



## PERSON, THEIR SECURITY AS A VALUE IN THE SPECTRUM OF PUBLIC POWER: LEGAL PROBLEMS OF RECOGNITION THROUGH A CIVILIZATIONAL PERSPECTIVE

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### ABSTRACT

Recognition of a person, their life, health, honor, dignity, inviolability and security as the highest social value, as a key principle of the Constitution of Ukraine and its implementation in the spectrum of public authority is the subject of in-depth theoretical and legal analysis. Historical origins of modern perception of human value. Reaching the depths of the birth of the Christian faith, revolutionary events in the European space of the past, world wars, the adoption of the UN Universal Declaration of Human Rights are reflected in many constitutions of states, including modern Ukraine. At the same time, certain problems are obvious in this area, including: differences in the perception of the content of human rights in Western and Eastern civilizations, Christian and Muslim beliefs, diverse constitutional declaration and further legislative implementation, the separation of new human rights is increasingly attracting the attention of scholars and practitioners. Some of these problems have been the subject of research.

**Keywords:** constitution, responsibilities, guarantees freedom, natural law, rule of law, conservatism.

### 1 INTRODUCTION

In Ukraine, the constitutional recognition of man as the highest social value (Constitution of Ukraine, 1996) and the implementation of this idea in practice is essentially a multifaceted applied and scientific-theoretical problem in various scientific fields. It is the subject of research in philosophy, sociology, economics and other scientific





fields and certainly in law. The effectiveness and success of its solution determines the level and quality of socio-economic development of society and the state. But even a preliminary look at this fundamental constitutional thesis, in our opinion, raises the question - the indisputable importance of man as the highest social value is the basis for such a definition in the Basic Law of the Ukrainian state? Or on the contrary: the definition in the Constitution of Ukraine in the fundamental article of man is the highest value, thus indisputably causes such recognition in the state and society of man as such a value?

Reflecting on the deep perspectives of this problem, we pay attention to its individual facets. First of all, it is important to note that symbolic is the very fact that mankind recognizes man as one of the living beings, endowed with consciousness and the ability to evaluate the world around and transform it. According to religious Christian dogmas, man is a creation and likeness of God. These and other ideas about the recognition of the significance and value of man are concentrated in the philosophy of anthropocentrism - an anthropological paradigm, the basis of which is reflected in the famous saying of the ancient Greek philosopher Protogor that man is the measure of all things.

In the historical periods of the Middle Ages, the Renaissance, especially during the events of the French Revolution, anthropocentrism gained greater social and legal significance, when its basic principles were declared in the Declaration of Human and Civil Rights of 1789 and other important political and legal documents of the time. Even then, the socio-legal basis of modern European values was established. They attract scientists, because the priority of human interests and individual freedom, as a principle of natural law and a significant component of such values is considered really more progressive and bribes its priorities for a certain part of the human community with its advantages over other modern legal concepts.

However, even in those distant historical periods of the past, in addition to the value of man himself and his rights and freedoms, another, somewhat alternative component of socio-economic European values in terms of the importance of property rights for man emerged. This was a manifestation not so much of democratic or political liberalism as of economic liberalism, based on the principles of free trade, and at the same time hired labor. And this inevitably led to human exploitation and an alternative to it - building a system of protection of its social interests through the formation of a social and legal state.





And then the modern European social-democratic state really becomes a real, not a pretended example of this.

However, it is appropriate to note that the characteristic of modern European values is the idea of conservatism, which was also established in the late 18th - early 19th centuries. At its core, it primarily defended the principle of order. As for human rights, the most important of them was the right to security. Today's ideas of European conservatism regarding the value of man and his rights and freedoms as the subject of this article, in our opinion, successfully summarized the modern French scholar of philosophy of law Alain de Benoist in his famous work "On the other side of human rights" (de Benoist, 2015).

Further, emphasizing the second part of Article 3 of the Basic Law of Ukraine, according to which human rights and freedoms and their guarantees determine the content and direction of the state, we emphasize that it is responsible to man for his activities. Moreover, the establishment and protection of human rights and freedoms is constitutionally defined in Ukraine as the main duty of the state (Constitution of Ukraine, 1996). In practice, these principles should become decisive for understanding the social axiological guidelines of the period of the current formation of Ukrainian statehood in general and public authorities in particular. The state must implement these constitutional principles through the power and tools of power. We emphasize that we are talking about the norm of Art. 5 of the Constitution, which states - the only source of power is the people, who exercise power through public authorities and local governments, which under Art. 7 of the Constitution is recognized and guaranteed. But for Art. 6 of the Basic Law of Ukraine, state power is exercised on the basis of its division into legislative, executive and judicial. It is important to note that the Constitution of Ukraine under Art. 8 has the highest legal force and is actually the result and consequence of the implementation of the legislative power of the state. That is why in the presence of such a Ukrainian constitutional and legal mechanism for recognizing a person, his life and health, inviolability and security as the highest social value, it is essentially aimed at establishing and ensuring human rights and freedoms as the main duty of the Ukrainian state,

But the real level of implementation in the socio-economic reality of indicators of life, health, safety of people in Ukraine in many respects remains low compared to many other European countries. The problem of immigration of Ukrainian citizens to the countries of





the European Union and not only is a certain characteristic evidence of it. These perspectives of the researched problem, in the opinion of the authors of this article, uniting the commonality of subjects of their scientific interests, are perceived as an actual scientific-theoretical and applied problem, which requires the attention of scientists and practitioners.

## 2 ANALYSIS OF RECENT RESEARCH ON HUMAN VALUE

Considering scientific research and publications, our attention is focused on the views of those scholars who not only take a unanimous position in support of established views, but also those that lead to polemical reasoning. Among the wide range of areas studied in this article, the problem of scientific work of both foreign and Ukrainian scientists, it is advisable to focus on works in the field of general philosophical, theoretical and legal visions of scientists on the understanding of human value.

In this regard, first of all, it is worth paying attention to the iconic general philosophical thesis of the famous Ukrainian philosopher Myroslav Popovich. who, reflecting on the question of what a person is, quite rightly stated that the very nature of man, including its value, is determined by man himself (Popovich, 2011). And he is a priori right, because in the view of today's human civilization, only man is endowed with a level of consciousness, so the value of man is the highest. But on what scale is such an assessment realized, who or what is compared to a person, and is at another lower level of value. And if we consider more generally these elements of the world of the terrestrial universe, then maybe this natural environment in general - flora, fauna.

If we consider a person within the social coordinates as the highest social value then can along with the person, his life, health, honor, dignity, inviolability and security, ie his vital interests should put the interests of a community of people, society, state, as it is perceived in other philosophical and legal systems. Or maybe if, given the Christian idea that man is the image and likeness of God, then his value is higher than the value of God himself? Such rhetorical questions and answers suggest the need for thinkers in ordinary people a logical and reasonable search for answers to these questions.





Indicative for understanding the peculiarities of the perception of the researched problem and the search for theoretical and applied ways to solve it was also a scientific discussion in the columns of authoritative Ukrainian publications. Paying attention to some of her publications, which, in our opinion, is right S.P. Golovaty, emphasizing that... **man is a work of Nature** (highlighted GSP), and not society, is a product of nature and not (society) of society. And that is why she (man) and her dignity need protection and protection (Golovaty, 2015).

At the same time, the reflections of the authors of this article on the significance of the deep content of this defining thesis about man as a product of nature lead to the expediency of taking into account the scientific position of Yuval Nobel Harari, a professor at the Hebrew University. The history of mankind from the past to the future. Analyzing the achievements of scientists in various fields of knowledge, he makes quite strong arguments about the "intelligent man" as a direct natural ancestor of modern man, which somewhat break the common notion of the inherent positive qualities of man himself. It is intelligent man, as this scientist emphasizes, led to the extinction of other members of the human race on Earth. Thus Yu.N. Harari emphasizes that "nomo sapiens" took first place among living organisms in the extinction of most species of plants and animals, and therefore has the dubious honor of being the deadliest species in the annals of biology (Harari, 2016). Isn't that why an intelligent person, as a work of nature, should not be idealized in relation to other representatives of the human race in view of such modern criteria as humanism, virtue, and morality. But it is this implementation of the principle of natural selection in favor of the existence in nature of primitive man "nomo sapiens" and gave the opportunity to man of modern civilization to reach a new conscious level of its existence, further forming such social regulators as morality, law in general and natural law in particular, which is clearly different from the laws of nature.

Such a past of ours, in our opinion, really, as scientists say, should not be silenced or ignored. At the same time, in our opinion, it does not contradict the current notion of natural law. According to the theory of social naturalism, which according to scientists is the basis of natural law, law as well as morality follow not from human nature, but from the nature of human social life, ie from social nature (Kostenko, 2021). That is, even if the current view of public life in Neanderthal times, the morality of the time corresponded to





the actions of man "Homo sapiens", which writes Yu.N. Harari, were necessary both for the survival of the individual and the human race as a whole, of which we are now members, its modern representatives. And that's why O.M. Kostenko is right in that the social has no antibiotic character as an end in itself, just as the biological has no antisocial character. But, in our opinion, both at the time of the extinction of Neanderthals and now in our time, when the human community, ie social, or a certain part of it as a result of its activities (industry, development and application of destructive flora and fauna and in general biological and even the planet Earth armaments, etc.) is harmful, albeit not purposefully, but the result is now increasingly obvious. Therefore, is not this a manifestation of one of the laws of social nature, which are referred to in O.M. Kostenko, which do not depend on the will of man?

In view of such considerations, it is worth returning to the argument of S.P. Golovatyi with reference to the documents of the Venice Commission "... on the compliance of the Constitution of Ukraine with European standards, which states that a significant shortcoming of the Ukrainian founding act is just unfounded and unjustified recognition in Art. 3 people "the highest social value". Such a socially-oriented understanding of the human being, according to Golovatyi, is extremely harmful because it does not create any problems in order to further perceive man as a "social product". Moreover, man as an element that comes from society or "belongs to society." (and hence its political institution - the state) on property rights (Golovatyi, 2015; Golovatyi, 2016). However, in such statements S.P. Golovatyi seems to us not convincing enough. After all, the origin of society, in our opinion, cannot be perceived as an alternative to it, especially on property rights. But the thesis that legal science really should get rid of the syndrome of exaggeration of the role of the state in relation to the person is not in doubt.

The obvious argument for this is not even the need for controversy over "state ownership." The realities of the Ukrainian present are more convincing, when millions of members of our society and, accordingly, citizens of the state ignore such "ownership" of them, migrating to other societies and state formations more acceptable to them, thus realizing the possibility of choosing the world where it was noted that it is acceptable for a person to maintain his identity. It is significant that in the personally translated SP Comments on the Venice Commission document "The Rule of Law" for the Ukrainian user





in paragraph 90 when considering the relationship between the three concepts - law, democracy, human rights, as illustrated in a special document of the Committee of Ministers of the Council of Europe, commenting on human rights as an example freedom of movement is given (European Commission for Democracy..., 2017).

In fact, in our opinion, this is a manifestation of the implementation of the constitutional principle of the perception of man as the highest social value and respect for his dignity in the context of growing globalization. It is obvious that globalization as a global phenomenon progresses more spontaneously, chaotically, leading to civilizational polarization and even international or interstate conflicts and, importantly, to be taken into account in domestic realities, ruthlessly punishes inefficient, weak states. E.M. Libanova (2021) is right in this regard, who considers the departure of Ukrainian citizens abroad as a way to solve their financial and material problems as a demographic problem, argues that this is not the only and not the main reason for this process. According to her, the main factor is inequality in various spheres between countries and, as a result, Ukrainian citizens have no vision of a better future for the state.

Reflecting on this thesis of a famous Ukrainian scientist, in our opinion, this situation is in fact evidence of passive political protest, disagreement of citizens with state policy, without seeking political asylum, without loud statements. but protest. However, not every citizen of the state can use this form of protest. Thus, citizens of the state who are civil servants, servicemen without termination of their status are legally deprived of this right to travel abroad. Although, as evidenced by socio-political realities, this problem exists. The historical experience of the past cites many such mass examples during revolutionary events, wars, and other social cataclysms, when migration tendencies were much stronger. They should definitely be perceived as a manifestation of social nature. Therefore, the main factor in migration is inequality in various areas between countries, and Ukrainians mostly leave not only to get higher wages, but also because of the lack of vision for a better future for the state. Regarding the criticism by the Venice Commission of the provisions of the Constitution of our state regarding the recognition of man as the highest social value, it should also be noted that according to Art. 3 of the current Basic Law of Ukraine, the highest social value is recognized not only a person, but also his life,





health, honor and dignity. That is, the norm itself emphasizes that a person is recognized as such a holistic value with certain components and qualitative characteristics.

Although in one of the draft amendments to the Constitution of Ukraine P.M. Rabinovych and the author's team of scholars led by him propose to formulate this basic norm of the Constitution in another wording: "Man, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social values" (Lviv Laboratory of Human and Civil Rights, 2015). That is, we are talking about many such values. But even in this version of the constitutional norm, the criticism of the authoritative European institution and S.P. Golovaty, in our opinion, is quite fair. Evidence of this is the fact that in the practice of constitutional legislation of a number of states, the normative definition of "man as a higher value" (not social as in our country) is common in the post-Soviet space (Belarus, Russia and some others). Whereas for the states of Western and Central Europe such a constitutional definition is not used.

Thus, the Polish Constitution is only about guaranteeing civil rights, respect for freedom and justice and ensuring freedom and human rights, as well as the security of citizens. And the French Constitution proclaims commitment and commitment to human rights. German basic law states that human dignity is inviolable. It is the duty of all public authorities to respect and protect it. The Spanish Constitution proclaims the desire (effort) to ensure the realization of human rights. And the highest values of the Spanish legal order as a legal, democratic, social state are proclaimed justice, equality, political pluralism. There are other examples of the proclamation of human relations in the constitutions of states. Thus, the constitutions of Japan and South Korea even enshrine the human right to achieve or strive for happiness.

O.M. Borislavska (2018) quite rightly notes that human rights according to the European model of constitutionalism are one of the necessary attributes of constitutional government. At the same time, she rightly emphasizes that there are a number of different doctrines and concepts of human rights and, referring to the views of others, emphasizes the lack of agreement on how the basic institutions of constitutional democracy should be organized to meet fair conditions for free and equal cooperation citizens.

## Constitutional norms on man as the highest value







An important component of the study of the constitutional norm on man as the highest value, in our opinion, is also the need to gradation of such values. If we are talking about the highest degree of value, it is quite logical to ask what other values are comparable to it. The need to consider this scientific problem in law is discussed by both foreign and domestic scientists. Thus, the famous sociologist of the early twentieth century M. Scheler (1994), who is considered one of the founders of modern Western European philosophical anthropology, the doctrine of nature and the essence of man on the basis of various branches of science, thinking about values as a phenomenon of human feeling the need to form and organize the hierarchy, the height of values in general and in relation to the person in particular, both material and formal order.

The modern German philosopher-pragmatist Ioas Hans (2014), whose subject of research is the value of human rights, in his thorough work "The Origin of Values", exploring a wide range of scientific views on the formation, change and loss of values and argues that sociality as a basis the definition of values cannot contradict universal approaches and be reduced to the resolution of conflicts, interests and distribution of benefits without taking into account the normative potential in various social formations, even with antagonistic features.

Ukrainian lawyer M. Savchin (2018) in his scientific works, building the author's concept of the hierarchy of constitutional values, including in the context of globalization, generally considers, along with other general categories such as human rights, human dignity, but actually man, as noted in text of the Constitution, it is not mentioned. In a polemic with the co-author of the article, he, defending such a position, argues it with the realities of today's Ukraine related to the war in the east, where thousands of people die, it would be immoral and illogical. And this scientist is right.

In our view, the value of a person and human life are comparable only to the value and life of another person. At the same time, in the Ukrainian legislative and legal field there was a certain comparison of values on this issue. Thus, in the Law of Ukraine "On the Fundamentals of National Security of Ukraine" adopted in June 2003, which, however, has expired with the adoption of the Law of Ukraine "On National Security of Ukraine" on June 21, 2018, defining the objects of national security, the legislator view, quite rightly put on a par with man and citizen - their rights and freedoms, as well as society - its





spiritual, moral and ethical, cultural, historical, intellectual and material values, information and environment and natural resources and the state - its constitutional order, sovereignty, territorial integrity and inviolability. That is, the values of all these objects of national security at this legislative level, which regulate security issues at the strategic national level, have been balanced.

But already in the Law of Ukraine "On National Security of Ukraine" in 2018, this rule is missing. However, the National Security Strategy of Ukraine implemented on the basis of the above Law in 2020 among the priorities of national interests of Ukraine and national security already states that a person, his life and health, honor and dignity, inviolability and security - the highest social value in Ukraine and the implementation of this norm of the Constitution of Ukraine is the main goal of the state policy of national security (Decree of the President of Ukraine No. 392/2020, 2020). Such specific features of the legislative and legal regulation of the constitutionally defined main duty of the state during the years of its existence, in our opinion, do not contribute to its success.

Given the general approach to understanding human rights and their significance, it is worth mentioning others that are in some ways contrary to traditional views on this important issue. In this regard, the position of the Canadian scientist and politician Michael Ignatiev deserves attention, who draws attention to the problem of the relationship between the importance of the foundations of human rights and human rights themselves. In his opinion, belief in the "right" grounds cannot be more important than the "right" attitude to people, based on respect for people (Ignatiev, 2019).

Swedish scholar-lawyer of the XIX-XX centuries Rudolf Challen in the context of the problem we study in his famous work "The state as a form of life", which he wrote in 1916, expressed a rather unusual for our time opinion that as a result of tests for the people so for an individual, better than happiness is such a finale that is worth the prize at a cost in life, is the improvement of personal qualities for the sake of the greatest possible improvement. Thus improvement of qualities of the people becomes the final task of the state, only then it goes to happiness (Challen, 2008).

The French thinker Alain de Benoit, analyzing this problem with reference to other scholars, also emphasizes that the protection of human rights reflects Western values. They are imposed on other societies, which in this case must abandon their values, social





practices and deep cultural values and adopt anthropological and theological ideas and specific, in the opinion of his associates, the use of the terms "law" and "human rights" (de Benoist, 2015).

American lawyer Bob Black (2021), who positions himself as a utopian anarchist, sees the very idea of human rights as a myth that serves the political functions of a particular social practice. In many aspects of his criticism of human rights, he also draws attention to issues such as: the human rights recognized by the UN Universal Declaration of Human Rights in 1948 are acceptable to the standards of Western civilization and do not take into account the views of others. -eastern and eastern) civilizations; human rights - human rights cannot be the highest priority, because man is not the center of the universe; the concept of human dignity is radically different from European in various other cultures, such as Muslim, Far Eastern; there are certain contradictions between different human rights, human rights belonging to different subjects, as well as human rights and the interests of the state.

But in this regard, returning to the Ukrainian domestic problems, the obvious, in our opinion, another question arises, and whether it is worth the gradation of values or social values referred to in Art. 3 of the Constitution as the Main Law of Ukraine to take into account such values as Nature, environment and other equal categories. It is not absurd to deny the origin and significance of the phenomenon of natural law, but its understanding and application requires scientific and theoretical understanding and applied implementation. Therefore, in this article we will focus more on such issues.

First of all, it is worth making a statement of O.M. Kostenko (2021), that the actual existence and operation of the laws of social nature does not deprive a person of liberty, the manifestation of which in the form of non-fulfillment of obligations imposed on a person by the law of social nature is a violation of these laws. In fact, this violation is a natural basis for establishing legal liability in the legislation. But then, in our opinion, the opposite manifestation of human will in the form of claiming to ensure certain rights should become a natural basis for guaranteeing and exercising such human rights by state authorities, both legislative and executive and judicial, as well as local self-government. But public authorities, as is unfortunately the case, do not properly exercise such functions and human rights for their citizens and others. Does not implement for various reasons, unable





due to the potential of the state, or for subjective reasons of the performers. Then would it not be logical to say that the will of man in the form of public actions to defend their rights on the principle of social naturalism is not able to influence this process and its consequences depend only on the laws of social nature?

Moreover, if a person's free will can in no way abolish or change the social laws of nature, but only fulfill or not fulfill them, then such a person as a constitutionally determined highest social value is not a subject of social processes, but above all their object? According to O.M. Kostenko (2021), the concept of the rule of law, which is actually the basis and its basis, belongs to the constitutional recognition of man and his rights and freedoms as the highest social value, provides that the rule belongs to the laws of natural law. And according to the doctrine of legal positivism, the principle of the rule of law presupposes the rule of the Constitution and other legislation. Thus, according to O.M. Kostenko, there is an opportunity to grant the status of supremacy to any legislative act established arbitrarily, ie contrary to the laws of natural law. But in our opinion, there is no reason to claim that the Constitution of the state was adopted arbitrarily and cannot claim supremacy. Another significant example of the importance of the supremacy of the laws of social nature over human value is the logical statement that the social function of the state is to ensure compliance with the laws of social nature through the management of public life.

It is quite logical, but it would be more appropriate to note that the state, as the main really important administrative regulator, ensures the implementation of laws and other legislative acts produced by it, which must comply with the laws of social nature. Because without the presence of such acts of governance only on the laws of social nature will be ineffective, ineffective, especially the provision of human rights. That is why the state functions, whose main constitutionally defined duty is to affirm and ensure human rights and freedoms. And it seems that all branches of government are used to effectively fulfill this duty - legislative, executive and judicial, as well as local self-government.

But an important thesis of O.M. Kostenko (2021) in his argument, referring to the views of famous thinkers of the past and present, supporters of the concept of natural law, there is a statement that in this process the state's compliance with social laws is its mandatory quality - the state must be legal. Moreover, there must be a legal society and





a legal person. The main criterion for this quality is the perception as a basis for the priority of natural law, rather than positive legislation. In our opinion, there is an unconditional logic in this. But is it equally important that the state be not only legal but also social and democratic, as well as sovereign and independent? This is exactly what is recorded in Art. 1 of the Constitution of Ukraine. And these principles must become not only constitutional principles, slogans, but must have an applied embodiment both in the legal aspect and, above all, in the social aspect.

### 3 ANALYSIS OF THE PRINCIPLE OF THE RULE OF LAW

As for the functions of the state, in our opinion, the position of Hans-Adam II (2018), the Ruling Prince of Liechtenstein, who in his work "The State in the Third Millennium" on the example of the functioning of Western European states experience and convincingly offers ways to reform modern states. It is significant, according to O.M. Kostenko, that according to the principle of the rule of law, both natural human rights and their natural responsibilities arising from natural law are interrelated. However, to ensure their implementation in public life, these rights and responsibilities must be enshrined in the form of positive legislation, namely the constitution and other legislation. At the same time, the interconnectedness of natural rights and natural responsibilities, and in our view, is indeed an important, balancing need, which itself stems from natural law. Violation of this balance leads to permissiveness for people (if they ignore their responsibilities), as well as permissiveness for the state (if it ignores human rights), which, in one way or another, can have devastating consequences for public life.

Aleyda Assman (2020), a Western European scientist, is right in this regard, stating that there are very different human responsibilities: to the state, to God, to nature, to life. However, it is not about these general responsibilities, but mainly about responsibilities to other people. And therefore quite logical and obvious, in our opinion, the question arises, and whether among the named by this authoritative person in science such categories as God, the nature, as well as the person, its life, health, safety the highest values which should be considered in the list specified in the Ukrainian constitution.





But if we specify this problem, then the question is far from rhetorical for the scientific community - what is the natural duty of man corresponds to his determining natural right to life? Perhaps if we take into account the principle that ignoring the balance of natural rights and responsibilities, hypertrophy of some due to malnutrition of others, in the search for the relationship of the human right to life is its natural duty - to ensure the proper state of life. But without going into too much detail, nature itself questions the causal link between this right and the duty of the individual.

Returning to the thesis on enshrining the laws of natural law as natural human rights and its natural responsibilities in the form of positive legislation, we note that in our opinion, this thesis is quite valid. However, in the realities of public life there is no division between purely natural rights and responsibilities and other rights and human responsibilities, which are also enshrined in the acts of positive legislation. And the very gradation of human rights and responsibilities into natural and unnatural would certainly not be in favor of man and would obviously not be natural. This is stated in the work of the French philosopher of the XIX-XX centuries Zh. Mariten (2000) "Man and the State", where he devotes a fourth chapter to human rights, in which he considers natural law as a philosophical basis. At the same time, he approaches their analysis holistically and thoroughly, emphasizing even such a detail as a certain opposition of some of the so-called "old" rights and "new" human rights.

As for the proposal Zh. Mariten to supplement the Declaration of Rights with the Declaration of Duties, which is emphasized by O.M. Kostenko, a certain realization of such an idea could be feasible only if the content of the Declaration of Human Rights itself is radically changed, possibly even by making a change in the name, calling it the "Declaration of Human Rights and Responsibilities."

Important in view of the subject of research of this article is the problem formulated by O.M. Kostenko (2021) on human freedom and human security. Its essence is the realization of human freedom so that it is not to the detriment of human security and at the same time ensuring human security does not restrict human freedom. A generalized consideration of this problem is given by O.M. Kostenko believes that in fact the safety of people is not harmed by freedom, but pseudo-freedom, which is not consistent with the laws of natural law. And human freedom is limited by pseudo-security, which is not based





on the laws of natural law. On the basis of such considerations, he concludes that only the coordination and establishment on the basis of the natural law of freedom and security can ensure their harmonious coexistence.

Paying tribute to O.M. Kostenko, as a well-known Ukrainian scholar-lawyer, a supporter of the theory of natural law, but such an idealized, humanistic vision of the way to solve this really important problem, in our opinion, is far from the current social realities of legal regulation. First of all, it should be noted that the comparison of human subjects - people, as a certain community of them, used in these theses to consider the security mechanism is, in our opinion, insufficiently substantiated. It is generally accepted and quite logical, in our opinion, also in view of the laws of social nature, is the vision of a number of subjects of security in the form of: man, society, state. For man, security is seen as one of the basic needs for existence, or in another perspective, the right to security is really one of his natural rights.

The level of security of the person, society and the state depends on a number of factors, we will pay attention first of all to threats of natural character on which O.M. Kostenko (2021), considering the covid-pandemic. But another series of security threats as produced by other states, criminal elements are no less threatening to humans. In this series of threats, the pseudo-freedom of man, which is not in accordance with the laws of natural law, when compared with others, is not, in our opinion, so significant and threatening.

The issue of human value and human rights and freedoms in emergencies is relevant to security issues. One of the manifestations of such an emergency is the covid-pandemic, which has become global and has been going on for almost 2 years now. Considering the current aspects of this situation O.M. Kostenko (2021) quite rightly emphasizes that anti-epidemic measures must meet natural needs and then be adequate.

However, taking into account today's Ukrainian social realities, as well as the peculiarities of legal regulation, the real conditions, the manifestation of actual martial law or emergency are full-fledged hostilities, and essentially a hybrid war, with the actual use of military means in eastern Ukraine. In such emergencies, a person's value, life, health, integrity and security are already in a system of criteria and values other than those established in peacetime. Among such values, given the realities of social nature, in the





opinion of the authors, more important are the security of the state and its interests (sovereignty, territorial integrity, economic and information security, as the most important functions of the state), as stated in Art. 17 of the Constitution of Ukraine and is recognized as a matter of the whole people.

In this regard, according to the authors, it is logical to say that the state of emergency, even in a limited area of the state affects the values of the entire territory of the state regarding man, his life, health, inviolability and security, as constitutionally recognized in Ukraine the highest social. This statement is based on the fact that to protect the sovereignty and territorial integrity of the state are involved as representatives of the Ukrainian people, citizens of Ukraine who are serving in military formations, regardless of place of residence in its territory. Then according to the relevant laws of natural law and quite logical according to part 4 of Art. 17 of the Constitution of Ukraine is the provision by the state of social protection of those citizens who are in military service, as a certain compensation for the threat to their lives, health, inviolability and security. But for Ukrainian realities, it would be important that the value of the life of a human citizen of Ukraine - a serviceman who can be involved in a risky military operation in advance - was calculated as a determining criterion.

O.M. Kostenko (2021) is right in this regard, noting the reality of the process of modifying the natural rights and responsibilities of citizens in connection with the natural necessity of the transition from a normal situation to an emergency. However, he is considering this approach to the government's response to the covid pandemic. But, in our opinion, this process actually takes place in the conditions of hostilities in the east. The volunteer movement of patriotic people, both citizens of Ukraine and others at the initial stage of the military confrontation, when the state and its armed forces in particular were unable to properly resist Russian aggression, was a clear reflection of the manifestation of natural responsibilities. And indeed, if we apply analogies with the position of O.M. Kostenko, a logical consequence of such social cataclysms should be a legal reflection, which is manifested in the functioning of all branches of government, as well as municipal authorities in the regions in order to reproduce in laws and regulations and their proper implementation as responsibilities. and the proper rights of all participants in hostilities and members of their families. Problems in the activities of state authorities







to fulfill these natural responsibilities are clearly manifested in the shortcomings of pensions for both combatants and servicemen in advance, the allocation of land provided by law (this applies primarily to the scope of municipal authorities), lack of proper psychological rehabilitation, who returned to a peaceful life after the war, and in other examples of socio-legal reality.

The consequence of such and similar socio-legal factors is in fact a legal modification, in some other states, as noted by O.M. Kostenko (2021), suggests the use of the institution of derogation in legal regulation, i.e. the application of the right of the state to repeal a particular law as a way of waiving the obligations assumed. Such a procedure is mostly used in international legal relations between states and states and unions of states. However, this fact, referring to international legal acts on the admissibility of the right to derogate from a state which, under the pressure of natural necessity in emergencies, may waive some of its international human rights obligations, suspending national legislation in particular, is quite appropriate. relevant for today's Ukrainian realities. It would be more appropriate to recognize the fact of suspension of a certain legislative act than its actual ignoring in the course of implementation, given the limited financial and economic potential and budgetary resources. However, when applying such a mechanism of legal regulation there is a dilemma, because there are rules of Art. 22 of the Ukrainian Constitution on the impossibility of narrowing the content and scope of existing rights and freedoms when adopting new laws or amending existing ones.

## 4 CONCLUSIONS

Thus, according to the results of consideration of theoretical and legal and applied problems of recognition of man, his life and security as a value in the spectrum of public power in Ukraine and the world, according to the authors, it becomes clear that unambiguous understanding of the importance and value of man, his rights cannot be.

There are theoretical and applied contradictions, problems of applied implementation both in the Ukrainian society and the state and in other countries and





international scales. Their philosophical, religious, historical, civilizational, regional basis, the diversity of legal systems should not diminish the importance of man.

Recognition of human values, life, health, and security must really become a real, not a declarative, main duty of the state and the content and direction of all branches and types of government. At the same time, the current social and legal state of development of the human community clearly indicates the need for further understanding of human values, their interests and their comparison with other values of nature.

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