-trial manner by settling the issues of the use of digital tools in the current legislation, in particular, the expansion of the use of digital documents, digital signatures, the conclusion of contracts remotely and the normalization of legal assistance to IDPs in conditions of war, for example, using the Action digital tool,

etc. The legal regulation of the conclusion of labor contracts in digital form remotely could simplify the legalization of remote labor relations and contribute to the reduction of tension in the labor market.

In the article [9], Chesakova M., et al. stated that the proper level of labor regulation of IDPs is not a charitable assistance to victims, but a legal tool for solving a significant number of problematic issues for the state, in particular, the possibility of reducing the amount of financial aid, providing local enterprises with labor, etc. It is noted that the legal regulation of the use of online platforms in the EU countries for the provision of consulting services and the resolution of legal issues can be an example of the pre-trial settlement of the problems of IDPs.

In the study by Prytyka Y., et al. [10], it is stated that the realization of the right of IDPs to equal access to justice is complicated due to at least the difficulty of accepting participation of representatives of such an extremely unprotected category of citizens as IDPs in the legal process in the current conditions. The limited protection of internally displaced persons of their rights is not compensated even by the cancellation of the fee by the court and the provision of free legal aid. According to Prytyka Y., et al. [10], this requires the creation of alternative out-of-court mechanisms for the settlement of legal disputes. Unfortunately, Prytyka Y., and others [10] do not specify such mechanisms. Such a mechanism is proposed in the presented article.

In the article by Butyrskiy A. and Reznikova, V. [11], the Law of Ukraine “On Employment” is indicated as the main mechanism of legal regulation of IDP labor, in particular, Article 24 of the mentioned Law, which defines special measures to promote the employment of IDPs. Butyrskiy A. and Reznikova, V. [11] indicated directions for improving the norms of the Law of Ukraine “On Employment” and directions for their coordination with the norms of international law which regulate the sphere of employment of internally displaced persons. At the same time, as indicated by Butyrskiy A. and Reznikova, V. [11], the peculiarities of the legal regulation of the labor of IDPs are largely due to the complexity of the regulatory and legal field in Ukraine and the possibility of ambiguous interpretation of some legal norms for the category of internally displaced persons, which is a relatively new concept in the Legislation of Ukraine. These problems are addressed in the presented article.

Lohvynenko B. [12] indicated that due to an incomplete list of reasons for internal relocation in the definition of “internally displaced person” under the legislation of Ukraine, grounds are being formed for the impossibility of officially obtaining an IDP status for all refugees, which leads, for example, to a reduction in the possibility of legal regulation of the labor of these persons. The specified problem is considered in this article.

Mendjul M. V. [13] stated that for the regulation of the work of IDPs under dynamic changes in conditions, the constitutional mechanisms of legal protection become more significant, as they are of essential and valuable importance for defending the basic principles of human rights (justice, the rule of law, equality before the law, legal certainty, proportionality, etc.). According to Mendjul M. V. [13], the application of constitutional mechanisms in the judicial process will allow, if necessary, filling in the gaps in the regulatory and legal field of Ukraine in the judicial proceedings, which will result in an increase in the integrity and effectiveness of the system of legal protection of IDPs. The principles of legal protection specified by Mendjul M. V. [13] on the basic principles of justice are supplemented in the presented article.

Various aspects of legal protection of IDPs have been considered in a significant number of scientific works by Alimova I. Thus, in the article by Alimova I. [14], the need for legislative improvement of the activities of instructional structures working in the field of protection of the rights of IDPs, in particular, the right to work, is considered. The need to improve

the functional powers of legislative institutions for the unification of the legal framework for the legal regulation of the labor of internally displaced persons is also indicated.

The above review of publications indicates that the legal framework for the problems of regulating the right to work needs improvement. Failure to regulate the right to work can lead to an increase in the level of social tension, and this requires the introduction of such legal instruments that are capable of reducing the level of conflict-genicity of these problems in society. Also, dynamic changes in the legislation sometimes require coordination with the provisions of other current laws in the specified area, which also requires research into measures to standardize the specified issues.

**Purpose.** To study the regulatory and legal provision of labor regulation of internally displaced persons in Ukraine. To identify the impact of changes in legislative norms regarding this issue on the effectiveness of legal regulation of the labor of internally displaced persons in Ukraine. To develop recommendations for clarifying legal provisions and propose directions and tools for reducing the potential for conflict in this area.

**Methods.** In the article, general and special methods of cognition were used. The method of analysis and synthesis was applied with a justified level of relevance and significance of the settlement of labor problems of internally displaced persons in Ukraine. The method of logical generalization was used to determine that the legal regulation of the labor of IDPs should not be limited only to their employment. This method was also used to identify other possible restrictions on the right to work. With the use of the hermeneutic method, it was determined that the judicial system became more important as a guarantor of social stability in the state, and it was stated that the legal regulation of the work of IDPs in the practice of the judiciary should be based on the essential content of the basic rights of a citizen and ensure, if necessary, the renewal of the legal status of IDPs. Therefore, the judicial power, given the significant dynamics of changes in external conditions, must first of all follow the spirit of the Law and show initiative in the protection of basic human rights. The application of the method of comparative analysis made it possible to point out the problematic issues of the legal regulation of the labor of IDPs. The method of comparative analysis made it possible to establish an inappropriate level of imperativeness in the implementation of legislative norms regarding the legal regulation of the labor of IDPs. The method of logical generalization made it possible to propose a tool for pre-trial consideration of disputes regarding the regulation of the right of IDPs to work and the use of legal mediators for this institute.

The use of formal-legal and special-legal methods made it possible to propose changes to the provisions of the current

legislation, which will contribute to the legal regulation of the labor of IDPs.

**Results.** First of all, it is necessary to confirm the level of significance of the settlement of labor problems of internally displaced persons in Ukraine.

According to the International Organization for Migration (IOM), more than 5.1 million citizens of Ukraine have the status of IDPs. Of those IDPs who wanted to get a job, ~34 % have a stable job, ~66 % have an unstable job [1]. At the same time, ~20 % of those who got a stable job got a job below their qualification level or a much lower-paid job than at their previous job. In the fourth quarter of 2023, the most famous electronic job search platform recorded the largest number of vacancies since the beginning of the full-scale war – 105,809 job vacancies, which is too few for the total number of unemployed people, who compete in the labor market with IDPs. The situation on the labor market is worsened by the fact that the level of competition is largely differentiated by individual geographical locations. Thus, the Bedevlyan community (Transcarpathian region, Tyachiv district), which had ~6,500 residents, provided shelter for more than 1,800 internally displaced persons, which is more than 27 % of the community.

Based on the data of the National Institute of Strategic Studies [1] (Figure), it can be stated that the crisis situation on the labor market, in particular, regarding the employment of IDPs, has stabilized at present. An indicator of this is the dynamics of the share of the number of unemployed IDPs in the total number of unemployed, which has not changed since the beginning of 2023 and is ~ 8 %. Nevertheless, the presence of such a number of unemployed IDPs and the absence of a tendency to decrease their share in the total number of unemployed indicates the level of significance of the settlement of labor problems of internally displaced persons in Ukraine. At the same time, the trend towards an increase in the number of decisions in favor of affected citizens of Ukraine in the European Court of Human Rights (ECHR) in the field of protection of the right to work and, accordingly, causing financial and reputational losses to Ukraine, in particular, due to the need to compensate damages, indicates shortcomings of the practice of judicially regulating the right to work, first of all, the right of IDPs to work.

According to the Ministry of Justice of Ukraine, the structure of the requests of internally displaced persons changes according to the time spent in the IDP status. Immediately after changing their place of residence, citizens ask questions about finding housing, obtaining subsidies, etc.; some time later, – regarding the restoration of documents, employment, etc. In the future, the issue of regulating labor relations becomes important.

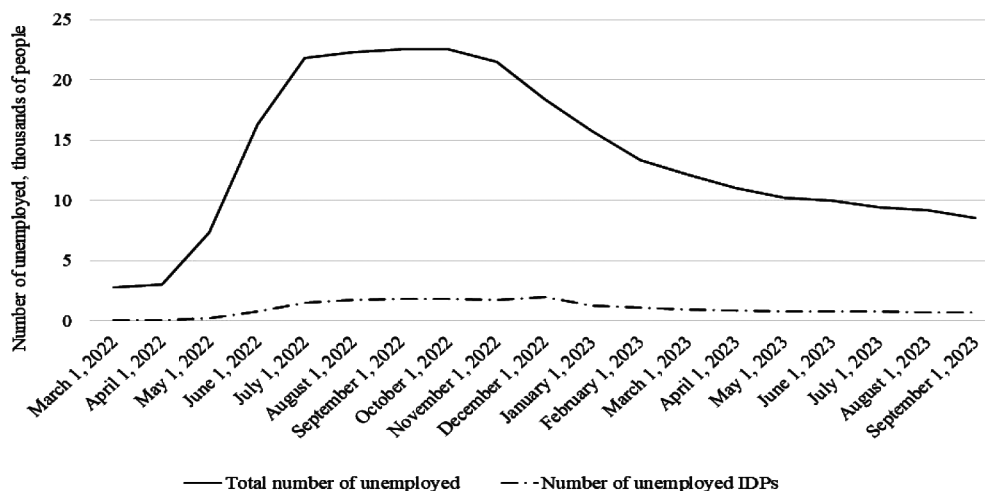


Fig. Comparative dynamics of the total number of unemployed and the number of unemployed IDPs after the start of the full-scale invasion, thousands of people

The issue of employment and ensuring proper working conditions of internally displaced persons has many aspects, which, accordingly, forms many aspects of their legal protection. On the one hand, in conditions of significant migration of the population abroad, mobilization, there is a need to compensate for the labor shortage in the regions. Therefore, the authorities consider internal migration, in particular, as an opportunity to provide local enterprises with a labor force, to acquire competitive advantages with them in the market, which will increase the economic weight of the region. On the other hand, the local population considers internally displaced persons as competitors in the labor market and as an excuse for entrepreneurs to reduce the level of wages for employees due to a surplus of labor. This leads to an increase in social tension, which, in particular, is indicated in the article by Tykhonchuk L. H. [15]. The level of dissatisfaction of internally displaced persons regarding the choice of jobs is also increasing. This is due to the fact that large industrial facilities are concentrated in the regions where internally displaced persons come from. The above determines the specialization of the mentioned persons. In other regions of Ukraine, there are significantly fewer of such industrial facilities, or they are completely absent. Therefore, highly qualified employees of a narrow specialization are left to engage in low-skilled and, accordingly, low-paid work [16].

This also increases the level of social tension, contributes to the involvement of IDPs in the informal economy, which results in the growth of the shadow sector in the areas of relocation of IDPs and even worsens the criminogenic situation. Therefore, the employment of internally displaced persons has a legal, social, and even political component.

It also increases the requirements for compliance of judicial proceedings with the principle of justice.

The judicial system is also becoming more important as a guarantor of social stability in the state. Therefore, the legal regulation of the work of IDPs in judicial practice should be based on the essential content of the basic rights of a citizen and ensure, if necessary, the renewal of the legal status of internally displaced persons, given that the relocation of the specified persons did not occur due to their wishes, but was a result of force majeure circumstances and inadequate institutional protection of citizens' rights.

Judicial power, given the significant dynamics of changes in external conditions, must, first of all, follow the spirit of the Law and show initiative in the protection of basic human rights. As a typical example of the initiative of the judiciary, we can cite the facts of the acceptance in court cases of documents issued in the non-controlled territory of Ukraine. According to the legislation of Ukraine, the specified documents are recognized as illegal, even if they have an official seal from December 1, 2014. In particular, Part 2 of Article 13 of the Law of Ukraine No. 1207-VII in the edition of 18.10.2023 "On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine" indicates the invalidity of agreements of business entities located in the temporarily occupied territory of Ukraine. According to the specified Law, they are not subject to the rule specified in the second paragraph of Part 2 of Article 215 of the Civil Code of Ukraine, according to which there are cases when a void deed can be recognized as valid in a court proceeding. At the same time, in the scientific article of Amelicheva I. [17] the so-called "Namibian exceptions" are studied. This definition points to a precedent in international law due to the decision of the International Court of Justice of the United Nations dated 21.06.1971 "Legal Consequences for States Regarding the Continued Presence of South Africa in Namibia". According to this decision, the documents issued by the occupation structures must be accepted in the courts, if their non-acceptance can be interpreted as a restriction of the basic rights of a citizen. The decision of the UN International Court of Justice also states that the acceptance of such documents for consid-

eration in the court process is not a legal confirmation of the legality of the occupation.

Documents issued in the non-controlled territory of Ukraine should be taken into consideration during the consideration of the court case and given a legal assessment, which, in particular, is indicated by the decision of the court of first instance dated February 24, 2016, in case No. 423/620/16-ts. The court decision on the specified case also states that such an action does not legitimize the occupying power.

Legal regulation of the labor of internally displaced persons should not be limited only to their employment. A person may be limited in the right to work due to other circumstances: the impossibility of placing a child in a school or kindergarten due to the local authorities not providing the necessary number of places in the named institutions; lack of proper transport infrastructure, mobile communication between the place of work and the place of residence of the family (chosen at an affordable price); lack of information about vacancies, etc. These aspects expand the scope of labor regulation of IDPs. In particular, the importance of informing IDPs looking for work about the economic status of a potential employer and advising on the direction of decisions in the field of employment at a specific enterprise, which can significantly determine their further work, is growing.

The legal basis for regulating the labor of internally displaced persons is laid down by the Law of Ukraine No. 1706-VII "On Ensuring the Rights and Freedoms of Internally Displaced Persons", adopted in 2014, by Resolutions of the Cabinet of Ministers of Ukraine No. 637 dated November 5, 2014 "On the implementation of social benefits for persons who moved from the temporarily occupied territory of Ukraine and areas of the anti-terrorist operation"; dated September 8, 2015 No. 696 "On approval of the Procedure for the implementation of measures to promote employment, return of funds aimed at financing such measures, in case of violation of employment guarantees for internally displaced persons", other regulatory and legislative acts.

The understanding of the need to update the legal framework regarding the regulation of the labor of IDPs is evidenced by the permanent introduction of a significant number of changes in the legislation on this issue. Thus, according to Article 7 of the Law of Ukraine No. 1706-VII a new approach to normalizing the termination of an employment contract with internally displaced persons who were unable to terminate it due to threats of war was introduced in accordance with Part 1 of Article 36, Articles 38, 39 of the Labor Code.

The legal basis for regulation of IDP labor is also provided by Article 24-1 of the Law of Ukraine No. 5067-VI – as amended on October 14, 2023, "On employment of the population". At the same time, according to Part 2 of Article 24-1 of the specified law, its application is restricted only to registered unemployed IDPs, which makes it difficult to regulate the work of certain categories of displaced persons.

According to the specified article of the Law of Ukraine No. 5067-VI, the following measures are implemented: compensating a registered unemployed IDP for the costs of moving from the place of temporary stay to the administrative-territorial unit where the place of work is located and, if necessary, the costs of a medical examination; compensating the employer for the labor costs of IDPs subject to certain limitations of its size and payment period and the costs of the specified legal entity for retraining or upgrading the qualifications of IDPs; financing of providing IDPs with a place of work, first of all, internally displaced persons with disabilities; continuation of receiving compensation to the employer in the case of placement of another internally displaced person in the place of the dismissed IDP, etc. Measures introduced by Article 24-1 of the Law of Ukraine No. 5067-VI form the basis for the formation of guarantees of employment of IDPs in the legal field and ensure the interest of the parties to the employment contract in realizing the right of IDPs to work.

One of the problematic issues of legal protection in the field of protection of the labor rights of IDPs is the absence in the legal field of an unambiguous definition of the mechanism for the payment of wages during the period of the circumstances, as a result of which the employment contract was suspended [18], even after the cessation of the specified circumstances, although there is a decision of the Constitutional Court of Ukraine (CCU) on some aspects of the specified issue, in particular: Decision of the Constitutional Court of Ukraine No. 9-rp/2013 on compensating workers for loss of wages due to violation of the terms of its payment; decision of the CCU No. 8-rp/2013, regarding the payment of wages for downtime that occurred through no fault of the employee, etc. However, the specified problematic issue is much broader than certain aspects of it, regulated by individual decisions of the Constitutional Court of Ukraine.

The situation worsens significantly due to the practice of employers to use the fact of suspension of the employment contract for non-payment of wages to IDPs, even, under the current legal norm, regarding the need for legal justification of the specified suspension.

In legal practice, there are cases when the employer refers to Part 3 of Article 10 of the Law of Ukraine No. 2136 “On the Organization of Labor Relations in the Conditions of Martial Law” to justify non-payment of wages. At the same time, the specified legal provision states that exemption from the obligation regarding the terms of payment of wages must occur upon substantiated proof of non-payment as a result of force majeure. Furthermore, according to Part 3 of Article 10 of the Law of Ukraine No. 2136, force majeure does not exempt the employer from the obligation to pay the employee wages.

In such cases, despite the attempts of some employers in legal proceedings to interpret their position based on a false interpretation of the term “salary”, according to Article 233, 117, 237-by the Code of Labor Laws of Ukraine (KZpPU) and the decision of the Constitutional Court of Ukraine No. 4-/2012, this term should be understood as all payments to which the employee is entitled in accordance with both the employment contract and guarantees for proper remuneration, approved legislation, in particular, guarantees to internally displaced persons.

Also, in its decision No. 8-/2013, the Constitutional Court of Ukraine indicated that, since the salary is the source of existence of the employee and his family members, it requires inflation indexation, changes in consumer prices, etc., and proper compensation in case of delayed payment, taking into account time detention. This is especially important for internally displaced persons, given the increased level of their vulnerability.

This requires the introduction of changes in some legislative acts, in particular, to the second paragraph of the fourth part of Article 7 of the Law of Ukraine No. 1706-VII in the edition of 12.30.2023, “On Ensuring the Rights and Freedoms of Internally Displaced Persons”, as follows: “If it is impossible to terminate the employment contract in accordance with Part 1 of Articles 36, 38, 39 of the Ukrainian Code of Labor and Employment, an internally displaced person has the right to receive wages for work performed in accordance with the employment contract, payment of wages for forced downtime that was not due to the fault of the employee, and compensation for the loss of wages due to violation of the terms of its payment. For non-observance or non-observance to the full extent of the specified norm of the law, the employer pays a fine at the rate of 25 percent of the employee’s unpaid wages. Funds from the specified fines are credited to the State Budget of Ukraine”.

The provision on specified penalties strengthens the level of imperativeness of the proposed legal norm.

There is also a problem of harmonizing the provisions of international law and national legislation regarding the regulation of social, economic, and other problems of IDPs. A certain universal nature of such a problem is indicated by the fact that it is characteristic not only for Ukraine [19, 20].

In particular, a problematic issue for our country is that in the regulatory and legal field of Ukraine, the interpretation of the concept of “internally displaced person” differs from its definition according to international legal norms. Thus, the UN Guiding Principles on Internal Displacement within a country (UN document E/CN.4/1998/53/Add/2 F) apply to a much wider range of circumstances that have led to the displacement of a person. At the same time, the specified Guidelines do not envisage a separate legal status of IDPs, and the need to provide additional guarantees for this category of citizens. The Guidelines emphasize that the rights and obligations of IDPs are identical to the rights and obligations of other citizens. Therefore, it becomes difficult to fully implement PACE Recommendation No. 1899 (2009), according to which PACE member states should introduce a set of measures aimed at the social and economic reintegration of IDPs into their host communities, to ensure access to available jobs without discrimination in the private sector or in state institutions, as the legislation of Ukraine provides for special guarantees for IDPs in these matters.

At the same time, there is a decision of the ECHR Part 56 in the case of Kjeldsen v. Denmark, which states that discriminatory treatment based on any characteristic of a person or group of persons, i. e., also based on the status of internally displaced persons, is inadmissible [21, 22]. Inconsistencies in international law are an additional problem to consider the provisions of international law in national legislation.

Another problem is the practice of introducing changes in the legislation, which should facilitate the employment of IDPs regarding the consistency of the workplace with the employee’s qualifications, compliance of working conditions at the place of employment with current laws, etc., but which do not have the appropriate level of imperativeness. This, in particular, is evidence of an implicit dispositive approach to the implementation of appropriate provisions in legislation [23]. The absence of a proper imperative mechanism for the implementation of the specified norms, the absence of liability defined in the legislation for their non-compliance significantly reduces the effectiveness of the specified legislative provisions [24, 25].

For example, on June 19, 2022, changes to Article 23 Chapter 3 of the Labor Code indicate the obligation of employers to inform employees who have signed a fixed-term employment contract about the availability of vacancies according to their qualification level and the need to provide for the possibility of IDPs working under an indefinite contract. The lack of a notification procedure, regulations for the objective appearance of the opportunity for the employee to go to work under an open-ended employment contract, the conditionality of clearly defined advantages of IDPs in obtaining such an opportunity, negates the imperative of the provisions of the specified document [26].

The above determines the need to adjust the provisions of Article 23 Chapter 3 of the Labor Code and making the following changes: “For non-compliance with the obligation to inform about job vacancies for employees, especially vulnerable categories of the population – disabled people, internally displaced persons, with whom fixed-term employment contracts have been concluded, the employer is responsible according to the current legislation”.

It is also a problematic issue that many employers, who later, in court proceedings, refer to their ignorance, do not accept IDPs for work under the pretext that the employee does not have an employment book. This requires the strengthening of informing both employers and IDPs about the legal norms related to the regulation of the labor of internally displaced persons and the legal responsibility of those who do not comply with the specified norms. In view of the above, the opening of courses for internally displaced persons and employers at local employment centers or local authorities on the current legal norms in the field of labor regulation of IDPs would be an effective measure.

Employers also often neglect the right of internally displaced persons to work part-time, in accordance with Article 21 of Ukrainian Labor Code.

Such violations of the right of IDPs to work are sometimes difficult to prove in the court process, therefore, this requires other instruments of legal regulation of the work of internally displaced persons. In the Resolution of the Supreme Court of Ukraine dated May 20, 2020, in case No. 815/1226/18, it is stated that the failure of institutional structures to fulfill the tasks of protecting human rights is a prerequisite for overloading the courts with lawsuits from citizens.

In view of the above, a pre-trial hearing is a reasonable tool in the settlement of legal disputes in the field of labor relations, reducing the level of conflict in this area, which is also capable of reducing the number of hearings of these disputes in court.

Pre-trial settlement of disputes under Article 16 of the Civil Procedure Code of Ukraine (CPC) is that the parties should use all available opportunities for pre-trial settlement of the dispute, both with the aim of reaching an agreement in resolving the dispute, and in view of the need to comply with the law in cases provided for by current legislation. The pre-trial settlement should facilitate the fact that the party in the dispute that violated the rights and legally substantiated interests of the other party should restore them during the pre-trial settlement of the dispute. Moreover, in Part 6 of Article 175, Chapter 1, Section 3 of the Code of Civil Procedure the mandatory nature of the pre-trial settlement of the dispute is indicated as well as the need to notify the procedure for taking measures in this direction in the court proceedings.

Uncertainty in the use of the specified legal instrument leads to the need for its interpretation by higher courts. For example, the ambiguity of the concept of mandatory pre-trial dispute settlement in judicial practice led to the adoption of the relevant Decision of the Constitutional Court of Ukraine (document No. v015p710-02), which determined the absence of objective reasons for mandatory pre-trial dispute settlement. This indicated that pre-trial settlement is a right and not an obligation of the party whose rights or legitimate interests are violated. This has expanded the use of protection tools by the injured party.

The procedure for pre-trial settlement of disputes is specified in other areas of law, in particular, in land law (Article 26, Chapter 5 of the Land Code of Ukraine) and economic law (Article 222, Chapter 24, Section 5 of the Economic Code of Ukraine “Pre-trial procedure for the implementation of economic legal responsibility”). Thus, in Article 26 Chapter 5 of the Land Code of Ukraine it is indicated that possible mediators of pre-trial settlement may be executive authorities or local self-government bodies, which emphasizes the importance of pre-trial settlement of controversial issues at the local level and the responsibility, first of all, of institutional structures of this level in ensuring social stability. Article 222, Chapter 24, Section 5 of the Commercial Code of Ukraine describes in detail the procedure for a written claim as a mechanism for pre-trial dispute resolution.

At the same time, in the presence of the legal concept of “pre-trial dispute settlement”, in particular in Article 16 and 175 of the Code of Criminal Procedure, and the use of this concept in legal practice, its definition is absent in the legal framework of Ukraine.

In view of the above, the following definition is offered: “Pre-trial settlement of disputes is a procedure of actions aimed at achieving a voluntary agreement of the parties in a case regarding the violation of the rights and legitimate interests of the party/parties and is applied before the start of the resolution of the dispute in court”.

The incentive for the parties to the dispute regarding the use of the specified procedure, which should be promoted, is, firstly, the avoidance of spending financial resources and spending time on court procedures, and secondly, the legal understanding by the parties of the soundness of the legal grounds of the dispute and its proper documentary support,

which reduces time if necessary in further court proceedings and, accordingly, simplifies court procedures [27, 28].

In view of the above, there is a need to introduce the institute of lawyer-mediators for the settlement of disputes related to labor problems of IDPs. Mediation is an effective method of dispute settlement, especially for the parties that do not fully understand the legal grounds for forming their position and, accordingly, the prospects for a trial. Mediation facilitates the provision of legal aid and access to justice for socially vulnerable categories of internally displaced persons [29].

Unfortunately, the legislative instrument for solving the specified issues – the Draft Law “On Mediation” has been withdrawn by the legislators. At the same time, as stated above, since the local government is also interested in the fair and timely settlement of legal disputes in the field of labor regulation in regions with a significant concentration of internally displaced persons, it is advisable to entrust the duties of legal mediation of the specified issues to the bodies of the executive power or bodies of local self-government by analogy with Article 26 Chapter 5 of the Land Code of Ukraine.

In order to avoid discrimination against IDPs in employment and defamation in the performance of duties under the employment contract, it is proposed to introduce amendments to Article 25 of the Labor Code with the following content: “It is prohibited to request information from internally displaced persons who enter work that may pose a threat to their relatives who have remained in the temporarily occupied territory of Ukraine or be a basis for defamation of internally displaced persons”.

In order to increase the level of imperativeness of the legislative provisions regarding the provision of guarantees for the work of IDPs, the following additions to the provisions of the Laws of Ukraine are proposed:

- Clause 8 of Article 42 of the Labor Code regarding the list of categories of persons who, for equal labor productivity and qualifications, are given preference in remaining at the workplace: “and internally displaced persons” should be added to the text “persons from among those deported from Ukraine, within five years from the time of return to their permanent place of residence in Ukraine”;

- Article 43-prime of Labor Code of Ukraine on termination of the employment contract without the consent of the trade union: “except for internally displaced persons” is to be added to the provision on “dismissal of an employee who is not a member of the primary trade union organization operating at the enterprise, institution, organization”;

- to Article 5 of the Law of Ukraine No. 5067-VI “Guarantees in the sphere of public employment” Clause 10 “additional assistance in the employment of vulnerable categories of the population: persons with disabilities, internally displaced persons who are registered unemployed, and provision for the specified persons of working conditions that meet the requirements of current legislation for the production environment and labor process”;

- to Part 1 of Article 14 of the Law of Ukraine No. 5067-VI: “citizens who have the status of an internally displaced person” should be added to the list of categories of persons who are provided with additional guarantees in employment.

**Conclusions.** The level of significance of the settlement of labor problems of internally displaced persons in Ukraine is substantiated. It is noted that the improper settlement of IDP labor problems leads to an increase in the number of ECHR decisions in favor of the affected party in the field of protection of the right to work and, accordingly, causing financial and reputational losses to Ukraine, in particular, due to the need to compensate damages. This also increases the level of social tension, the involvement of IDPs in the informal economy, which results in the growth of the shadow sector in the areas of IDP relocation and even worsens the criminogenic situation. Therefore, the employment of internally displaced persons has a legal, social, and even political component.

It also increases the requirements for compliance of judicial proceedings with the principle of justice. The judicial system is also becoming more important as a guarantor of social stability in the state. The legal regulation of the work of IDPs in judicial practice should be based on the essential content of the basic rights of a citizen and ensure, if necessary, the renewal of the legal status of internally displaced persons, given that the relocation of the specified persons did not occur due to their wishes, but due to force majeure circumstances and insufficient level of institutional protection of citizens' rights. Therefore, the judicial power, given the significant dynamics of changes in external conditions, must, first of all, follow the spirit of the Law and show initiative in the protection of basic human rights.

It is noted that the legal regulation of the work of IDPs of internally displaced persons should not be limited only to their employment. An internally displaced person may be limited in the right to work due to other circumstances: the inability to place a child in a school or kindergarten due to the local authorities not providing the required number of places in the said institutions; lack of proper transport infrastructure, mobile communication between the place of work and the place of residence of the family (chosen at an affordable price); lack of information about vacancies, etc. These aspects expand the scope of labor regulation of IDPs. In particular, the importance of informing IDPs looking for work about the economic status of a potential employer and advising on the direction of decisions in the field of employment at a specific enterprise, which can significantly determine their further work, is growing.

Problematic issues of legal protection in the field of protection of labor rights of IDPs are indicated. It is noted that the situation in the specified area worsens due to the practice of employers using the fact of the suspension of the employment contract for non-payment of wages to the employee, even with the current legal norm, specifying the need for legal justification of the specified suspension. This, in particular, is evidence of an improper imperative approach to the implementation of legislative norms regarding the legal protection of IDPs, the absence of responsibility defined in the legislation for their non-compliance, which reduces the effectiveness of the specified legislative provisions. In order to increase the level of imperativeness of the legislative provisions regarding the provision of guarantees for the work of IDPs, additions to the provisions of the Laws of Ukraine are proposed.

It is noted that in legal practice there are cases when the employer, referring to certain inconsistent norms in the legislation of Ukraine, avoids following the spirit of the Law and legal obligations to the employee, which increases the need for legal protection of the latter. The mentioned cases are investigated from a legal point of view.

It is stated that according to decision No. 8-/2013 of the Constitutional Court of Ukraine, in case of withholding of wages by the employer, it needs to be indexed in accordance with the level of inflation, changes in consumer prices, etc., and proper compensation. It is noted that there are problematic issues that require coordination of the provisions of international law and national legislation regarding the regulation of the problems of IDPs.

In view of the fact that the Resolution of the Supreme Court of Ukraine dated May 20, 2020 in case No. 815/1226/18 states that the failure of the institutional structures to fulfill the tasks of protecting human rights creates prerequisites for overloading the courts with citizens' lawsuits, it is stated that an expedient tool in the settlement of legal disputes in the field of labor relations, reducing the level of conflict in this area is a pre-trial hearing, which will also reduce the number of hearings of these disputes in court.

The proposed definition of the concept of "pre-trial settlement of disputes", the available incentives for the parties to the dispute regarding such a legal instrument and the need to introduce an institute of lawyer-mediators, whose validity will require legislative regulation, are indicated.

In order to avoid discrimination against IDPs in employment and defamation in the performance of duties under an employment contract, amendments to Article 25 of the Labor Code of Ukraine are proposed.

Prospects for further development in this direction consist in the analysis of court decisions regarding the regulation of the right of IDPs to work and, based on the specified analysis, the development of recommendations to clarify the legal provisions of the current legislation of Ukraine and offer directions and tools for reducing the potential for conflict in this area.

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## Правове регулювання праці внутрішньо переміщених осіб в Україні

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**Мета.** Дослідити нормативно-правове забезпечення регулювання праці внутрішньо переміщених осіб (ВПО) в Україні. Виявити вплив змін законодавчих норм стосовно цього питання на ефективність правового регулювання праці ВПО. Розробити рекомендації щодо уточнення правових положень і запропонувати напрями та інструменти зменшення конфліктогенності в цій сфері.

**Методика.** Використання методів: аналізу й синтезу дозволило обґрунтувати значущість врегулювання праці ВПО; логічного узагальнення – вказати, що правове регулювання у практиці судочинства має спиратися на сутнісний зміст основних прав громадянина; порівняльного аналізу – вказати на неналежний рівень імперативності в законодавстві щодо правового захисту ВПО; логічного узагальнення – запропонувати інструмент досудового розгляду спорів; формально-юридичного та спеціально-юридичного методів – розробити зміни до законодавчих положень.

**Результати.** Указані проблемні питання врегулювання права на працю ВПО. Зазначено, що регулювання права на працю є значно ширшим за проблеми працевлаштування ВПО. Вказано на неналежність рівня імперативності законодавчих норм врегулювання права на працю ВПО. Обґрунтована необхідність досудового розгляду спорів стосовно захисту права на працю. Запропоновано запровадити для цього інститут юристів-медіаторів. Для уникнення дискримінації ВПО при працевлаштуванні й дифамації при виконанні обов'язків за трудовим договором запропоновані зміни до Кодексу законів про працю.

**Наукова новизна.** Запропоновані заходи для посилення імперативності норм чинного законодавства, спрямованих на регулювання праці ВПО. Запропоновані зміни до положень діючих Законів України й напрями зменшення конфліктогенності у цій сфері.

**Практична значимість.** Упровадження запропонованих рекомендацій щодо змін положень чинного законодавства сприятиме правовому регулюванню праці ВПО.

**Ключові слова:** *правове регулювання, право на працю, внутрішньо переміщені особи, конфліктогенність*

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