

PROTECTION AND DEFENSE OF HUMAN RIGHTS, FREEDOMS AND LEGITIMATE INTERESTS IN UKRAINE UNDER MARTIAL LAW

PROTEÇÃO E DEFESA DOS DIREITOS HUMANOS, LIBERDADES E INTERESSES LEGÍTIMOS NA UCRÂNIA SOB A LEI MARCIAL

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ABSTRACT

Human rights, freedoms and legitimate interests are based on the social abilities of the individual, which are the prerequisites for their realization. These abilities are the basis of social activism and creative achievements of a person. Joining the Council of Europe and ratification of the 1950 Convention for the Protection of Human Rights and



Fundamental Freedoms on July 17, 1997, included Ukraine in the European human rights protection system, which defines the obligation to protect and respect fundamental rights, freedoms and legitimate interests of a person. In the light of the transnational vision of this problem, one of the leading tasks of national policy and diplomacy is to direct maximum efforts, including to support Ukrainian refugees, to develop joint programs with host countries aimed at this category of citizens. The ultimate goal of such programs should be to protect the rights, freedoms and legitimate interests of these citizens. In order to ensure effective protection of human rights, freedoms and legitimate interests in Ukraine under martial law, an effective step is to establish interagency cooperation between the police, the system of free secondary legal aid, social services and services for children, etc. Such cooperation especially needs to be improved at the level of territorial communities and social service centers of village councils.

Keywords: human rights, freedoms and legitimate interests, protection and defense, martial law.

RESUMO

Os direitos humanos, as liberdades e os interesses legítimos baseiam-se nas capacidades sociais do indivíduo, que são os pré-requisitos para a sua realização. Essas habilidades são a base do ativismo social e das conquistas criativas de uma pessoa. A adesão ao Conselho da Europa e a ratificação da Convenção para a Proteção dos Direitos Humanos e das Liberdades Fundamentais de 1950, em 17 de julho de 1997, incluíram a Ucrânia no sistema europeu de proteção dos direitos humanos, que define a obrigação de proteger e respeitar os direitos fundamentais, liberdades e direitos legítimos. À luz da visão transnacional deste problema, uma das principais tarefas da política e da diplomacia nacionais é direcionar esforços máximos, inclusive para apoiar os refugiados ucranianos, para desenvolver programas conjuntos com os países de acolhimento destinados a esta categoria de cidadãos. O objectivo final de tais programas deveria ser proteger os direitos, liberdades e interesses legítimos destes cidadãos. A fim de garantir a protecção efectiva dos direitos humanos, liberdades e interesses legítimos na Ucrânia sob a lei marcial, um passo eficaz é estabelecer uma cooperação interagências entre a polícia, o sistema de assistência jurídica secundária gratuita, serviços sociais e serviços para crianças, etc. a cooperação precisa de ser melhorada especialmente ao nível das comunidades territoriais e dos centros de serviço social dos conselhos de aldeia.

Palavras-chave: direitos humanos, liberdades e interesses legítimos, proteção e defesa, lei marcial.

1. INTRODUCTION

Everyone is born equal and expects to be treated similarly before the law in cases involving criminal activity and other obligations. There is always the need to conduct a thorough investigation into the commission of crimes to secure justice (Sokurenko, Morhunov, Ablamskyi, 2023). The problem of effective provision of the protection of the aggrieved person's rights has always existed. However, as historical



events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from this time, protecting human rights is not a purely internal competence of states. It has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms (Ablamskyi et al., 2020; Sokurenko et al., 2023). The scientific world turns its attention to the rising geopolitical tensions caused by the Russian invasion of a sovereign nation, waging a war that no one thought possible since the end of World War II (Gamarra-Amaya, 2022). Today Ukraine lives in difficult conditions of struggle against the armed aggression of the Russian Federation. Every day, law enforcement bodies record the facts of deliberate gross violations of the laws and customs of war - war crimes (Ablamskyi et al., 2023).

Human rights, freedoms and legitimate interests are a universal category and reflect the inherent possibility of realizing personal aspirations in various spheres of public life. The level of democracy in any state is determined by a number of factors, including the existence of civil rights and freedoms, freedom of speech, and the ability of a person to freely express his or her views and opinions. Equality or social differentiation of citizens (social policy, equal chances for education, public funding of political parties, protection of information freedom) are components of the functional approach to measuring the level of democracy in a country. The ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 included Ukraine in the European system of human rights protection, which includes not only the obligation to protect and respect the rights and freedoms enshrined in the Convention, but also the recognition of the jurisdiction of the European Court of Human Rights. At the same time, this means that the activities of all state authorities of Ukraine, including judicial and law enforcement agencies, their decisions and procedures must not contradict the provisions of the Convention (Voitsikhovskiy et al., 2019, p. 153). Such international obligations confirm the validity of the opinion of J. Huymens (1995, p. 87) that the study and clarification of the essence of human rights and fundamental freedoms, which are the basis of the legal status of a person, is the center of the theory of modern philosophy of law. Moreover, in the times of rapid development of the information revolution, the rights, freedoms and legitimate interests of man and citizen are significantly modified, including the emergence of the so-called



fourth generation rights, such as the right to euthanasia, cloning, use of artificial intelligence, etc. At the same time, the current information environment, which in one way or another covers every person in the world against the background of free access to the Internet, creates objective obstacles to maintaining confidentiality and individual privacy, not only in communication but also in performing a number of actions on the Internet.

Thus, modern ideas about the protection and defense of human rights, freedoms and legitimate interests are somewhat different from those that existed even a few decades ago. This is also due to the development of society, the growing influence of civil society on the state, the development of information technology, communications, the World Wide Web, simplification of access to information and its dissemination, and a significant increase in the role of the media and their influence on society. Today, human rights and freedoms are a certain symbiosis of mental and social components, because a person is a rational being and the product of his/her analytical activity, thinking is the formation, emergence of certain ideas, views and opinions that he/she, as a social being, seeks to share.

Purpose and objectives of the study.

The purpose of the article is to define the theoretical and legal framework for interaction between public authorities and the public under the martial law regime. To achieve this goal, it is necessary to solve the following tasks: to define the main approaches to understanding public authority; to analyze the formation of the concept of civil society and its transformation in modern conditions; to comprehend the problems which took place in the studied area of public relations before the introduction of martial law in Ukraine, and which have emerged as a new challenge during the period under study, giving rise to the need for relevant theoretical and legal research.

2. MATERIAL AND METHOD

In the course of the study, search, generalization and analysis of scientific publications on the protection and protection of human rights, freedoms and legitimate interests in Ukraine under martial law was carried out. Legal aspects regarding the



protection and defense of human rights, freedoms and legitimate interests in Ukraine under the conditions of martial law were analyzed.

The main and primary role in the research is played by the method of analysis as a method of scientific knowledge. Analysis is a method of cognition, the content of which is the dissection of the subject of research into components for the purpose of their detailed and comprehensive study. Its aspects, signs, properties, relations, etc. act as components of a complete object. With the help of this method, the components of the researched topic were singled out and divided into separate parts of the scientific question.

A deductive method was also used. Deduction is a method of transition from knowledge of general regularities to its individual manifestation (analysis of concepts). Applying the deduction method, an overview of the general patterns of the functioning of law as a means of regulating society in the state was carried out, the essence of society in the state was determined, as well as the relationship between society and law.

The method of system analysis, the system and structural method, and general scientific methods of analysis and synthesis made it possible to analyze the development of human rights, as well as to investigate the legal provisions that can be used as a basis for their protection and defense under the conditions of martial law.

Applying the appropriate research methods, a comprehensive and in-depth study of the issue under investigation was carried out, which made it possible to identify the components that define the value of law in civil society, namely, to establish the quintessence of law as a primary element that is a means of regulating social relations.

3. RESULTS AND DISCUSSION

With the beginning of the large-scale invasion of the Russian Federation into the territory of sovereign Ukraine, a significant number of people need legal support both in Ukraine and abroad. As noted by S. G. Pevko (2023), lack of respect for the law, ignorance and misunderstanding of the essence of legal norms in force in the state leads to a misunderstanding of the value of law in civil society. However, the law is one of the main means of regulating society, is a legal phenomenon that serves both the state and society, and therefore plays an important role in the existence of society and the state.



In the context of the military confrontation in the east of the country and the full-scale war with Russia, information security is becoming a priority. Protection of personal data under martial law should be a priority for the state, companies and users. Not only the information security of the state and its citizens, but also their rights and freedoms depend on it (Svitlychnyi, 2023).

As we can see, the military aggression of the Russian Federation has led to a significant transformation of the life of our state, as the needs to regulate and ensure the stability of public relations related to the defense of state sovereignty, as well as the protection of the personal safety of Ukrainian citizens and other persons living on its territory come to the fore (Buhaichuk, 2023).

L. Kazanchian (2020, p. 159) notes that in recent decades, the philosophy of law (along with the theory of state and law) has increased interest in protecting human rights, freedoms and legitimate interests, which have ceased to be exclusively subject to regulation by national legislation and have moved to the international legal platform. S. Azzam (2023, p. 72) emphasizes that these rights are protected by various international organizations with numerous protocols and declarations designed to protect and develop them.

The leading, basic category in the analysis of the studied categories is the legal status, which, in the understanding of L. Kazanchian, includes a set of rights, freedoms, duties and legitimate interests of a person, which, in turn, is a means of legal regulation that regulates the social status (position) of a person (2020, p. 160). It should be noted that the vast majority of modern legal scholars, including foreign ones, such as J. Rideau, consider the main elements of the legal status of a person to be rights, freedoms and obligations, and additional elements are legitimate interests (Rideau, 2003, p. 23–24). At the same time, according to N. Trion, in states that stand in the way of democracy, human rights and freedoms are not fixed and eternal, but constantly changing and dynamic concepts (Trion, 2012, p. 23–24). Scientists are convinced that one of the most important characteristics of the modern stage of civilization is the massive informatization of all aspects of life. Information is an integral part of any modern society, which is called "informational", and most analysts link the processes of its globalization to the development of the information revolution. The development of the rule of law, which is taking place against the background of the transformation of Ukrainian society from a post-industrial to an information society, requires the



creation of an effective mechanism for the protection and defense of public relations (Manzhai et al., 2022, p. 284).

Human and civil rights, freedoms and legitimate interests are being significantly modified in this whirlwind of the information revolution. The so-called fourth generation rights are emerging, including the right to euthanasia, cloning, the use of artificial intelligence, etc. At the same time, the current information environment, which in one way or another covers every person in the world against the background of free access to the Internet, creates objective obstacles to maintaining confidentiality and individual privacy, not only in communication but also in performing a number of actions on the Internet: purchasing goods and services, viewing certain information, which is not only leisure but also full-time employment for a modern person. This environment creates opportunities not only for instant access to the necessary services, but also for the rapid acquisition of personal information as a result of online fraud. It is also appropriate to emphasize that the rights, freedoms and legitimate interests of a person and a citizen are based on the social abilities of the individual, which are the prerequisites for their realization. These abilities are the basis of civic activism and creative achievements. At the same time, the distorted formation of these abilities leads to various forms of human rights violations. Thus, there are individual cases of torture, ill-treatment, use of evidence obtained through inhuman treatment, lack of effective investigation of allegations and reports on this issue, which cause a serious public outcry and negatively affect the credibility of the police and the entire national law enforcement system (Voitsikhovskiy et al., 2019, p. 153).

Domestic civilists, analyzing the essence of civil rights protection, note that the legal literature is dominated by certain views of scholars who focus on the protection of subjective civil rights directly on its state and legal nature, which consists in restoring the violated right and ensuring the fulfillment of legal obligations. Thus, protection is seen as a function of the State which, with the help of certain special measures, is aimed at both stopping specific offenses and restoring violated interests or ensuring conditions for their satisfaction in other forms (Zozulia et al., 2020; Romovskaya, 1985).

The protection and defense of human and civil rights, freedoms and legitimate interests are closely related to the realization of the right to defense. According to S. Azzam (2023, p. 71), the concept of the right to defense is widely recognized in academic discourse as an important mechanism that allows individuals to respond



effectively to external violations of their rights, thus providing essential legal guarantees. The key guarantees of this right include understanding of the charges, confrontation of evidence, freedom of speech, access to a lawyer, and the right to remain silent. The fundamental right to defense is recognized and protected by international treaties and national laws within the judicial system. At the same time, as some researchers rightly note, a person has the right to choose certain methods and forms of defense, including non-judicial, in accordance with the content of the violated right, the nature of the offense and its consequences, or to refuse to use remedies at all. Thus, the non-judicial form of protection means that the protection of rights is entrusted to citizens and other persons by taking certain independent actions not related to the application to the state authorities of the relevant competence (Khodieieva et al., 2021, p. 635).

In the conditions of martial law, the mechanism of protection and defense of the rights, freedoms and legitimate interests of a person and citizen underwent profound changes. As M. Fossey, O. Serdiuk and A. Markovska (2023) note, the people of Ukraine survived a full-scale Russian invasion with all the challenges that can be expected. Those who lived in conflict zones were forced to relocate or witness death and destruction on a massive scale. Many have witnessed or survived war crimes, including sexual violence. Millions have lost their homes and property, and thousands are mourning their loved ones. It is during the period of martial law that the personal rights and freedoms of citizens are in a more vulnerable position than usual. Thus, for example, certain opportunities and advantages previously enjoyed by Ukrainian society in peacetime were sharply limited or became impossible after the declaration of martial law. Analyzing the public goods that have been restricted in Ukraine after February 24, 2022, scholars note that in some cases, certain freedoms of citizens, such as the right to free movement, or the right to free dissemination of information, or the possibility of unimpeded travel abroad, may be restricted by the state during martial law when it is necessary to eliminate the threat to the very existence of the Ukrainian state or the Ukrainian nation (Komziuk et al, 2023, p. 513, 518). At the same time, in our deep conviction, it is important to comprehend the problem of protection and defense of rights, freedoms and legitimate interests of a person and citizen under martial law in Ukraine as a transnational one, given the significant number of Ukrainian refugees in different countries of the world, which tends to grow steadily. According to V. O. Lukianykhin, O. A. Lukianykhina, A. Yu. Andrieiev and M. I. Didenko (2022, p.



64), migration challenges in the labor market of migrant-receiving countries may become catastrophic in the context of increased military tensions in Europe (including in connection with Russian aggression against Ukraine, in particular, shelling of civilian objects in Ukraine, which could lead to a humanitarian catastrophe and the formation of a new wave of refugees).

In the light of the transnational vision of this problem, one of the leading tasks of national policy and diplomacy is to direct maximum efforts, including to support Ukrainian refugees, to develop joint programs with host countries aimed at this category of citizens. The ultimate goal of such programs should be the return of these citizens to Ukraine, providing them with grants to set up their own businesses in Ukraine, scholarships for vocational or higher education, temporary or permanent housing in case of its destruction, and guarantees of respect for their rights, freedoms and legitimate interests. The future of Ukraine, its socio-economic, scientific, and cultural development, especially for children and the younger generation, belongs to such citizens. And in the process of preserving the Ukrainian citizenship of such persons, the leading role is assigned to the foreign diplomatic missions of Ukraine and the Ukrainian diaspora, conducting a wide range of cultural, educational, national and patriotic activities, including those aimed at determining the conditions for the return of such persons to Ukraine and their vision of their own future in Ukraine.

N. E. Miloradova and V. V. Dotsenko (2023, p. 194) draw attention to the greater likelihood of violence and factors that may contribute to an increase in domestic violence during war (fear, uncertainty, feelings of helplessness and confusion; socio-economic instability and loss of work; forced relocation and loss of a safe environment and established interpersonal space; disruption of family dynamics and relationships; increased alcohol and drug use; easy access to various types of weapons; post-traumatic stress syndrome, etc. To address the problem of domestic violence, an effective step is to establish interagency cooperation between the police, the system of free secondary legal aid, social services and services for children in the prevention and counteraction to domestic and gender-based violence. Such cooperation especially needs to be improved at the level of territorial communities, social service centers of village councils.

Referring to the general legal definition of guarantees of human rights and freedoms, it should be noted that guarantees are a system of norms, principles and requirements that ensure the process of observance of human rights and legitimate



interests (Voitsikhovskiy et al., 2019, p. 4). The existence of an effective system of guarantees contributes to the possibility of realizing human rights and freedoms in reality. At the same time, the guarantee component is an integral element of building a high-quality mechanism for the protection and restoration of rights in case of their violation. Among the mandatory elements of the guarantee mechanism are the regulatory and institutional components, which are tasked with protecting human rights and freedoms. At present, domestic legislation is far behind the dynamic development of social relations related to the development of the digital network, which gives rise to numerous gaps in the law, i.e., the lack of regulation of existing social relations by the law. This causes the phenomenon of insecurity of citizens in case of violation of their interests.

There are a number of scientific approaches to the theory and philosophy of law in the context of protection and defense of rights and freedoms. For example, A. Voitsikhovskiy (2018, p. 548-549) proposes the following measures for the proper observance and protection of fundamental rights and freedoms:

- a) to launch a large-scale and comprehensive educational program to obtain broad knowledge and skills in the protection of rights and freedoms;
- b) to restore or launch updated state targeted programs for the introduction of information and communication technologies into the educational process;
- c) advanced training courses for law enforcement and judicial officials to better navigate human rights issues;
- d) ensure the effective functioning of judicial and extrajudicial mechanisms for the protection of human rights and freedoms;
- e) conduct regular monitoring of the observance of human rights and freedoms.

4. CONCLUSIONS

Summarizing the above, we can conclude that the rights, freedoms and legitimate interests of a man and citizen are significantly modified in the information revolution. Domestic challenges in the direction of distinguishing and legislating digital human rights are only indirectly reflected in the norms of national legislation, and are vague and generalized. The issue of qualitative generation of national law norms to meet the needs of the time, including the implementation of the abrogation procedure, remains logical and quite relevant. In view of this, an analogy should be drawn to the



results of the practical work of the institutional capacity of the state mechanism to protect a person from threats arising in the digital network.

In the light of the transnational vision of this problem, one of the leading tasks of national policy and diplomacy is to direct maximum efforts, including to support Ukrainian refugees, to develop joint programs with host countries aimed at this category of citizens. The ultimate goal of such programs should be to protect the rights, freedoms and legitimate interests of these citizens, return them to Ukraine, provide them with grants to set up their own businesses in Ukraine, scholarships for vocational or higher education, and temporary or permanent housing in case of destruction. Such citizens, especially children and the younger generation, are the future of Ukraine, its socio-economic, scientific and cultural development. And in the process of preserving the Ukrainian citizenship of such persons, the leading role is assigned to the foreign diplomatic missions of Ukraine and the Ukrainian diaspora, conducting a wide range of cultural, educational, national and patriotic activities, including to determine the conditions for the return of such persons to Ukraine and their vision of their own future in Ukraine.

To address the problem of domestic violence, which is one of the most fundamental in the field of protection and defense of human and civil rights, freedoms and legitimate interests in Ukraine, an effective step is to establish interagency cooperation between the police, the system of free secondary legal aid, social services and children's services in preventing and combating domestic and gender-based violence. Such cooperation especially needs to be improved at the level of territorial communities, social service centers of village councils.

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