

# LEGAL PROTECTION OF THE RIGHT TO FREEDOM AND PERSONAL INTEGRITY OF THE CITIZENS OF UKRAINE (PRIVATE AND PUBLIC ASPECT)

SVITLANA HRYNKO<sup>1</sup>, RUSLAN HRYNKO<sup>2</sup>, MAKSYM LEVYTSKYI<sup>3</sup>,  
ARTEM MAKOVSKIY<sup>4</sup>, OLEKSANDR BILOVSKIY<sup>5</sup>

**Abstract:** The article defines the specifics of private legal protection of the right to freedom and personal inviolability of an individual in Ukraine. It elaborates on the content of the right to freedom and personal inviolability of a natural person, including both physical and psychological inviolability. The article identifies methods that violate the psychological inviolability of an individual (hypnosis, polygraph, etc.). Private legal protection of the right to freedom and personal inviolability, characterized as a personal non-property right of a natural person, has been analyzed in the context of legal regulations. The conclusion has been drawn that the right to freedom and personal inviolability is safeguarded through the establishment of a set of prohibitions regarding its infringement and methods of protection in case of violation. Both private legal and public legal means of protecting the right to freedom and personal inviolability of a natural person have been identified. The article characterizes violations of the right to freedom and personal inviolability of an individual in the context of their placement in places of liberty deprivation (orphanages, psychiatric hospitals, boarding schools, military guard-houses, detention facilities, etc.). Through the analysis of Ukrainian judicial practice and the European Court of Human Rights, the conclusion has been drawn that there are cases where there are no legal grounds for placing individuals in places of liberty deprivation, as well as instances of torture, cruel, inhuman, and degrading treatment of these individuals.

**Keywords:** Legal Protection, Human Rights, Physical Inviolability, Mental Health, Psychological Inviolability, Psychophysiological Equipment, Criminal Process.

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<sup>1</sup> Doctor of Law, Professor. Head of the Department of Civil Law and Procedure. Leonid Yuzkov Khmelnytskyi University of Management and Law, 29013, Heroiv Maidanu St., 8, Khmelnytskyi, Ukraine. Email: svetgrin27@ukr.net

<sup>2</sup> PhD. Professor of the Department of Administrative Activities. Bogdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine, 29000, 46 Shevchenko Str., Khmelnytskyi, Ukraine. Email: rvg14@ukr.net

<sup>3</sup> PhD. Senior Lecturer of the Department of Legal Theory and Criminal procedural Activities. Bogdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine, 29000, 46 Shevchenko Str., Khmelnytskyi, Ukraine. Email: 210486max@ukr.net

<sup>4</sup> PhD. Senior Lecturer of the Department of Psychology, Pedagogy and Socio-economic Disciplines. Bogdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine, 29000, 46 Shevchenko Str., Khmelnytskyi, Ukraine. Email: makovsli200844@gmail.com

<sup>5</sup> PhD. Senior Lecturer of the Border Service Department. Bogdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine, 29000, 46 Shevchenko Str., Khmelnytskyi, Ukraine. Email: lennartoloffson@gmail.com

## 1. INTRODUCTION

Currently, there is growing theoretical and practical interest worldwide in personal freedom and its inviolability, as the right to freedom and personal inviolability constitute a complex of socially legitimate phenomena expressed in democracy, responsibility, and morality.

Considering the events occurring worldwide, the issues of suppression of freedom and limitations of inviolability are acute and painful. To satisfy their needs and interests, individuals have the right to personal self-organization and preservation of individuality. Personal freedom and inviolability should be ensured with guarantees that allow for the restraint of the arbitrariness of state or officials and creation of a reliable mechanism for their protection. Therefore, the primary task of any state is to create a mechanism for proper protection and realization of a person's non-property rights. The relevance of this topic lies in addressing issues of a dignified human life, personal protection, and significance in society. Protection of the right to freedom and personal inviolability is proclaimed by the Constitution of Ukraine (Constitution of Ukraine, 1996: Article 29).

The list of directions for personal freedom and inviolability is constantly expanding. This is due to the rapid development of life, cultural maturity of society, and its self-esteem. It should be noted that the existence of rights to freedom and personal inviolability in the state serves a wide range of personal interests. That is, the state recognizes freedom within the framework of existing legislation. At the same time, the state establishes guarantees for the protection of the right to freedom and personal inviolability (Horbalinskiy, et al., 2023).

It is necessary to focus on the issue of the relationship between private law and public law protection of the right to freedom and personal inviolability of a natural person. Such interest is explained by different methods and means of protection, with a close connection between them. The European Court of Human Rights (ECHR), when considering any complaints about violations of fundamental rights and freedoms of a person, always ensures private law protection of the applicant (determines compensation for moral damage). National and European courts also apply other means of protection at the request of the injured person.

Legislation and legal practice are constantly changing (Hretsa, et al., 2022). This means that the new legal reality shifts certain focuses in research and requires a reevaluation of some aspects. All of this together underscores the need for a comprehensive study of private law protection of the right to freedom and personal inviolability of a natural person, as most problems related to the protection of personal non-property rights remain unresolved.

The living conditions of an individual, protection and legal regulation of his or her rights to freedom and personal integrity have always been the focus of attention of many Ukrainian researchers. Only in the last three years, a number of interesting and relevant scientific investigations have been conducted, which are also related to the problem of our

research. Thus, Andrusyshyn and the co-authors (Andrusyshyn et al., 2023) investigated the right of a person to a fair trial in extraordinary conditions. The researchers singled out directions for improving the activities of state authorities to ensure the right to a fair trial under martial law and concluded that activities under martial law require the adoption of non-standard decisions, and moreover it is necessary to develop the procedure for restoring lost court proceedings by the judicial self-government bodies.

The subject of the research of Burlaka and others (Burlaka, et al., 2023) was the civil legal protection of the population, in particular, socially vulnerable categories of the population - internally displaced persons (evacuees from the zone of active hostilities and occupied territories of Ukraine). The problems of protecting the rights of internally displaced persons were also studied by Izarova and others (Izarova, et al., 2023), in particular, the scientist concluded that creation of alternative extrajudicial legal mechanisms will allow to prevent and settle civil disputes.

Reshota investigated the significance of court decisions as a source of law for protecting and securing human rights, in particular it was established that not all court decisions constitute a source of law, but only those that change, suspend or terminate the effect of a legal norm (Reshota, et al., 2022).

The influence of international law on the national law of Ukraine in the field of criminal and civil law was the subject of study by Morska with the co-authors (Morska, et al., 2022), where the scientists concluded that when implementing certain provisions of acts of an international legal nature, the domestic legislator does not take into account the specifics of Ukrainian legislation regarding criminal liability.

Omelchuk and his co-authors (Omelchuk, et al., 2021) investigated the international aspect of human rights protection in the context of the development of the rule of law principle, in particular it was established that in the European region a large role in the development and interpretation of the concept of the rule of law is played by its judicial interpretation, as well as the indicators of the measurement of the rule of law index in the country and their analysis were characterized in the dynamics at the international level and the distribution of the rule of law index by factors in Ukraine.

Thus, the main principles of legal protection of human rights, civil legal protection of internally displaced persons and the importance of international documents as a source of law in the resolution of legal disputes by the court were the subject of the scientists' attention.

However, the problems of determining the specifics of the legal protection of the right to freedom and personal integrity of Ukrainian citizens in both private and public aspects, which is the purpose of this study, remained beyond attention of the above-mentioned scientists.

The purpose of the research is to identify the peculiarities of private legal protection of the right to freedom and personal inviolability of a natural person in Ukraine.

Research objectives: The objectives aimed at achieving the research goal are as follows:

- analyze the content of the right to freedom and personal inviolability and identify its elements;
- determine the features of the normative legal framework for the right to freedom and personal inviolability in national and international legislation;
- assess the practical implementation and protection of the right to freedom and personal inviolability through the lens of judicial practice in Ukraine and the European Court of Human Rights (ECHR).
- outline the issues and ways to address them regarding the protection of the right to freedom and personal inviolability.

## **2. METHODS**

The methodological basis of the scientific research is a combination of general scientific, philosophical and specific methods of scientific knowledge, the use of which ensured the reliability of the obtained results and solution of research tasks.

With the help of historical and comparative methods, the genesis of the legal regulation of the protection of the right to freedom and personal integrity of Ukrainian citizens, as well as the ratio of public-law and private-law methods of protecting this right, were investigated. Both at the national and international levels.

The formal-logical method was used to clarify the content of certain concepts and research categories (physical and personal integrity, right to freedom and personal integrity, polygraph). This technique contributed to the analysis of the norms of current national and international legislation, monitoring of violations of the right to freedom and personal integrity, which made it possible to identify gaps and formulate proposals for the protection of personal non-property rights of an individual.

The comparative legal method contributed to a comprehensive study of the content of norms that are the basis for the application of methods of protection of personal non-property rights of an individual. This made it possible to compare national and international judicial practice in solving violations of the right to freedom and personal integrity.

## **3. RESULTS**

The right to personal freedom and inviolability serves as a guarantee of a person's external and internal world. In the context of exercising the right to freedom and personal inviolability, it is appropriate to mention two main elements: physical and mental inviolability, characterizing the inner world of a person. Prohibitions on physical and psychological pressure are established accordingly.

*Physical inviolability* includes prohibition of detaining a person without his or her consent, the use of torture, inflicting beatings, or any other methods of causing physical pain (infection with venereal diseases, administration of narcotic drugs, forced use of psychotropic drugs). Physical inviolability also includes prohibition of interfering with medical treatment, diagnosis, sterilization, abortion, conducting medical-biological experiments, forced collection of anatomical materials etc. Negative changes that occur in a person's consciousness when physical suffering is inflicted lead to mental disorders.

*Mental inviolability* is ensured by prohibiting threats, blackmail, deception, as well as modern methods of obtaining information through the use of instrumental diagnostics and hypnosis. It is clear that regardless of the purpose of using these methods (for example, for treatment or in connection with the investigation of a criminal case), it is important to obtain the person's consent, as the right to such application is not provided for in Ukrainian legislation. It should be added that during the period of hypnotic sleep, certain influence and intrusion into a person's consciousness can be induced, which is equivalent to subduing the will of the hypnotized person. However, during a criminal investigation, the use of hypnosis is effective as it can help restore the memory of a victim or a witness and obtain important information about specific events. At the same time, this method can devalue personal significance of a person.

Another means of obtaining necessary preliminary information and uncovering what a person is concealing is a polygraph. The polygraph is a type of psychophysiological equipment and a complex multi-channel hardware method for recording changes in a person's psychophysiological reactions in response to the presentation of certain psychological stimuli (Wikipedia, 2023). This method began to be actively used by law enforcement agencies and police in the United States. In 1965, the U.S. Department of Defense introduced a federal regulatory document regulating the procedure for using the polygraph (All-Ukrainian Association of Polygraphists, 2023).

In Ukraine, the period of active conducting of forensic psychophysiological examinations began in the early 2000s (Serhii, et al., 2023). In Ukraine, there is an Instruction on the Procedure for Using Polygraphs in the National Police of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine dated November 13, 2017, No. 920.

Besides supporters of using the polygraph, there were also many opponents. Ukrainian scientists, in their reports, claimed the impossibility of examinations using the polygraph. This is because it activates memory, and the examinee begins to recall all possible details of the crime. While this may aid in the investigation, it has a negative impact on the emotional state of the accused, infringing upon their rights and freedoms. Therefore, recreating the circumstances of the crime, conducting a lineup - these methods do not "traumatize" the individual, in this case - the suspect, while the use of the polygraph is considered less humane and legal (All-Ukrainian Association of Polygraphists, 2023).

It should also be noted that the polygraph records physiological indicators such as breathing rhythm, blood pressure levels, pupil reactions, and perspiration intensity. There

is plenty of evidence that physiological reactions do not change even when a person denies committing an offense. Conversely, a person who did not commit a crime may demonstrate physiological changes under psychological stress that would indicate guilt. Psychologists argue that the results obtained from a polygraph are not reliable. This demonstrates the imperfections of technical means or human factors.

The private law protection of the right to freedom and personal inviolability as a personal non-property right of a natural person should primarily be considered in terms of normative legal regulation. A defining moment in this regard was the adoption of the Civil Code of Ukraine in 2003, where Book Two is devoted to personal non-property rights. Article 270 of the Civil Code of Ukraine includes the right to freedom and personal inviolability among the types of personal non-property rights of a natural person. This right received separate normative legal consolidation in Articles 288 and 289 of the Civil Code of Ukraine. It should be noted that the placement of these articles in Chapter 21 of this Code means that the right to freedom and personal inviolability is classified as personal non-property rights that ensure the natural existence of a natural person.

In the Civil Code of Ukraine, the right to freedom and personal inviolability is protected by establishing a series of prohibitions on its violation and methods of protection in case of violations. Prohibitions regarding the right to freedom of a natural person include physical pressure, psychological pressure, inducing the use of alcoholic beverages, narcotic and psychotropic substances, and other actions that violate the right to freedom (Civil Code of Ukraine, 2003: Article 288). The right to personal inviolability of a natural person is guaranteed by prohibiting torture, cruel, inhuman, or degrading treatment, behavior or punishment, physical punishment by parents (adoptive parents), guardians, custodians, caregivers of minors, juniors, and wards (Civil Code of Ukraine, 2003: Article 289).

The right to freedom and personal inviolability is also enshrined in Article 27 of the Constitution of Ukraine. This provision contains guarantees for the exercise of the right to freedom by establishing two prohibitions that no one can be arrested or detained except by a reasoned court decision, which can only be made on the grounds and in the manner prescribed by law. An exception to this rule is recognized as the urgent need to prevent a crime or stop it. Law enforcement authorities authorized to do so can apply this exception as temporary preventive measures, the validity of which must be verified by a court within seventy-two hours.

To protect the right to freedom of a natural person under the Constitution of Ukraine, the following public-law means have been established:

1. If within seventy-two hours from the moment of detention no reasoned court decision on detention is handed to a detained person, that person must be released immediately.
2. Every arrested or detained person must be promptly notified of the reasons for their arrest or detention, have their rights explained to them, and be provided with



the opportunity to defend themselves personally and to have legal assistance of a defender from the moment of detention.

3. Every detained person has the right to challenge their detention in court at any time.
4. Information about the arrest or detention of a person must be promptly communicated to the relatives of the arrested or detained person (Civil Code of Ukraine, 2003: Article 27).

Public legal guarantees of the right to freedom and personal inviolability are enshrined in the Criminal Procedure Code of Ukraine. Thus, the state of Ukraine guarantees respect for human dignity, rights and freedoms of every person during criminal proceedings (Criminal Procedure Code of Ukraine, 2013: Part 1, Article 11). Prohibitions regarding the right to liberty during criminal proceedings include: 1) torture, cruel, inhuman or degrading treatment, treatment or punishment; 2) the threat of such treatment; 3) keep a person in humiliating conditions; 4) to force her to take actions that degrade her dignity (Criminal Procedure Code of Ukraine, 2013: Part 2, Article 11); 5) detention, being detained or restricted in the exercise of the right to free movement in another way due to suspicion or accusation of committing a criminal offense other than on the grounds and in the order provided by this Code (Criminal Procedure Code of Ukraine, 2013: Part 1, Article 12).

The Criminal Executive Code of Ukraine enshrines the prohibition of cruel, inhuman or degrading treatment of convicts (Criminal Executive Code of Ukraine, 2003: Part 2, Article 8). Legal protection of the right to freedom and personal inviolability is anchored in international acts.

The Convention on the Protection of Human Rights and Fundamental Freedoms establishes the following guarantees of this right:

- 1) no one can be deprived of liberty, except in such cases and in accordance with the procedure established by law (European Convention on Human Rights, 1950: Article 5);
- 2) no one may be subjected to torture or to inhuman or degrading treatment or punishment (European Convention on Human Rights, 1950: Article 3);
- 3) prohibition of slavery and forced labor (European Convention on Human Rights, 1950: Article 4).

Article 5 of this Convention enshrines the public legal means of protecting the right to freedom and personal inviolability: informing the arrested person in a language understandable to him about the grounds for his arrest and about any charge brought against him; appear immediately before a judge or other official authorized by law to exercise judicial power, and he or she must be granted a trial by court within a reasonable time or be released during the proceedings; has the right to initiate proceedings during which the court without delay establishes the lawfulness of the detention and decides on release if the detention is illegal. Private legal means of protecting the right to freedom and personal integrity include the right to compensation

(European Convention on Human Rights, 1950: Article 5). At the same time, everyone whose rights to freedom and personal integrity have been violated has the right to an effective means of legal protection in a national body, even if such a violation was committed by persons exercising their official powers (European Convention on Human Rights, 1950: Article 13).

With regard to other international acts, which also regulate powers related to personal freedom and inviolability, the following should be highlighted: the Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966 p.); Basic principles of treatment of prisoners (1990); Minimum Standards for the Treatment of Prisoners (1955); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

Certain guarantees are also introduced at the level of by-laws. The right to freedom and personal inviolability is guaranteed by establishing a number of prohibitions in the Instructions on the Procedure for Holding of Detained Persons in the State Border Protection Bodies (units), approved by Order of the Ministry of Internal Affairs of Ukraine dated March 30, 2015 No. 352. The temporary holding facilities are designed to keep citizens of Ukraine, foreigners or stateless persons who have been detained by authorized personnel of the State Border Guard Service of Ukraine for committing administrative offenses or on suspicion of committing criminal offenses, as well as foreigners or stateless persons, in respect of whom a decision has been made to place them in appropriate temporary holding facilities for foreigners and stateless persons, who are illegally in the territory of Ukraine. Torture, cruel, inhuman and degrading treatment of detained persons by personnel of state border protection bodies (units) is prohibited (clause 6 of these Instructions).

An individual's right to freedom may also be restricted in cases of placement in orphanages, psychiatric hospitals, boarding schools, guardhouses, prisons, and other places of deprivation of liberty.

In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, ratified by the Law of Ukraine dated 21.07.2006 No. 22-V, and the Law of Ukraine "On the Commissioner of the Verkhovna Rada of Ukraine on Human Rights" the Commissioner is entrusted with the functions of the national preventive mechanism. These functions are implemented through systematic inspection by the Commissioner and representatives of the Commissioner's Secretariat of places of detention, with the aim of monitoring compliance with the rights of persons detained (remaining) in these places, in particular, the right to protection against improper treatment (Horoshynskyi, 2023).

Based on the analysis of the Commissioner's reports (Annual and special reports [www.ombudsman.gov.ua](http://www.ombudsman.gov.ua)) for the years 2018-2022 and results of the Commissioner's response acts to the facts of illegal actions of law enforcement officers, the prosecutor's office, infliction of bodily harm, torture, abuse of official position, leaving in danger, table 1 was formed.



Table 1

Year	The number of acts recorded into in the Unified register of pre-trial investigations
2018	74
2019	63
2020	203
2021	315
2022	8*

\* The impact of active hostilities

There are cases where there are no legal grounds for placing individuals in places of detention, which causes a violation of the right to freedom and personal inviolability. This is evidenced by the materials of court decisions of national courts and the ECHR. In the case “Beley v. Ukraine” dated June 20, 2019, No. 34199/09, encroachments on the internal and external inviolability of the accused person are clearly demonstrated. The applicant appealed to the ECHR regarding illegal deprivation of liberty. Also, the case file contains all the grounds that testify to the torture of the applicant by the law enforcement agencies, namely the qualified conclusions of the forensic medical examinations as “light”, confirming the brutality of the law enforcement agencies. From these circumstances, the applicant suffered physical and psychological pain. Having considered all the circumstances, the Court came to the conclusion that such treatment, aimed at obtaining testimony from the applicant about the crime, was deliberate and cruel and, accordingly, recognized the violation of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Undoubtedly, the timely conduct of forensic medical and forensic psychiatric examinations will give a high probability of proving the presence or absence of an offense (ECHR, 2019. Beley v. Ukraine).

Another example is the court decision dated September 19, 2019 in case No. 84368064 in the case of the submission of a petition by prosecutor O. Zhadan on the continuation of the application of the preventive measure in the form of house arrest to the accused person in connection with the non-completion of the criminal proceedings. It should be noted that in that specific case, the Starobilsk District Court refers to the judicial practice of the ECHR and is quite reasonably guided by the Decisions of the Constitutional Court of Ukraine regarding restrictions on the right to freedom and personal integrity, clearly demonstrating the provisions contained in the Universal Declaration of Human Rights of 1948 and the International Covenant on civil and political rights of 1966. Therefore, taking into account all the above-mentioned legal norms, the request of prosecutor O. Zhadan was refused (Starobilsk District Court, 2019).

The case “Serhii Volosiuk v. Ukraine” dated 12.06.2009 in case No. 1291/02 based on the petitioner’s appeal regarding the fact that his case was not considered within a reasonable time and was not released from custody during the proceedings as indicated in clause 3 of Art. 5 of the Convention. The European Court states that it is the national courts that must ensure that the duration of pre-trial detention of the accused person in the

relevant case does not exceed a reasonable period. According to Clause 3 of Art. 5 of the Convention, the expediency of keeping the accused person in custody and applying other alternative measures to secure him before the court should be considered (ECHR, 2009. Volosiuk v. Ukraine).

The decision of the ECHR in the case “Osypenko v. Ukraine” dated February 9, 2011 in case No. 4634/04 is quite important. In this case, the applicant claimed that from 25 to 28 January 2002 he was unlawfully deprived of his liberty, the total duration of his detention was excessive. The court considers detention in custody based only on the gravity of the accusation to be unacceptable. In no case did the city court refer to certain circumstances regarding the impossibility of choosing alternative preventive measures instead of detention, and therefore it is obliged to substantiate this “impossibility” (ECHR, 2011. Osypenko v. Ukraine).

One more example is the decision of the European Court of Human Rights dated November 15, 2012, in case No. 49218/10 regarding inadequate provision of medical assistance in places of detention and the appropriateness of detaining seriously ill convicts. The applicant (the convict’s wife) applied to the ECHR, alleging a violation of Article 3 of the Convention and untimely and inadequate provision of medical assistance to her husband by the national competent authority, which led to a significant deterioration of his health (ECHR, 2012b. Yermolenko v. Ukraine).

It is worth noting that in this specific case, the Court acknowledges and supports the sequence of actions taken by the national authorities but emphasizes that an absolute prohibition of torture and inhuman treatment, which degrades human dignity according to Article 3 of the Convention, cannot be disregarded in all possible cases. It is necessary to assess the state of health of the convict, his or her age, and not to correlate all diseases with the general list of diseases, which allows to continue treatment in the place of deprivation of liberty. In the Court’s opinion, this practice does not provide decent guarantees of protecting the health and well-being of convicts. Under such circumstances, the Court considers that the violation of Art. 3 took place in a specific case.

There are cases of violations of the right to personal inviolability of individuals placed in psychoneurological institutions, social protection facilities, and other places of prolonged stay. As a result of inspections by the prosecutor’s offices in certain regions, torture and cruel treatment were found to be applied to detainees subjected to forced isolation and physical restraint. For example, in the Ivankiv Regional Special House-Internat, no medical assistance is provided to wards, the majority of whom are disabled persons of Groups 1 and 2, there is no medical staff, and no agreements have been concluded with healthcare institutions and medical personnel. The most common violations in specialized institutions in the Zhytomyr region include failure to provide wards with the established norms of living space, hygiene products, tableware, household inventory, and the absence of basic necessities such as access to handwashing facilities, etc (BFOJOC.ZT, 2018).

For a long time, there were places of liberty deprivation in the metro, where people were placed in cages at police posts. The existence of such ‘cages’ was not envisaged by

any regulatory document, and detention of detainees was not documented in any way, significantly violating their right to freedom. Furthermore, the placement of people in such ‘cages’ violated their right to personal inviolability since the conditions did not meet even minimal standards: people had no access to toilets, drinking water, phones, food, etc (ZMINA, 2017).

Additionally, we would like to outline the facts regarding violation of the non-property rights of the civilian population in the territories of Ukraine occupied by the troops of the Russian Federation, noted in the report of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights – “The Russian side has no legal grounds for detaining civilians. A civilian cannot be detained at all, and if this happens, he or she must be released immediately! International organisations have documented numerous cases of “filtration measures”, enforced disappearances, tortures, forced mobilisation, and restrictions on the freedom of citizens in foreign detention camps committed by the occupation forces against Ukrainian civilians. Currently, the Russian Federation is completely ignoring the norms of international humanitarian law regarding to the civilian population of Ukraine. In particular, by these actions, Russia is violating the 4th Geneva Convention, Article 3 of which prohibits the taking of civilian hostages. All civilian hostages are held in inadequate conditions of detention, they are not provided with a medical care and must work at least 12 hours a day to receive food, personal hygiene products and satisfy basic natural needs, they are unable to receive parcels from their relatives and to maintain contact with them” (Ukrainian citizens held hostage in Russia, 2023 <https://cutt.ly/GwmnVC9K>).

According to the Center for Civil Liberties, the Russian authorities have put between 1 and 2 million Ukrainian citizens through the so-called filtration process. If people do not pass this filtration, they end up in the so-called filtration camps, which can only be compared to concentration camps. As of the end of September 2022, there were at least 19 known filtration camps in the occupied territories of Ukraine. According to human rights activists, numerous cases of torture have been reported in filtration camps. Detainees are held in inhumane conditions and do not have access to information. They do not have proper medical and legal assistance, and are not allowed to communicate with their families. On November 11 2022, the Ukrainian military liberated the city of Kherson from Russian occupation, which they had seized since the beginning of the full-scale invasion of Ukraine. Nine torture chambers were found on the territory of the liberated Kherson region. They also found 432 bodies of civilians who had been killed. The liberation of the Kherson Region from the Russian military revealed new facts of ill-treatment – residents of the region were subjected to more brutal methods of torture than in the regions that were previously under temporary occupation – Kharkiv, Kyiv, Chernihiv. In these Regions, we recorded torture chambers, but in Kherson Region, for the first time, we established the facts (from the testimony of people who were in these torture chambers) that men and women were kept together for weeks at a time in torture chambers around the clock. Torture, beatings, sexual violence, but men and women were not kept together. Moreover, they were not released for weeks. Even women had to go to the toilet in front of men, and men had to go to the toilet in front of women. Each cell had video cameras for surveillance. This round-the-clock video surveillance was recorded with sound. Our citizens who were tortured emphasize this point and explain that they clearly

understood it. Because as soon as Kherson residents began to talk about the occupation, masked people immediately ran into the cameras and severely beat everyone (Human rights in Ukraine, 2023. <https://cutt.ly/swmn1kZT>).

Russia's deliberate and categorical violation of international humanitarian law is evidenced by the testimonies of Ukrainian servicemen released from captivity and information from various sources. Numerous cases of execution of captured Ukrainian soldiers, ill-treatment, torture, physical and psychological violence against them have been recorded. Torture by electric current, infliction of gunshot or stab wounds are used by Russians to obtain military information, intimidation, humiliation and revenge. These crimes are recorded by both the Ukrainian Parliament Commissioner for Human Rights and international human rights organizations (UN Human Rights Monitoring Mission in Ukraine, the Office of the United Nations High Commissioner for Human Rights, and the UN Independent International Commission of Inquiry on Violations in Ukraine). (Protection of rights in the security and defense sector 2023. <https://cutt.ly/hwmn2aIL>; Rogatinska, et al., 2023). Thus, on September 4, 2023, the UN Independent International Commission on Violations in Ukraine, created by the UN Human Rights Council, completed its regular visit to the country. At the press conference in Kyiv, experts spoke about the discovery of a significant number of violations by the Russian armed forces against the civilian population of Ukraine, which included intentional murders, illegal deprivation of liberty, torture, rape and other types of sexual crimes, as well as the illegal transfer and deportation of Ukrainian citizens, including children. The Field Office of the International Criminal Court, which is the largest representative office of the International Criminal Court (ICC) outside The Hague, together with the UN commission, is actively working in Ukraine (Chaplynskyi, et al., 2023).

In the light of recent international events, which correlate with our research, we would like to draw attention to the state of private legal protection of the right to freedom and personal integrity of Ukrainian citizens abroad (using the example of the armed conflict in the Gaza Strip).

Analyzing the research of (Neethling, 2005), attention is paid to the issue of protection of individual rights in the context of the dogmas of international humanitarian law. International humanitarian law governs the conduct of hostilities and is distinct from the law that governs the decision to use force. Whatever the legality of a decision to use force, all parties must comply with International humanitarian law (Baldwin, 2023; Rubenstein, 2023).

A fundamental rule of international humanitarian law during conflict states that all parties must always distinguish between combatants and civilians. Civilians and civilian objects should never be the target of an attack. It is not enough to simply state that civilians are not the target of an attack, international humanitarian law requires that parties to a conflict take all possible precautions to minimize harm to civilians and civilian objects. If an attack does not separate combatants from civilians or is expected to cause disproportionate harm to civilians compared to military gain, it is also prohibited. But we can see, on the example of the war in Ukraine and hostilities in Israel, that the postulates of international humanitarian

law are being violated. Russian troops are constantly shelling civilian infrastructure and critical objects in Ukraine. Deliberate killing of Israeli civilians and taking of hundreds of hostages by Hamas and other armed groups are war crimes, as are the indiscriminate firing of rockets into Israeli communities. According to the Israeli government, about 1,400 Israelis have been killed since October 7. In turn, Israel's armed forces have continuously bombarded the densely populated Gaza Strip, home to 2.3 million people, causing significant destruction and civilian casualties (United Nations, 2023).

Thus, according to the Ministry of Foreign Affairs of Ukraine, there are about half a thousand citizens of Ukraine in the Gaza Strip, and as of October 31, 2023, 25 Ukrainians died as a result of hostilities (<http://surl.li/neztt>). Attention should also be paid to the consequences for the mental health of the civilian population in the conflict zone. The prevalence of psychological trauma from the Hamas attacks in Israel and the airstrikes in Gaza is likely to be very high, including among children, who make up nearly half of Gaza's population. We observe a similar situation in Ukraine, as early as 2022, the First Lady of Ukraine noted the need to support the mental health of Ukrainians during a speech at the 75th World Health Assembly (<http://surl.li/neztt>), and in March 2023, the All-Ukrainian mental health program "How are you?" was launched. The focus of the Program is how to overcome stress and negative emotions during the war and how to find strength for psychological recovery.

Therefore, our analysis allows us to state that with the development of integration processes, the rapid development of the individual essence of a person, and the unwillingness to tolerate humiliation and personal restrictions, all these factors compel the legislator to develop new effective legal mechanisms that will protect the individual, reduce violations of personal non-property rights, and comply with European standards (Harasym, et al., 2023).

In Ukraine, in 2012, the most powerful institution for monitoring places of liberty deprivation, the National Preventive Mechanism, was created, which operates in accordance with the Optional Protocol to the United Nations Convention against Torture dated 18 December 2002 (ratified by Ukraine on July 21, 2006). It provides for regular monitoring of all places of liberty deprivation (pretrial detention centers, internment facilities, psychoneurological hospitals, hospices, prisons, military units, etc.) to prevent cruel treatment of people residing there. Its implementation is entrusted to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, who acts in the format of 'Ombudsman +' and involves monitoring visits to places of liberty deprivation by the Ombudsman's office staff together with civil activists who participate on a voluntary basis (Ukrainian Parliament Commissioner for Human Rights, 2023).

A person in places of liberty deprivation is highly vulnerable due to his or her limited ability to influence their own will and exercise and protect their rights. Isolated from society, such people are entirely dependent on officials who may treat them cruelly and subject them to torture at any time and in any place. Such individuals require enhanced protection, taking into account the conditions of their detention. Therefore, it is advisable to systematically monitor places of confinement, allowing for an immediate response to



violations of the rights of individuals in such places. Legal assistance will be provided to individuals in places of liberty deprivation during visits as needed. In addition, monitoring serves a preventive function with regard to officials who are obligated to properly perform their official duties and refrain from any violations.

Today, in Ukraine, there is a problem with conducting monitoring of places of liberty deprivation, which is explained by ongoing combat actions. Furthermore, there are challenges related to crossing checkpoints to visit individuals in places of liberty deprivation in areas affected by hostilities (Ukraine crisis media center, 2018). Particularly deserving attention is the issue of protecting seriously ill convicts, who have their own legal status, as the right to health is one of the most important objects of civil legal relations.

Systematic monitoring will enable individuals to avail themselves of protective measures, including filing claims in court for: the cessation of actions violating their rights; declaring decisions, actions, or inaction of state authorities or local self-government bodies, as well as their officials, as illegal; the restoration of the situation that existed before the violation; compensation for damages and other means of compensating property damage; and compensation for moral (non-property) harm.

Summarizing the analysis of the court decisions cited in the article and the violations of human rights recorded by the controlling bodies of Ukraine, it should be noted that the fundamental principle - the right to freedom and personal integrity - was violated in most cases. This, in turn, led to the victims receiving physical and mental injuries, and their search for an effective legal mechanism to restore violated rights, both at the national and international levels.

Having identified cases of violations of an individual's right to freedom and personal inviolability, let's consider private legal methods of protecting them. According to Article 20 of the Civil Code of Ukraine, 'The right to protect oneself is exercised at one's discretion.' This means that an individual has the right to use one or several methods of protection simultaneously. Every individual has the right to appeal to the court for the protection of their personal non-property right to freedom and personal inviolability (Civil Code of Ukraine, 2003: Article 16) with such claims.

- A). Suspension of actions violating rights** (cessation of physical or psychological pressure, torture, cruel treatment, physical punishment, cruel or immoral behavior, and other actions). For example, when there is a threat to the lives and health of individuals held in custody, Rule No. 39 of the ECHR Regulations should be applied. Unfortunately, there are many cases where individuals die due to the lack of timely or quality medical care. In fact, the ECHR can order the immediate transfer of a person for medical assistance. The transfer of a person to a medical facility does not change the preventive measure but provides a 100% basis for its modification in the future (Salova, 2018).
- B). Declaring decisions, actions, or inaction of state authorities, authorities of the Autonomous Republic of Crimea, or local self-government bodies along with their officials, as illegal** (for example, in cases of inaction by



child welfare workers having information about cruel, immoral behavior by parents towards children, and other cases).

- C). **Restoration of the situation that existed before the violation.** For example, in 2017, the Constitutional Court of Ukraine issued Decision No. 1-р/2017 in Case No. 1-28/2017 regarding the illegal automatic extension of detention. In this case, it was the provision of Article 315 of the Criminal Procedure Code of Ukraine, which provided for the automatic extension of detention, that was declared unconstitutional.
- D). **Compensation for damages and other means of compensating property damage.**
- E). **Compensation for moral (non-property) harm.**

These methods of protection fall under civil liability measures applied in cases where an individual has suffered property and/or moral (non-property) harm as a result of a violation of the right to freedom and personal inviolability.

The regulatory basis for their application is provided by the articles of Chapter 82 of the Civil Code of Ukraine. To claim compensation, the following conditions must be established: the infliction of property and/or harm, unlawful conduct by the harm-causer, a causal link between the harm and the unlawful conduct of the harm-causer, and fault. The presence of material or non-material harm is emphasized by the ECHR in its decisions (ECHR, 2012a. *Wassink v. the Netherlands*, §38).

Article 22 of the Civil Code of Ukraine defines damages as losses suffered by a person in connection with the destruction or damage to property, as well as expenses incurred or to be incurred by a person to restore their violated right (actual damages), as well as income that a person could realistically have received under normal circumstances if their right had not been violated (lost profit).

Among other means of compensating property damage, the legislator includes compensation in kind, meaning the transfer of an item of the same type and quality or the repair of the damaged item (Civil Code of Ukraine, 2003: Article 1192).

Moral harm can consist of:

- a) physical pain and suffering experienced by an individual as a result of mutilation or other bodily harm;
- b) emotional suffering experienced by an individual in connection with unlawful behavior towards themselves, their family members, or close relatives;
- c) emotional suffering experienced by an individual due to the destruction or damage to their property;
- d) humiliation of an individual's honor and dignity, as well as the business reputation of a physical or legal person.

The application of these methods of protection is explained by the ECHR in its decisions through the interpretation of Article 5 of the Convention for the Protection of

Human Rights and Fundamental Freedoms. The ECHR emphasizes that the compensation amount, which is insignificant or disproportionate to the seriousness of the violation, does not meet the requirements of Section 5 of Article 5 since it would render the right guaranteed by this provision theoretical and illusory (*Cumber v. the United Kingdom*, Commission decision; *Attard v. Malta*, decision). The payment amount cannot be significantly less than the amount previously awarded by the Court in similar cases (ECHR, 2012a. *Ganea v. Moldova*, §30; *Cristina Boicenco v. Moldova*, §43).

The requirement for compensation for property and moral harm can also be asserted by family members and close relatives of a deceased person if it is established that the organs and other anatomical materials of the deceased person were obtained and used by scientific, medical, or educational institutions after their death without authorization (Civil Code of Ukraine, 2003: Article 289).

#### 4. CONCLUSIONS

Summarizing the results of our research, it should be noted that in accordance with the topic, the purpose and tasks outlined in the introduction of the article by us:

- the content of the right to freedom and personal integrity was analyzed and its main elements, such as the physical and mental integrity of a person, were determined. It has been established that the rights to freedom and personal integrity of the individual, as well as the right to legal protection are most often violated in the occupied territories of Ukraine (Luhansk, Donetsk, Kherson, Zaporizhia Oblasts and the Autonomous Republic of Crimea) and in areas where active hostilities are taking place (Donetsk, Kherson, Zaporizhia Oblasts of Ukraine, the Gaza Strip (Israel));
- the peculiarities of the normative legal framework of the right to freedom and personal integrity in national and international legislation are determined;
- an analysis of the practical implementation and protection of the right to freedom and personal integrity of Ukrainian citizens was carried out, both in Ukraine (through the prism of Ukrainian judicial practice) and abroad (through the prism of international judicial practice);
- attention is focused on the problems and ways to solve them regarding the protection of the right to freedom and personal integrity of Ukrainian citizens, primarily caused by russian armed aggression and hostilities in the Gaza Strip.

Therefore, Ukraine's experience in providing legal protection of the right to freedom and personal integrity of Ukrainian citizens in conditions of external aggression and from the point of view of the doctrine of international humanitarian law may be of interest to the international community. And an effective mechanism for punishing and prosecuting all violators of national and international humanitarian law is vital for restoring the rule of law in the international arena.

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