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HUMAN RIGHTS IN UNCONTROLLED TERRITORIES: UKRAINIAN REALITIES

PRAWA CZŁOWIEKA W NIEKONTROLOWANYCH TERYTORIACH: RZECZYWISTOŚCI UKRAIŃSKIE

Abstrakt

Artykuł omawia zagadnienia praworządności i ochrony praw człowieka na tymczasowo okupowanych terytoriach Ukrainy. Na podstawie analizy sytuacji prawnej na Krymie i terytoriach niekontrolowanych przez Ukrainę na Wschodzie określono aktualne problemy ochrony praw człowieka. Zaproponowano zestaw konkretnych środków mających na celu ich rozwiązanie w kontekście współczesnego stanowienia i wykonania prawa. Przyjmuje się, że istnieje potrzeba uznania ochrony praw i wolności człowieka na tymczasowo okupowanych terytoriach jako kierunku strategicznego polityki państwa w ustawodawstwie krajowym, dokumentach strategicznych, a także w programach rozwoju państwa.

Słowa kluczowe: wojna hybrydowa, okupacja, prawa i wolności, ochrona praw człowieka

Introduction

Today modern Ukraine is experiencing an extremely difficult period, which is noted not only by the deep problems of socio-economic development, but also the need to withstand the external hybrid aggression of the Russian Federation – a period of external aggression which threatens the existence of Ukrainian independence and the Ukrainian nation. Occupation of the Crimea and armed conflict in the East of Ukraine exert heavy pressure on all spheres of public life: economic, political, social, informational, etc. At the same time, the social consequences of spy warfare are no less important than political and economic outcomes, but

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perhaps more painful, such as that of all residents of Ukraine without exception: those who find themselves in the occupied territory or directly involved in the conflict, and those who continue to live a normal life far from the area of hot conflict.

Warfare directly threatens the lives and health of people, destroys the normal conditions of their existence, deprives property and sources of income, increases the number of orphans, worsens access to education and health care, leads to forced migration. The main social challenge of the present is a rapid decline in living standards, which in turn causes an increase in the risk of poverty and social exclusion, and the deepening of inequality.

The acute social problems faced by Ukrainian citizens today have not arisen overnight, nor are they a direct consequence of the current hostilities. They accumulated over the years, but the warfare and accompanying economic crisis have greatly aggravated them. In the context of hostilities, significant financial, organizational, and human resources are diverted to protect the sovereignty and integrity of the state, which virtually eliminates measures to improve the socio-economic status of the population. In addition, external aggression has led to the emergence of new, extremely urgent problems in the social sphere, superimposed on existing ones.

In this background, particularly acute is the problem of internally displaced persons, which constitutes at least 3% of the population of Ukraine, and, of course, the situation with the inhabitants of occupied territories – the most deprived and vulnerable part of Ukrainian society (Gorbulin et al. 2015: 168).

As practice shows, a guarantee of the rights and freedoms of the inhabitants of the temporarily occupied territories are more formal than actual. Mechanisms for their implementation are currently absent. Most of the measures protecting human rights and freedoms in private, informational, social, humanitarian and other spheres are ineffective partly due to organizational problems, and partly due to the failure of their implementation in the uncontrolled territories.

The main aim of this work is to highlight topical issues of human rights protection in uncontrolled regions of Ukraine and to develop a set of recommendations aimed at their solution in the context of modern lawmaking and law-applying trends.

The hypothesis of the research is that effective protection of human rights and freedoms on temporarily occupied territories is possible only by recognizing it as a priority of national policy, wide reflection in current legislation and modernization of its mechanisms.

The purpose of this work has resulted in the comprehensive use of general *scientific methods* (dialectic, analysis, synthesis) and special legal methods of cognition (formalization, legal-logic etc.), which allowed the key aspects of protection of human rights and freedoms in temporarily occupied territories to be covered.

The information base of the study was the laws of Ukraine, the decrees of the President and the Cabinet of Ministers of Ukraine, and the *works of domestic and foreign scientists*: Hristova (2018), Lubel (2012), Gorbulin (2015), Irkha (2015), Tsymbal (2015), Korotkov (2017), Nesterovich (2017) Parlevliet (2017) et al.

The theoretical grounds for this work is based on the theory of “The interplay between war and human rights”, according to which developing useful policy responses to conflict and human rights requires an understanding of conflict dynamics and conflict resolution as well as the existing trends in policy, law-making and executive practice (Sriram, Martin-Ortega, Johanna Herman 2014).

1. Human rights as a victim of hybrid warfare

Today about 2.7 million citizens live in the occupied territories of Ukraine . In spite of the fact that the “hot conflict” phase, which has led to extensive human losses, infrastructure destruction and the displacement of more than a million people, has already passed, the situation with respect to civil rights and freedoms remains deplorable. Human rights violations in the occupied territories are systematic. According to international experts, the most acute problem for the inhabitants of these territories are the following:

Violations of the right to personal integrity. Unjustified detention of citizens, illegal arrests, tortures, forced labor (including – in military facilities) are common practices in the territory of so-called Donetsk People’s Republic and Luhansk People’s Republic. Trying to present such activities as legal, the repressive government issued an order, permitting the administrative arrest of citizens for up to 30 days with possibility of its extension. The arrest is carried out without contact with relatives and lawyers, without procedural supervision, or without monitoring of international organizations. Thus, “administrative arrest”, which can last up to several months, is very similar to kidnapping (Гуржій 2014).

The same situation is observed in correctional colonies, where frequent violations of the right to freedom occur. Firstly, it concerns prisoners who have completely served their sentence or were acquitted by official Ukrainian courts after the conflict began. However, this category of

prisoners was not released. As well, prisoners in DNR are denied the transfer to places of detention in the territory controlled by Central Government. Up to January 2017 separatists created 147 illegal places of detention (84 in Donetsk and 63 in Lugansk region) (Report on the human rights 15 February 2018: 7).

Violations of freedom from torture. In occupied territories illegal arrests and detentions are accompanied by tortures. Imprisoned persons suffer from insufficient medical aid, bad food, absence of heating (Deshko 2014). Moreover, they face limited access to water; absence of equipped sleeping places; bad sanitary conditions; and widespread use of physical, sexual and psychological violence (Universal Periodic Review 2017: 24).

Violations of freedom of movement. On the line of demarkation, the Russian occupation authorities (AR Crimea) and terrorist organizations (DPR, LNR) have introduced a regime of strict control and restrictions. Arrests of unreliable citizens at checkpoints very often happen, forced confiscations of property, and applying of unfair monetary penalties. In most of DNR and LNR cities there is a regime of „curfew” (“commandant’s hour”), which restricts any movement of transport and citizens between 23:00 and 5:00. Breaking of this regime at best leads to arrest, at worst – into torture and forced labour at military facilities. During 2018, in DNR alone, more than four thousand people were arrested for breaking of “curfew”. Many of them were punished by forced labour and penalties (In the “DPR” ... 2017).

Violations of the freedom of thought, conscious and religion. By 2014, about 1,500 religious organizations were registered in the Donbas region. Today, due to the moral and physical pressure of terrorists, the centers of the Greek-Catholic, Muslim, Jewish and other religious organizations actually stopped their activity (Report on the human rights 15 February 2018: 98–99).

Children constitute a special category of influence on consciousness. Human rights activists detected the involvement of about 200 children from uncontrolled Donetsk and Luhansk regions in military training camps in Russia, or territory actually controlled by Russia (Abkhazia and Crimea). Part of such camps are organized on the basis of military units of the Russian Army (camps “Boevoe bratstvo”, “Gvardeets”) or with the involvement of Russian security forces. Experts note that such actions with the children from occupied territories, in conjunction with military patriotic rhetoric, creates a real risk of the recruitment of boys and girls to illegal paramilitary groups (Sedova et al. 2017).

In occupied Crimea numerous ideological restrictions are implemented, against Tatarian communities. The occupation authorities are fighting with all forms of social, religious and cultural activity of the Crimean Tatars. To this end, a wide range of repressive measures have been applied (from penalties to mass arrests and false accusations of terrorism). Mejlis of the Crimean Tatar people is also connected with extremist organizations.

One of the most crass violations of human rights happened on September 11, 2017. Crimean activist Akhtem Chigoz was sentenced to 8 years imprisonment for organizing mass riots in Simferopol in February 2014 – even before the Crimea occupation (Situation on human rights 25 August 2017: 10)

Violations of the right to peaceful assembly and freedom of association. Today in the occupied territories of Ukraine, open and free assembly is impossible. It is forbidden to express alternative political positions, including positions regarding the annexation of the Crimea. Moreover, public declaration that Crimea annexation is contrary to international law and is not legitimate is punished by up to 3 years imprisonment. The same proclamations made in mass-media or Internet entail imprisonment for up to 5 years.

Violations of freedom of speech. In the occupied territories, freedom of expression is disproportionately and illegally limited. It makes it impossible to gather and to spread objective, socially meaningful information. First of all, it concerns journalism. The occupation authorities continue to pressure opposition and independent journalists. For example, in February 2017 in Simferopol, a television group of STB-channel (Ukraine) was arrested for filming, even though it had the permission from the Russian Ministry of Foreign Affairs. Some journalists and media-activists are even included on the list of terrorists and extremists.

Citizens' access to mass media and Internet resources, which is not under the control of occupation authorities, is limited (Gurzhii T., Gurzhii A., Seliukov V. 2018). There are widespread illegal detentions and torture of those who criticize occupants on social media. There are reported cases of serious bodily harm to pro-Ukrainian bloggers and active contributors to political "pamphlets".

In continuation of such oppressive policy the terrorist authorities of DNR issued a requirement, according to which local Internet providers should collect, store and transmit to intelligence services the personal data of all users, as well as information about their actions on the Internet

Violations of the right to own. On the territory of the DNR and LNR there is no comprehensive mechanism for the compensation of loss of

property, caused during armed clashes. Looting and the illegal confiscation of property are widespread. The authorities of Luhansk adopted the requirement, according to which private housing, left unattended for 3 months, should be inventoried and prepared for transfer to other persons. In turn, at the end of 2017, the DNR authorities issued an order about the “nationalization” of crops grown on “communal” lands “without permission” (Human rights in the occupied territories and in the conflict zone 2017).

Violations of economic, political and social rights. The population of occupied territories is actually deprived of state social and economic guarantees. Citizens do not have proper access to social assistance, bank accounts and civil status registration. Many of them are unable to vote at national and local elections. People with disabilities have no access to free medicines within the territory of the DNR and LNR. They are deprived of quality treatment and medical rehabilitation. Disability payments fail to cover even basic medical needs. In general, vulnerable categories of people remain dependent on their families or humanitarian aid. However, the repressive government arbitrarily restricts such assistance by selective accreditation. As a result, today about 800,000 inhabitants of occupied territories have problems with access to humanitarian aid activity (Report on the human rights 16 November 2017: 2).

Violations of the right to health care. Medications for locals (primarily, in the occupied territories of Donetsk and Lugansk regions) in most cases are unavailable or too expensive. Access to specialized medical care remains limited and provided mainly through humanitarian assistance.

The systemic problem is very poor medical care in places of detention in occupied Crimea. The Office of the United Nations High Commissioner has reported a case of refusal to give medical assistance to convicted person at the Simferopol Correctional Colony № 102 because he had no Russian medical insurance. On March 6, 2017, the Crimean prisoner Andriy Levin died in a correctional colony in the Russian Federation (Tlyustenhabl, Adygea), where he was transferred from the Crimea. He suffered from AIDS, tuberculosis, chronic pancreatitis and chronic paranephritis. A month before his death, he appealed to the Russian prosecutor’s office with a complaint about the lack of medical treatment. There was no reaction to this complaint.

Among the crass violations of human rights should be noted the draft of Crimean residents to the Russian Army, contrary to international humanitarian law, which prohibits forcing service in the armed forces of the occupying state. Every draft covers more than 2,000 Crimeans. And the third part of them are expected to be transferred from the Crimea to the mainland of the Russian Federation (Situation on human rights 25 August 2017)

2. Strengthening human rights protection: the steps taken

The information above shows the extremely difficult situation with observance of human rights and freedoms in the occupied territories of Ukraine. To date, the Ukrainian state is unable to break this situation. It has no access to administrative decisions, to law enforcement and to justice mechanisms (Gurzhii 2017).

In this regard, the Ministry of Foreign Affairs of Ukraine sent a letter to the Parliamentary Assembly of the Council of Europe (PACE), stating that Ukraine is relieving itself of responsibility for the observance of human rights in uncontrolled territories. In turn, on April 24, 2018, PACE adopted a resolution according to which the uncontrolled territories of Donetsk and Lugansk regions were recognized as “territories under the effective control of the Russian Federation”.

But, of course, the removal of political and legal responsibility for violations of human rights in the occupied territories does not mean that Ukraine has distanced herself from solution of the above-mentioned problems. The vast majority of victims of such violations are Ukrainian citizens. Neither society nor state remain indifferent to their plight.

Today, Ukraine is doing a lot to protect and restore the rights of its citizens in the occupied territories. This includes, in particular: giving legal assistance; gaining the release of persons illegally detained by the occupation authorities; delivering humanitarian aid to the population; making conditions for taking part in elections; providing access to free education; social assistance and much more.

An important step in this direction was taken by the Government, which adopted the “Plan of measures for reintegration of certain regions of Donetsk and Luhansk regions, where the state authorities temporarily failed to exercise their powers” (Decree of January 11 2017 № 8-p). The Plan foresees the establishment and development of contacts between Ukrainian citizens living on both sides of the line of demarcation, as well as on counteraction to military aggression by non-military means. Achieving this aim is carried out through 12 main directions: fight with corruption at checkpoints of delineation lines; improving the procedures for crossing such lines; regulation of legal activity of Ukrainian businesses in the occupied territories; providing citizens with access to Ukrainian goods; psychological, social and legal services for inhabitants of the occupied territories; restoration of Ukrainian TV and radio broadcasting; the opening of state service centers; providing humanitarian assistance; protection the children of conflict zone; involvement of youth from uncontrolled territories in national and international sports activi-

ties; assistance in restoring the cultural space of Ukraine; provision the access to Ukrainian education.

An effective organizational measure aimed at protecting the rights and freedoms in the temporarily occupied territories was the formation of Interagency Commission on the Application and Implementation of International Humanitarian Law in Ukraine in April 2017. Despite its short history, the Commission adopted a wide set of measures for implementing the norms of international humanitarian law in the national legislation, their integration into the programs of academic education, expanding their provisions onto the activities of armed forces and law enforcement units. Currently under development are the mechanisms for documenting war crimes and other violations of international humanitarian law. Currently in progress is the law-making work on setting responsibility for international crimes.

Also, at the end of 2017, the Strategy for the integration of internally displaced persons and the implementation of long-term decisions on internal movement for the period up to 2020 was approved (Decree of November 15 2017 № 909-p). The main directions of the Strategy determine the socio-economic integration of internally displaced persons; increasing the self-sufficiency and independence of internally displaced persons taking into account the interests of host communities; establishment of effective interaction of internally displaced persons with host communities and state authorities, local self-government bodies; reduction of the continuing internal movement in Ukraine due to the permanent change in the place of stay of internally displaced persons; elimination of any manifestations of discrimination and achievement of social unity. The implementation of the aforementioned directions has yielded good results: providing housing for settlers, opening of Centers for providing administrative services, infrastructure development, improving production, etc.

At the same time, in spite of the measures taken, many problematic aspects of implementation and protection the rights and freedoms of the inhabitants of the temporarily occupied territories problems are felt acutely. It is obvious that the key to their solution should be sought in the field of organizational and legal support.

Conclusion

The situation requires a wide range of legal and organizational measures aimed at restoring civil peace and social harmony in Ukrainian society, guaranteeing constitutional rights and freedoms of citizens, im-

proving the effectiveness of human rights protection, and implementing international human rights standards.

As a first step in this direction, the preparation and holding of parliamentary hearings on the current state of the protection constitutional rights and freedoms of Ukrainian citizens, living on temporary occupied territories, should be initiated. This step should clearly identify the range of urgent problems, to summarize the experience of their solution and, ultimately, to create an empirical and legal framework for comprehensive implementation of the National Human Rights Strategy.

At the Strategy implementation, priority support must be given to strengthening guarantees for fundamental human rights (for life, for personal integrity, for social and medical care etc.). Besides this, attention should be focused on the development of legal mechanisms for stopping and investigations of human rights violations in the temporarily occupied territories; restoration of violated human rights, compensation for inflicted harm, providing social and psychological rehabilitation of victims of conflict; ensuring the right to independent and fair trial within a reasonable time, consistent with European values and democratic principles of justice; counteracting all forms of discrimination, gender violence, human trafficking and slavery; organizing and conducting independent investigations into all allegations of extrajudicial executions, arbitrary detention, torture and other forms of ill-treatment (inhuman detention, refusal to meet with a doctor, lawyer, etc.); releasing the bodies (remains) of people who died in the conflict, free access to places of burial.

Particular attention should be paid to raising the level of social security for internally displaced persons, taking into account their financial situation and actual living conditions. To this end, it is necessary to prepare a draft amendment to the Law of Ukraine “On Interim Measures for the Period of the Anti-Terrorist Operation” (the rules of which are determined temporary support measures for removed persons and persons, living in occupied territories) and the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” (which establishes guarantees of observance of rights, freedoms and legitimate interests of internally displaced persons), and also (if necessary) to other legislative acts in the field of social protection.

Of course, this is far from a comprehensive list of measures to be implemented for the effective insurance of human rights and freedoms under condition of hybrid warfare. Achievement of this aim is possible only within the framework of national policy based on the principles of planning, integrity, consistency, participation, transparency, consensus and responsibility. To this end, protection of the rights and freedoms on

temporarily occupied territories should be recognized as a strategic direction of state policy, reflected in national legislation, strategic acts, as well as in the state development programs.

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