



**GUARANTEES TO ENSURE THE RIGHTS, FREEDOMS AND  
LEGITIMATE INTERESTS OF PERSONS IN PLACES OF  
DETENTION**

**GARANTIAS PARA ASSEGURAR OS DIREITOS, AS LIBERDADES E OS  
INTERESSES LEGÍTIMOS DAS PESSOAS EM LOCAIS DE DETENÇÃO**

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**ABSTRACT**

**Objective:** The object of the article is theoretical and practical aspects of ensuring the rights, freedoms and legitimate interests of persons held in places of detention, taking into account current legislation and regulatory requirements of the European Union.

**Methods:** The research was conducted using the methodology of systematic comprehensive analysis of legal phenomena, and the factor and evolutionary approaches were applied.

**Results:** The study examines the guarantees of the rights, freedoms and legitimate interests of persons in places of detention, as well as the methods of exercising the rights, freedoms and legitimate interests of detainees and administratively arrested persons. The article also highlights the content of legal regulation, including internal regulations,





provision of medical and legal assistance, and ensuring sanitary and hygienic standards in places of detention in the institutions of the Ministry of Internal Affairs of Ukraine. The author emphasises the importance of supervision and control to ensure the exercise of the rights of detained and arrested persons.

**Conclusion:** The relevance of this topic is explained by the need to improve legislation in order to ensure more effective exercise of the rights and legitimate interests of persons in places of detention. The rights, freedoms and legitimate interests of detainees and administratively arrested persons are determined by the Constitution of Ukraine, laws, orders of the Cabinet of Ministers of Ukraine and internal regulations. One of the aspects of the activities of the administration of places of detention is to ensure the exercise of the rights of this category of citizens and stateless persons. The author also examines the peculiarities of legal implementation of the rights and legitimate interests of persons held in places of forced detention by public administration bodies. The methods of exercising the rights, freedoms and legitimate interests of persons in places of forced detention are investigated. The author also highlights the content of legal regulation, including internal regulations, provision of medical and legal assistance, and ensuring sanitary and hygienic standards in places of detention in the institutions of the Ministry of Internal Affairs of Ukraine. The author emphasises the importance of supervision and control to ensure the exercise of the rights of detained and arrested persons.

**Keywords:** Procedural guarantees; Places of detention; Rights, freedoms and legitimate interests.

## RESUMO

**Objetivo:** O objeto do artigo são os aspectos teóricos e práticos da garantia dos direitos, liberdades e interesses legítimos das pessoas detidas em locais de detenção, tendo em conta a legislação em vigor e os requisitos regulamentares da União Europeia.

**Métodos:** A investigação foi realizada utilizando a metodologia de análise sistemática e global dos fenómenos jurídicos, tendo sido aplicadas as abordagens fatorial e evolutiva.

**Resultados:** O estudo examina as garantias dos direitos, liberdades e interesses legítimos das pessoas em locais de detenção, bem como os métodos de exercício dos direitos, liberdades e interesses legítimos dos detidos e das pessoas presas administrativamente. O artigo destaca igualmente o conteúdo da regulamentação jurídica, incluindo os regulamentos internos, a prestação de assistência médica e jurídica e a garantia de normas sanitárias e de higiene nos locais de detenção nas instituições do Ministério dos Assuntos Internos da Ucrânia. O autor sublinha a importância da supervisão e do controlo para garantir o exercício dos direitos das pessoas detidas e presas.

**Conclusão:** A relevância deste tema explica-se pela necessidade de melhorar a legislação, a fim de garantir um exercício mais efetivo dos direitos e interesses legítimos das pessoas em locais de detenção. Os direitos, as liberdades e os interesses legítimos dos detidos e das pessoas presas administrativamente são determinados pela Constituição da Ucrânia, pelas leis, pelas ordens do Conselho de Ministros da Ucrânia e pelos regulamentos internos. Um dos aspectos das actividades da administração dos





locais de detenção consiste em assegurar o exercício dos direitos desta categoria de cidadãos e apátridas. O autor examina igualmente as particularidades da aplicação jurídica dos direitos e interesses legítimos das pessoas detidas em locais de detenção forçada pelos organismos da administração pública. São investigados os métodos de exercício dos direitos, liberdades e interesses legítimos das pessoas em locais de detenção forçada. O autor destaca igualmente o conteúdo da regulamentação jurídica, incluindo os regulamentos internos, a prestação de assistência médica e jurídica e a garantia de normas sanitárias e de higiene nos locais de detenção nas instituições do Ministério dos Assuntos Internos da Ucrânia. O autor sublinha a importância da supervisão e do controlo para garantir o exercício dos direitos das pessoas detidas e presas.

**Palavras-chave:** Garantias processuais; Locais de detenção; Direitos, liberdades e interesses legítimos

## 1 INTRODUCTION

The functioning of a democratic and law-based state is impossible without continuous development of the legal status of a person, especially his or her rights, freedoms and legitimate interests, as well as ensuring appropriate guarantees for their realisation. This principle is expressed in Article 3 of the Constitution of Ukraine, which states that a person is the highest social value, and his or her rights, freedoms and guarantees of their exercise form the focus and content of the state's activities. One of the key aspects of the definition of human rights and freedoms is the need for their protection by the state and in accordance with established laws. The exercise of human rights and freedoms depends on the level of their protection and guarantee. However, although the principle of guaranteeing rights and freedoms is enshrined in Article 22(2) of the Constitution of Ukraine, this does not mean that they are actually guaranteed. Therefore, the effective implementation of the enshrined human and civil rights and freedoms in Ukraine requires a well-established legal mechanism that guarantees their implementation.

The need for a scientific study of the problems arising in the process of ensuring the rights, freedoms and legitimate interests of persons in places of detention requires a comprehensive analysis and consideration of the essence and content of control and supervision and other activities of special subjects of ensuring the rights, freedoms and legitimate interests of citizens with a view to improving the efficiency of management in the area under study.





Given that the Code of Criminal Procedure of Ukraine does not enshrine the list of freedoms of a participant in criminal proceedings, it is necessary to determine which freedoms are enshrined in the Fundamental Law of Ukraine. Thus, A. Oliynyk distinguishes the following fundamental freedoms enshrined in the Constitution of Ukraine: a) freedom of movement, free choice of residence, freedom to leave the territory of Ukraine (Article 33); b) freedom of thought, speech, free expression of views and beliefs (Article 34); c) freedom of worldview and religion (Article 35); d) freedom of association in political parties and public organisations (Article 36); e) freedom of literary, artistic, scientific and technical creativity (Article 54) (Oliynyk A., 2014).

Of the listed constitutional freedoms of a person, the freedoms enshrined in Article 33 of the Constitution of Ukraine, namely freedom of movement and free choice of residence, are of significant importance for a participant in criminal proceedings.

According to the content of legal relations, the following types of constitutional freedoms of movement can be distinguished: 1) freedom of movement; 2) freedom to choose a place of residence; 3) freedom to leave the territory of Ukraine; 4) freedom to return to Ukraine at any time (Oliynyk A., 2014).

Freedom of movement may be restricted only in cases established by law. The most likely restriction of freedom of movement may be imposed on a suspect or accused person. Such restriction is possible in the following cases: detention of a person, application of such preventive measures as house arrest or detention to a suspect or accused. In addition, restrictions on freedom of movement, freedom to choose one's place of residence, and freedom to leave the territory of Ukraine are possible in the case of imposing obligations on the suspect or accused when choosing a preventive measure not related to detention, namely the obligations specified in clause 5 of Article 194 of the Criminal Procedure Code. 194 of the Criminal Procedure Code of Ukraine, such as: a) not to leave the locality in which he/she is registered, resides or is staying without the permission of the investigator, prosecutor or court; b) to notify the investigator, prosecutor or court of any change of his/her place of residence and/or place of work; c) not to visit places designated by the investigating judge or court; d) to deposit his/her passport(s) for travelling abroad and other documents entitling him/her to leave and enter Ukraine with the relevant state authorities. Restrictions





on freedom of movement may be imposed on suspects, accused persons and witnesses in the event of their being brought in (Article 140 of the Criminal Procedure Code of Ukraine).

Theoretical and practical issues of guarantees of rights, freedoms and legitimate interests were the subject of the authors' research: Esimova S., Ivankova I., Danilian O., Korovayko O., Mukoida R., Ostapenko O., Spivak M., Oliynyk A., Riyaka V., Varfolomeeva T., and others. In order to improve the legislation on legal regulation of guarantees for ensuring the rights, freedoms and legitimate interests of persons in places of forced detention, it is necessary to analyse the legislation on this issue.

## 2 METHODS

The methodological basis of the research on the indicated topic is a set of used general scientific and special legal methods. These methods complement each other taking into account the research topic, which in turn contributes to objective analysis. Among the methods of research on the topic of this article, it is worth highlighting dialectical and semantic methods, the method of system analysis, and the method of analogy, comparative legal and historical methods.

## 3 RESULTS AND DISCUSSION

The Constitution of Ukraine enshrines the issue of actual protection of rights, freedoms and legitimate interests. An analysis of the current legislation in the area of ensuring the rights, freedoms and legitimate interests of persons in places of detention allows us to state that it can be classified into groups: The Constitution of Ukraine; laws that apply to the category of persons under study; sectoral legislation that regulates the specifics of the legal status of persons in the context of the type of place of detention.

K. Zakomorna, V. Riyaka and others propose another approach to the classification of constitutional guarantees of human and civil rights and freedoms. According to this approach, the guarantees are divided into the following three groups: procedural; institutional; rules on the grounds and limits of possible restriction of human rights and





freedoms (Riyaka V. O., 2002). Procedural guarantees include those mentioned above, as well as some others, namely: the right to judicial protection of rights and freedoms (including the right to appeal in court against unlawful actions and decisions of state and local authorities and their officials); the right to have your case heard in the court and by the judge whose jurisdiction is established by law; the right to a defence; the right to receive qualified legal assistance (including the right to use the services of a lawyer from the moment of detention, arrest or indictment); the right to appeal against illegal arrest in court; the right not to incriminate oneself or one's relatives; the right to be presumed innocent until proven guilty by a court verdict that has entered into force (presumption of innocence); the right to compensation by the state for damage caused by unlawful actions (or inaction) of state authorities or their officials; the right to apply to interstate bodies for the protection of human rights and freedoms if all domestic remedies have been exhausted (Khalyota A. I., 2015).

It is worth noting that national legislation provides for a much wider range of rights to protect the freedoms and legitimate interests of a person in places of detention.

Thus, these are the rights enshrined in the following articles of the Constitution: Article 26, which guarantees the rights of persons held in custody; Article 30 on guarantees of the right to inviolability of the home; Article 31 on guarantees of the right to secrecy of correspondence, telephone conversations, telegraph and other correspondence; Article 56 on the right to compensation for material and moral damages at the expense of the state or local authorities. 56 on the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by unlawful decisions, actions or omissions of state authorities, local self-government bodies, their officials and employees in the exercise of their powers; in Article 62 on the right to the presumption of innocence, i.e. a person is presumed innocent of committing a crime and cannot be subjected to criminal punishment until his or her guilt is proved in accordance with the law and established by a court verdict of guilty. No one is obliged to prove his or her innocence of a crime. The accusation cannot be based on evidence obtained illegally or on assumptions. All doubts as to the proof of a person's guilt shall be interpreted in his or her favour; p. 63 refers to the right of a person to refuse to testify or explain himself or herself, family members or close relatives, the circle of which is determined by law, etc. As we can see, virtually all provisions of the Convention and other international legal acts, including those directly related to the





protection and guarantees of rights, freedoms and legitimate interests of a person in criminal proceedings, as international legal standards, have been implemented in the Constitution of Ukraine as a law of direct effect, the Criminal Procedure Code of Ukraine, laws of Ukraine, and have become part of national legislation that is applied in criminal proceedings and during pre-trial investigation by authorised procedural subjects.

It is through the mediation of these legislative acts that the provisions of the Convention are implemented in criminal proceedings in Ukraine. However, the case law of the ECHR, which was established to implement the provisions of the Convention in the activities of the signatory states, is not directly applied in the practical activities of investigative units due to the lack of the necessary legal mechanism. At present, the only legally enshrined means of applying ECHR judgments in criminal proceedings is the possibility of introducing relevant legislative changes based on these judgments into the current criminal procedure legislation of Ukraine, but this path is quite lengthy in the context of imperfect domestic legislative activity. This conceptual provision is important because it explains the mechanisms and legal basis for implementing the provisions of the Convention and the ECHR case-law through national legislation in criminal proceedings in Ukraine. At the same time, the case law of the ECHR, which was established to ensure that the High Contracting Parties comply with their obligations under the Convention and its Protocols, is directly aimed at implementing the rules of international law specified in the Convention in signatory countries with different legal systems and traditions.

General laws include the Law "On Citizens' Appeals", which establishes the procedure for consideration of citizens' appeals. The law establishes the rights of citizens during the consideration of an appeal, the obligation to accept an appeal for consideration, the procedure for considering individual appeals, the timeframe for consideration of an appeal, and the liability for failure to fulfil these obligations. This group includes the Law on the National Police. The law contains provisions defining the purpose of the police, the legal status of police officers regardless of the place and nature of their service, and the type of place of detention. The legislation governing the operation of places of detention contains separate articles that guarantee the exercise of the rights, freedoms and legitimate interests of persons held there. A number of legislative norms specify the actions of the administration of places of forced detention in terms of material and healthcare provision. This is expressed





in the creation of conditions that meet the requirements of hygiene, sanitation, and fire safety; provision of an individual bed and free bedding; establishment of a sanitary area in the cell for one person; mandatory emergency medical care in case of bodily injury or deterioration of health.

Legislative provisions for the exercise of rights by persons in places of forced detention are extended in regulatory acts. One such act is the Rules of Internal Regulation in Temporary Detention Facilities of the Internal Affairs Agencies of Ukraine.

A priority role in ensuring the rights, freedoms and legitimate interests of persons in places of detention is played by the existence of an effective mechanism for regulating the activities of state bodies tasked with pre-trial investigation and judicial review of issues related to bringing a person to criminal responsibility.

According to O. I. Korovayko, an important and at the same time an integral part of modern criminal proceedings is the legal means by which its tasks are implemented, including in terms of protection of rights, freedoms and legitimate interests of participants to criminal proceedings. Such means are the relevant guarantees. Their introduction is determined by the essence of one of the key areas of functioning of a democratic, social, rule-of-law state - the establishment and ensuring of human rights and freedoms as the main duty of the state, in particular, in the area of dispute resolution between legal entities in the criminal law sphere (Korovayko O., 2017).

In this regard, O. G. Danilian notes that the term "ensuring of rights" is considered in two meanings: firstly, as the activity of state bodies, public organisations, officials and citizens in the exercise of their functions, competences, duties in order to create optimal conditions for the strict implementation of legal provisions and the lawful exercise of rights and freedoms; secondly, as the result of such activity, which is expressed in the actual implementation of legal provisions, rights and freedoms of citizens" (Danilian O. G., 2013).

In order to reveal all the problematic issues, it is necessary to consider such a category as "guarantee", which has a multidimensional nature, without studying which further improvement of the means by which the rights of an individual are realised, protected and defended is impossible. There is no common understanding of the concept of "guarantee" in both the theory of law and the science of criminal procedure. Therefore, first of all, it is necessary to clarify its etymology. The term "guarantee" is derived from the French







word "garantie", which means security, surety, condition that ensures something. In this sense, the term "guarantee" is used in all areas of technology, science and social life. The dictionary defines "guarantee" as a pledge of something, provision of something; conditions that ensure the success of something (Dotsenko P. & Yurchuk L. A., 1971)

In other words, the constituent parts of the term "guarantee" are surety, condition, and security. A "surety" is understood as an assurance, a guarantee of something; a responsibility assumed for someone. The term "condition" has several meanings: 1) a necessary circumstance that makes it possible to carry out, create, form something or facilitates something; 2) rules that exist or are established in a particular area of life or activity that ensure the normal operation of something (Zahnitko A. & Shchukina I. 2008).

Guarantees of rights, freedoms and legitimate interests of a person are one of the most important elements of the mechanism for ensuring the rights, freedoms and legitimate interests of persons in places of detention and are considered as a legally enshrined system of means to ensure the implementation, protection and defence of rights.

Means of ensuring the exercise of individual rights can be seen as the means that create conditions for the proper exercise of their rights by participants, as well as ensure their actual exercise. An example of such means is the obligation of the investigator, prosecutor, investigating judge, court to explain to the suspect or accused their rights and ensure the right to qualified legal assistance from the defence counsel of their choice or appointed by the court (part 2 of Article 20 of the Criminal Procedure Code of Ukraine). It should be noted that these means ensure, firstly, equal legal opportunities for a person to exercise their rights, and secondly, their actual implementation. Thus, the investigator's obligation to explain the rights creates an opportunity for the suspect to exercise them, but the person chooses the method of exercising a certain right independently (for example, to defend himself or herself or to use the legal assistance of a defence counsel). In this regard, Yevhen Martynchyk quite correctly pointed out that there are no grounds for identifying the obligations of the court, prosecutor and investigator to ensure the possibility of exercising procedural rights with their exercise, since the implementation of this possibility depends only on the participants of the criminal process themselves (Martynchik E., Radkov V., Yurchenko V., 1982)





Arrested persons are subjected to a personal search and held in custody, as specified in Article 327 "Procedure for serving administrative arrest" of the Code of Ukraine on Administrative Offences, in places determined by the National Police (Ostapenko O., Kovaliv M., Yesimov S., Gulak L., 2021). Part 3 of Article 327 of the Code of Ukraine on Administrative Offences states that administrative detention is carried out in accordance with the rules established by the laws of Ukraine. Relevant provisions are found in the draft law "On the Rules of Serving Administrative Detention", which provides for the possibility of obtaining legal assistance by persons subjected to administrative detention. The draft law defines the procedure for responding to written appeals: they are handed over to persons under arrest against receipt, and responses to written appeals addressed to the administration of the place of administrative arrest are given within two days. Responses to these appeals are announced within one day, and in case of additional verification - within two days.

In terms of proper medical care, the administration of the place of detention shall immediately inform the prosecutor of any illnesses, injuries that prevent the arrest or death of the detainee. To ensure the exercise of the rights, freedoms and legitimate interests of detainees, the rules establishing the duties of the administration and staff of the place of administrative detention are aimed at ensuring the exercise of the rights, freedoms and legitimate interests of detainees. The issues of ensuring the rights, freedoms and legitimate interests of administrative detainees are regulated in more detail in departmental regulations. The internal regulations of places of detention set out the following: conditions for walking; the procedure for performing religious rites; the procedure for filing appeals, including to the European Court of Human Rights; the procedure for showering and changing bed linen. If there are complaints of ill health at the request of a detainee or a person taken into custody, or if there are bodily injuries, the officer on duty is obliged to call a medical professional. If there are reasons to call an ambulance, as provided for in the Procedure for the provision of primary medical care, an ambulance is immediately called.

The possibility of exercising rights, freedoms and legitimate interests of minors in places of detention is laid down in the Regulation on reception centres for children of the National Police of Ukraine.





A special place in the system of guarantees of rights, freedoms and legitimate interests is occupied by legal education and legal information. The legal illiteracy of persons in places of forced detention is a factor that creates conditions for violations of rights, freedoms and legitimate interests. This fact explains the submission of complaints, which are mostly not confirmed. One of the forms of legal education and legal information is the provision of legal aid to persons held in places of forced detention. The basic norm is the constitutional provision that guarantees the right to receive qualified legal aid. This legislative provision is further elaborated in sectoral and departmental regulations. Free legal aid is a significant means of legal education for this category of people. This refers to the part of the population that, due to objective circumstances, is unable to receive paid assistance: the disabled, minors, etc. (Kovaliv M., Sopilnyk L., Sopilnyk R., Esimov S., 2020).

A study of the conditions of detention in places of forced detention revealed a problematic issue of accessibility for disabled people and other less mobile categories of citizens. In these places, there are no ramps or devices in common areas. These circumstances are not reflected in the materials of departmental inspections, conclusions of representatives of the Ombudsman of the Verkhovna Rada of Ukraine, or public supervisory commissions. Some provisions unreasonably allow for administrative discretion in its implementation (Spivak M., 2021).

The main legal guarantee of the protection of human rights and freedoms, including those of convicts, is judicial protection. In case of violation of human rights and freedoms, the state is obliged to provide any person with an effective remedy. This is provided for in Article 2.3 of the International Covenant on Civil and Political Rights. 1 The controlling activity of the court is crucial for ensuring the procedural and legal status of the convicted person at the stage of execution of the sentence. The human rights function of this body is manifested in the very process of the judicial proceedings: in the principles and principles that the court must adhere to in the course of criminal executive proceedings, in the procedural form. The powers of the prosecutor at the stage of execution of the sentence are aimed at preventing violations of the law in relation to the person of the convicted person. The latter can be detected by reviewing applications and complaints from convicts, appealing against unlawful orders, instructions and resolutions of the administration of





institutions where convicts serve their sentences, institutions for compulsory treatment and re-education.

The prosecutor has the right to demand explanations from officials regarding violations, although, in our opinion, it would be more appropriate to formulate this provision in the form of an obligation rather than a right. According to Article 121 of the Constitution of Ukraine, the prosecutor's office is responsible for supervising the observance of laws in the execution of court decisions in criminal cases, as well as in the application of other measures related to the restriction of citizens' freedom. At the stage of execution of the sentence, as well as at all other stages of criminal proceedings, the prosecutor is obliged to take measures provided for by law to eliminate any violations of the law, no matter who committed them. The subject of supervision is the observance of the law during the stay of persons in temporary detention facilities and other institutions that execute sentences or coercive measures imposed by the court, compliance with the procedure and conditions of detention or serving sentences by persons in these institutions, their rights and the performance of their duties.

The President of Ukraine plays a significant role in the state legal mechanism for ensuring constitutional rights and freedoms in Ukraine, as he is the guarantor of human and civil rights and freedoms in accordance with Article 102 of the Constitution of Ukraine. The exercise of constitutional rights and freedoms by citizens largely depends on his or her activities. Since the President of Ukraine is elected to his position by the entire people of Ukraine, this circumstance obliges him to act in the interests of the entire nation, and not for the purposes of any political forces or social strata. Thus, the President of Ukraine, in accordance with paragraph 27 of Article 106 of the Constitution of Ukraine, grants pardons, which ensures the legal status of a convicted person.

The Ukrainian Parliamentary Commissioner for Human Rights monitors the observance of human and civil rights and freedoms. His role and authority in the state are constantly growing, as evidenced by the numerous appeals from citizens with complaints about violations of their constitutional rights (Varfolomeeva T., 2003). Although the decisions made by the Ombudsman are not legally binding, he submits annual reports to the Parliament, which takes appropriate measures against violators of the law. The Ombudsman carries out his activities on the basis of information about violations of human





and civil rights and freedoms. Such appeals are submitted to the Commissioner within a day of the violation.

With regard to guarantees of the rights, freedoms and interests of persons in places of detention in foreign countries, effective legal guarantees, extrajudicial in nature, are the presumption of innocence and the Miranda Rule. The latter was introduced on the initiative of the judiciary in the United States and provides that a police officer, at the time of detention, must inform the person of a list of his or her rights, including: the right not to testify; the right to consult a lawyer and to have a lawyer present during interrogations of the detained person; the right to appoint a lawyer if the person does not have the means to pay for his or her work; the right not to answer any questions or make any statements; the person must also be informed that anything he or she says can and will be used against him or her in court. If, during the detention of a person, a police officer fails to point out at least one of the listed rights, especially the right to receive free legal aid, this will be considered a significant procedural violation and may lead to the acquittal of the accused in court on formal grounds (Riyaka V., 2002).

M. V. Huzela examines the content of international standards for ensuring the rights of a suspect as the consolidation of a certain minimum number (scope) of a person's rights, which, in the event of certain conditions, are the most vulnerable in the course of criminal proceedings. At the same time, as the researcher notes, such conditions may arise mainly in the process of detention of a suspect or his/her detention. The scholar emphasises that in many international legal acts that enshrine the rights of persons subject to criminal prosecution, certain of their provisions directly or indirectly regulate the possibility of ensuring the rights of a suspect in a criminal offence, and also establish certain guarantees for the exercise of the suspect's procedural rights (Guzela M., 2016).

A similar procedure is enshrined in the constitutions of many states, for example: Article 17 of the Spanish Constitution states: "Every detainee shall be informed immediately and in an understandable manner of his rights and the grounds for his detention"; Article 37 of the Constitution of Japan states: "In all circumstances, a criminal defendant may seek the assistance of a qualified lawyer. In the event that the accused is unable to do so himself, a lawyer shall be appointed by the state" (Seryogin V., Kolomiets Yu., Martselyak O., 2009).





The constitutional legislation of foreign countries, in addition to the above, enshrines specific procedures that guarantee human and civil rights and freedoms, including "amparo" - protection of citizens by constitutional justice bodies, which provides opportunities for compensation for damage caused to the rights of a person and for appealing against illegal actions of public authorities and officials that infringe on the rights of a person; petitions - collective appeals in writing to public authorities; "mandamus" - a court order containing a proposal to a person, usually a senior official, to perform actions that he or she is legally obliged to perform; "certiorari" - a court order issued under judicial supervision to withdraw a case from the proceedings of a lower court; "habeas corpus" - gives interested parties the right to demand that a detainee be brought before a court to verify the grounds for deprivation of liberty (Shapoval V., 2007).

An important guarantee of human and civil rights and freedoms is the establishment, usually in constitutions, of the following rules: the law does not have retroactive effect; no one may be held liable for acts that were not recognised as an offence at the time of their commission; the enshrinement of certain rights and freedoms in constitutions does not mean denial or diminution of other universally recognised human rights and freedoms; human and civil rights and freedoms may be restricted by law only to the extent necessary to protect the constitutional order, rights and legitimate interests of other persons (Yakovyuk I., 2010). A special role in the system of guarantees of human and civil rights and freedoms is played by international legal guarantees, namely: international legal acts that enshrine the relevant rights; activities of international bodies and institutions aimed at protecting human rights and freedoms. Thus, human rights in democratic states are an integral set of legal and institutional means of domestic and international legal nature, judicial and extrajudicial, and constitutional guarantees.

International bodies should also play an important role in ensuring the legal status of a convicted person. A prerequisite for this is the provision of Part 4 of Article 55 5 of the Constitution of Ukraine, which states that everyone has the right, after exhausting all national remedies, to apply for the protection of their rights to the relevant international judicial institutions or to the relevant international organisations of which Ukraine is a member or participant. As for international organisations for the protection of human rights, the central place among global intergovernmental organisations for the protection of human





rights is occupied by the United Nations (UN), according to Article 1 of the Charter of which the implementation of international cooperation in promoting and developing respect for human rights and freedoms is one of the main tasks of its activities. As for the European intergovernmental organisations for the protection of human rights, the leading place among them is occupied by the Council of Europe, which includes: European Court of Human Rights (Strasbourg).

A convicted person at the criminal procedure stage of execution of a sentence, ruling, or resolution, in particular, may apply the following articles of the Convention to appeal against the decision of a national authority 1) Article 6, which guarantees everyone the right to a fair and public hearing within a reasonable time by an impartial tribunal established by law; 2) Article 13, which guarantees everyone the right to an effective remedy before the relevant national authority, and others.

## 4 CONCLUSION

Summing up the above, we can note that some legislative provisions are declarative and require other legal support. An analysis of the legislation and other legal acts regulating the use of detention allows us to draw the following conclusions.

The content of the guarantees, along with the creation of appropriate conditions and special means to ensure the exercise of rights and freedoms, should include the activities of state bodies, courts, and NGOs to monitor the performance of duties by officials in the area under study. The latter is manifested in the places of forced detention of the Ministry of Internal Affairs of Ukraine, as evidenced by the facts of violation of the rights, freedoms and legitimate interests of persons held there.

In order to ensure the rights and freedoms of persons, including those held in places of detention of the Ministry of Internal Affairs in Ukraine, guarantees should include not only the creation of the necessary conditions and means to ensure these rights and freedoms, but also the activities of state bodies, courts and NGOs to monitor the performance of duties by officials in this area. This is particularly important as there are facts of violations of the rights, freedoms and legitimate interests of persons held in such places. Such an approach could reduce the scope of legislative restrictions in this area and facilitate the actual realisation of the rights, freedoms and legitimate interests of detainees and administratively





arrested persons.

Ensuring the rights, freedoms and legitimate interests of persons in places of forced detention is ensured by a system of constitutional norms, laws, other legal acts regulating the conditions and procedure of stay; legislative norms guaranteeing the exercise of rights, freedoms and legitimate interests, special subjects of protection in the field under study, which indicate the existence of a holistic system that guarantees the protection of the rights, freedoms and legitimate interests of persons in places of forced detention of the Ministry of Internal Affairs in Ukraine. In particular, we are talking about the Law "On Pre-trial Detention", which provides for material and living conditions in these institutions for pregnant women, women with small children and minors. Neither the legislative nor any other regulatory level defines the concept of such conditions, nor does it disclose their content.

Thus, our state has created a large number of different bodies that contribute to ensuring the rights and legitimate interests of its citizens, including persons in temporary detention facilities. However, there is also a need to establish clear interaction between them in order to carry out effective and efficient law enforcement activities.

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