

# CONSTITUTIONAL GUARANTEES OF SOCIAL PROTECTION FOR FAMILIES OF DECEASED (DEAD) DEFENDERS OF UKRAINE

*Pleskun Oleksandr, Slobodanyk Tetiana*

DOI: <https://doi.org/10.61345/1339-7915.2024.5.19>

**Annotation.** The article is dedicated to the study of social protection for the families of deceased or dead Defenders of Ukraine in the context of constitutional guarantees. In the current conditions of war, when numerous families have lost their loved ones, it is important to provide a reliable support mechanism for such families through social programs and legislative initiatives, which should become part of the national policy. The authors analyze the role of the Constitution of Ukraine and national legislation in ensuring the rights and interests of the families of deceased servicemen, highlighting the importance of integrating these norms into the social protection system.

The article examines key aspects of social protection, including financial support, pensions, compensation, free medical care, and other social services provided to the families of the deceased. The author emphasizes that social protection for these individuals is not only an act of charity but also a constitutional obligation of the state to its citizens who have made a significant contribution to defending the country's sovereignty and territorial integrity.

The article specifically focuses on the importance of creating a comprehensive state support policy for the families of deceased defenders, particularly on establishing effective mechanisms for interaction between government agencies. The paper compares existing legislation with international human rights and social protection standards, identifying possible directions for improving the domestic social security system.

The conclusion of the article presents recommendations for improving the legal framework of social protection for the families of deceased Defenders of Ukraine, particularly through the enhancement of national legal norms that guarantee the recognition of their rights and provide support in difficult times. The authors conclude that the role of the Constitution of Ukraine as the fundamental document guaranteeing an adequate level of social protection for the families of deceased (dead) Defenders of Ukraine must be strengthened.

**Key words:** Defender, social protection, Constitution, guarantees, benefits, families of the deceased.

## 1. Introduction.

According to Article 1 of the Constitution of Ukraine, a person's life and health, honor and dignity, inviolability and security are recognized as the highest social values in Ukraine. Human rights and freedoms, and their guarantees, determine the content and direction of state activities. The state is responsible for its actions to the person. The affirmation and provision of human rights and freedoms are the primary duties of the state [1].

At the same time, part 1 of Article 46 of the Constitution of Ukraine states that citizens have the right to social protection, including the right to be supported in cases of total, partial, or temporary loss of ability to work, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided by law [1].

Social protection for military personnel's families is a type of general social protection for citizens and is one of the key aspects of the state's social policy with its specific characteristics.

Based on Articles 17 and 65 of the Constitution of Ukraine, the Constitutional Court of Ukraine in its ruling of December 18, 2018, No. 12-p/2018 determined that citizens of Ukraine who defend the Motherland, independence, and territorial integrity of Ukraine perform constitutionally significant functions. Therefore, the state must grant them and their families special status and provide additional social protection guarantees, according to part five of Article 17 of the Constitution of Ukraine, both during and after their service.

Part five of Article 17 of the Constitution of Ukraine provides special social protection for individuals who are responsible for defending Ukraine, its independence, and territorial integrity, and their families, which is not limited by the conditions and level established in Article 46 of the Constitution (paragraphs two and three of section 3 of the decision) [2].

The Constitutional Court of Ukraine also concludes in its ruling that the state must provide social protection to those who have defended the Homeland, sovereignty, territorial integrity, and inviolability of Ukraine, as well as their families in accordance with part five of Article 17 of the Constitution in combination with part one of this article, meaning that the provision of benefits and other social protection guarantees for war veterans, those covered by Law No. 3551, should not depend on the material status of their families and should not be conditioned by the financial capabilities of the state [2].

## **2. Analysis of scientific publications.**

Sydorenko A.O. defines the right to social protection as one of the most important personal rights that should be recognized and guaranteed at the state level. Military personnel and their families should be considered as a category of people requiring special social protection. Adequate state financing of social protection measures for military personnel and their families ensures the necessary effectiveness in military personnel's work, as it is an important motivational factor for military personnel to perform their duties at a high professional level, selflessly, and effectively. Especially today, amid armed aggression, economic instability, and the systematic transformation of Ukraine as a European model state, the issue of social protection for military personnel and their families is particularly pressing. Although attention is paid to this issue at the legislative level, many aspects still need to be addressed, especially the social protection of military personnel's families [3, p. 525].

According to Yuzefira A.R., the effectiveness of guarantees depends on the level of development of general legal principles, the state of the economy, the development of democratic institutions, the reality of the political system, the presence of a system of refined laws in the state, the effectiveness of law enforcement mechanisms, the level of legal consciousness and culture of the population, the alignment of the interests of the population and society as a whole, and the existence of a highly efficient constitutional control body [4, p. 75].

## **3. The aim of the work.**

The aim of the article is to study the social protection of the families of deceased or dead Defenders of Ukraine in the context of constitutional guarantees.

## **4. Review and discussion.**

Social protection for military personnel and their families is a direct duty of the state, considering the specifics of their professional activities. According to Article 17 of the Constitution of Ukraine, the state ensures social protection for citizens of Ukraine serving in the Armed Forces and other military formations, as well as for their families [1]. At the same time, the Law of Ukraine "On Social and Legal

Protection of Military Personnel and Their Families” defines the main principles of state policy in the field of social protection of military personnel and their families, establishes a unified system of social and legal protection, guarantees favorable conditions for realizing their constitutional duty to defend the Motherland, and regulates relations in this area, specifically stating that military personnel and their families who are entitled to benefits, guarantees, and compensation under this law enjoy benefits, guarantees, and compensation established for Ukrainian citizens by laws, other normative legal acts, and local government decisions [5].

The war in eastern Ukraine and the subsequent full-scale war in Ukraine created a new legal status for individuals, members of the families of deceased (dead) Defenders of Ukraine.

The procedure for granting this status is defined by the “Procedure for Granting the Status of a Family Member of a Deceased (Dead) Defender of Ukraine,” approved by the Cabinet of Ministers of Ukraine on September 23, 2015, No. 740 (hereinafter – Procedure) [6].

According to Article 10-1 of the Law of Ukraine “On the Status of War Veterans and Guarantees of Their Social Protection” of October 22, 1993, No. 3551-XII, family members of deceased (dead) Defenders of Ukraine include:

- parents;
- one spouse who has not remarried, regardless of whether they receive a pension;
- children who do not have (and have never had) their own families;
- children with disabilities before reaching adulthood, even if they have their own families;
- children whose both parents were killed or went missing;
- dependents of the deceased (dead) to whom a pension is paid [7].

Since social protection includes benefits, guarantees, and other types of material support, it is reasonable to analyze the system of benefits established by the state for the families of deceased (dead) Defenders of Ukraine.

Analyzing Article 15 of the Law of Ukraine “On the Status of War Veterans and Guarantees of Their Social Protection,” which defines certain benefits provided to the families of deceased (dead) Defenders of Ukraine, it is concluded that some benefits have no special advantages, so their establishment is purely declarative and lacks substantial meaning. For example, the procedure for granting a loan for the construction, reconstruction, or major repair of residential houses and related buildings is regulated by the Cabinet of Ministers of Ukraine’s resolution of May 8, 2019, No. 449 [8].

When reviewing the conditions for providing such loans, it is evident that they are repaid over ten years, beginning in the fifth year after the construction is completed or as per the contract. Notably, the clause “or as per the contract” grants banks the right not to offer any advantages in loans to family members of deceased (dead) Defenders of Ukraine and to treat them as any other borrowers, thus devaluing the benefit and not guaranteeing its application. This highlights shortcomings in social protection for this category of citizens.

Furthermore, the realization of rights and benefits established for a particular legal status requires active actions from individuals holding the relevant status. As mentioned, family members of deceased servicemen have a special status, which means their implementation must also account for special characteristics. This is because, after a serviceman’s death, families are in a state of distress and need support, while they are burdened with administrative tasks related to obtaining the corresponding status, which is not free from bureaucratic complications.

Yes, in accordance with the Procedure, a list of documents has been defined that applicants must collect and attach to their application for granting the status of a family member of a deceased (fallen) Defender of Ukraine. Notably, these documents can be exchanged between the relevant authorities within their interaction, or they can be obtained from the relevant state registries without involving the applicants.

Additionally, it sometimes happens that the deceased was the only close relative, and the family member left after their death finds themselves alone without any psychological, informational, or physical support.

Therefore, we believe that in order to implement the rights, and accordingly the benefits of family members of a deceased (fallen) Defender of Ukraine, there is a need for a state guarantee to ensure this implementation by introducing state support for such individuals, for example, by assigning a social worker to the family of the deceased (fallen) Defender from the moment of notification about the death (passing) and throughout their life.

As repeatedly pointed out by scholars, the effectiveness of guarantees also depends on the presence of a system of well-developed laws in the state and the efficiency of mechanisms for implementing legal provisions. In this context, it should be noted that the procedure for obtaining the status of a family member of a deceased (fallen) Defender of Ukraine has certain shortcomings, namely, it does not define in the list of persons who are considered family members those individuals who by law can and should belong to it.

For example, children born after the death (falling) of their father, a Defender of Ukraine, are not included in the list of family members of deceased (fallen) Defenders of Ukraine, which violates the norms of national and international law. Confirmation of this is the position of the Supreme Court of Ukraine, expressed in the Resolution of May 10, 2024, in case No. 440/6725/23 (administrative proceedings No. K/990/5495/24) [9].

Since we already have judicial practice in favor of a child born after the death (falling) of a Defender of Ukraine, it would be appropriate to include the following in the legislative list of family members of deceased (fallen) Defenders of Ukraine:

“Children conceived during the life of the deceased (fallen) person and born after their death.”

This gap affects the level of social protection of the families of deceased servicemen, as without the proper constitutional guarantee for granting such status, there can be no discussion of the realization of constitutional rights guaranteed by the state.

Most foreign countries adhere to the principle that social protection for family members of military personnel is carried out alongside social protection for the servicemen themselves.

In many countries around the world (especially NATO members), a “military social work” system has developed, which refers to a specialized practice of social work that provides support to military personnel, war veterans, and their families [10, p. 62].

Also, the legislation of many countries has established a fairly broad system of benefits and guarantees for family members of servicemen. It should be noted that Israel offers the widest range of benefits and guarantees compared to other countries, as evidenced by the provisions of the Law “On Families of Soldiers Killed in Service (Compensation and Rehabilitation)” [11].

## 5. Conclusions.

After examining the issue of social protection for the families of deceased or fallen Defenders of Ukraine in the context of constitutional guarantees, we conclude that there is a need to strengthen the role of the Constitution of Ukraine as the main document that guarantees an appropriate level of social protection for the families of deceased (fallen) Defenders of Ukraine. We believe it is necessary to improve the legislative framework in the area of acquiring and implementing the legal status of family members of deceased or fallen Defenders of Ukraine, taking into account foreign experience, which will enhance the effectiveness of constitutional guarantees for social protection for this category of individuals.

## References:

1. Constitution of Ukraine, June 28, 1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

2. Decision of the Grand Chamber of the Constitutional Court of Ukraine in the case of social protection of war veterans and their families of December 18, 2018, No. 12-p/2018. URL: <https://zakon.rada.gov.ua/laws/show/v012p710-18#Text>.
3. Sydorenko A. O. On the essence of social protection for family members of military personnel. European Orientations for the Development of Ukraine in the Context of War and Global Challenges of the 21st Century: Synergy of Scientific, Educational, and Technological Solutions: Materials of the International Scientific and Practical Conference (Odesa, May 19, 2023). Odesa: Yurydyka Publishing, 2023. Vol. 1. P. 525–527.
4. Yuzefiv A. R. Constitutional Guarantees for Ensuring Human Rights and Freedoms. Comparative-Analytical Law. 2018. No. 1. P. 74–77.
5. Law of Ukraine “On Social and Legal Protection of Military Personnel and Their Families” of December 20, 1991, No. 2011-XII. URL: <https://zakon.rada.gov.ua/laws/show/2011-12#Text>.
6. Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Granting the Status of a Family Member of a Deceased (Fallen) Defender of Ukraine” of September 23, 2015, No. 740. URL: <https://zakon.rada.gov.ua/laws/show/740-2015-%D0%BF#Text>.
7. Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection” of October 22, 1993, No. 3551-XII. URL: <https://zakon.rada.gov.ua/laws/show/3551-12#Text>.
8. Resolution of the Cabinet of Ministers of Ukraine “On the Approval of the Procedure for Granting Loans to War Veterans and Family Members of Deceased (Fallen) War Veterans, Family Members of Deceased (Fallen) Defenders of Ukraine” of May 8, 2019, No. 449. URL: <https://zakon.rada.gov.ua/laws/show/449-2019-%D0%BF#Text>.
9. Resolution of the Supreme Court of Ukraine of May 10, 2024, in case No. 440/6725/23 (administrative proceedings No. K/990/5495/24). URL: [https://verdictum.ligazakon.net/document/118962318?utm\\_source=jurliga.ligazakon.ua&utm\\_medium=news&utm\\_content=jl03](https://verdictum.ligazakon.net/document/118962318?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03).
10. Husak N. Ye., Neskorodyana O. P. Military Social Workers in the United States of America. Scientific Notes of NaUKMA. 2016. Vol. 188. Pedagogical, Psychological Sciences, and Social Work. P. 61–65.
11. Law on Families of Soldiers Killed in Campaign (Compensation and Rehabilitation), 1950-57. URL: [https://www.nevo.co.il/law\\_html/law01/151\\_005.htm#Seif72](https://www.nevo.co.il/law_html/law01/151_005.htm#Seif72).

---

**Oleksandr Pleskun,**

*Candidate of Legal Sciences, Associate Professor,  
Associate Professor of the Department of Fundamental and Branch Juridical Sciences,  
Faculty of Law, Humanity and Social Sciences,  
«Kremenchuk Mykhailo Ostrohradskyi National University»  
E-mail: kafedragun@gmail.com  
ORCID: 0000-0001-6152-4957*

**Tetiana Slobodianyk,**

*Candidate of Legal Sciences, Associate Professor,  
Associate Professor of the Department of Fundamental and Branch Juridical Sciences,  
Faculty of Law, Humanity and Social Sciences,  
«Kremenchuk Mykhailo Ostrohradskyi National University»  
E-mail: kafedragun@gmail.com  
ORCID: 0000-0003-1838-5781*