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## Duration of Internal Displacement at the Intersection of Law and Politics

**Abstract:** Even though the question of when internal displacement ends was the subject of the UN-led standards-setting efforts and addressed in the resulting international soft-law norms, in practice, the determination of when an internally displaced person (IDP) is no longer in need of assistance and protection is still performed arbitrarily and on ad hoc basis. There are different explanations of why the rights-based criteria on the duration of displacement have not served their aim. In this paper, the authors identify another one by arguing that their ineffectiveness is caused in the first place by the essentially political nature of the matter they are supposed to regulate. The paper's aim is to serve as a preliminary investigation and set the ground for a more systematic and in-depth analysis of the relationship between the law and the politics in the process of deciding when the internal displacement is over. To this aim, the paper provides an overview of the two main international soft-law instruments regulating the status of IDPs and a short analysis of the principal humanitarian, human rights and refugee law norms from which these soft-law instruments were derived or which have otherwise directed the identification of therein contained standards. The investigation shows not only that the two main international soft-law instruments tend to be inadequate as means to regulate the process of determining when a person should no longer be considered in need of assistance and protection as an IDP, but that the international law norms restated in these instruments as such cannot offer clear guidance on the matter. The inquiry also shows, in the context of protracted displacement, that where the impasse in the negotiation and/or implementation of a peace agreement reduces the traditional triad of durable solutions to only two of them – integration in the place of displacement and resettlement to the third place - the entire edifice of the rights-based criteria collapses. Such situations, the authors argue, demonstrate that the rights-based criteria on the duration of displacement can only serve as a framework for the essentially political deliberations on the matter.

**Key words:** internally displaced persons (IDPs), duration of internal displacement, durable solutions, protracted displacement, Serbia.

## 1. INTRODUCTION

The prevalence of the civil over the interstate wars characterising the post-Cold War period and the vast number of persons affected by these wars in the last two decades have doubled the number of internally displaced persons (IDPs).<sup>1</sup> The estimates are that by mid-2021, nearly 50,9 million people in the world were forcibly displaced as a consequence of conflict and violence.<sup>2</sup> There is a clear tendency for an ever longer duration of internal displacement, with an average conflict-induced displacement lasting 17 years.<sup>3</sup> A rapidly resolved displacement crisis has become an exception, and each year an increasing number of IDPs find themselves in protracted displacement, which, as a consequence of prolonged unavailability of durable solutions, can last for decades.<sup>4</sup> All of this has led to what the UN today characterises as the global displacement crisis.<sup>5</sup>

Serbia represents one of the few European regions of protracted displacement with a high overall displacement record. The conflict in June 1999 and the March 2004 violence were the main triggers of the forced displacement from Kosovo and Metohija. According to the official figures, today, more than 20 years since the end of the conflict, Serbia (excluding Kosovo and Metohija) hosts approximately 196 000 internally displaced persons.<sup>6</sup> Apart from its longer-term development implications<sup>7</sup> and effects on regional stabilisa-

<sup>1</sup> For a more developed analysis of the reasons which have led to an increased number of IDPs compared to the number of refugees, see: Hathaway, C. J. (2007). Forced Migration Studies: Could We Agree Just to 'Date'?. *Journal of Refugee Studies*, 20 (3), 349-369. doi:10.1093/jrs/fem019. As per the definition of IDPs, the UN Guiding Principles on Internal Displacement define them as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border" (para. 2). United Nations Commission on Human Rights (UNCHR), Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998, Annex.

<sup>2</sup> UNHCR, Mid-Year Trends Report 2021, 9.

<sup>3</sup> UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons, Addendum: Follow-up mission to Azerbaijan, 8 April 2015, A/HRC/29/34/Add.1, 1.

<sup>4</sup> Protracted displacement, as a distinct type of displacement, characterised by the long duration and the lack of prospects for achieving the durable solutions, has become one of the most prevalent types of displacement (Report of the UN Secretary-General's High-Level Panel on Internal Displacement. (September 2021). *Shining a Light on Internal Displacement: A Vision for the Future*, 3). So far, there is no agreed definition of protracted displacement. However, one could say that this type of displacement typically is a consequence of a stalemate in the negotiations and implementation of peace agreements and/or of the situation in which the state, which bears primary responsibility for protecting and assisting those displaced within its borders, does not have effective control over the part of its territory from which IDPs have fled.

<sup>5</sup> To "better prevent, respond and achieve solutions to the global internal displacement crisis", in 2019, the UN Secretary-General established the High-Level Panel on Internal Displacement. Retrieved June 4, 2022, from <https://www.un.org/internal-displacement-panel/content/what-we-do>.

<sup>6</sup> The statistics presented on the official web page of the Commissariat for Refugees and Migrations of the Republic of Serbia. Retrieved May 11, 2022, from [https://kirs.gov.rs/cir/interno-raseljena-lica](https://kirs.gov.rs/cir/interno-raseljena-lica/interno-raseljena-lica).

<sup>7</sup> More on the developmental implications of internal displacement in: Asfour, H., Al-Thawr, S., Chastonay, C. (August 2020). *Internal Displacement as a Development Challenge*. UNSG High-

tion, the most severe consequence of protracted displacement is observed in the continued socio-economic vulnerability of IDPs and the lack of prospects for resolution of their displacement-related difficulties. Despite years-long active efforts of the Government of Serbia and the international community, 68 514 IDPs are still in need of assistance, while the prospects of reaching durable solutions to displacement are far from sight.<sup>8</sup> The existing statistics also shows that a significant portion of IDPs still has displacement-related needs, among which the most pervasive are those related to their property rights in Kosovo and Metohija, access to personal documents, access to employment and the social security benefits.<sup>9</sup> At the same time, it seems that the quest for providing durable solutions for IDPs from Kosovo and Metohija has arrived at an impasse. The question of how to resolve IDPs' problems is out of focus of the public discourse both in Serbia and on the international plane. The statistics on their vulnerabilities and needs is being collected within ever longer intervals.<sup>10</sup> The EU-facilitated Belgrade-Pristina dialogue and the resulting "Brussels Agreements" do not directly address the displacement-related difficulties encountered by IDPs. Even more worryingly, for some international stakeholders, the category of IDPs from Kosovo and Metohija no longer exists.<sup>11</sup>

Such a situation is not unique to the Republic of Serbia. In many countries with protracted displacement, the duration of IDP status is more often than not matter of how different stakeholders, international and national, see IDPs fit to their broader political agendas rather than of an assessment based on the legal criteria.<sup>12</sup> Even though the question of when internal displacement ends figured for quite some time as an important topic of the UN-led international standards-setting activities, in practice, the determination of when an IDP is no longer in need of protection is often performed arbitrarily and on *ad hoc* basis. There are several possible reasons for the ineffectiveness of the existing soft-law criteria for determining the duration of internal displacement. In this paper, the authors depart from the hypothesis that at this stage of its development, international law cannot offer an unambiguous and decisive set of criteria on the duration of internal displacement. The paper is to serve as a preliminary investigation that would lead to a more systematic and in-depth analysis of the relationship between the law and the politics in the process of determining when the internal displacement is over. To this aim, the two main international soft-law instruments regulating the status of IDPs are analysed, as well as the principal humanitarian, human rights and refugee law norms from which these soft-law instruments

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Level Panel on Internal Displacement Research Briefing Paper.

<sup>8</sup> Commissariat for Refugees and Migrations of the Republic of Serbia (May 2018). Position and Needs of IDPs. 15.

<sup>9</sup> *Ibid.*, 15, 37-40,

<sup>10</sup> The last available official statistics on the position and needs of IDPs dates May 2018.

<sup>11</sup> According to the Internal Displacement Monitoring Centre (IDMC), an organisation established in 1998 by the Norwegian Refugee Council which each year produces highly cited global displacement reports and other pieces displacement-related statistics, since 2014 there have been no more IDPs in the Republic of Serbia. See the web page with the country profile of Serbia. Retrieved 21 May 2022, from <https://www.internal-displacement.org/countries/serbia>.

<sup>12</sup> For an interesting analysis of this tendency and its consequences, see: Johansson, P. (2019). Displaced Persons as Symbols of Grievance: Collective Identity, Individual Rights and Durable Solutions. In: Bradley, M., Milner, J., Peruniak, B. (eds.) *Refugees' Roles in Resolving Displacement and Building Peace: Beyond Beneficiaries*. Washington: Georgetown University Press, 132-149. <https://doi.org/10.2307/j.ctvfrxq90.12>.

were derived or which have otherwise directed the identification of therein contained standards. The broader goal of the paper is to pave the way for more comprehensive academic inquiries into the relationship between the legal and the political means for addressing internal displacement and its human rights dimensions. It is believed that a clearer picture of the relationship between the two could open the space for more enhanced strategies for remedying the protracted displacement both in Serbia and elsewhere.

Although different events could lead to forced displacement, including natural or human-made disasters, the paper is limited to the internal displacement caused by armed conflict or situations of generalised violence. In the first part of the paper, the authors provide an overview of the two main international soft-law instruments for protecting IDPs. The second part of the paper brings a short overview of the norms of international humanitarian, human rights and refugee law which served as the basis of these soft-law instruments with regard to the question of when to stop considering someone as an internally displaced person. In its third part, the authors turn back to the hypothesis and analyse it in the context of protracted displacement.

## 2. WHEN SHOULD INTERNAL DISPLACEMENT END?

While the last three decades have seen a radical shift in the interest of the forced migration scholars and practitioners from refugees to internally displaced persons, which has resulted in an intensive standard-setting activity in the field, several vital aspects of the status of IDPs are still subject to differing interpretations. One of the most important unresolved issues certainly is the question of how long the IDP status should last. Unlike refugees, IDPs do not cross an internationally recognised border and do not have special legal status under international law; henceforth, there is no cessation clause on the duration of their status as for refugees.<sup>13</sup> Given that they remain within their own country, logically speaking, displacement is over when conditions are in place for IDPs to a) return and reintegrate in the place of origin, b) remain and integrate in the place of displacement or c) resettle and integrate in a third location, and are able to realise their human rights *on a par* with the rest of the population. However, how long the displacement should last in practice is a complex question, given that not all durable solutions would always be feasible, and the displacement-related vulnerabilities and needs of IDPs could affect their lives for many decades after they fled homes. That being particularly observable in the situations of protracted displacement where the process of finding durable solutions for IDPs is stalled, and IDPs are marginalised as a consequence of a lack of protection of their human rights both in the place of displacement and in the place of origin.

There are many reasons why it is essential to determine the (non)existence of the IDP status of an individual. Some of those include collecting reliable IDP-related statistics by national and international stakeholders to determine, through their budgets, strategies and action plans, the nature and scope of the aid required to assist and protect IDPs, *i.e.* remedy the situation of forced displacement.<sup>14</sup> Furthermore, IDPs have the right to be duly informed about the duration of their status, the cessation of which may create consequenc-

<sup>13</sup> On the conceptual differences and similarities between Internally displaced persons and refugees, see: Phuong, C. (2005). *The International Protection of Internally Displaced Persons*. New York: Cambridge University Press, 13-37. <https://doi.org/10.1017/CBO9780511494062>.

<sup>14</sup> Cardona-Fox, G. (August 2020). *The Politics of IDP Data: Improving the Use of IDP Data and Evidence*. UNSG High-Level Panel on Internal Displacement Research Briefing Paper, 3.

es regarding the benefits they are entitled to as IDPs or limitations imposed upon them. An unjustified identification of a person as IDP, especially in the context of protracted displacement, can be detrimental to that person's ability to integrate into society successfully.

The theory and practice now generally agree that an answer to protracted displacement should be sought in the operationalisation of the conventional triad of durable solutions (repatriation, integration and resettlement) via collective outcomes, understood as commonly agreed results that reduce the displacement-related needs, risks and vulnerabilities of IDPs and increase their resilience through strategic, clear, quantifiable and measurable targets.<sup>15</sup> These results and targets need naturally be context-specific and developed through the combined efforts of all stakeholders. However, sustainable collective outcomes cannot be identified without a clear set of criteria for assessing the level of achievement of durable solutions. The same criteria are needed to determine when a person is no longer in need of assistance and protection as an IDP. In that sense, the humanitarian and human rights standards on the protection of IDPs were the first place to look at while searching for an answer on how long internal displacement should last.

### 2.1. UN Guiding Principles on Internal Displacement

Already at the end of the nineties, the scholarly work and the activities of the UN agencies resulted in the relatively fast consolidation of knowledge on internal displacement into a set of humanitarian, peacebuilding and human rights standards for the protection of IDPs.<sup>16</sup> In 1998 these standards were laid down in the UN Guiding Principles on Internal Displacement (further "the UN Guiding Principles").<sup>17</sup> As the main international instrument regulating the subject, the UN Guiding Principles restate the international human rights and humanitarian law standards germane to IDPs and identify a set of rights they are entitled to during displacement and in the course of achieving durable solutions. In general, IDPs have the "right to request and to receive protection and humanitarian assistance" (principle 3.2). The rights guaranteed during displacement include the right to: life (principle 10), dignity and physical, mental and moral integrity (principle 11), liberty and security of person (principle 12), liberty of movement (principle 14), asylum (principle 15), information on the missing relatives (principle 16), respect of family life (principle 17), adequate standard of living (principle 18), health care (principle 19), legal identity (principle 20), freedom from interference with the enjoyment of property and possessions (principle 21), freedom from discrimination (principle 22), and education (principle 23). Given that IDPs remain within the borders of their own country, the UN Guiding Principles point to the national authorities having the primary obligation to protect and assist IDPs (principle 3)<sup>18</sup>, while international humanitarian organisations are entitled to "offer

<sup>15</sup> More on this in: Kälén, W., & Chapuisat, H. E. (June 2007). *Breaking the Impasse: Reducing Protracted Internal Displacement as a Collective Outcome*. UN Office for Coordination of Humanitarian Affairs (OCHA).

<sup>16</sup> On the early developments of the IDP protection concepts, see: Weiss, G. T., & Korn, A. D., (2006). *Internal Displacement Conceptualisation and Its Consequences*. Abingdon: Routledge.

<sup>17</sup> United Nations Commission on Human Rights (UNCHR), Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998, Annex.

<sup>18</sup> See also principle 25.1 of the UN Guiding Principles. The international normative framework on internal displacement is predicated on the view that the state bears primary responsibility for protecting and assisting those displaced within its borders because they are members of the

their services” to the primary duty bearer (principle 25.2). In the course of return, integration and resettlement, national authorities are obliged to “establish conditions, as well as provide means” that would allow the safe and dignified return of IDPs and “endeavour to facilitate the reintegration of returned or resettled [IDPs]” (principle 28.1). In this regard, IDPs have the right to freedom from discrimination on the ground of displacement status, the right to participation in public affairs and the right to access public services on equal ground with the other citizens (principle 29.1). Furthermore, the national authorities are obliged to assist IDPs to “recover, to the extent possible, their property and possessions” and, when such recovery is not possible, to obtain “appropriate compensation or another form of just reparation” (principle 29.2).<sup>19</sup> Since they retain their status of citizens or habitual residents during and after displacement, (former) IDPs also fall under the general human rights legal framework applicable in their state. The UN Guiding Principles are important for analysing the matter at hand because their norms point to the nature and scope of the specific protection assigned to this category of the displaced population. However, despite extensively regulating various issues related to internal displacement, the UN Guiding Principles do not provide an answer on when its provisions are no longer applicable. Instead, they merely state that “[d]isplacement shall last no longer than required by the circumstances” (principle 6.3).

## 2.2. Framework on Durable Solutions

While the UN Guiding Principles are not obligatory for the states, they have gained significant authority over the last two decades, making the lack of explicit cessation-related norms a considerable gap in IDP protection. Given the importance of securing a coherent response to the question of when displacement ends, in 2001, the UN Office for the Coordination of Humanitarian Affairs (OCHA) asked the Representative of the UN Secretary-General on Internally Displaced Persons<sup>20</sup> to provide guidance on “when generically an individual would not only become an IDP but [...] should no longer be considered under this category.”<sup>21</sup> During the extensive inquiries with academia<sup>22</sup>, international

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national political community, either as citizens or habitual residents.

<sup>19</sup> While noting the relevance of all human rights provisions, it should be particularly observed that the realisation of property rights concerning displacement represents one of the main obstacles in effectuating durable solutions. A set of regional instruments applicable in Serbia have explicitly addressed the issue, such as the Council of Europe (CoE), Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons, adopted on 5 April 2006, para. 8; CoE, Resolution 1708 (2010) on Solving property issues of refugees and internally displaced persons with the accompanying explanatory report by Jørgen Poulsen (Rapporteur of the Committee on Migration, Refugees and Population of the CoE Parliamentary Assembly), Doc. 12106. Furthermore, since the decision in *Loizidou v. Turkey* case (Application no. 15318/89, 18 December 1996), the European Court for Human Rights (ECtHR) has played a significant role in confirming the rights of IDPs to property and peaceful enjoyment of possessions.

<sup>20</sup> Now the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.

<sup>21</sup> The Brookings Institution – University of Bern Project on Internal Displacement. (June 2007). *When Displacement Ends: A Framework for Durable Solutions*, 3.

<sup>22</sup> See, for instance, *Forced Migration Review's special issue* on “When does internal displacement end?”, May 2003, which came about as a result of the consultations between the leading scholars



governmental organisations, civil society, and other stakeholders, the issue was analysed through the UN Guiding Principles, refugee experience by analogy and specific case studies of internal displacement. In the course of the consultations, three possible approaches were developed and tested: a) cause-oriented (whether the cause that brought to the flight had changed), b) needs-focused (whether IDPs still had displacement-related needs), and c) solutions-based (whether IDPs had returned, locally integrated or resettled).<sup>23</sup> The conclusion reached was that none of the approaches was sufficient to resolve the matter, and the priority was placed on the combined needs-focused and solutions-based approaches. The conclusion also showed that the end of displacement does not occur at one particular point in time but that it represents “a gradual process during which the need for specialised assistance and protection for IDPs begins to diminish”.<sup>24</sup> The results of the UN initiative were eventually used to formulate criteria for determining to what extent a durable solution has been achieved. These criteria were in 2010 laid down in the Framework on Durable Solutions for Internally Displaced Persons (further “the Framework on Durable Solutions”).<sup>25</sup> According to this soft-law instrument, displacement ends when IDP has achieved one of the three durable solutions (return, integration or resettlement), which he/she has opted for and pursued on the basis of an informed and voluntary decision (para. 21(d)). A durable solution is achieved when a former IDP no longer has specific assistance and protection needs linked to displacement, and such person can enjoy his/her human rights without discrimination resulting from displacement (para. 8). In accordance with principle 28 of the UN Guiding Principles, the primary responsibility to provide durable solutions for IDPs and ensure their protection and assistance needs lies with the national authorities. However, in the situation where *de facto* authorities control the territory and exercise elements of governmental authority in the absence or default of the official authorities, this responsibility extends to them without implying legal recognition (para. 21(a)). The Framework on Durable Solutions sets eight criteria on the basis of which it should be possible to assess the level of achievement of a durable solution, *i.e.*, how remote or close the end of displacement is. These are objective criteria which can be defined as indicators of the level of achievement of human rights in the realisation of which IDPs typically encounter displacement-related obstacles, selected among the IDPs’ rights laid down in the UN Guiding Principles. They concern long-term safety, security and freedom of movement, an adequate standard of living, access to livelihood and employment, restoration of housing, land and property, access to personal and other documentation, family reunification, participation in public affairs and access to effective remedies and justice (para. 53). The Framework also singles out the right to be protected against discrimination as “a cross-cutting principle that should guide the process of supporting a durable solution and the assessment to what extent a durable solution has been achieved” (para. 21(g)).

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and practitioners.

<sup>23</sup> When Displacement Ends: A Framework for Durable Solutions’, 4. For a summary, see: Mooney, E. (2005). *An IDP No More?: Exploring the Issue of When Internal Displacement Ends (Background Paper)*. Georgetown University.

<sup>24</sup> When Displacement Ends: A Framework for Durable Solutions, 5.

<sup>25</sup> UN Human Rights Council, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin: addendum: Framework on Durable Solutions for Internally Displaced Persons, 9 February 2010, A/HRC/13/21/Add.4.

One of the main weaknesses of the Framework on Durable Solutions, as noted by the scholars and practitioners, is that due to their broad and multifaceted character its provisions are hard to operationalise and apply in practice, this being especially true in the situations of protracted displacement.<sup>26</sup> As illustrated earlier, the Framework on Durable Solutions has not prevented the further occurrence of the scenarios in which different stakeholders respond differently to the question of whether the time has come for the IDP status to end individually or collectively. At least part of the explanation of a failure to set more reliable criteria for determining the duration of IDP status could be hidden in the international law norms from which the UN Guiding Principles and the Framework on Durable Solutions are derived. For that reason, it might be useful to step back and see how the humanitarian law, the human rights law, and the refugee law by analogy, regulate the subject.

### 2.3. International hard-law norms

The humanitarian law contains the cessation clause in, e.g., Article 6, paras. 2 and 3 of the 1949 Fourth Geneva Convention, which sets that in the territory of the parties to the conflict, the application of the present Convention shall cease one year after the general close of military operations and “on the general close of military operations” in the case of an occupied territory.<sup>27</sup> Principle 10.2 of the UN Guiding Principles prohibits “attacks or other acts of violence against [IDPs] who do not or no longer participate in hostilities”, in particular, e.g. “starvation as a means of combat” and using IDPs “to shield military objectives” (principles 10.2.b and 10.2.c). The provisions apply only to IDPs during an armed conflict, even though the displacement can also continue in its aftermath.

The cessation concept in refugee law is found in Article 1C of the 1951 Convention Relating to the Status of Refugees,<sup>28</sup> which explicitly regulates various instances when a person ceases to be a refugee. Most notably, Article 1C.5 provides for cessation of refugee status when “circumstances in connection with which he has been recognised as a refugee have ceased to exist” – implying the existence of protection within the state of nationality. The cessation pursuant to Article 1C.4 occurs once the refugee has “re-established himself in the country which he left”, and it seems to correspond with the situation of an IDP returnee, *mutatis mutandis*. On the other hand, the similar notion of “[IDPs] who have returned to their homes or places of habitual residence or who have resettled in another part of the country” in principle 29.1 of the UN Guiding Principles does not imply the discontinuation of the IDP status. This provision should be read in a way that returnees, for instance, still fall under the UN Guiding Principles for reasons of their presumed higher vulnerability in a possibly inimical environment that is not necessarily inimical enough to be labelled as insecure. That is because the struggle to achieve return as a durable solution, *i.e.*, enjoy the rights on par with the other nationals, does not finish when an IDP, for

<sup>26</sup> See on this: Beyani, C., & Krynsky Baal, N., & Caterina, M. (2016). *Conceptual Challenges and Practical Solutions in Situations of Internal Displacement*. Forced Migration Review, 52, 39–42. For a literature review on this subject, see: Cantor, J. D., & Woolley, A. (2020) *Internal Displacement and Responses at the Global Level: A Review of the Scholarship*. The Internal Displacement Research Programme (IDRP) Working Paper No. 1, 8.

<sup>27</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

<sup>28</sup> Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, 137.



instance, physically returns home, but it implies a lengthy process of reintegration into the place of origin. As established in the Framework on Durable Solutions, “[s]ecuring a truly durable solution is often a long-term process of gradually diminishing displacement-specific needs, while ensuring that IDPs enjoy their rights without discrimination related to their displacement” (para. 15). Moreover, the analogy drawn from refugee law would not be entirely useful as the identification of a person as an IDP does not grant any specific legal status under international law.

With further reference to refugee law, it could be observed that the UN High Commissioner for Refugees (UNHCR) guidelines on interpretation and implementation of the “ceased circumstances” clause (Articles 1C.5 and 1C.6) set as the basic standards for evaluating the developments in the countries of origin: a) fundamental character of the change, and b) durability.<sup>29</sup> The fundamental character of change points to a significant and stable development in the circumstances (“to remove the basis of the fear of persecution”), including, *inter alia*: free and fair elections, full respect for human rights and relative political and economic stability in the country occurring over varying periods of time.<sup>30</sup> With regard to durability, the UNHCR has suggested a “waiting period” of 12-18 months to allow consolidation to occur.<sup>31</sup>

When it comes to the third and the most important source of the soft-law standards on IDP protection, it is clear that the cessation concept cannot emanate from the international human rights law considering that the latter remains applicable even after the loss of the IDP status. As a member of the national political community, either as a citizen or habitual resident, a former IDP remains entitled to the full range of the rights mentioned above under the human rights legal corpus applicable in the country. These rights ensue from, *inter alia*, the Universal Declaration of Human Rights (UDHR)<sup>32</sup>, International Covenant on Civil and Political Rights (ICCPR)<sup>33</sup>, International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>34</sup>, International Convention on Elimination of All Forms of Discrimination (CERD)<sup>35</sup>, European Convention on Protection of Human Rights (ECHR)<sup>36</sup>, etc. For instance, the prohibition of discrimination against IDPs “as a result of them having been displaced” under principle 29.1 of the UN Guiding Principles remains preserved as the prohibition of discrimination based on “other status” in, e.g., Articles 7 of UDHR, Articles 2.1 and 26 of ICCPR, Articles 2.2 and 10.3 of ICESCR, Article 5 of CERD, Article 14 of ECHR and similar.

<sup>29</sup> UNHCR. (1999). *The Cessation Clauses: Guidelines on their Application*. paras. 23-29.

<sup>30</sup> *Ibid.*, para. 28.

<sup>31</sup> Bonoan, R. (2003). *Cessation of Refugee Status: A Guide for Determining When Internal Displacement Ends? Forced Migration Review: When Does Internal Displacement End Special Issue?*, 8.

<sup>32</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

<sup>33</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171.

<sup>34</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, 3.

<sup>35</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, 195.

<sup>36</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

### 3. LAW, POLITICS AND THE DURATION OF INTERNAL DISPLACEMENT

The analysis shows not only that the two main international soft law instruments tend to be ineffective when it comes to the attempt to establish clear criteria for determining when an individual should no longer be considered in need of assistance and protection as IDP, but that the international law norms restated in these instruments a such cannot offer clear guidance on the matter. Some tend to explain the inability of the law to regulate the matter by the fact that the situations of internal displacement caused by armed conflict and violence can exhibit great differences among each other. Others assign it to the too broad scope of the Framework on Durable Solutions, which generically addresses the question no matter whether displacement was generated by the conflict, violence, natural or man-made disasters.<sup>37</sup> Another reason could be sought in rather limited diffusion of the knowledge of the Framework among the international organisations and governments active in the field or affected by the internal displacement.<sup>38</sup> For Asfour *et al.*, one of the main problems with the application of the criteria identified in the soft-law instruments is that they are based on the idea that IDPs should enjoy a set of universal rights which are basic in nature but may actually raise the threshold too high in the situations where they “may not actually be generally enjoyed in practice by the wider population of that country”.<sup>39</sup>

While all these elements certainly contribute to the problem, this paper places forward the proposition that the ineffectiveness of the attempt to introduce the legal criteria on the duration of displacement in the first place ensues from the essentially political nature of the matter and that the existing rights-based criteria can only serve as a framework for the political deliberations. That is, the authors argue, particularly manifest in the situations of protracted displacement. The impasse in the negotiation and/or implementation of a peace agreement, characterising this type of displacement, reduces the traditional triad of durable solutions to only two of them – integration in the place of displacement and resettlement to the third place. In such situations, IDPs’ right to a free and informed choice among the three durable solutions cannot be realised.<sup>40</sup> At the same time, the given right lays at the very basis of both the UN Guiding Principles and the Framework on Durable Solutions, emanating from the right to freedom of movement and residence guaranteed by Article 13(1) of the Universal Declaration of Human Rights and the freedom to choose one’s own residence as articulated in Article 12 of the International Covenant on Civil and Political Rights which IDPs can enjoy because they have not left their own country. The logical conclusion that follows is that the absence of this right results in the collapse of the entire structure of the legal criteria analysed in the paper. What is left is a common-sensical conclusion that an assessment of when displacement should end in such situations mandates a recourse to political means. That is what eventually takes place in

<sup>37</sup> Bradley, M., Sherwood, A. (2016). Addressing and Resolving Internal Displacement: Reflections on a Soft Law “Success Story”. In: Lagoutte, S., Gammeltoft-Hansen, T., Cerone, J. (eds.) *Tracking the Roles of Soft Law in Human Rights*. Oxford: Oxford University Press, 161. doi: 10.1093/acprof:oso/9780198791409.001.0001.

<sup>38</sup> See on this: Schrepfer, N. (2012). Addressing Internal Displacement through National Laws and Policies: A Plea for a Promising Means of Protection. *International Journal of Refugee Law*, 24, 667-691. <https://doi.org/10.1093/ijrl/ees048>.

<sup>39</sup> Asfour, Al-Thawr, Chastonay, 3.

<sup>40</sup> As articulated in principle 28 of the UN Guiding Principles on Internal Displacement.

the real-life context, where the political considerations take the lead through the dominance of the return-oriented interpretations of the existing criteria.

Although a perfunctory reading of the Framework for Durable Solutions shows that “long-term safety and security, restitution of or compensation for lost property and an environment that sustains the life of the former IDPs under normal economic and social conditions”<sup>41</sup> are *conditio sine qua non* of a sustainable solution to displacement, in practice, a solution-based approach dominates the process of determining the duration of displacement. That is particularly true in the cases when such determination is undertaken by the governments of states with protracted displacement.<sup>42</sup> A rather common adherence to the above-mentioned solution-based approach might practically result in an automatic equation between the return to the place of origin as the end of the displacement, the former being a fairly tangible way to determine that the IDP status ended. The flaw of this approach is that in the context of protracted displacement, it could eventually create the prospect of an indefinite perpetuation of displacement, even when IDPs clearly opt for integration in the place of displacement and would objectively be in the same situation as other nationals.

The mentioned tendency arguably may be observed in the case of a significant number of IDPs from Kosovo and Metohija who could be considered factually locally integrated and no longer have any displacement-related needs, yet, they still retain their IDP status by maintaining in the personal documents their Kosovo-based place of abode as their permanent residence. Notwithstanding a series of national strategic documents directed at promoting the rights of IDPs in the place of displacement, the Government of Serbia acceptance of the mentioned practice implies that the state has assumed the solution-based approach, which is significantly bent toward the return. At the same time, the local and international authorities in Kosovo and Metohija have not succeeded in providing basic conditions to effectuate the return, both with regards to the basic security considerations, protection against discrimination, as well as to the mechanisms for restitution of or compensation for property lost as a consequence of conflict and violence.<sup>43</sup> The Kosovo context could be compared, up to a point, to the situation in Cyprus. The unresolved conflict involving vast property/land issues, coupled with the long presence of the UN and the return desire among the IDP population extending the validity of the IDP label.<sup>44</sup>

These and many other similar examples bring to the conclusion that in the absence of applicable legal standards, the only means left to address the problem of protracted displacement are the traditional methods of international politics.<sup>45</sup> In that sense, Me-

<sup>41</sup> When Displacement Ends, 8.

<sup>42</sup> As Megan Bradley notes, in the national level interpretation of the above-analysed soft-law instruments, “the lion’s share of attention and effort [is] still focused on return”. See: Bradley, M. (2018). Durable Solutions and the Right of Return for IDPs. *International Journal of Refugee Law*, 30 (2), 227. <https://doi.org/10.1093/ijrl/eey021>.

<sup>43</sup> See, e.g., Joint IDP Profiling Service (JIPS). (January 2018). Profiling of Internally Displaced Persons in Kosovo: Assessing the Route to Durable Solutions for IDPs in Kosovo.

<sup>44</sup> See: Bailliet, C. (2000). Unfinished Business: The IDP Land Question. *Forced Migration Review: Going Home: Land and Property Issue*, 16-19.

<sup>45</sup> On the resolution of IDP issues through peace agreements, see: Fagen, P. W. (2009). Peace Processes and IDP Solutions. *Refugee Survey Quarterly*, 28(1), 31–58. See also: Psaltis, C., et al. (2020). Internally Displaced Persons and the Cyprus Peace Process. *International Political*

gan Bradley argues that return as a durable solution could be better conceptualised and approached if seen as “an explicitly political process [...] shaped by complex power relations stretching from the interpersonal and local through to the international level”.<sup>46</sup> A concentrated engagement of both domestic and international actors in reaching a political settlement of the displacement-related difficulties faced by IDPs is not only a way forward to resolve the problem of protracted displacement, but it could also become a basis for a more profound and positive shift in the relationship between the parties to the conflict.<sup>47</sup>

#### 4. CONCLUSION

An IDP is not in need of protection and assistance when durable solutions are ensured, *i.e.*, when IDP either returns to the place of origin, locally integrates or resettles in another part of the country, enjoying the same rights as other nationals without any discrimination ensuing from the fact of displacement. However, it is not always clear at which point this is the case in the real-life context, and divergent interpretations may be given in an attempt to address the issue. The answer to the question of when displacement ends in practice remains susceptible to various interpretations. In addressing the question, different stakeholders in a different way interpret the existing standards and arrive at the conclusions which are often a disguise of their broader political agendas. In that way, they tend to reach different, habitually irreconcilable conclusions on the duration of IDP status and, hence, on the number of IDPs. The two main international soft-law instruments on the subject do not provide enough clear criteria for determining when a person should no longer be considered in need of displacement-related assistance and protection. The UN Guiding Principles on Internal Displacement do not directly address the question. The Framework on Durable Solutions, the soft-law instrument created with an explicit intention to fill in the void in the international legal standards *vis-à-vis* the duration of displacement, does not succeed in setting the criteria which could represent enough firm ground for deciding the matter. The analysis also shows that the international hard law norms restated in these two instruments, as such, cannot offer more precise guidance on the matter. That is mainly observable in situations of protracted displacement.

All these reasons, most of which are, as already noted, not unique to Serbia but characterise *en general* the protracted displacement situations in many parts of the world, point to the need to bring the question of how to arrive at durable solutions and on the basis of which criteria to assess when displacement is over back to the fore of international scholars and practitioners' discussions. A reasonable beginning of such renewed inquiry would be to understand, in the first place, what are the possibilities and limitations of using the law to answer the question of the duration of displacement and, accordingly, acknowledge the relationship between the law and the politics in addressing the matter. The many instances of protracted internal displacement around the globe show that without successfully negotiated and implemented political solutions to the problems faced by IDPs, the displacement tends not only to last for decades but also to become a seed of future forced displacements.

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*Science Review*, 41(1), 138–154. <https://doi.org/10.1177/0192512119872057>.

<sup>46</sup> Bradley (2018), 221.

<sup>47</sup> For the opposite views stressing the values and challenges of the rights-based approaches to internal displacement see the volume: Grabska, K., Mehta, L. (eds). (2008). *Forced Displacement: Why Rights Matter*. London: Palgrave MacMillan.

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## Trajanje internog raseljenja na raskršću prava i politike

**Rezime:** Iako je dužina trajanja internog raseljenja, odnosno statusa interno raseljenog lica (IRL) tokom nekoliko godina bila predmet intenzivne normativne delatnosti u okviru UN-a koja je iznedrila skup standarda, u praksi se ovom važnom pitanju i dalje pristupa arbitrarno i kroz ad hoc rešenja. Različiti autori na različite načine objašnjavaju neuspeh pokušaja da se ovo pitanje reguliše na pravu zasnovanim kriterijumima. U radu, autori postojećim objašnjenjima dodaju još jedno koje polazi od pretpostavke da problem na prvom mestu proističe iz toga što je pitanje dužine trajanja raseljenja u osnovi političko a ne pravno pitanje. Cilj rada je da posluži kao preliminarno istraživanje koje će prethoditi jednoj sistematičnijoj i temeljnijoj analizi odnosa između prava i politike u postupku odlučivanja o tome kada je kraj internom raseljenju. U tu svrhu u radu autori analiziraju dva glavna međunarodnopravna instrumenta kojima su postavljeni standardi u domenu statusa i zaštite interno raseljenih lica, kao i osnovne norme međunarodnog humanitarnog, izbegličkog i prava ljudskih prava koje su utkane u ove instrumente. Sprovedena analiza pokazuje da odredbe sadržane u ova dva međunarodna instrumenta nisu uspele da uredi proces odlučivanja o tome kada se ima smatrati da nekom licu više ne treba pružati zaštitu u svojstvu interno raseljenog lica. Rezultati analize ukazuju i na to da ni same norme međunarodnog prava iz kojih su analizirane odredbe izvedene ne mogu da posluže kao dovoljno čvrst oslonac za pravno regulisanje ovog pitanja. U kontekstu produženog raseljenja, istraživanje dalje pokazuje da kada zastoj u pregovorima ili u sprovođenju mirovnog sporazuma svede tradicionalnu trijadu održivih rešenja na samo dva moguća ishoda za raseljena lica – integracija u mestu raseljenja ili preseljenje u neko drugo mesto – čitav sistem odredbi kojima se reguliše pitanje zaštite IRL-a, kao i dužina trajanja raseljenja gubi svoj oslonac u međunarodnom pravu ljudskih prava. To je i razlog, autori zaključuju, što na pravu zasnovani kriterijumi za određivanje dužine trajanja raseljenja mogu služiti jedino kao okvir za rešavanje ovog pitanja političkim metodama.

**Ključne reči:** interno raseljena lica (IRL), trajanje internog raseljenja, održiva rešenja, produženo raseljenje, Srbija.

