

Social Support of Internally Displaced Persons (IDP'S)

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Abstract: In the late 20th century the problem of forced migration has become very relevant for the Russian Federation. In recent decades, the Russian Federation faces massive forced migration from the Commonwealth of Independent States (CIS) and Baltic States. Internally displaced persons (IDPs) are Russian citizens forced to leave their place of residence in a foreign country, or who were forced to move into another part of the Russian Federation. Existing federal legal regulations concerning the resettlement of IDPs must address accountability of the regional authorities to guarantee declared rights of IDPs for judicial protection, a decent housing and social support. The rights of IDPs require a clear legal consolidation and established mechanisms in all regions of the Russian Federation. Despite the gaps in the legislation, judicial decisions in the local courts create precedents that protect IDPs rights for decent living conditions and social support and helps in building the legal foundations for protection IDPs in Russia.

Key words: Refugees · Internally displaced persons · Forced migrants · Compensation · Lost housing and property

INTRODUCTION

In international law, the term forced migrant has been known for a long time. Initially, forced migrants to some researchers attributed only to persons with refugee status. "Refugee status ... is the legal space, characterized on the one hand, the principle of the sovereignty of states and the associated principles of territorial sovereignty and self-preservation and the other - competing humanitarian principles. However, the rules governing the status of refugees, not yet fully formed as the system of legal protection because it does not provide the necessary regulatory situations that should be considered extreme. To a certain extent they facilitate the position of victims of violations of human rights or as a result of the collapse of the pre-existing social order as a result of revolutions, civil strife or aggression, but they are not complete. As refugees and asylum seekers, still may be refused even temporary asylum or temporary protection, safe return to their homes or compensation. " [1, p5]. Before the adoption of the Refugee Convention in 1951, number of acts regulating the status of refugee were adopted. League of Nations, 28 October 1933 adopted the Convention on the International Status of Refugees. In February 10, 1938 League of Nations

adopted the Convention relating to the Status of Refugees coming from Germany. These are people who do not trust the government, to make their stay in the country of origin impossible or intolerable and are looking to start a new life abroad [2.p5].

Should also be noted that despite the fact that the Convention was developed in 1938 based on the 1933 Convention, there was no provision of non-refoulement. This led to the fact that in "extreme cases refugees may be sent back across the border of the Reich" [3,p729].

With the advent of the 1951 Convention, there was a so-called "right of refugees". The right of refugees can be viewed as a compromise between the reality of the huge ongoing flows of forced migrants crossing borders in Europe and the general prohibitive immigration policy." [2, p2]. The words "refugee status determination" are forbidding and legalistic. But the process they refer to concerns human beings, usually in circumstances of great distress [4].

In the Encyclopedia of Public International Law to the displaced (or national refugees) are those who were in a similar situation of refugees, although they remained within the internationally recognized borders of their state, or who are leaving the state of residence, took refuge in another State, gives them the same status as

nationals and obviously can not be subject to international protection, although they may be in need of some international aid [5, p453].

Protection of the rights of persons displaced within the country of the Special Rapporteur on internally displaced persons (it is also representative of the Secretary-General for internally displaced persons in the country), which basically does not work on the consideration of the situation and on the development of new principles, new standards which should help to ensure the rights of such persons. April 1998 - adopted resolution 2000/53, which called for the dissemination and application of the "Guiding Principles" on internally displaced persons in the country [6].

In recent decades, the Russian Federation faced massive forced migration from the Commonwealth of Independent States (CIS) and Baltic States. The volume of migration and the circumstances under which it occurred in post-Soviet space were fundamentally new to the world community. In the Russian Federation the rights of forced migrants or internally displaced persons (IDP) are regulated by Constitution of the Russian Federation, Federal laws and regional regulations. Our aim was reviewing actual implementation of the constitutional and legal rights of IDPs to receive social support in the North-Caucasus Federal District of the Russian Federation [7].

We focused on IDPs because this social category faces very specific legal and social problems. Internally displaced persons (IDPs) are Russian citizens forced to leave their place of residence in a foreign country, or who were forced to move into another part of the Russian Federation. Citizens of former USSR permanently residing in the territory of the former republics of the Soviet can also receive IDP status under special circumstances.

The main federal law governing the legal status of internally displaced persons in the Russian Federation is the Federal Law "On Forced Migrants" [8] Principle 21 establishes IDP's right to receive a social support and to own property. This principle is the most relevant for IDPs who lost their property as a result of armed conflicts. Yet, the state support and compensation are rather symbolic.

Principle 28, Clause 1, stipulates responsibilities of the state migration agencies for the successful voluntarily resettlement of the IDPs. The migration service also has to facilitate successful reintegration of resettled IDPs into society.

Principle 29, paragraph 2, obligates the governmental bodies to help resettled IDPs, return their property if possible, or to assist them in obtaining a compensation for the lost property. The various regions of the Russian

Federation developed set of regulations guiding local migration services in resolving legal and social problems of the IDPs. Federal legislations without working mechanisms for implementing the law have a declarative character and do not objectively reflect the severe legal and social problems of IDPs within the districts of the Russian Federation.

North-Caucasus Federal District, due to its geopolitical location, received the largest number of IDPs when compared with other regions. Armed conflicts in Chechen Republic, the neighboring Dagestan and Kabardino-Balkaria regions forced migration of thousands IDPs to the North-Caucasus Federal District. We reviewed documented activities of the Federal Migration Service in the North-Caucasus Federal District from 2002 to 2008. We identified 98 civilian cases and 136 cases of administrative violations in the archives of the courts of general jurisdiction of the North-Caucasus Federal District region.

The jurisprudence practice that has been developed in the Stavropol Territory on IDPs can be classified as follows:

- Receiving/providing the status of IDP
- Disputes arising at the moment of applying for IDP;
- A direct denial of IDP.
- Extension of the status of IDP.
- Claims of violation of the right to receive different kinds of compensation.
- Misconduct of the authorities responsible for the payment of compensation.
- Establishing the facts of legal significance.
- General civil cases relating to improving the social situation of IDPs.

The underlying reason for third and fourth type of claims related to social support is that the notion of settlement and naturalization is not well defined in the law. For instance, the Federal Law "On Forced Migrants" and the Housing Code determine funds for the temporary settlement of IDPs and types of residential premises. However, the mechanism for providing temporary accommodation and the procedure for granting temporary registration of IDPs have not received a practical solution. The law does not provide a liability on immigration authorities for refusing to provide temporary shelter and temporary registration.

The main piece of legislation governing the housing arrangement of IDPs, the Decree of the Russian Federation Government lists the categories of IDPs who can not apply for better living conditions. These include:

- Receiving cash compensation for a lost housing;
- Receiving a long-term interest-free loan;
- Living in accommodation provided by family members for permanent residence under a contract of employment;
- Residing in the dwelling owned by a family member in ownership or in common ownership of several family members.

Compensation for the Lost Housing: Russian Federation Government Resolution [9] provides a compensation for lost housing and/or property, citizens who left Chechnya permanently. However, the amount of compensation for lost housing is limited to less than \$5000 and compensation for lost property is less than \$300 per family member for families who are composed of up to 3 persons, inclusive and even less for each additional family member with total amount no more than \$1000 per family.

Furthermore, in accordance with this Regulation, the citizens who own the right of ownership of several dwellings shall be entitled to compensation for only one dwelling. The amount of compensation provided for this ruling is not indexed and has not changed since 1997.

Considering inflation, this amount of compensation does not match the market value of the property and does not provide adequate assistance for IDPs. A permanent departure from the Chechen Republic must be established in the court as a judicial fact in order to receive this compensation. In reality, many Russian citizens can not receive an official statement of the permanent departure from the Chechen Republic. This problem has been exacerbated due to the exchange of passports.

Pursuant to Presidential Decree 898 and Resolution No 404 stipulated a compensation for lost in Chechen Republic housing is \$10,000 and for lost property is \$2000, which is several times larger compared to the compensation outlined in the Resolution 510. This decree has divided the persons involved in the same situation in two categories because this compensation is provided only for those who left Chechnya and does not apply to IDPs from the republics of Central Asia and other North and South Caucasian regions. Double standards for IDPs from Chechen vs. other regions are unconstitutional.

Compensation Procedure: Compensations should be calculated automatically and delivered through the bodies of social protection. However, claims for such compensation take place in courts, because, until now, the procedure for collecting compensation has not yet been registered with the Ministry of Justice. At the moment, the jurisprudence of this issue develops as

follows: the defendant speaks on behalf of the Treasury of the Russian Federation Ministry of Finance represented by the Office of the Federal Treasury. The magistrates decide on this category of cases.

After the decisions have been made, the Federal Treasury Department appeals to the district courts. The original court decisions and determinations accompanied by a writ of execution have been sent to the Ministry of Finance of the Russian Federation. The execution, despite the order ' 666, however, is very slow. In violation of the current legislation of the Ministry of Finance, expert audits, endless testing, etc, delay disciplinary actions up to three years.

Thus, the compensation procedure for the dead and injured victims of the war turns into an elementary mockery of the citizens, who already had to endure all the burdens of the war. The IDPs could apply the European Court of Human Rights. However, the amount of compensation awarded by the European Court may not exceed the amount of compensation established by Presidential Decree, number 898. Since the amount of compensation has not changed since the decree and is almost worthless due to inflation, eligible citizens often refuse to begin court proceedings.

Government Loans: In accordance to the previous federal regulations on 28 September 1993, IDPs could be granted long-term interest-free loans to build or buy housing. The loan size was an averaged less than \$500 per family. The process of obtaining the loan was very long and complicated. IDPs living in rural areas experienced additional difficulties related to multiple trips to the administrative centers in order to collect all necessary documents. The Federal Migration Service cancelled this loan in March 12, 1997. IDPs who received interest-free loans for the construction, or purchase, of housing could not be longer qualified for other housing improvements from the government on the basis of 845 RF Government Regulation. IDPs living with their relatives have been also denied the opportunity to improve their living conditions.

Local Housing Improvement Initiative: IDPs can wait in a queue for housing improvement at local government. This opportunity to register on the improvement of living conditions for citizens who have received compensation for lost housing in the Chechen Republic appeared only in 2002. The Supreme Court of the Russian Federation in 2002 claims 19 permitted IDPs who had received compensation a possibility to be added to a waiting list for housing improvement.

However, IDPs can expect government assistance in improving of housing for a long mostly undefined period of time. The Federal Law "On Forced Migrants" does not have peremptory norms pointing out that citizens who received one type of public assistance are automatically deprived of the opportunity to get a different kind of help. Also, the Federal Law "On Forced Migrants" has no rules which would include denial of IDP status on the grounds that the displaced person received one of the types of assistance.

The 510 Decree of the Government only apply to IDPs who arrived between 1994 and 1996. Thus, many citizens who have come to a new residence before, or after, this time are not protected by the law. These people were deprived of the possibility of obtaining compensation for lost housing because of "non compliance" by the arrival time. Some of them found housing on their own and, thus, lost their right to the renewal of the IDP status and a hope for further improvement of housing conditions.

The housing does not meet the sanitary and housing regulations very often. Thus, 845 Resolution of the Government of the housing arrangement of IDPs rather obstructs settlement of the IDPs than assists IDP in resolving of housing problems [10].

Despite the gaps in the legislation, judicial decisions in the local courts create precedents that protect IDPs rights for decent living conditions and social support. Local judicial practice shapes the jurisprudence of the regions. All local public authorities must obey the decisions of the courts. Judicial decisions to extend the status of IDPs solved problems for many IDPs. Local judicial practice helps improving the federal law. For instance, the Supreme Court of the Russian Federation amended 510 Resolution of the Government which prohibited IDPs to register for the government assistance in improving housing conditions after the payment of compensation for lost housing and / or property.

Judicial Practice to Protect Rights of the IDPs in Stavropol Region: In the Stavropol region the Office for Migration and representatives of the Federal Government and public organizations decide compensations for the lost housing and/or property. The Federal Law "On Forced Migrants" does not have a clear definition of "Settlement and Arrangement". Errors in defining eligibility for the compensation and registration for improving housing result in disputes over compensation.

In accordance with article 1069 of the Civil Code of the Russian Federation, the state must compensate the damage caused to a citizen in full. Compensation for lost

housing in accordance with Government Decree # 510 does not compensate for lost housing and property in full. This compensation is the only partial social support from the state.

Some settlers who arrived from Chechnya had previously owned several apartments or houses. Compensation for the lost housing included only one apartment or house. This provision does not suit many IDPs and they go to the court to recover the material and moral harm. Defendants are the Ministry of Defense, Ministry of Interior and Ministry of Finance. The jurisprudence of the Stavropol Territory on such matters had only one positive solution to such disputes.

Shmagin SG appealed to the Leninsky district court against the Federal Treasury for the Stavropol Territory, the territorial authority of Federal Affairs, National and Migration Policy of Russia in the Stavropol Territory, the Ministry of Social Development, Ministry of Defense and the Ministry of Internal Affairs for compensation for moral and financial damage.

The plaintiff's apartment was destroyed in Grozny on January 1995 as a result of aviation bombing. Migration officers refused to take his application for the compensation for a variety of pretexts. Plaintiff learned that even if he brings the necessary documents a compensation for housing would be no more than 120, 000 rubles (1 ruble ~ \$28-31) and he will get it within 4-5 years after registration.

Shmagin SG appealed to the court, considering the amount of lost homes in the 367,169 rubles, destruction of property in the sum of 4,594 rubles, as well as moral damages in the amount of 500,000 rubles. Moral damage expressed in moral anguish and nervous feelings about the destruction of the apartment and the property, long term inability to provide shelter and permanent housing for his family and a fear for the lives of his wife and children. During the hearing it was established that the direct tortfeasor to the plaintiff were the troops of the Ministry of Defense and the Interior Ministry, acting together, supported each other, using military equipment and their activities.

The military was guided by a presidential decree No 2166 of 30 November 1994, to eliminate illicit hostile armed formations in Chechnya using air power and artillery. The actions of the troops of the Ministry of Defense and the Interior Ministry caused plaintiff's losses. Thus, the court sought jointly with the Ministry of Defense and the Interior Ministry declared material loss, decreased the amount of compensation for moral damages and dismissed the lawsuit against the other defendants.

Because of military hostilities, many IDPs were unable to collect the required set of documents to obtain compensation for lost housing and / or property. When establishing the facts of legal significance in cases of disputes related to compensation for lost housing and / or property, the statements can be categorized as follows: 1) the finding of irreversible exit (permanent departure) from the Chechen Republic;

- Establish the fact of residence in the territory of the Chechen Republic;
- Establish the fact of possession of property in the territory of the Chechen Republic.

Establishing an irrevocable exit the court must confirm that the individual has never returned to the Chechen Republic. In accordance with Government Decree No 510, Compensation for lost housing and/or property, shall be paid only to those who left Chechnya permanently.

The vast majority of people applying for compensation for lost housing and or property have a current status of forced migrants. Many of them have a complete set of documents confirming the ownership of property in the territory of the Chechen Republic (house register, copies of the bills and certificates from the local government), but there is no note of withdrawal from registration records. The additional efforts establishing the fact of permanent departure from Chechnya seem illogical.

The fact is obvious: the citizens get the forced migrant status and hence prove to authorities that they fall under Article 1 of the Federal Law "On Forced Migrants" and have no reason to return to Chechnya. In the court evidence of this fact is based largely on the testimony and documents confirming registration at the new place of residence.

Citizens had to prove previous residency at a particular address in order to obtain compensation for the lost property. The Presidium of the Supreme Court of the Russian Federation requires an evidence of the ownership of the exact property in order to obtain a compensation for the lost property in the Chechen Republic. Such evidence could be found in the Chechen Republic only. During active military actions, the judicial system in Chechnya has not acted and many courts have established the fact of ownership based on the available documents.

Later, when the situation in the Chechen Republic improved, the courts may require additional evidence so applicants had to go to Chechnya to establish the fact of ownership.

For the majority of the IDP even a brief visit of the Chechen Republic was impossible according to many human rights defenders. Many of them have murdered relatives and friends and were very fortunate to survive. Convince this category of people that they must go to Chechnya to obtain additional evidence and the trip is not dangerous was very difficult.

Witness testimonies were also required to determine the property ownership. Potential witnesses on this issue, as a rule, resided in different regions of the Russian Federation. Official requests from the Chechen district court to the district courts of a new residence of the witnesses were necessary in order to question them. Also, forced migrants needed a representative throughout the trial.

Only through the work of human rights defenders, acting in the territory of the Chechen republic, the establishing the facts of residence for persons living in other regions of the Russian Federation became possible. (Council of Europe Human Rights Commissioner, 2005, the Commissioner for Human Rights in the Chechen Republic of the Russian Federation, 2008).

In addition to all obstacles IDPs repeatedly faced a threat from criminal structures. For example, criminals demanded homeownership of the property of the IDPs due to the fact that property had been sold, or under a contract of sale. The procedure for invalidation of such demands is also very long. Many migrants are simply afraid to deal with the criminal elements. Thus, the IDPs face many difficulties in proving ownership of property in the territory of the Chechen Republic.

The following case may serve as an interesting example of the conflict between the IDP and the authorities responsible for her settlement. Dudochkina TY arrived in Stavropol from the Chechen Republic in 1995 and received a status of the forced migrant in 1998. The Migration Service had provided a temporary residence for her in 1998 in one room in a two-bedroom apartment. Another family of IDPs lived in the second room in the same apartment. Territorial authority of the migration service registered Dudochkina TY in a line to receive permanent housing. In accordance with Resolution 845 A.41 IDPs must be provided with separate apartments and paragraph 43 of the same resolution, said that housing must be available as a rule in the town of the registration. In her case, the town of the registration was the city of Stavropol.

Dudochkina developed hostile relations with her neighbors. She has repeatedly appealed to the immigration authorities with a request for resettlement or for permanent housing in the city of Stavropol. Migration

Service has repeatedly replied in writing with promises to provide a permanent housing but in the Stavropol region rather than in the city of Stavropol. Dudochkina was a lonely retired elderly woman. Moving to a remote district of the Stavropol Territory far from her close friends would cause her another strong psychological stress comparable to her forced departure from Chechnya.

In 2001, Dudochkina appealed to the Leninsky district court to compel the requirements of the immigration authorities to provide her a permanent home in the city of Stavropol. Claims in the district court were overruled by the Presidium of the Stavropol Regional Court due to procedural irregularities. The local Migration Office withdrew her from the registration list for a better housing in May 2003.

Dudochkina appealed against this action as illegal to the Leninsky District Court. However, the district court denied her claims. Collegiums for Civil Cases of the Stavropol Regional Court reversed the decision made by the district court and restore her in the housing queue in December 2003. In parallel, a case of giving her shelter in the city of Stavropol was suspended pending the outcome of the suit to restore her in the housing queue. After Dudochkina was reinstated to the list for improved housing, the Leninsky District Court ordered the Migration Office to provide her a shelter in the city of Stavropol in July 2004. Collegiums for Civil Cases confirmed this decision in September 2004. However, the Presidium of the Stavropol Regional Court superseded this decision and sent the case back to district court, citing procedural irregularities in November 2004. Finally, in February 2005, the district court adjudicated the granting her a home in the city of Stavropol.

This case shows that the government bodies responsible for the arrangement of IDPs have absolutely no interest in improving their social status. Trials, extending over several years, have been a serious emotional distress for the persons who left their previous place of residence as a result of military actions.

The wording of the law "as a rule" allowed state authorities to solve the problem of resettlement as they wish and rarely in favor of IDPs. Favorable for IDPs court decisions would not be possible without active participation of the public organizations that provide legal assistance for Dudochkina and other IDPs.

We need to mention an adoption in March 21, 2006 of the Resolution of the Government of Russian Federation # 153 mandating the local authorities to provide housing for groups of citizens and a new federal program "Housing "for 2002-2010 years. It states that state

financial support must provide citizens with a housing provision through the federal budget subsidies guaranteed by a certificate of public housing. In accordance with Article 5, § g, of this Ordinance, the IDP registered by the Federal Migration Service as eligible for improved housing have rights to participate the program. The Office of the Federal Migration Service is no longer responsible for the arrangements of IDPs giving all the powers to the local administrations.

However, the law obligating local administrations with a direct provision of a decent housing for IDPs does not exist. As a result, forced migrants can not receive a shelter from the immigration authorities nor from the local administrations.

On another hand, the Government Resolution ¹ 845 is still valid. There is no single legislative act, exempting the immigration authorities from the providing housing to IDPs. But now immigration authorities force IDPs to apply for a housing certificate. Despite the court decisions on the provision of housing, immigration authorities insist on this form of public assistance. There is no a single law requiring migrants to agree with immigration authorities.

Another problem related to housing of IDPs is the refusal of local authorities to register the IDPs for the receiving of the housing certificates. Local authorities justify such actions with lack of developed order of registration for the IDPs. In this case we can speak about the misconduct of public officials. For instance, in 7 June 2007, the October District Court of Stavropol satisfied the claim of Adonts EK who had a current status of the forced migrant. Stavropol administration refused to register her for improving in housing. The court considered such refusal as illegal.

To date, many citizens from the USSR reside in the Russian Federation for a long time but for some reason have not received Russian citizenship. A registration of the residence obtaining a temporary residence permit is the only legal way to establish the fact of the residence. The legal fact of the Russian residency is essential for the application in the Russian Federation.

In this case, IDPs have to submit to the court any evidence of a permanent residence in Russia including medical certificates, certificates from schools, certificates of employment, etc.

For example, in September 25 2007 Nevinnomyssk Municipal Court confirmed the residence for IDPs who arrived from Tajikistan and did not have Russian citizenship. Kadirova GA and her daughters Kadirova GR and Kadirova FR proved their residence in the territory of the Russian Federation by their official application to the

migration service for IDP status but also by the evidence of the attending of the secondary school by one of the daughters.

CONCLUSIONS

The rights of IDPs require a clear legal consolidation and established mechanisms in the regions of the Russian Federation. Russian legislation on migration at the constitutional and federal level as a whole has developed within the generally recognized norms and principles of international law. This is not a case for the regional legislative regulation of migration. The legal foundations for protection IDPs in Russia currently have been built. However, the virtually all regulations concerning the resettlement of IDPs need an improvement. IDPs human rights for judicial protection and social support must be guaranteed at all levels, from access to justice to the enforcement of court decisions.

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