

ARMED CONFLICT AND THE LEGAL SYSTEM: SOME DIRECTIONS OF INFLUENCE

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Annotation. *The aim of the work is to analyze the ways in which armed conflicts affect the legal system and its components, in particular: institutional, functional, normative and ideological.*

The methodological basis of the study is a system of methods, scientific approaches, techniques and principles that were aimed at achieving the study objectives. Universal, general scientific and special legal methods were used. Thus, for example, the methods of analysis, synthesis, induction and deduction allowed to generalize the acquired knowledge, which became the basis of scientific intelligence.

Results. *The armed conflict is an important factor that affects all spheres of society, including the legal system as a complex system of legal phenomena. Armed conflicts pose a real threat to existing legal systems and inevitably lead to their transformation. This necessitates their in-depth scientific analysis, which undoubtedly determines the relevance of the topic under study. In order to achieve the goal of the study, the authors characterized each component of the legal system (institutional, functional, normative and ideological) and paid attention to their corresponding changes that took place as a result of the influence of the armed conflict on them.*

Conclusions. *The article outlines a scheme for analyzing the impact of armed conflict on the legal system, and in particular, it is proposed that it should be characterized by the degree of impact on the components of the legal system, namely, institutional, functional, normative and ideological. These components of the legal system contain most of the legal phenomena that reflect the patterns of its development during armed conflict. Although the armed conflict affects the legal system in general, the greatest impact is on the institutional and normative components, especially with regard to the concept of human rights, changes in the legal status of subjects, increasing influence of international law, changes in the correlation between international and national law, and the emergence of new areas requiring legal regulation.*

Key words: *the legal system, the components of the legal system, armed conflict, the impact of armed conflict.*

1. Introduction.

The armed conflict is an important factor that affects all spheres of society, including the legal system as a complex system of legal phenomena. It also has an impact on the establishment of a new legal regime that would correspond to the situation in society and regulate all newly emerging legal relations, otherwise massive disorder and destruction will occur.

Armed conflicts pose a real threat to existing legal systems and inevitably lead to their transformation. Unfortunately, they have become commonplace in the current environment, emerging, developing and becoming determinants of change in different parts of the world. This necessitates their in-depth scientific analysis, which undoubtedly determines the relevance of the topic under study.

2. Analysis of scientific publications.

The issues of the legal system in general and the impact of various factors on it have been studied by such scholars as: L. Luts, I. Nastasiak, N. Onishchenko, O. Petryshyn, Y. Ryzhenko, M. Haustova, M. Zwick, Y. Shemshuchenko, O. Yarmysh and others.

The following authors have studied the impact of the armed conflict on the nature of the legal system: Batrymenko O., Vorotniuk M., Horbulin V., Gubrienko O., Zarosylo V., Kulchytskyi S., Lavnichenko O., Lutsyshyn H., Nahirnyi M., Savchyn M., Stefanchuk R., Yarmaki V., etc.

3. The aim of the work.

The aim of this research is to analyze the ways in which armed conflicts affect the legal system and its components, in particular: institutional, functional, normative and ideological.

4. Review and discussion.

First of all, it should be noted that, in our opinion, it is necessary to create a scheme for analyzing the impact of armed conflict on the legal system based on the impact of this phenomenon on the components of the legal system, namely, institutional, functional, normative and ideological. After all, all of them are necessary to characterize the structural organization of the legal system.

The institutional component. Some authors call it the subjective level of the legal system. The subjective level is distinguished to emphasize the importance of subjects of law, the only system-forming material factors of the legal system in a certain sense [1, p. 104].

Thus, the institutional part consists of legal entities that are elements of the legal system. These elements include state bodies, as well as entities that are endowed with rights and obligations, as well as the ability to bear responsibility for offenses.

During an armed conflict, new subjects of legal relations appear, in particular: insurgents, participants of the national liberation movement, members of an anti-terrorist organization, veterans of an anti-terrorist organization, displaced persons, residents of temporarily occupied territories, refugees, peacekeepers and others, whose status requires proper legal regulation for the effective exercise of their rights and obligations.

The armed conflict also affects other participants of the legal system, including the state, public organizations, territorial communities, peoples, and national minorities, which, in turn, affect the further functioning and development of the legal system. In some cases, stakeholders incite national, religious, and racial hatred among citizens in the territory of the state where the armed conflict is taking place.

In times of an armed conflict, the concept of human and civil rights and freedoms undergoes a significant change, as their realization and observance is in danger. Legislation in most European countries allows for restrictions on the rights and freedoms of citizens during a state of emergency or martial law in the interests of national security and defense.

At the same time, the introduction of each of these regimes is necessarily accompanied by certain modifications of the usual scope of economic, political and some other freedoms of citizens; these restrictions are justified by the purpose of overcoming extraordinary circumstances that have led to a dangerous situation. Certainly, in this aspect, certain restrictions seem fully justified. At the same time, there is always a danger that the government may take advantage of the state of emergency in its own interests; there are such examples in history [2, p. 112].

According to some authors, it is necessary to formulate clear criteria for assessing the legitimacy of restrictions on constitutional rights and freedoms in the interests of national security. For this purpose, it is

advisable to introduce in the law and judicial practice the so-called proportionality test, which is used by the European Court of Human Rights and other courts of Western countries. It consists of two stages. At the first stage, it is established whether the public authorities have actually restricted certain rights and freedoms by their actions. At the second stage, these authorities must demonstrate that they pursued a legitimate aim and that the restrictions imposed were proportionate to that aim. The test itself includes three criteria: first, the means chosen by the authorities to achieve the relevant goal must be suitable for achieving this goal; second, out of all suitable means, the one that restricts the rights and freedoms of an individual to the least extent should be chosen; third, the damage caused to an individual due to the restriction of his or her rights and freedoms should be proportional to the benefits of the authorities in achieving the goal [3, p. 61].

In our opinion, such a test for the proportionality of human rights and freedoms restriction is important for the development of democracy and humanism, but during an armed conflict, the main focus is on resolving it as soon as possible with the least loss of forces, means and territories.

For example, researcher Irkha Y.B. notes in this regard that “although constitutional rights and freedoms are endowed with supremacy over other rights and freedoms, most of them are not absolute, and the exercise of some of them may be limited by law”. He also rightly notes that many citizens often exaggerate the scope of their constitutional rights and freedoms and the limits of their realization, put their interests above national ones, and therefore consider it unlawful to impose any restrictions on them in order to ensure national security [4, p. 78].

In any case, the following actions against persons are and will remain prohibited: attacks on the life, health, physical and mental condition of persons, including murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; taking hostages; acts of terrorism; abuse of human dignity, in particular, insulting treatment, rape, forced prostitution or indecent assault in any form; slavery and slave trade in all its forms; robbery; threats to commit any of the above acts [5]. The list of such prohibited actions is very important, as it should protect against inhuman treatment, torture and other cruel acts of persons who are or have been in the territory of the armed conflict.

It is worth noting that there are three hypotheses regarding the relationship between the degree of human rights violations and manifestations of interstate aggression, namely: 1) states that systematically violate the rights and freedoms of their citizens are more likely to engage in international aggression; 2) states in which human and civil rights and freedoms are protected mediocly or well are unlikely to engage in international aggression; 3) states that respect human and civil rights and freedoms may participate in international intervention solely on the basis of international law and in order to protect the rights and freedoms of citizens from violations by their own state [6].

The functional component. For the purposes of our study, without resorting to a separate analysis of this issue, we will single out only those functions which are necessary for the existence of the legal system as an integral phenomenon. The existence of any social system, including the legal system, implies its functioning to achieve a social goal and is manifested in functions, and therefore the purpose and essence of the legal system is manifested through its functions [7].

Thus, the external functions of the legal system include: 1) adaptation (ways to ensure the preservation of the system, correlation with other subsystems of the social system); 2) optimization (which contributes to the improvement of the system); 3) integrative (which ensures the existence of the system as a whole). Thus, among the internal functions are distinguished: 1) targeted, which is to direct the functioning of all parts to achieve the goal; 2) regulatory (prescriptive), which consists in establishing models of behavior and ensuring the emergence and implementation of links between elements; 3) organizational (which has two sub-functions: subordination and coordination, which contribute to the appropriate placement of links in the system); 4) control (protective), which is aimed at exercising social control over the behavior of subjects; 5) protective, which is aimed at establishing the violated rights of subjects [8, p. 35].

Thus, the main functions of the legal system during an armed conflict are adaptive, regulatory, integrative, targeted, control (security), and protective, since the primary tasks facing the legal system affected by an armed conflict are to ensure the preservation of the system and its correlation with other subsystems of the social system, directing the functioning of all parts to achieve the goal, exercising social control over the behavior of subjects, and establishing violated rights of subjects.

The normative component. The normative part of the legal system should be understood as a set of regulatory and legal tools (normative regulators) that mediate the emergence and existence of relations between subjects. The objective basis for its reform is, first of all, the development of the system of law, the state of which depends not only on the state of the system of legislation, but also on ensuring links between all elements of the legal system, as well as links between the legal system, on the one hand, and other subsystems (economic, political, cultural, etc.) of the social system of society, on the other hand [8, p. 98].

The impact of armed conflict on the legal system affects lawmaking. Normative and legal acts adopted under such conditions will reflect the specifics of the situation in the territory where the armed conflict is taking place. Thus, new areas are emerging that need to be regulated by legal means, in particular, humanitarian law and its sub-branches: peace law and security law are gaining in importance. In an armed conflict, considerable attention is paid to national security as a priority area.

Each type of administrative and legal regime during an armed conflict will to some extent be subject to regulation by international law, for example, if the armed conflict takes the form of war, the Convention on the Laws and Customs of War on Land (IV Hague Convention) will apply [9]. In addition, during an armed conflict, subjects of international relations, on the basis of a voluntary expression of will, develop a system of legal norms on the basis of which a supranational legal space is formed to resolve an armed conflict or to extend the application of international humanitarian law.

The ideological component. The ideological part of the legal system usually includes legal ideology, legal psychology and legal culture.

In times of armed conflict, there is a need to form a legal ideology that respects and guarantees the rule of law, protects human rights, ensures the effectiveness of legislation, promotes the optimal functioning of the rule of law and civil society, and forms a coherent, dynamic legal system. At the same time, significant losses among the population as a result of the armed conflict lead to legal nihilism, because at this time the law loses some of its ability to guarantee human rights.

Finally, it is worth noting that in the context of armed conflict, the legal system is often localized, which means consolidation of ethnic groups that seek to preserve legal, cultural, religious, moral values, norms, customs and pursue a policy of "cultural isolation". In addition, the period of armed conflict is characterized by the regionalization of the legal system, which means the coexistence of competing multi-vector models of legal, economic, political, social, and cultural development of states and their legal systems within a particular region.

5. Conclusions.

Thus, the article outlines a scheme for analyzing the impact of armed conflict on the legal system, and in particular, it is proposed that it should be characterized by the degree of impact on the components of the legal system, namely, institutional, functional, normative and ideological. These components of the legal system contain most of the legal phenomena that reflect the patterns of its development during armed conflict. Although the armed conflict affects the legal system in general, the greatest impact is on the institutional and normative components, especially with regard to the concept of human rights, changes in the legal status of subjects, increasing influence of international law, changes in the correlation between international and national law, and the emergence of new areas requiring legal regulation.

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