

THE FUNCTIONING OF THE HUMAN RIGHTS MECHANISM DURING THE WAR IN UKRAINE

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Summary

The article is devoted to identifying the features of the functioning of the mechanism for ensuring human rights during the war in Ukraine. The author determined that the main burden for ensuring human rights in Ukraine during the war fell on the Head of State, Parliament, Government, courts, the Constitutional Court of Ukraine, the Ombudsman, the Prosecutor's Office, law enforcement agencies, local government bodies, local state administrations. At the same time, in connection with the war, in addition to the powers of peacetime, the above-mentioned public authorities experienced an additional burden due to the consequences of military actions. In addition to public authorities in Ukraine, there is a bar association and public organizations and political parties that also participate in the human rights process, their activities must be legal, timely and effective.

One of the main problems of directly ensuring human and citizen rights and protecting and restoring violated rights lies not only in the area of gaps in legal regulation, but also in the area of insufficient material and human resources to ensure the implementation of relevant activities by public authorities.

As a result of the introduction of martial law in Ukraine, temporarily, for the period of the legal regime of martial law, the possibility of restricting such rights and freedoms of a person and citizen has been introduced: the right to inviolability of the home, the secrecy of correspondence, the right to privacy, freedom of movement, the right to freedom of thought and speech, the right of citizens to participate in the management of state affairs, to elect and be elected, the right to peaceful assembly, the right to property, the right to entrepreneurial activity, the right to work, the right to strike, the right to education. All other rights and freedoms guaranteed by the Fundamental Law of Ukraine must be fully ensured.

To fulfill this constitutional duty of the state, public authorities must simplify bureaucratic procedures, optimize document flow processes, apply an individual approach and the principle of the rule of law.

Key words: martial law, constitutional duty, public authorities, ensuring human rights, digitalization process, full-scale war.

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1. Introduction

Ukraine is currently going through a terrible stage in its recent history. The full-scale war that began in February 2022 affected not only every citizen of Ukraine, but also all people around the world. The martial law introduced in this regard has introduced a special legal regime, which, although it provides for the possibility of restricting human rights, must still ensure compliance with the rule of law and the possibility of exercising the rights and freedoms

of man and citizen. This article is devoted to certain aspects of the functioning of the mechanism for ensuring human rights during the war in Ukraine.

The purpose of this study is to identify the features of the functioning of the human rights mechanism during the war in Ukraine, by performing the following tasks:

- to determine the current state of the functioning of the human rights mechanism in Ukraine;
- to study the legislative novelties regarding the functioning of the human rights mechanism in Ukraine;
- to identify problematic aspects of the functioning of the human rights mechanism in Ukraine;
- to suggest ways to improve the functioning of the human rights mechanism during the war in Ukraine.

The methodological basis of the study is a set of modern methods of scientific knowledge, the application of which is based on systemic and dialectical approaches. Which made it possible to investigate certain aspects of the functioning of the mechanism for ensuring human rights during the war in Ukraine, by clarifying the components of this mechanism, the features of the legal regime of martial law, which affects its functioning.

The article uses the following methods of scientific knowledge: logical-semantic – for analysis and deepening the conceptual apparatus; classification and grouping – for systematization of scientific views on the functioning of the mechanism for ensuring human rights; ways of improvement the functioning of the mechanism for ensuring human rights during the war in Ukraine are made using the method of legal modeling.

2. Constitutional and legal bases Providing Human Rights during the War

The painful and tragic stage in the history of Ukraine, which we are experiencing now, applies to everyone and touches all spheres of public life. The issues of functioning of the mechanism of protection of human rights are no less acute, and accordingly, solving problems and challenges in the field of human rights should be one of the primary tasks of the state. Because no circumstances release the state from the duties taken by it, in accordance with Art. 3 of the Constitution of Ukraine, Part 2 of which stipulates that "human rights and freedoms and their guarantees determine the content and orientation of the state. The state is responsible for its actions to the person. The assertion and protection of human rights and freedoms is the main duty of the state" (*Konstytutsiia Ukrainy, 1996*).

Full-scale invasion of the territory of Ukraine, and accordingly the threat of national security led to the need to introduce on February 24, 2022 by the Presidential Decree № 64/2022 of martial law throughout Ukraine in order to direct the activities of the bodies of protection and defense of Ukraine for a defense nature in order to repeat the aggressive actions of the Russian Federation (*Ukaz Prezydenta Ukrainy, 2022*).

In accordance with paragraph 3 of this Decree, in connection with the introduction of martial law in Ukraine temporarily, during the period of action of the legal regime of martial law, the constitutional rights and freedoms of man and citizen, provided by Articles 30–34, 38, 39, 41–44, 53 of the Constitution of Ukraine. We are talking about the right to inviolability of the home, the secrecy of correspondence, the right to privacy, freedom of movement, the right to freedom of thought and speech, the right of citizens to participate in the management of state affairs, to elect and be elected, the right to peaceful assembly, the right to property, the right to entrepreneurial activity, the right to work, the right to strike, the right to education (*Ukaz Prezydenta Ukrainy, 2022*).

However, Art. 64 of the Constitution of Ukraine, establishes that in the conditions of martial law or emergency, certain restrictions of rights and freedoms may be established, indicating the term of validity of these restrictions. In the context of martial law or emergency, certain restrictions of rights and freedoms may be established, indicating the duration of these restrictions. The rights and freedoms provided for in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of this Constitution (*Konstytutsiia Ukrainy, 1996*) cannot be restricted (*Konstytutsiia Ukrainy, 1996*).

Doroshenko V. analyzing the legal mechanisms for the protection of human rights during the war, stays that the legal system includes both national and international forms and ways of protection of human rights during the war, each of which can be used by persons who have been violated by their rights and freedoms in wartime. In order to record all cases of human rights violations in the territory of Ukraine, public authorities, in order to collect evidence for each criminal and other offense, which was committed through the armed aggression of the Russian Federation, created a separate intergovernmental platform for the formation of the evidence base of criminal acts of the aggressor state. These innovations will facilitate the formalization of citizens' appeals to protect their violated rights during the war, which is correlated with the European integrational orientation of Ukraine (*Doroshenko, 2023: 325*).

Madalitsa V. having examined the mechanism of protection of social human rights in the context of martial law, it notes that the realization of the social function of the state and protection of human rights in the conditions of war is an extremely difficult task that requires innovative approaches, coordinated work of state bodies and active international cooperation. Successful integration of digital technologies, increased cyber security, improving legal regulation and improving the efficiency of the institutional system are key elements of improvement. In addition, the author notes that increasing the digital literacy of the population is an integral part of the prospects for improving social protection mechanisms. Teaching of citizens, including elderly and socially vulnerable groups, the use of modern technologies will help to overcome digital inequality and provide equal access to social services (*Madalyts, 2025: 46*). We can only partially agree with this position, because if a person wants to communicate with public authorities using information technologies, the state should provide him/her with this opportunity. However, if a person wants to communicate in other forms (telephone, correspondence, personal reception), their functioning should also be ensured.

It is believed that the state in the field of human rights protection during the war should fulfill the following functions: to provide at least minimal conditions for citizens to preserve their sense of human dignity; to create conditions for developing mutual respect not only between citizens but also between citizens and the state; not to take discriminatory measures, because the physical, political or financial superiority negates the sense of human dignity; to form a tolerant attitude towards other citizens, despite some differences – physical, mental, racial, gender; to develop a sense of responsibility both for the state that must fulfill its functions and the citizens themselves, who should be aware of their responsibility for their actions and choice (*Demchenko, 2023: 147*).

We can only partially agree with this position, in the aspect that the right to respect for the honor and dignity of a person should be ensured in the conditions of war, as well as the prohibition of discrimination. But we stand in the position that the state, even more so in war, should ensure the rights and freedoms of man and citizen in full, given only constitutional restrictions on rights, if they are introduced in accordance with the Basic Law.

Moza A., Moza V. believe that the strengthening of the protection of the rights of the person is obvious, especially in such areas, where the control of legality alone is not enough.

The authors believe that the improvement of the mechanism should be based on the creation of a concept that will first of all include the following provisions: consolidation of a high degree of independence of law – making processes and bodies that implement law-making and human rights activities in the system of state authorities of Ukraine; reducing the formalization of procedures for consideration of complaints granted from citizens to violate their rights and freedoms, the restriction of which is impossible even in the conditions of martial law and contradicts the provisions of the Constitution of Ukraine; free assistance, including information and explanatory services, continuous legal support and support, as well as meeting other needs of citizens in the context of law-making and human rights activities (*Motsa A., Motsa V., 2022: 288*).

This position, in our opinion, is justified, the mechanism of human rights must be transformed in connection with the war and the challenges it brought. Considering the fact, that cases of human rights violations have increased significantly.

3. Subjective composition of the mechanism of human rights in Ukraine

Regarding the functioning of the mechanism for ensuring human rights during the war in Ukraine, the main criterion for effectiveness is undoubtedly the activity of the relevant public authorities. It is known that the mechanism for ensuring human rights includes the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, courts, the Constitutional Court of Ukraine, the Commissioner for Human Rights of the Verkhovna Rada, the Prosecutor's Office, law enforcement agencies, local self-government bodies, local state administrations. The listed entities, in accordance with the powers granted to them, must ensure human rights. In addition to public authorities, there is a bar association in Ukraine, as well as public organizations and political parties, which also participate in the human rights protection process.

Today, it is already possible to state the fact that the war has caused new challenges in the field of ensuring human rights of a systemic nature. Thus, analyzing the results of the work of the Ombudsman (*Shchorichni ta spetsialni dopovidi, 2024*), we can talk about the following problems that have arisen in the field of ensuring human rights as a result of the full-scale invasion: access to education for children and youth from the temporarily occupied territories of Ukraine, protection of the rights of civilians deprived of personal freedom as a result of armed aggression against Ukraine, missing under special circumstances, and members of their families, prisoners of war and illegally detained civilians, observance of the rights of national minorities (communities) and indigenous peoples in the context of the armed aggression of the Russian Federation against Ukraine.

4. The role of government in the functioning of the human rights mechanism

In accordance with part 2 of Article 116 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine shall take measures to ensure the rights and freedoms of man and citizen (*Konstytutsiia Ukrainy, 1996*).

This provision is duplicated in part 2, Part 1, Article 2 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”, as one of the main tasks of the Government, with the addition that the Cabinet of Ministers of Ukraine must create favorable conditions for the free and comprehensive development of the individual (*Shchorichni ta spetsialni dopovidi, 2024*).

“To uphold the rights and freedoms of man and citizen” are sworn in, including newly elected members of the Government (Article 10 of this Law), Article 19 includes “resolving

issues of ensuring the rights and freedoms of man and citizen” within the competence of the Government. Article 20 defines in Clause 3, Part 1 areas of the Government's authority, such as legal policy, legality, ensuring the rights and freedoms of man and citizen, in which, in particular, the Cabinet of Ministers of Ukraine takes measures to protect the rights and freedoms, dignity, life and health of man and citizen from unlawful encroachments, protect property and public order, ensure fire safety, fight against crime, prevent and counteract corruption (*Shchorychni ta spetsialni dopovidi, 2024*). The Government also directs and coordinates the work of central government bodies to observe the rights and freedoms of man and citizen (Article 21). And Article 32 defines the basis for the interaction of the Cabinet of Ministers of Ukraine with the Ombudsman.

As for the implementation of the relevant provisions, the digitalization process plays an important role in wartime conditions, so on the official website of the Cabinet of Ministers of Ukraine, the “Services” section redirects to “State Services Online”, that is, “Actions”. The menu of relevant services, in particular, includes issues that arose and remain relevant precisely in connection with the war, namely: protection of citizens during the war – all about state assistance for displaced persons and victims of a full-scale war; social protection – information on the provision of social assistance to socially unprotected categories of citizens, pension services, guardianship and care; war veterans – all about services for participants in hostilities, persons with disabilities as a result of the war, war participants, victims of the Revolution of Dignity and family members of deceased (deceased) war veterans, Defenders of Ukraine (*Hid z derzhavnykh posluh, 2025*).

One of the main problems of directly ensuring human and civil rights and protecting and restoring violated rights lies not only in the area of gaps in legal regulation, but also in the area of insufficient material and human resources to ensure the implementation of relevant activities by public authorities.

For example, on February 23, 2023, the Verkhovna Rada of Ukraine adopted Law № 2923 “On Compensation for Damage and Destruction of Certain Categories of Real Estate Objects as a Result of Hostilities, Terrorist Acts, and Sabotage Caused by Armed Aggression of the Russian Federation against Ukraine, and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, and Sabotage Caused by Armed Aggression of the Russian Federation against Ukraine”, which determined the legal and organizational principles for providing compensation for damage and destruction of certain categories of real estate objects. Accordingly, the mechanism became operational in May 2023. In the same year, 2.8 thousand Ukrainians purchased new homes for housing certificates, which they received as compensation for destroyed housing (*Krasnenko, 2025*). At the same time, as of December 2024, the Ombudsman's office noted that during the full-scale war of Russia against Ukraine, at least 3.5 million people lost their homes (*Andalitska, 2024*). As of May 12, 2025, according to official information from the Ministry of Community and Territorial Development, over 100 thousand Ukrainians were able to receive funds for repairs or certificates for the purchase of new housing during the 2 years of the relevant program, e-Recovery. Of these, 9.6 thousand have already purchased new homes. More than 93 thousand were granted compensation for the restoration of housing after damage for a total amount of 9.8 billion hryvnias. Of these, 8.9 billion hryvnias have already been transferred to applicants (*2 roky yeVidnovlennia, 2025*).

Analyzing the above figures, the following conclusions can be drawn: the e-Recovery program is working, but not even half of the people who need it have received compensation. And here, it should be noted that the program does not take into account people who lost their homes as a result of the hostilities that took place from 2014 to 2022.

5. Conclusions

The introduction of martial law on February 24, 2022 by Decree of the President of Ukraine № 64/2022 on the entire territory of Ukraine temporarily, for the period of the legal regime of martial law, introduced the possibility of restricting such rights and freedoms of a person and a citizen: such as the right to inviolability of the home, the secrecy of correspondence, the right to privacy, freedom of movement, the right to freedom of thought and speech, the right of citizens to participate in the management of state affairs, to elect and be elected, the right to peaceful assembly, the right to property, the right to entrepreneurial activity, the right to work, the right to strike, the right to education. All other rights and freedoms guaranteed by the Fundamental Law of Ukraine must be fully ensured.

The mechanism for ensuring human rights includes the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, courts, the Constitutional Court of Ukraine, the Verkhovna Rada Commissioner for Human Rights, the Prosecutor's Office, law enforcement agencies, local self-government bodies, and local state administrations. At the same time, the war also affects the functioning of the listed entities, since in addition to their peacetime powers, they have been subjected to additional burdens caused by the war. In addition to public authorities in Ukraine, there is a bar association, public organizations, and political parties that also participate in the human rights process; their activities must be legal, timely, and effective.

Public authorities that must ensure respect for human rights and guarantee the possibility of protecting rights in wartime conditions are subject to additional burdens, and accordingly must develop ways to ensure the protection and restoration of violated rights by simplifying bureaucratic procedures, optimizing document flow processes, and applying an individual approach and the principle of the rule of law.

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