

DOI <https://doi.org/10.61345/2734-8873.2024.1.2>

# PROBLEMS OF REALIZING THE RIGHTS AND FREEDOMS OF CERTAIN CATEGORIES OF CITIZENS

Dmytro Byelov<sup>1</sup>,

Vadim Roskhaniuk<sup>2</sup>

**Annotation.** It is indicated that the realization of rights and freedoms is the practical implementation by citizens and other participants of social life of the demands provided for by the constitutional norms to satisfy requests and needs or obtain the necessary material and spiritual benefits in the manner established by law. Therefore, the mechanism for the realization of rights and freedoms is, first of all, a complex procedural and legal order for the realization of rights, freedoms and obligations, in which the law establishes a certain algorithmic nature of the order of implementation, its procedure: the sequence of actions of the bearer of rights and freedoms and the obliged subjects rights, as well as the content of these actions, the implementation of which is aimed at the most complete and accurate use of the right or freedom.

In the opinion of the authors, since the factors influencing the consolidation of the value guidelines of the constitutional system are usually found at each specific stage of the development of the state, and which certainly affect the content of the principles in general, and the principles of the constitutional system in particular, the above list should be supplemented, at least one is the level of ensuring national security of the state.

Considering the above, according to the authors, it would be quite logical to take advantage of the situation of potential reform of the fundamental principles of the constitutional system. Within the scope of the research, taking into account the issue of violation of the state sovereignty of our country, the modernized Constitution of Ukraine is intended to become a nationwide political and legal treaty and a fundamental law of national law. At the same time, the amended Constitution of Ukraine must ensure the proper implementation of all value guidelines of the constitutional system: people's sovereignty, human rights, the rule of law in relation to the universal principles of modern constitutionalism - legality, proportionality, legal certainty, responsibility and

---

<sup>1</sup> Doctor of Law, Professor, Professor of the Department of Constitutional Law and Comparative Law, «Uzhhorod National University», Honored lawyer of Ukraine; ORCID: <https://orcid.org/0000-0002-7168-9488>.

<sup>2</sup> Candidate of legal sciences, Associate professor, Head of the Department of Economic Law, «Uzhhorod National University».

subsidiarity in the legal provision of rights and freedoms person and citizen, the independence and impartiality of the court, the prohibition of the retroactive effect of the law, etc. (which are now doctrinally considered as components of the principle of the rule of law).

**Key words:** Constitution, constitutional system reform, constitutional-legal status of a person and citizen, rights of certain categories of citizens, constitutional-legal status of refugees, armed conflict, military aggression.

**Formulation of the problem.** Currently, the issue of choosing effective models for the implementation of human rights norms is particularly acute. Human rights as a measure of the possible behavior of individuals is a great potential, a set, a choice of lines of human behavior in a particular legal situation. At the same time, the modern awareness of the importance of building optimal development vectors in the system of implementation and protection of basic rights does not always find a response in the scientific community. The need for a fundamental statement of the importance of mechanisms for the implementation and protection of human rights leads to an attempt to reveal the specifics of the specified legal phenomenon in the context of an armed conflict within the limits of this article.

It can be argued that the realization of rights and freedoms is the practical implementation by citizens and other participants of social life of the demands provided for by the constitutional norms to satisfy requests and needs or obtain the necessary material and spiritual benefits in the manner established by law. Therefore, the mechanism for the realization of rights and freedoms is primarily a complex procedural and legal order for the realization of rights, freedoms and obligations, in which the law establishes a certain algorithmic nature of the order of implementation, its procedure: the sequence of actions of the bearer of rights and freedoms and the obliged subjects rights, as well as the content of these actions, the implementation of which is aimed at the most complete and accurate use of the right or freedom.

**The state of development of research problems.** A significant contribution to the development of theoretical foundations, which can serve as the doctrinal basis of research, was made by both domestic and foreign scientists: M. Baimuratov, O. Bandurka, Yu. Barabash, T. Varfolomeeva, A. Kolodiy, V. Kravchenko, M. Loshytskyi, N.A. Myalovitska, O. Martselyak, M. Orzih, O. Skrypniuk, L. Tatsii, Yu. Todyka, O. Tikhomirov, V. Shapoval, Yu. Shemshuchenko and others. The issue of the concept of the constitutional and legal status of refugees and the realization of their rights in the conditions of armed conflict is relevant, and its individual aspects have been the subject of research by many modern scientists, in particular: M. Almashi, M. Gromovchuk, I. Lysky, H. Moskalya, A. Popka, T. Furdyk and a number of other domestic constitutional scientists. In addition, significant attention was paid directly to the problem of the legal status of refugees in Ukraine in the scientific works of S. Britchenko, O. Kopylenka, O. Malinovska, O. Frytskyi, S. Chekhovych and a number of other leading domestic and foreign scientists.

The authors set themselves the **aim** of considering some problems of the implementation of individual constitutional rights and freedoms of a person and a citizen in the conditions of an armed conflict.

**Presentation of the research material.** As stated in the Legal Encyclopedia, human rights are the defining principles of a person's legal status, belong to a person from birth, and therefore are natural and inalienable. Without these rights, a person cannot exist as a full-fledged social being. Human rights are a necessary element of civil society and the rule of law [14].

In Ukraine, human rights acted and continue to act as a kind of hostages of complex state-building processes, the object of systematic political speculation by almost all political forces, which largely neutralized the very value of human rights in the public consciousness. Such an impersonal approach creates social alienation of the individual and the citizen. , makes it impossible to develop a real effective state policy, and even more so its implementation, creates unfavorable conditions for the development of the potential of the individual and society in general. After all, in such a case, a person acts as a means, not the goal of state activity [15, p. 16].

The problems of the realization of human rights and freedoms in the last quarter of the 20th and the beginning of the 21st century acquired, it can be asserted without exaggeration, world, global significance and came to the fore in the international system of criteria for evaluating the level of development of democracy in a certain state and society on the globe [1] . This process has both an objective and a subjective basis and is determined, on the one hand, by the history of the formation and development of world civilization and its democratic institutions, and on the other hand, by the will of the «powers of this world» (individual most economically and politically developed states and societies: USA, Japan, Great Britain, Germany, France) - aimed at creating a unified world order built on the generally accepted idea of protecting human rights and fighting terrorism. This attitude towards this problem in the world today is largely objective and, unfortunately, often has a bright political color and will remain so for many years to come [2, p. 28].

Problematic issues regarding human and citizen rights acquire a global character in the aspect that concerns not only their regulation, but also their implementation in practical activities. The implementation of human rights is a complex process that includes the mechanism and forms of implementation of the law, on the basis of which the purpose of the study is formed, which consists in identifying problematic issues of the implementation of human rights through the prism of the rule of law and proposing ways to solve them in the context of the formation of a legal and social state and the development of democracy in Ukraine [12, c. 40].

It is quite true that the rights and freedoms of a person and a citizen should not only be conditioned by social needs and legally established, recognized and protected by the state in the person of its bodies and officials, but most importantly, should correspond to the possibilities of their implementation. Hence, the effective provision of the principle of the priority of human rights and freedoms directly depends on economic, political, socio-cultural factors,

on the dominant legal culture (and subcultures) in society, which affects the ability of a person to understand his legal opportunities, to realize his freedoms not only as general values, but also as individual value orientations, to learn how to use them skillfully [13, p. 24].

Note that, on the one hand, the value orientations of the constitutional system are a reflection of the overarching task that expresses the will of the people, and on the other hand, the constitutional system expresses the desire for happiness, goodness, justice, freedom, equality, solidarity, and order. In each state, the establishment of such landmarks of the constitutional order takes place with its own features and specifics, different contents of the content, which is determined by both objective and subjective factors [3, p. 28].

It should be noted that the scientist Z. Kravtsova refers to the determining factors affecting the consolidation of the value orientations of the constitutional system: 1) the concept of the constitution chosen in a specific state; 2) the type of social system, which finds its legal reflection in them, the forms and characteristics of the state, the form of government, the state system, the history and legal traditions of a specific state; 3) the structure of the constitution. At the same time, according to the scientist, it is necessary to supplement the specified classification of factors such as: constitutional and legal validity, political and ideological traditions, political and legal culture, national peculiarities in the state power of a specific country [4, p. 28].

At the same time, in our opinion, since the factors affecting the consolidation of the value guidelines of the constitutional system are usually found at each specific stage of the development of the state, and which certainly affect the content of the principles in general, and the principles of the constitutional system in particular, we believe that the above the list should be supplemented by at least one more - the level of ensuring the state's national security.

Considering the above, in our opinion, it would be quite logical to take advantage of the situation of potential reformation of the fundamental principles of the constitutional system. Within the scope of our research, taking into account the issue of violation of the state sovereignty of our country, in our opinion, the modernized Constitution of Ukraine is intended to become a nationwide political and legal treaty and a fundamental law of national law.

At the same time, the amended Constitution of Ukraine must ensure the proper implementation of all value guidelines of the constitutional system: people's sovereignty, human rights, the rule of law in relation to the universal principles of modern constitutionalism - legality, proportionality, legal certainty, responsibility and subsidiarity in the legal provision of rights and freedoms person and citizen, the independence and impartiality of the court, the prohibition of the retroactive effect of the law, etc. (which are now doctrinally considered as components of the principle of the rule of law). As correctly enshrined in one of the drafts of the concept of amendments to the Constitution of Ukraine, in order to really ensure the principle of justice and the establishment of a democratic, legal, socially oriented, ecological state, the focus should be on recognizing the priority of universal human values (life,

health, honor, dignity, freedom, inviolability, security), as well as creating an institutional basis for the implementation, guarantee and protection of human rights and fundamental freedoms [5].

Thus, since the state should be the main subject of ensuring the proper implementation of human rights, in our opinion, it would be quite logical to include Article 3 in the Basic Law in a new version:

«A person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine.

Human rights and freedoms and their guarantees determine the content and direction of state activity. The state is responsible to the people for its activities. Affirmation and provision of human rights and freedoms is the main duty of the state.

State authorities, within the limits of their competence, carry out their activities in order to ensure the balance of the interests of people, society and the state.»

In the future, in the context of the topic of our research, in our opinion, the focus should be on refugees. The military aggression of the Russian Federation against Ukraine caused the largest displacement of citizens of our country. Most of our citizens were accepted by Poland - almost 6 million people crossed its border since February 24 (perhaps a certain part did not stop in Poland, but moved on to Europe). At the same time, many people are returning home. Everyone's reasons for returning are individual, one of them is the financial difficulties faced by citizens abroad, despite the help provided to them by both EU states and volunteers.

According to Article 3 of the Constitution of Ukraine, human rights and freedoms and their guarantees determine the content and direction of the state's activities, and the assertion and provision of these rights and freedoms is the main duty of the state [6]. At the same time, declaring and enshrining them in laws or other legal acts of state bodies has no meaning without real guarantees of implementation.

Despite the importance of socio-economic, ideological, political guarantees, the main ones are undoubtedly the legal ones (the guarantee of constitutional rights and freedoms and the impossibility of their cancellation and limitation, the guarantee of judicial protection of rights and freedoms, the right of everyone to know their rights and obligations, the right for legal aid, etc.). As O. Mordovets emphasizes, this is due to the fact that socio-economic, political and ideological conditions as such do not yet ensure the realization of individual rights and freedoms. Actually, they become guarantees only thanks to the legal form and organizational efforts of the state and society [7, p. 278]. A similar thesis is expressed by O. Sychyov, who asserts that having assumed the constitutional obligation to protect the rights and freedoms of citizens, the state thereby also imposes another obligation on itself – the creation of appropriate mechanisms. In full, the function of such protection was performed and performed by the bodies of the bar [8, p. 170].

The establishment of the foundations of the legal status of refugees by the Constitution of Ukraine marked the beginning of the process of building a new

type of legal culture of our state and its citizens. At the same time, the very principles of the legal status of IDPs, being formed outside of the institution of the constitutional status of refugees, bring to it the meaning that causes the need for truly historic changes in our society. Therefore, the growth of the scientific interest of constitutionalists in the questions of the sources, nature and legal value of the main principles of the constitutional status of refugees and IDPs is quite natural. Without denying either the epistemological or practical value of the approach to understanding and identifying the main principles of the constitutional status of refugees and IDPs, one cannot fail to notice its one-sidedness, which is a perspective of research in the works of constitutionalist scholars.

*1. Protection of the rights of IDPs through the provision of services by the state.* According to the Government, there are about 7 million internally displaced persons in Ukraine. These are people who left their homes to escape the war, or left the temporarily occupied territory, linking their future with Ukraine.

The state provides various types of assistance to such persons: a certificate of registration of an internally displaced person; granting the status of a child who suffered as a result of hostilities and armed conflicts; registration of internally displaced persons who need housing for temporary residence; extension of the term of providing residential premises from housing funds for temporary residence of internally displaced persons; monthly cash assistance to internally displaced persons; monetary compensation for receiving suitable living quarters for internally displaced persons who defended the independence, sovereignty and territorial integrity of Ukraine; monetary compensation to victims whose residential buildings (apartments) were destroyed as a result of a military emergency caused by the armed aggression of the Russian Federation; preferential mortgage loans to internally displaced persons at the expense of grant funds provided by a credit institution for reconstruction.

*2. Digitalization and the status of a person.*

In essence, the digitization process is a reformatting of analog data into a digital format. Despite this, today it is customary to use the category «digitalization» to outline a wider range of phenomena, in particular, the «digital revolution» in the economic sphere [9].

«There are many plans, but little time» - that's how you can describe the digitalization policy in Ukraine. Last year, the Cabinet of Ministers of Ukraine approved the Concept for the Development of the Digital Economy and Society of Ukraine for 2018-2020, and already in September 2019, the Government made a decision to create the Ministry of Digital Transformation of Ukraine. We will talk about what has been done, as well as what is planned in the future, in this article.

What does digitization give to Ukraine and its citizens in particular, and why can we be proud of the pace of digitization?

1) Digitization, first of all, gives Ukraine the speed of development of the state as a whole, the absence of corruption in the end. Because any digital process in the state system, where decisions are already made using digital registers, is the mechanism by which we completely eradicate corruption.

2) Digitization is the growth of the economy, because it is a matter of the digital economy, attractiveness for business when working with the same government structures, when interaction with a person is minimal.

3) Digitization is also education. We talk a lot today about distance learning. Digitization is also a remote workplace for people who want to be implemented in certain fields and be useful, but due to certain physical characteristics, they could not do this before. Digitization is the future of our country. [10]

Note that in March 2021, a law was signed according to which the Verkhovna Rada voted for a law that gives the electronic version of a passport in a smartphone the status of a full-fledged document [11] (in global practice, this is the first such case).

### 3. *Digital law and how to protect your «digital rights».*

According to Konrad Becker's Dictionary of Tactical Reality, "digital human rights are the extension and application of universal human rights to society's information-based needs. Basic digital human rights include:

- the right to access the electronic network,
- the right to freely communicate and express opinions online,
- the right to inviolability of the private sphere.

The United Nations defines the right to access the Internet as a fundamental human right (digital right). If you cannot pay with a bank card, or there is no Internet access in a certain area, or you cannot use an electronic ticket, or get a doctor's consultation online, this is considered a violation of digital rights.

Thus, based on the above, we can draw the following **conclusions**.

1. In order to ensure the proper level of realization of the rights and freedoms of a person and a citizen in the conditions of an armed conflict, we consider it necessary to supplement the list of determining factors that are currently established in the constitutional and legal doctrine and affect the consolidation of the value guidelines of the constitutional system in the Basic Law of the State, at least one more – the level of ensuring national security of the state.

2. Since the state should be the main subject of ensuring the proper implementation of human rights, in our opinion, it would be quite logical to include Article 3 in the new version of the Basic Law:

«A person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine.

Human rights and freedoms and their guarantees determine the content and direction of state activity. The state is responsible to the people for its activities. Affirmation and provision of human rights and freedoms is the main duty of the state.

State authorities, within the limits of their competence, carry out their activities in order to ensure the balance of the interests of people, society and the state.»

### References:

1. Dvorkin Ronald. Serioznyi pohliad na prava; per. z anhl. A. Frolkin. K.: Osnovy, 2001. 519 s.

2. Sushchenko V. M. Problemy realizatsii ta zakhystu prav i svobod liudyny ta hromadianyna v Ukraini (u konteksti verkhovenstva prava). Naukovi zapysky NaUKMA. Tom 129. Yurydychni nauky. 2012. S. 28–31.
3. Kravtsova Z.S. Modeli konstytutsiinoho zakriplennia pryntsyviv konstytutsiinoho ladu. Pravo i hromadianske suspilstvo. №1. 2014. S. 27-35.
4. Byelov D.M. Konstytutsiino-pravovy status liudyny i hromadianyna: okremi pytannia teorii konstutsionalizmu. Chasopys Kyivskoho universytetu prava. 2020. № 4. S. 31-37.
5. Proekt kontseptsii vnesennia zmin do Konstytutsii Ukrainy. URL: <http://khp.org/index.php?id=1372332292>.
6. Kravchuk K.H. Pravookhoronna diialnist: problema zahalno-teoretychnoho vyznachennia. Materialy naukovo-praktychnoi internet-konferentsii (10.10.2012). URL: [http://legalactivity.com.ua/index.php?option=com\\_content&view=article&id=387%3A111012-07&catid=52%3A6-1012&Itemid=64&lang=ru](http://legalactivity.com.ua/index.php?option=com_content&view=article&id=387%3A111012-07&catid=52%3A6-1012&Itemid=64&lang=ru).
7. Rabinovych, P.M. Osnovy zahalnoi teorii prava ta derzhavy. Vydannia 5-te, zi zminamy. Navchalnyi posibnyk. K.: Atika. 2001. 176 s.
8. Sychov, O.M. Suchasni tendentsii zakonodavstva pro notariat. Zakon. 2009. № 10. S. 169–184.
9. Didzhitalizatsiia. DW. DW.COM. URL: <https://www.dw.com/uk/didzhitalizatsiia/t47168398>.
10. URL: <https://kanaldom.tv/didzhitalizatsiia-perspektivy-i-polza-dlya-ukrainczev-5-voprosov-s-aleksandrom-fedienko/>.
11. URL: <https://zakon.rada.gov.ua/laws/show/1368-20#Text>.
12. Pylhun N.V., Roshchuk M.V. Problemy realizatsii ta zakhystu prav i svobod liudyny i hromadianyna v konteksti funktsionuvannia pryntsyvu verkhovenstva prava v Ukraini. Naukovyi visnyk UzhNU. Serii «Pravo». Vypusk 26. 2014. S. 40–43.
13. Koziubra M.I. Prava liudyny i verkhovenstvo prava. Pravo Ukrainy. 2010. № 2. S. 24–35.
14. Yurydychna entsyklopediia: v 6 t. / redkol.: Yu.S. Shemshuchenko (holova redkol.) ta in. Kyiv: Ukraïnska entsyklopediia, 2002. T. 4: N-P. 720 s.
15. Pohorilko V.F., Holovchenko V.V., Siryi M.I. Prava ta svobody liudyny i hromadianyna v Ukraini. K.: In Yure, 2009. 52 s.
16. Byelov D.M., Hromovchuk M.V. Konstytutsiino-pravovy status osoby: bazovi pidkhody. Konstytutsiino-pravovi akademichni studii. 2020. № 1. S. 21–27.
17. Byelov D.M., Hromovchuk M.V. Konstytutsiino-pravovi zasady statusu osoby: okremi aspekty. Analitychno-porivnialne pravo. № 1. 2021. S. 21–26.