



Research Article

THE VALUE OF HUMAN SECURITY AND LEGAL MEANS OF ITS REALIZATION IN THE CONTEXT OF THE ARMED AGGRESSION OF THE RUSSIAN FEDERATION AGAINST UKRAINE

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ABSTRACT

Background: *The armed aggression of the Russian Federation against Ukraine and within Ukraine makes the issue of security as a universal human and legal value particularly relevant. Ukrainian legislation defines the concept of national security and links it, among other things, to the protection of vital human interests, safe living conditions, and well-being. This prompts an examination of the phenomenon of human security in view of: 1) the dependence of collective security on external factors, especially under martial law, and 2) the influence of internal factors on individual capabilities, particularly those related to national defence procedures.*

Methods: *The study is based on a system of methods subordinated to a single natural law conceptual research approach, which serves to substantiate the scientific hypothesis that human security is understood as a component of a complex value—the value of the human personality, primarily in terms of its legal protection and development in conjunction with the value of freedom.*

Results and conclusions: *Based on the results of the study, it was found that social relations related to the embodiment of the value of human security are subject to a general permissive type of legal regulation. Aimed at enabling the “general freedom of action” of a person, this type of regulation becomes a guideline and criterion for assessing legislation and legal practice, in particular, legal means that shape the content and scope of constitutional rights that mediate human protection procedures, such as the right to judicial protection. At the same time, the analysis of the practice of Ukraine’s constitutional jurisdiction illustrates examples of testing such legal means (justified from the standpoint of preserving and expanding the scope of freedom) in the course of examining issues of compliance with the principles of the non-exhaustiveness of human and civil rights and the prohibition of narrowing the content and scope of existing rights.*

1 INTRODUCTION

The armed aggression of the Russian Federation against Ukraine and in Ukraine has made the issue of security a universal human and legal value extremely relevant. The legislation of Ukraine defines the concept of national security and associates it with the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats, and such interests include vital interests of a person, society and the state, the realization of which ensures Ukraine's state sovereignty, its progressive democratic development, and safe living conditions and well-being of its citizens.¹

This context prompts the study of the phenomenon of individual security, which, on the one hand, is dependent on collective security, and on the other hand, remains an individual social value that the state professes at the level of its main duty (to ensure human rights and freedoms and decent living conditions). This leads to the study of individual security, which, on the one hand, is dependent on collective security. This is relevant to resolving armed conflicts² and terrorist threats.³ On the other hand, security remains an individual social value that the state professes at the level of its main duty (to ensure human rights and freedoms and decent living conditions).

Therefore, the value of human security is determined by external factors, especially in martial law, as well as by internal factors determined by the specifics of national legal regulation. This specificity is primarily related to national defence procedures, including judicial ones.⁴

2 METHODOLOGY

The methodological basis of the study is a system of conceptual research approaches, general scientific, group and special research methods. These guided the direction of the study, the criteria for selecting empirical material and the interpretation of results.

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- 1 Law of Ukraine no 2469-VIII of 21 June 2018 'On the National Security of Ukraine' [2018] Official Gazette of Ukraine 55/1903 <<https://zakon.rada.gov.ua/laws/show/2469-19>> accessed 10 April 2025.
 - 2 David Andersen-Rodgers and Kerry F Crawford, *Human Security: Theory and Action* (Peace and Security in the 21st Century, 2nd edn, Rowman & Littlefield, 2022).
 - 3 Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge 2013) pt 5.
 - 4 Iryna Izarova, Oksana Uhrynovska and Yuliia Hartman, 'Procedural Issues in Compensation Cases: Insights from Court Practice in Ukraine' in Silviu Nate (ed), *Ukraine's Journey to Recovery, Reform and Post-War Reconstruction: A Blueprint for Security, Resilience and Development* (Contributions to Security and Defence Studies, Springer 2024) 119, doi:10.12688/f1000research.136162.1.

2.1. Conceptual Research Approaches

The following main approaches were used:

- *Dialectical approach* — to form an understanding of the value of human security in terms of its legal protection and development in relation to the value of freedom.
- *Anthropological approach* — to identify the legal grounds for extending the general permissive type of legal regulation and its mechanisms to social relations related to the realization of human security, viewed as the main subject of the right to development.
- *Personalist (human-centred) approach* — to establish the role of the constitutional jurisdiction body of Ukraine in assessing the legal means of legislative fixation from the perspective of preserving and maximising the scope of human freedom.

2.2. General Scientific Research Methods

These methods include:

- *Descriptive method* — to characterise the security of law as a value within the framework of which Ukraine shapes its foreign policy, in particular by joining international agreements that expand legal opportunities for compensation for damage and any losses caused by the aggression of the Russian Federation against Ukraine and in Ukraine.
- *Systemic and structural method* — to understand legal regulation of the general permissive type on the basis of its components - general freedom of action and appropriate legal means of its formalisation.
- *Structural-functional method* — to clarify the nature of the right to development and identify its two aspects: dynamic (active manifestation) and static (passive manifestation).
- *Methods of qualitative and quantitative analysis* — to formulate ideas about the main legal means of shaping the content and scope of constitutional rights and freedoms, including the right to judicial protection.
- *Synthesis method* — to derive a certain algorithm, a legal calculation of freedom by the Constitutional Court of Ukraine in the course of its activities as a “negative legislator” or official interpreter of the Basic Law of Ukraine.
- *Classification method* — to identify certain groups of positions of the Constitutional Court of Ukraine related to problematic issues of the realization of the right to judicial protection.
- *Social deterministic method* — to study human security in the direction of interdependence of various characteristics of the essence of the human personality as a single and complex social value.
- *Factor analysis method* — to identify the impact of martial law in Ukraine on the process of preserving the content and scope of the right to judicial protection.

2.3. Group Methods

The group methods include *the method of specific sociological research*, which allowed to form an appropriate empirical basis for the study, in particular, to select the legal positions of the Constitutional Court of Ukraine which illustrate its analysis of the content and scope of the constitutional right to judicial protection.

2.4. Special Scientific Methods

- *Formal legal method* — to illustrate possible ways of implementing the value of human security within the existing national legal order, in particular, based on the practice of the constitutional justice body in Ukraine.
- *Interpretation of legal provisions* — to analyse the content of a number of concepts that determine the logic of the study, such as “security”, “general freedom of action”, “right to judicial protection”, and “justice”.
- *Comparative legal method* — to draw on the practice of constitutional courts of European countries, in particular, the Federal Republic of Germany, to improve the legal guarantee of the value of security.
- *General theoretical method* — to reveal the nature of security as a legal value. This method uses a *modelling method* that links the phenomena of “value”, “security”, “right to protection” and “general permissive legal regulation” into a single construct.

The combination of these approaches and methods made it possible to obtain reliable and substantiated conclusions and results.

3 HUMAN SECURITY AS A VALUE

Values form the ontological basis of culture, politics, and law in modern states. This is evidence of the realization of the idea of civil society, which expresses not narrow group interests or a position of power but demonstrates the openness and democratic nature of its structures, as well as its interaction with the rule of law.⁵

The constitutional recognition of a human being as the highest social value determines the axiological status of his or her basic existential characteristics, such as life and health, honour and dignity, inviolability and security.⁶ As can be seen, security closes the circle of the defining components of the essence (“core”) of the human personality, as it triggers their protection mechanism. First, this follows from the understanding of security as a state of

5 Oksana V Hryshchuk, *Constitutional Values: Philosophical and Judicial Aspects* (2nd edn, Vaite 2020) 11.

6 Constitution of Ukraine of 28 June 1996 (amended 1 January 2020) <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 10 April 2025.

protection of a person from the risk of harm,⁷ which is crucial for the constructs “national interests of Ukraine” and, consequently, “national security of Ukraine.”⁸

In the context of human security, Ukraine’s accession to the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine,⁹ established by Resolution CM/Res(2023)3 of the Committee of Ministers of the Council of Europe, adopted on 12 May 2023 at the 1466th meeting of the Deputy Ministers, can be considered a state of human security.¹⁰ The Resolution is based on:

- *Acts of the United Nations General Assembly*, according to which the Russian Federation should be held legally responsible for the consequences of all its internationally wrongful acts in or against Ukraine, including reparation and any damage caused by such acts, and in this regard recognises the need to establish an international reparation mechanism and an international register of damages in cooperation with Ukraine.¹¹
- *Acts of the Parliamentary Assembly of the Council of Europe*, which reiterated its call on member states to establish an international compensation mechanism and, as a first step, to establish an international register of damages to ensure timely compensation to victims of the internationally wrongful acts of the Russian Federation in Ukraine or against Ukraine.¹²

Currently, the following categories of applications are open for submission to the Register:

“A1.1 Forced internal displacement A2.1 Death of a close family member A2.2 Disappearance of a close family member A2.3 Serious bodily injury A2.4 Sexual violence A2.5 Torture or inhuman or degrading treatment or punishment A2.6 Deprivation of liberty A2.7 Forced labour or service A3.1 Damage or destruction of residential real estate.”¹³

7 National Standard of Ukraine, *Occupational Safety: Terms and definitions of fundamental conceptions* (DSTU 2293: 2014) (Ministry of Economic Development and Trade of Ukraine 2015).

8 Law of Ukraine no 2469-VIII (n 1).

9 Law of Ukraine no 3432-IX of 8 November 2023 ‘On Ukraine’s Accession to the Extended Partial Agreement on the Register of Damages Caused by the Aggression of the Russian Federation against Ukraine’ [2024] Official Gazette of Ukraine 2/8.

10 Resolution of the *Committee of Ministers* CM/Res(2023)3 of 12 May 2023 on the establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine <<https://search.coe.int/cm?i=0900001680acc3f9>> accessed 10 April 2025.

11 UN General Assembly Resolution ES-11/5 of 14 November 2022 Furtherance of Remedy and Reparation for Aggression against Ukraine <<https://docs.un.org/en/A/RES/ES-11/5>> accessed 10 April 2025.

12 Parliamentary Assembly of the Council of Europe Resolution 2482 (2023) On the Legal and Human Rights Aspects of the Aggression of the Russian Federation against Ukraine <<https://pace.coe.int/en/files/31620>> accessed 10 April 2025.

13 *Register of Damage for Ukraine (RD4U)* (Council of Europe 2022) <<https://www.rd4u.coe.int/uk/submit-a-claim>> accessed 10 April 2025.

At the same time, the issue of the unlawfulness of the damage caused by the aggression of the Russian Federation is considered, as evidenced by the materials of its discussions,¹⁴ in the plane of the relevant presumption, which serves as a guarantee of the protection of human rights.

The analysis of the above categories demonstrates the close (interdependent) connection between human security (as its protection) and the values of life, health, honour, dignity, inviolability, which are clearly formalised in a number of the following constitutional provisions, including:

- “Everyone has the right to protect his or her life and health, and the life and health of other people from unlawful encroachments” (Article 27);
- “Everyone shall be guaranteed judicial protection of the right to refute false information about himself or herself and members of his or her family..., as well as the right to compensation for material and moral damage caused by the collection, storage, use and dissemination of such false information” (Article 32)
- “Everyone shall be guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs. The exercise of these rights may be restricted by law ... to protect the reputation or rights of others” (Article 34);
- “Everyone has the right to proper, safe and healthy working conditions” (Article 43);
- “Citizens have the right to social protection” (Article 46);
- “Everyone has the right to an environment safe for life and health” (Article 50);
- “...the opportunity to defend themselves personally and to have legal assistance from the moment of detention” (Article 29).

The Constitutional Court of Ukraine has also spoken out on this issue. Its legal positions stand in normative unity with the provisions of the Constitution of Ukraine interpreted in these decisions and become direct regulators of public relations—particularly in determining the content and scope of constitutional rights and freedoms.¹⁵ Thus, when examining the problematic issues of protecting dignity and ensuring decent living conditions in the context of the constitutional provision that “the State shall protect the rights of consumers” (Article 42), the Constitutional Court of Ukraine pointed out the importance of the strategic course for Ukraine's full membership in the European Union, as defined in the Basic Law of Ukraine. It stressed that “Ukraine will ensure a high level of consumer protection through the creation and functioning of a mechanism for the

14 Constitutional Court of Ukraine, ‘Register of damages caused by the Russian aggression against Ukraine: mandate, functions and categories of claims: Lecture’ (*Judiciary of Ukraine*, 6 March 2025) <<https://ac.lg.court.gov.ua/press/news/1768393/>> accessed 10 April 2025.

15 Case no 1-170/2018(1114/18) *On the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the sixth sentence of part one of Article 13 of the Law of Ukraine “On Psychiatric Care”* Decision no 13-r/2018 (Constitutional Court of Ukraine, 20 December 2018) [2019] Official Gazette of Ukraine 7/229.

exercise and protection of consumer rights. A component of such a mechanism is a jurisdictional judicial form of consumer protection, within which consumers should be provided with access to justice and ensure the effectiveness of judicial protection of their rights and interests”¹⁶.

This connection is also discussed in legal doctrine, in particular as a three-element structure of the concept of security, which includes the following components:

- 1) physical and psychological safety of a person (safety of the body: physical and psychological health);
- 2) positive connection with others (guaranteed receipt of assistance);
- 3) respect for freedom of realization (freedom to choose self-realization).¹⁷

Therefore, from the perspective of human security (protection), the amendments to the Criminal Code of Ukraine, according to which behaviour related to the fulfillment of the duty to protect the Motherland, independence and territorial integrity of Ukraine is not considered criminal (namely, acts committed under martial law or during an armed conflict aimed at repelling and deterring the armed aggression of the Russian Federation or another country, even if they caused harm to the life or health of the person carrying out such aggression, or caused damage to law enforcement interests, in the absence of signs of torture or the use of means of warfare prohibited by international law, other violations of the laws and customs of war, as provided for by international treaties ratified by the Verkhovna Rada of Ukraine) (Article 43¹).¹⁸

The above illustrates the understanding of human security as a component of a complex value—the human personality. This raises the issue of legal support for such value, determining the appropriate legal means, such as legal permissions, obligations, and prohibitions. The state chooses the appropriate type of legal regulation in a particular area of social relations to determine its use.

16 Case no 3-88/2021(209/21, 47/22, 77/23, 188/23) *On the constitutional complaints of Doroshko Olha Yevhenivna, Yevstifeev Mykyta Ihorovych, Kushaba Ivan Petrovych, Yakimenko Volodymyr Petrovych on the compliance with the Constitution of Ukraine (constitutionality) of paragraphs 1, 5 of part six of Article 19, paragraph 2 of part three of Article 389 of the Civil Procedure Code of Ukraine (regarding the guarantee of the right to judicial protection in minor disputes)* Decision no 10-r(II)/2023 (Constitutional Court of Ukraine, 22 November 2023) [2024] Official Gazette of Ukraine 6/285

17 Olesia O Borysova, ‘Concepts and Models of Human Security in the Ukrainian and International Legal Field: Theoretical and Legal Analysis’ (2022) 2 Juridical Scientific and Electronic Journal 10, doi:10.32782/2524-0374/2022-2/1.

18 Law of Ukraine no 2124-IX of 15 March 2022 ‘On Amendments to the Criminal Code of Ukraine and Other Legislative Acts of Ukraine to Determine the Circumstances that Preclude Criminal Illegality of an Act and Provide Combat Immunity in the Conditions of Martial Law’ [2022] Official Gazette of Ukraine 33/1724.

4 THE VALUE OF HUMAN SECURITY IN THE FIELD OF GENERAL PERMISSIVE TYPE OF LEGAL REGULATION

When choosing the type of legal regulation in a particular area of social relations, the choice is guided by its addressee, i.e., the characteristics of the subject to whom such regulation will apply.

Security is primarily associated with the value of the human personality, positioned within the framework of international legal standards as the main subject of development—a comprehensive economic, social, cultural and political process aimed at continuously improving the well-being of the entire population and all individuals on the basis of their active, free and constructive participation in development and in the fair distribution of the benefits created in the course of it.¹⁹

According to scholars, development is about overcoming various forms of unfreedom²⁰ and thus establishing security. This position of the conceptual unity of security and human development is actively defended in doctrinal sources.²¹

Hence, the understanding of a person as a free “active participant and beneficiary of the right to development,”²² and, consequently, the nature of this right is characterised as:

- 1) A comprehensive right—“The right to development is a composite right to a process of development; it is not just an umbrella right or the sum of a set of rights. The integrity of these rights implies that if any one of them is violated, the whole composite right to development is also violated”;²³
- 2) A right characterised by dynamic manifestation (human activity) and static manifestation (acceptance, receipt by a person of certain benefits necessary for his/her development and security). Researchers here demonstrate a broader view of human security that includes the conditions necessary for people to live free from serious threats to their lives and dignity, including access to resources, participation in governance, and protection of fundamental rights.²⁴

19 UN General Assembly Resolution 41/128 of 4 December 1986 Declaration on the Right to Development <<https://digitallibrary.un.org/record/126476?ln=en&v>> accessed 10 April 2025.

20 Amartya Sen, *Development as Freedom* (OUP 1999) XII.

21 Des Gasper, ‘Securing Humanity: Situating “Human Security” as Concept and Discourse’ (2005) 6(2) *Journal of Human Development* 221.

22 UN General Assembly Resolution 41/128 (n 19).

23 Stephen P Marks, ‘The Human Right to Development: Between Rhetoric and Reality’ (2004) 17 *Harvard Human Rights Journal* 149.

24 Taylor Owen, ‘Human Security – Conflict, Critique and Consensus: Colloquium Remarks and a Proposal for a Threshold-Based Definition’ (2004) 35(3) *Security Dialogue* 373, doi:10.1177/0967010604047555.

This approach is based on human rights and therefore aims to ensure that all people can claim their rights and empower themselves, although its implementation often faces resistance due to competing political and economic priorities.²⁵

Several aspects of the right to development arise when studying the realization of the value of human security. On the one hand, the state guarantees protection from external interference — i.e., the “freedom from” or “right to security” discussed in legal doctrine.²⁶ On the other hand, there is the dimension of “freedom for”, namely, the constitutional provision that states: “Everyone shall have the right to protect his or her rights and freedoms from violations and unlawful encroachments by any means not prohibited by law” (Article 55).

This indicates the dependence of human security on the quality of freedom and therefore projects the direction of legal regulation in areas of social relations related to the embodiment of the value under study, which is reflected in the formula: “everything that is not prohibited by law is permitted,” i.e., the general permissive principle. The essence of legal regulation under the general permissive type is to promote the maximum realization of freedom within the existing legal order.

As R. Dvorkin noted, “people have a right to what the law gives them, but they also have a right to equality of concern and respect in the design and administration of the political institutions that govern them.”²⁷ Therefore, the task of legal science and practice is to find appropriate legal opportunities to show such care and respect. One such mechanism is the construction of a general permissive type of legal regulation.

The element-by-element approach to interpreting the general permissive type of legal regulation encompasses components such as general discretion and the appropriate means of its formalisation. This warrants closer examination.

4.1. General Freedom of Action as a Constitutional Principle

The issue of general freedom of action is actualised by the constitutional practice of Ukraine. The Constitutional Court of Ukraine has concluded that “human freedom (liberty) is a priori determinative and priority for respect by the state as a whole, state authorities, local self-government bodies, and other subjects”, and that “the constitutional presumption of human freedom necessitates the necessity to justify any significant restriction of it by the state.” Furthermore, “the Constitution of Ukraine guarantees freedom of movement and the free choice of place of residence, which is an

25 Paul Gready and Wouter Vandenhole (eds), *Human Rights and Development in the New Millennium: Towards a Theory of Change* (Routledge 2014) 77.

26 Tetiana P Kirienko, ‘Evolution of Approaches to Understanding the Concept of “Human Right to Security”: Domestic and Foreign Doctrine’ (2023) 1(77) *Uzhhorod National University Herald*, Series: Law 95, doi:10.24144/2307-3322.2023.77.1.15.

27 Ronald Dworkin, *Law’s Empire* (Harvard UP 1986) 93.

integral part of the broader context of personal freedom, namely the general freedom of the individual and their activities in all spheres of life.”²⁸

At the same time, the Constitutional Court of Ukraine distinguishes between *general freedom of action*—which, along with human dignity, is contained in the catalog of constitutional human rights and is their essential content—and the right to liberty and security of person (Article 29 of the Basic Law of Ukraine) understood as freedom from arbitrary detention.²⁹

In this sense, the Constitutional Court of Ukraine has continued the legal tradition established by the Federal Constitutional Court of Germany, which affirmed the general freedom of action (*Allgemeine Handlungsfreiheit*), thereby expanding the scope of protection to include freedoms not covered by special constitutional rights.³⁰ Interpreting the concept of “free development of the personality” in the context of Article 2 (I) of the Basic Law of Germany, the Federal Constitutional Court of Germany noted that the understanding of development only in the basic sphere of the personality, which constitutes the essence of a person as a spiritual and moral person, makes it unclear how development in this basic sphere can violate the moral law, the rights of others or even the constitutional order of liberal democracy. It is these restrictions imposed on a person as a member of society that show that the Basic Law in Article 2(1) implies freedom of action in a comprehensive sense.³¹ It has been stated that “the fundamental right provided for in Article 2(1) of the Basic Law grants general freedom of action in a comprehensive sense”³² and that “by guaranteeing security, the state simultaneously guarantees the freedom of every person; for security is the basis of freedom and therefore its integral part. Compared to this, the encroachments on the fundamental rights of some persons related to systematic search, which are necessary to enhance freedom, are of only minor importance, since they, like all other persons, benefit from ensuring freedom.”³³

28 Case no 3-39/2021(86/21) *On the constitutional complaint of Abramovych Oleksii Volodymyrovych on the compliance of paragraph 2 of part two of Article 40 of the Housing Code of Ukraine (regarding discrimination in the exercise of the right to housing)* Decision no 5-r(II)/2022 (Constitutional Court of Ukraine, 22 June 2022) [2022] Official Gazette of Ukraine 56/3354.

29 Case no 3-88/2022(205/22, 114/24) *On the constitutional complaints of Ruslan Onishchenko, Dmytro Havryliuk on the compliance with the Constitution of Ukraine (constitutionality) of part six of Article 615 of the Criminal Procedure Code of Ukraine (case on guarantees of judicial control over the observance of the rights of persons in custody)* Decision no 8-r(II)/2024 (Constitutional Court of Ukraine, 18 July 2024) [2024] Official Gazette of Ukraine 73/4389.

30 Fritdhelm Hufen, *Staatsrecht II: Grundrechte* (9 aufl, CH Beck 2021) 241; Lothar Michael und Martin Morlok, *Grundrechte* (8 aufl, Nomos 2023) 263

31 Case 1 BvR 253/56 *Elfes* (Federal Constitutional Court, 16 January 1957) BVerfGE 6/32 <<https://www.servat.unibe.ch/dfr/bv006032.html>> accessed 10 April 2025.

32 Case 2 BvR 854/79 *Taubenfütterungsverbot* (Federal Constitutional Court, 23 May 1980) BVerfGE 54/143 <<https://www.servat.unibe.ch/dfr/bv054143.html>> accessed 10 April 2025.

33 Case 1 BvR 518/02 *Präventive polizeiliche Rasterfahndung* (Federal Constitutional Court, 4 April 2006) BVerfGE 115/320 <<https://www.servat.unibe.ch/dfr/bv115320.html>> accessed 10 April 2025; *ibid*, Dissenting opinion of Judge Haas.

Thus, by linking the value of human security to the quality of freedom, the vector of legal regulation in social relations related to the realization of this value is oriented toward realizing the maximum amount of freedom.

The legal order in Ukraine is based on constitutional principles, according to which “no one may be forced to do anything that is not provided for by law,” and “state and local self-government bodies and their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine” (Article 19). This position is further specified at the level of the State Human Development Strategy: “Taking into account the needs of human development, the task of the state should be to form an economic and social order that will be the basis for the realization of personal freedom and guarantee the realization of the right of citizens to individual development, individual responsibility and social security.”³⁴

This framework shapes the legal instruments that determine the general freedom of action. Specifically, it concerns the relevant legal permissions, obligations, and prohibitions, which form the content and scope of constitutional rights and freedoms of man and citizen,³⁵ essentially reflect the actual scope of freedom within these rights.

Human security, as a state of security, is associated with certain procedures for ensuring such a state, which are mediated by the right to defence. This right, in turn, presupposes general freedom of action (Article 55 of the Constitution of Ukraine). Among all types of protection, the decisive role is assigned to judicial protection, which follows from the characteristics of the rule of law principle,³⁶ and is affirmed in legal practice: “the right to judicial protection is a guarantee of the realization of other constitutional rights and freedoms, their assertion and protection through justice”;³⁷ and “in a state governed by the

34 Decree of the President of Ukraine no 225/2021 of 2 June 2021 ‘On the decision of the National Security and Defense Council of Ukraine of 14 May 2021 “On the Human Development Strategy” [2021] Official Gazette of Ukraine 45/2758.

35 Case no 3-243/2018(3254/18, 4772/18, 6232/18, 6820/18, 2945/19, 1821/19) *On the constitutional complaints of Pavlo Viktorovych Baishev, Olha Oleksandrivna Burlakova, Iryna Viliamivna Dats, Viacheslav Viktorovych Dedkovskiy, Mykhailo Vasylovych Zhelezniak, Liudmyla Anatoliivna Kozhukharova on the compliance of paragraphs 2, 3 of Section II “Final Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Introduction of a Contract Form of Work in the Field of Culture and a Competitive Procedure for the Appointment of Heads of State” dated 28 January 2016 no 955-VIII as amended Decision no 5-r(I)/2019 (Constitutional Court of Ukraine, 12 July 2019) [2019] Official Gazette of Ukraine 62/2162.*

36 European Commission for Democracy through Law (Venice Commission), *Report on the Rule of Law* CDL-AD(2011)003rev (4 April 2011) <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e)> accessed 10 April 2025; Tom Bingham, *The Rule of Law* (Serhiy Holovaty ed, V Castelli and D Shkreba tr, Vaite 2024) 90.

37 Case no 1-12/2018(3911/15) *On the constitutional petition of the Ukrainian Parliament Commissioner for Human Rights on the compliance with the Constitution of Ukraine (constitutionality) of the of the provisions of Part one of Article 294, Article 326 of the Code of Ukraine on Administrative Offenses Decision no 10-r/2018 (Constitutional Court of Ukraine, 23 November 2018) [2019] Official Gazette of Ukraine 2/60.*

rule of law, recourse to court is a universal mechanism for protecting the rights, freedoms and legitimate interests of individuals and legal entities.”³⁸

Therefore, there is a need to study the legal permissions, obligations and prohibitions that formalise and instrumentally “accompany” the right to judicial protection.

5 THE RIGHT TO JUDICIAL PROTECTION AS A PLATFORM FOR INTERACTION OF THE VALUES OF HUMAN SECURITY AND FREEDOM: LEGAL INSTRUMENTS FOR ENSURING

By choosing a general permissive type of legal regulation in social relations related to the implementation of the value of human security through the exercise of judicial protection, a certain criterion is established for assessing the legal means that determine the right to judicial protection. Specifically, this concerns the relevant legal permissions, obligations, and prohibitions that form the content and scope of this right, and their ability to serve the “general freedom of action” of the individual.

The principal testing of such legal means takes place within the framework of constitutional proceedings, in particular in the process of analysing compliance with two principles: (1) the principle of the “non-exhaustiveness of human and civil rights and freedoms,” which guarantees maximum freedom of action, and (2) “prohibition of narrowing the content and scope of existing rights and freedoms,” or the principle of prohibition of violation of the very essence of human and civil rights and freedoms, the essential content of law,³⁹ which guarantees minimum freedom of action.

In this regard, two groups of legal positions of the Constitutional Court of Ukraine can be traced.

The first group concerns the assessment by the constitutional jurisdiction body of legal permissions, obligations, and prohibitions from the perspective of preserving and maximising the content and scope of the right to judicial protection— that is, the scope of freedom provided by this right. Several examples illustrate this:

38 Case no 3-9/2019(206/19) *On the constitutional complaint of Margo Polina Oleksandrivna regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 1 of part five, part seven of Article 454 of the Civil Procedure Code of Ukraine* Decision no 2-r(II)/2022 (Constitutional Court of Ukraine, 6 April 2022) [2022] Official Gazette of Ukraine 34/1881.

39 Case no 1-17/2005 *On the constitutional submission of 51 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 92, paragraph 6 of Section X “Transitional Provisions” of the Land Code of Ukraine (case on permanent use of land plots)* Decision no 5-rp/2005 (Constitutional Court of Ukraine, 22 September 2005) [2005] Official Gazette of Ukraine 39/2490.

- **Assessment of legal permits (as reasonable, justified according to the specified criterion):**

The Court has held that “the establishment by law or contract of pre-trial settlement of a dispute by the will of the parties to legal relations is not a limitation of the jurisdiction of courts and the right to judicial protection”.⁴⁰

- **Assessment of legal obligations (as unreasonable):**

“The subject of constitutional control in ... the case is part two of Article 3, subparagraph 9 of paragraph 1 of part two of Article 4 of the Law⁴¹ in terms of the obligation of the plaintiff (recoverer in enforcement proceedings) to pay a court fee for filing an appeal and cassation appeal against a court ruling issued as a result of consideration of an appeal against a decision, action or inaction of a state enforcement officer or other official of the state enforcement service or a private enforcement officer during the execution of a judgment. The above indicates that the state has not created proper legal mechanisms for exercising the right of access to court, as well as the lack of real judicial control at the stage of execution of a court decision, since there is a complication in the practical exercise by a person (a creditor in enforcement proceedings) of his right of access to court, which is a violation of the constitutional principles of justice and the principles of civil procedural law”.⁴²

- **Assessment of legal prohibitions (as reasonable, justified):**

“Assessing the constitutionality of paragraph 2 of part three of Article 389 of the Code⁴³ in terms of the proportionality of the legal means used therein, which establish a “filter” for cassation review of court decisions made by the courts of first instance and appellate courts, the Constitutional Court of Ukraine takes into account that subparagraphs a-d of this paragraph directly define the cases in

40 Case no 3-120/2021(273/21) *On the constitutional complaint of the Primary Trade Union Organization of the All-Ukrainian Trade Union of Science, Production and Finance Workers of PJSC “Arcelor Mittal Kryvyi Rih” regarding compliance with the Constitution of Ukraine (constitutionality), including the provisions of Article 7 of the Law of Ukraine “On the Procedure for Resolving Collective Labor Disputes (Conflicts)” (regarding the right to judicial protection during the resolution of a collective labor dispute)* Decision no 10-r(II)/2024 (Constitutional Court of Ukraine, 13 November 2024) [2024] Official Gazette of Ukraine 108/6893.

41 Law of Ukraine no 3674-VI of 8 July 2011 ‘On Court Fees’ [2011] Official Gazette of Ukraine 59/2349 <<https://zakon.rada.gov.ua/laws/show/3674-17>> accessed 10 April 2025.

42 Case no 3-187/2023(351/23) *On the constitutional complaint of Volodymyr Mykhailovych Lopushansky regarding the compliance with the Constitution of Ukraine (constitutionality) of Part two of Article 3, Subparagraph 9, Paragraph 1, Part two of Article 4 of the Law of Ukraine “On Court Fees” (case on the binding nature of a court decision)* Decision no 6-r(II)/2024 (Constitutional Court of Ukraine, 13 May 2024) [2024] Official Gazette of Ukraine 53/3156.

43 Civil Procedure Code of Ukraine no 1618-IV of 18 March 2004 [2004] Official Gazette of Ukraine 16/1088 <<https://zakon.rada.gov.ua/laws/show/1618-15#Text>> accessed 10 April 2025.

which cassation proceedings should be opened despite the fact that the case is recognised as insignificant. Such cases, which are defined in paragraph 2 of part three of Article 389 of the Code, are, in particular, the presence in the cassation appeal of a question of law that is fundamental to the formation of a unified law enforcement practice (subparagraph “a”); significant public interest or exclusivity of its importance for the party to the case filing the cassation appeal (subparagraph “c”); classification of the case as insignificant by the court of first instance by mistake (subparagraph “d”). ... the “filter” for cassation review of court decisions made by the courts of first instance and appellate courts, established in paragraph 2 of part three of Article 389 of the Code, such as the insignificance of the case, is not an insurmountable obstacle to a person's access to the court of cassation». Therefore, paragraph 2 of part three of Article 389 of the Code contains adequate means of legislative regulation of procedural relations regarding the opening of cassation proceedings in minor cases.”⁴⁴

The second group of legal positions relates to the Constitutional Court of Ukraine's own interpretation of the right to judicial protection, which is the basis for such assessment. This group covers several aspects:

- ***The essence of the right to judicial protection:***

“The essential content of the right to judicial protection, established by part one of Article 55 of the Constitution of Ukraine, should be determined both in connection with the basic principles of legal proceedings, as defined by the provisions of part two of Article 129 of the Constitution of Ukraine, and taking into account the content of the right to a fair trial, as defined in the article of the Convention⁴⁵ and interpreted by the European Court of Human Rights”.⁴⁶

- ***The content (structure) of the right to judicial protection:***

“The right to judicial protection established by part one of Article 55 of the Constitution of Ukraine should be considered in connection with the basic principles of legal proceedings defined by part two of Article 129 of the Constitution of Ukraine, and taking into account the right to a fair trial (which includes the obligation of the state to execute a court decision) guaranteed by Article 6 of the Convention”.⁴⁷

44 Case no 3-88/2021(209/21, 47/22, 77/23, 188/23) (n 16).

45 Law of Ukraine no 475/97-VR of 17 July 1997 ‘On the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms’ [1997] Vidomosti of the Verkhovna Rada of Ukraine 40/263 <<https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80#Text>> accessed 10 April 2025.

46 Case no 3-173/2018(1186/18, 77/19) *On the constitutional complaints of Kremenchuksky Anatoliy Mykhailovych and Pavlyk Vladyslav Volodymyrovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provision of part ten of Article 294 of the Code of Ukraine on Administrative Offenses* Decision no 5-r(II)/2021 (Constitutional Court of Ukraine, 21 July 2021) [2021] Official Gazette of Ukraine 65/4139.

47 Case no 3-187/2023(351/23) (n 42).

“The right to be heard as a component of the right to judicial protection is subject to realization until the state, its bodies or officials take any measures that may adversely affect a person, his/her rights and freedoms”.⁴⁸

“The equality of all people in their rights and freedoms guaranteed by the Constitution of Ukraine means the finality of providing them with equal legal opportunities, both material and procedural, for the realization of the same rights and freedoms in terms of content and scope”.⁴⁹

- ***The scope of the right to judicial protection:***

“Reduction of the term of court consideration and other procedural features of resolving minor disputes result in lower court costs for a person exercising his or her constitutional right to judicial protection, which generally facilitates access to justice and the very possibility of exercising the right guaranteed by the provisions of Article 55 of the Constitution of Ukraine”.⁵⁰

- ***Factors determining the limits of the right to judicial protection:***

“The fundamental judicial protection of a person from arbitrariness during the deprivation of his/her liberty cannot be limited under any circumstances, even under martial law”.

“Under martial law, the role of the court is decisive in the system of institutional support of the rule of law, and judicial protection of human rights and freedoms from arbitrariness is of utmost importance; in such conditions, arbitrary detention of a person without a reasoned court decision is not allowed.”

”The principle of the rule of law, which is a fundamental principle of a democratic society, makes it mandatory to have judicial control over interference with the right of every person to freedom; the constitutional human right to judicial protection is a crucial guarantee among all human and civil rights and freedoms, judicial protection is considered the most effective guarantee of restoration of these rights and freedoms in case of their violation”.⁵¹

48 Case no 3-88/2022(205/22, 114/24) *On the constitutional complaints of Ruslan Onishchenko, Dmytro Havryliuk on the compliance with the Constitution of Ukraine (constitutionality) of Part six of Article 615 of the Criminal Procedure Code of Ukraine (case on guarantees of judicial control over the observance of the rights of persons in custody)* Decision no 8-r(II)/2024 (Constitutional Court of Ukraine, 18 July 2024) [2024] Official Gazette of Ukraine 73/4389.

49 Case no 3-9/2019(206/19) (n 38).

50 Case no 3-88/2021(209/21, 47/22, 77/23, 188/23) (n 16).

51 Case no 3-111/2023(207/23, 315/23) *On the constitutional complaints of Bychkov Serhiy Andriyovych, Bay Anatoly Anatolyovych regarding the compliance with the Constitution of Ukraine (constitutionality) of Part six of Article 176 of the Criminal Procedure Code of Ukraine* Decision no 7-r(II)/2024 (Constitutional Court of Ukraine, 19 June 2024) [2024] Official Gazette of Ukraine 64/3876.

“Under martial law, the supremacy of the Constitution of Ukraine and its principles, in particular the rule of law, separation of powers, respect for human rights and freedoms, are the foundations of the democratic constitutional order of Ukraine. It is the Constitution of Ukraine in peacetime and under martial law that establishes the mechanism for introducing means of restricting human rights and freedoms.... The Constitution of Ukraine (Article 64, part two) and the acts that introduced martial law throughout Ukraine and, accordingly, the mechanism for restricting constitutional rights and freedoms under martial law, do not determine the possibility of restricting the rights and freedoms guaranteed in Article 29 (right to liberty and security of person), Article 55 (right to judicial protection), Article 62 (presumption of innocence), Article 63 (right to defense)”.⁵²

- ***The nature of justice itself*** “is inherently recognised as such only if it meets the requirements of justice and provides effective redress.”⁵³

Thus, the study of the specifics of legal regulation in the area of social relations related to the embodiment of the value of human security reveals a number of legal permissions, obligations and prohibitions that form the content and scope of the right to judicial protection. Such legal remedies introduced by the legislator in Ukraine are most often subject to constitutional control, with the Constitutional Court of Ukraine evaluating these remedies from the standpoint of preserving and maximising the scope of human freedom within the framework of judicial protection.

6 CONCLUSIONS

Human security is understood as a state of security, a component of a complex value—namely, the value of the human personality—which is dependent on the quality of freedom and therefore falls within the scope of the general permissive type of legal regulation. This type of regulation is understood as a legal construct identified by means of legal permissions, obligations, and prohibitions addressed to subjects of social freedom. Accordingly, this regulation is aimed at realising “general freedom of action”, which serves as a guideline and criterion for assessing legislation, in particular legal means that shape the content and scope of constitutional human rights.

The above also applies to the right to judicial protection, which determines the procedures for protecting a person and, consequently, his or her security. The analysis of the practice of the constitutional jurisdiction in Ukraine, which adheres to the best European legal traditions, including those introduced by the Federal Constitutional Court of Germany, illustrates how legal mechanisms are tested. This is carried out through the course of

52 Case no 3-88/2022(205/22, 114/24) (n 48).

53 Case no 3-88/2021(209/21, 47/22, 77/23, 188/23) (n 16).

studying the issues of compliance with the principles of “non-exhaustiveness of human and civil rights and freedoms” (which guarantees maximum freedom of action) and the “prohibition of narrowing the content and scope of existing rights and freedoms” (which guarantees minimum freedom of action). In this regard, two groups of legal positions of the Constitutional Court of Ukraine can be traced: the first concerns the assessment by the constitutional jurisdiction body of Ukraine of permissions, obligations, prohibitions as justified, reasonable (constitutional) in terms of preserving and maximising the content and scope of the right to judicial protection—that is, the scope of freedom provided by this right; the second concerns the Constitutional Court of Ukraine's own interpretation of the right to judicial protection, which determines such assessment.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЦІННІСТЬ БЕЗПЕКИ ЛЮДИНИ ТА ПРАВОВІ ЗАСОБИ ЇЇ РЕАЛІЗАЦІЇ В КОНТЕКСТІ ЗБРОЙНОЇ АГРЕСІЇ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ ПРОТИ УКРАЇНИ

Наталія Раданович* та Світлана Синчук

АНОТАЦІЯ

Вступ. Збройна агресія Російської Федерації проти України та на території України робить питання безпеки як універсальної людської та правової цінності особливо актуальним. Українське законодавство визначає поняття національної безпеки та пов'язує його, серед іншого, із захистом життєво важливих інтересів людини, безпечними умовами життя та благополуччям. Це спонукає до розгляду феномену безпеки людини з огляду на: 1) залежність колективної безпеки від зовнішніх факторів, особливо в умовах воєнного стану, та 2) вплив внутрішніх факторів на індивідуальні можливості, зокрема ті, що пов'язані з процесами національної оборони.

Методи. В основі дослідження є система методів, підпорядкованих єдиному природно-правовому концептуальному дослідницькому підходу, який слугує обґрунтуванню наукової гіпотези про те, що безпека людини розуміється як складова комплексної цінності — цінності людської особистості, насамперед з погляду її правового захисту та розвитку у поєднанні з цінністю свободи.

Результати та висновки. За результатами дослідження було встановлено, що суспільні відносини, пов'язані з втіленням цінності безпеки людини, підлягають загальнодозвільному типу правового регулювання. Спрямований на забезпечення «загальної свободи дій» особи, цей тип регулювання стає орієнтиром та критерієм для оцінки законодавства та юридичної практики, зокрема, правових засобів, що формують зміст та обсяг конституційних прав, що опосередковують процедури захисту людини, таких як право на судовий захист. Водночас, аналіз практики конституційної юрисдикції України ілюструє приклади апробації таких правових засобів (обґрунтованих з позиції збереження та розширення обсягу свободи) у ході розгляду питань дотримання принципів невичерпності прав людини і громадянина та заборони звуження змісту та обсягу наявних прав.

Ключові слова: правове регулювання, загальна свобода дій, право на розвиток, захист прав і свобод, право на судовий захист, гідні умови життя.