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JUDICIAL PROTECTION OF HUMAN INFORMATION RIGHTS: CONCEPTS, METHODS, AND GROUNDS FOR IMPLEMENTATION DURING THE WAR AGAINST UKRAINE

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INTRODUCTION

Relevance of the study. In the context of the full-scale armed aggression of the Russian Federation against Ukraine, the issue **of protecting the information rights of citizens** has become of particular importance. The war has significantly affected the country's information space, increasing the threats of human rights violations in the field of access to information, personal data protection, digital security, and freedom of expression.

Against the backdrop of the widespread use of **information technologies in wartime**, especially in the fields of digital document management, cybersecurity, media space, and social networks, citizens of Ukraine are facing new challenges in the implementation and protection of their information rights. In particular, **the spread of disinformation, cyberattacks, personal data leaks, censorship, and restriction of access to information** creates new legal dilemmas that require an appropriate judicial solution.

For Ukraine, as a democratic and rule-of-law state, despite the challenges of war, one of the priority tasks in domestic and foreign policy is to establish and ensure high standards of human rights recognized within the framework of the Council of Europe[1].

Following the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Verkhovna Rada of Ukraine on 17 July 1997[2], the fundamental human rights proclaimed became important guidelines for developing Ukraine as a democratic and legal state. These obligations, among other things, encompass the rights proclaimed in Articles 8 and 10 of the Convention, which guarantee respect for private and family life, the confidentiality of correspondence, and the right to express opinions freely and collect and disseminate information.

[1] Venger V., Zayarnyi O. Legal Analysis of the Main Models of Institutionalization of State Control in the Sphere of Personal Data and Access to Public Information in Ukraine. Kiev. 2020, 30 p. URL: https://rm.coe.int/legal-analysis-data-ua/16809ee077

[2] Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 URL: https://zakon.rada.gov.ua/laws/show/995_004.

The enshrinement of these human rights in the provisions of Articles 32 and 34 of the Constitution of Ukraine[3], while considering national specificities in formulating their content, demonstrates Ukraine's fulfillment of its international positive and negative obligations to ensure their proper implementation and protection against violations, such as denial, contestation, or prohibition of their exercise.

The essence of these obligations lies in the state's duty to undertake measures aimed at guaranteeing information rights and freedoms proclaimed by the Convention for the Protection of Human Rights and Fundamental Freedoms (positive obligations) and restoring violated information rights (negative obligations)[4].

At the same time, in the period 2015 – 2023, Ukraine made a number of derogations and reservations regarding significant difficulties in fulfilling certain obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms. This is due to the war of the Russian Federation against Ukraine and the inability to guarantee, among other things, the observance of the human right to non-interference in private and family life, freedom of thought and speech, and information. On 28 February 2022, the statement of derogation from certain obligations under the said convention was clarified, considering the challenges of a full-scale war against Ukraine.

At the same time, an analysis conducted by the Council of Europe on the justification for Ukraine's derogation from the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms revealed that the justification for such derogation, particularly concerning human information rights, was not entirely substantiated. This is because Article 8 already contains restrictive provisions that allow for restrictions on privacy for purposes of national security and public security.

However, a derogation from this article is not always necessary since the provisions of the Convention already allow certain restrictions in emergency situations.

However, the document also emphasizes that even if Ukraine has decided to derogate from Article 8 formally, this does not mean the automatic abolition of this right. According to international law, any interference with the right to privacy must remain proportionate and justified.

Ukraine has also derogated from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees

[3] Constitution of Ukraine of 28.06.1996 URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр.

[4] Handbook on the application of Article 8 of the European Convention on Human Rights – The right to respect for private and family life, housing and correspondence. Council of Europe/European Court of Human Rights, 2018. 118 p. URL: https://www.echr.coe.int/Documents/Guide_Art_8_UKR.pdf.

freedom of expression. This derogation is justified by the introduction of a legal regime of martial law on the territory of Ukraine and the need to protect state security. Still, the document states that Article 10 itself contains provisions that allow freedom of expression to be restricted in cases of national security, public order, or protection of the rights of others.

The document emphasizes that even if there is a derogation, restrictions must comply with the principle of proportionality. That is, they must be minimally necessary to achieve a legitimate goal. Any excess of these limits can be recognized as a violation of human rights by the European Court of Human Rights[5].

Laying the legal basis for the recognition of Ukraine as a legal, democratic, and social state, the Constitution of Ukraine, in Part 2 of Art. 3 established a fundamental rule for building relations between a person and the state.

According to this constitutional norm, human rights and freedoms and their guarantees determine the content and direction of the state's activities. Establishing and providing human rights and freedoms is the main duty of the state.

The obligation of the state established in Article 3 of the Constitution of Ukraine corresponds to the right of everyone to freely collect, store, use, and disseminate information orally, in writing, or in another way – at their choice, enshrined in Part 1 of Article 34.

The state guarantees the protection and implementation of this and other information rights through the direct appeal of the subject of information legal relations, whose rights are violated, unrecognized, or challenged to the court for their protection.

It should be emphasized, taking into account the previously cited legal position of the Council of Europe, that Ukraine's retreat from the fulfilment of certain international obligations in the field of observance of information human rights does not limit the right to their judicial protection in the manner provided for by the norms of national legislation.

At the same time: “The court cannot deny justice if a citizen of Ukraine, a foreigner, or a stateless person believes that their rights and freedoms have been violated or are being violated, obstacles to their implementation have been created or are being created, or there are other infringements of rights and freedoms, in particular, related to the manifestation of the legal regime of martial law”.

[5] Astol, L. Legal Analysis of the Derogation Made by Ukraine under Article 15 of the European Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights / L. Apostol. – Strasbourg: Council of Europe, 2022. – 40 p. URL: https://rm.coe.int/legal-analysis-of-the-derogation-made-by-ukraine-under-article-15-of-t/1680aa8e2c

1. The concept and essence of the protection of information human rights

In our opinion, the protection of the information rights of a person can be defined as the activities of authorized state bodies, international judicial institutions, or holders of information rights themselves, based on the norms of the legislation of Ukraine, aimed at restoring the violated information rights of individuals or legal entities, through the application of methods of protection provided by law or contract, provided by state coercion, which is carried out in a specific procedural Form.

The protection of information rights can also be considered as a system of successive substantive and procedural actions initiated by the subject of information legal relations aimed at renewing the violated information rights and/or its property status by submitting a request to the authorized state body to apply the methods of protection of information rights provided for by the legislation of Ukraine, to eliminate the consequences of violation of these rights.

In these aspects, the concept of «protection of information rights of a person» is characterized by the following features:

– It is based on the norms of substantive and procedural law, which determine the legal grounds, methods, and procedures for the protection of information rights.

– It is implemented by authorized state bodies, international judicial institutions, or directly by the holders of information rights themselves in a specific procedural form if there are grounds provided for by law or contract.

– It manifests itself through the use of methods of protection of rights provided for by the laws of Ukraine, corresponding to the nature of the violation.

– It is provided by state coercion.

– It is put into effect on the initiative of the holder of information rights, his authorized representative, or competent state body in the manner determined by the legislation of Ukraine.

– It is implemented only after the occurrence of the fact of violation of any of the information rights, recorded in accordance with the procedure established by law.

Its task is to restore the violated information rights of individuals or legal entities, and in case of damage or loss to them, as well as their property status.

In order for information rights to be subject to legal protection during the period of the legal regime of martial law, they must meet certain criteria, in particular:

Such rights must be guaranteed by the state and follow from the essence of the natural legal existence of man.

– Protection of information rights is possible only if there is a violation of the relevant right of a particular person (its restriction, non-recognition, challenge, prohibition of implementation, etc., if such restrictions or prohibitions are not related to the regulatory consequences of the introduction of the legal regime of martial law on the territory of Ukraine or restrictive measures established by military administrations in certain territories of the state).

– The implementation of the relevant rights should not be carried out with the aim of harming the interests of the state or society, national security, rights, and freedoms of other persons, or encroaching on the information legal order established in the state.

– The protected information rights and freedoms must be real and correspond to the nature of the dispute.

2. Ways to protect information human rights and features of their application by the courts of Ukraine during the legal regime of martial law

The information rights and freedoms of a person who is protected must be consistent with the chosen ways of their protection.

Methods of protection of subjective rights are understood as substantive and legal measures of a protective nature enshrined by law, with the help of which the restoration (recognition) of violated (disputed) rights and influence on the violator are carried out[6].

As means of legal influence on the violator of information rights, the methods of protection are characterized by the following basic properties:

– They are defined exclusively in the norms of the laws of Ukraine and can be specified in court decisions or terms of contracts.

– They are substantive and legal ways of influencing violators, i.e., aimed at restoring information rights or interests protected by the norms of substantive information legislation.

– In essence, they are imperative means of influencing the violator, which excludes the possibility of establishing restrictions or prohibitions on the use of one or another method of protecting information rights in the terms of contracts and other individual legal acts.

– The legal basis for the application of a specific method of protection of human information rights is set out in the statement of claim and in cases provided for by the legislation of Ukraine – complaint, claim, the demand of the injured person for the restoration of violated information rights or property status.

[6] Resolution of the Grand Chamber of the Supreme Court in case No. 925/1265/16 dated 22.08.2018. URL: view-source:https://zakononline.com.ua/court-decisions/show/76474144

– They are implemented in protective information legal relations in accordance with the procedural procedure established by the laws of Ukraine.

– Their use causes negative consequences of a property, organizational or personal nature for the violator.

– In terms of content, purpose, and consequences, the application must correspond to the nature of the violated right and the interest protected by law.

– They are applied by the court and, in cases provided for by law, directly by the victim.

When choosing ways to protect information rights, it is necessary to consider that in relation to individuals, this category of rights belongs to personal non-property, i.e. those that a person is endowed with throughout his life. Additionally, the information rights recognized for an individual are inalienable, i.e., those that cannot be transferred to third parties[7].

If the law or the contract does not determine an effective way to protect the violated, unrecognized, or disputed right, freedom, or interest of the person who applied to the court, the court, in accordance with the claim of such a person, may determine in its decision such a method of protection that does not contradict the law.

The general list of ways to protect information rights is determined by Part 2 of Art. 16 of the Civil Code of Ukraine regarding private law information relations and Part 2 of Art. 5 of the Code of Administrative Procedure of Ukraine regarding public law relations.

Some of these methods of protection of information rights in case of their forced implementation can be applied only by the court.

In particular, we are talking about invalidation of the contract, change or termination of legal relations, compensation for moral (non-property) damage, compensation for losses or other property damage, recognition of an individual legal act as illegal, recognition of an individual legal act as unlawful in whole or in a separate part of a regulatory legal act.

When applying one or another method of protection of information rights, the court, within the competence established by the procedural law, must find out whether the method of protection determined by the plaintiff is proper, effective, and based on the requirements of the law.

The answer to these questions is of fundamental importance for ensuring proper protection of the violated information right, jurisdiction, and jurisdiction of the information dispute referred to a specific judicial body,

[7] Kokhanovska O. V. Information as a Non-Property Good and Protection of Information Rights: Scientific Conclusion. URL: Supreme Court of Ukraine

resolving the issue of the possibility of applying several related methods of protecting information rights and other procedural issues[8].

The main type of ways to protect information rights and interests of a property nature is compensation for losses (for contractual information obligations) and compensation for damage caused not only by property but also by moral non-property damage (for tort information obligations).

The use of this method of protection of information rights is allowed only on the initiative of the injured person or a legal representative authorized by him/her in the presence of the following circumstances:

1. Unlawful behaviour of the subject of information legal relations in the form of actions or omissions that caused damage or losses.
2. The presence of damage or losses caused to the injured subject of information legal relations.
3. The causal relationship between the negative property consequences of the violation of information rights and the illegal actions or inaction of the subject of information legal relations who committed the violation of information rights.

In case of application by a person of such a method of protection of information rights and property interests, this legal remedy covers, in particular:

* Losses suffered by the subject of information legal relations in connection with the destruction or damage of the results of information activity (database, information technology, system, material carrier, or destruction of the information itself), as well as expenses that a person has incurred or must make to restore his violated right, in particular, due to war risks (real losses).

* Income that the subject of information legal relations could actually receive under normal circumstances if its right had not been violated (lost profit).

If the person who violated the right received income in connection with this, then the amount of lost profit to be compensated to the person whose right was violated cannot be less than the income received by the person who violated the right.

According to the requirements established in Part 3 of Art. 22 of the Civil Code of Ukraine: "Damages shall be compensated in full unless the contract or the law provides for compensation in a smaller or larger amount.[9]"

[8] Zayarnyi O. A. Administrative Delictology in the Information Sphere: Problems of Theory and Practice: Diss. Doctor of Law: Special. 12.00.07. Kyiv, 2018. P. 318 URL: http://scc.univ.kiev.ua/upload/iblock/d52/dis_Zaiarnyi%20O.A..pdf

[9] Civil Code of Ukraine: Law of Ukraine of 16.01.2003, No 435-IV (edition of 14.08.2021). URL: https://zakon.rada.gov.ua/laws/show/435-15.

The main problem faced by citizens who have suffered damage or losses is the assessment of property losses incurred in connection with illegal encroachment on non-property objects of information activity.

As for the application of such a method of protecting of information rights of a person as compensation for moral damage, in accordance with Part 2 of Art. 24 of the Civil Code of Ukraine, it is aimed at covering one or a set of the following losses:

* Physical pain and suffering suffered by an individual in connection with injury or other damage to health, torture;

* Mental suffering suffered by an individual in connection with unlawful behaviour against himself, his family members, or close relatives, including coercion to view harmful, dangerous content, recording torture or other war crimes against humanity by means of information technologies;

* Mental suffering suffered by an individual in connection with the destruction or damage to his/her property, in particular, from war crimes, persecution, etc.;

* Humiliation of the honour and dignity of an individual, as well as the business reputation of an individual;

* Losses incurred in connection with disseminating sensitive categories of personal data, in particular: biometric, genetic, racial, ethnic origin, property status, religious beliefs, criminal record, etc., or personal data of military personnel, prisoners of war, or children without proper consent.

Unless otherwise established by law, moral damage is compensated in cash, other property, or another way.

The court determines the amount of monetary compensation for moral damage depending on the nature of the offense, the depth of physical and mental suffering, the deterioration of the victim's abilities or deprivation of the opportunity to realize them, the degree of guilt of the person who caused moral damage if guilt is the basis for compensation, as well as taking into account other circumstances that are of significant importance. When determining the amount of compensation, the requirements of reasonableness and fairness are considered.

Moral damage is compensated regardless of the property damage to be compensated. It is not related to the amount of this compensation, Parts 3 and 4 of Art. 24 of the Civil Code of Ukraine[10].

The main feature of the methods of protection of personal (non-property) information rights is that for their application, it is enough only the fact of violation of these rights and filing a lawsuit with the court for their renewal. This category of information rights protection methods is not aimed at

[10] Civil Code of Ukraine: Law of Ukraine of 16.01.2003, No 435-IV (edition of 14.08.2021). URL: https://zakon.rada.gov.ua/laws/show/435-15.

restoring the property status of the injured subject of information legal relations. It aims to restore violated, unrecognized, or disputed information rights, terminating specific information legal relations or bringing them to the normative principles of information legal order.

This category of ways to protect information rights, among others, includes recognition of the right, recognition of the transaction as invalid, termination of an action that violates the right, enforcement of an obligation in kind, change or termination of a legal relationship, recognition of decisions, actions or inaction of a state authority, authority of the Autonomous Republic of Crimea or local self-government body, their officials and officials as illegal.

Along with the general methods of protection of information rights, certain laws of Ukraine establish special methods aimed at restoring specific information rights carried out in certain areas of information activity.

Such special means of protection include, for example, refutation of false information and/or the right of reply (Article 277 of the Civil Code of Ukraine), prohibition of disseminating information that violates personal non-property rights (Article 278 of the Civil Code of Ukraine), etc.

In accordance with Art., Art. 94, 277 of the Civil Code of Ukraine, an individual or legal entity whose personal non-property rights have been violated as a result of the dissemination of false information about him/her has the right to reply, as well as to refute this information. At the same time, in accordance with the approaches developed by judicial practice to determine the content of these methods of protection of information rights, the main differences between them are as follows:

– when refuting, the disseminated information is recognized as unreliable, and when exercising the right of reply, the person has the right to highlight his/her own point of view on the disseminated information and the circumstances of violation of the personal non-property right without recognizing it as unreliable;

– the person who disseminated it refutes false information, and the answer is given by the person about whom the information was disseminated.

According to Part 2 of Article 124 of the Constitution of Ukraine, the right to apply to the court in case of dissemination by the media of false information that violates the personal non-property rights of an individual or legal entity is unconditional and the non-use of the right provided for by Article 37 of the Law of Ukraine «On Printed Mass Media, About the Press) in Ukraine, to demand from the editorial board of a print media outlet to publish a refutation of such information, followed by the right to appeal, refusal to publish,

refutation, or violation of the procedure of its publication is not a ground for refusal to open proceedings in the case[11].

Such a special method of protecting the information rights and freedoms of a person, first of all, dignity, honor, and business reputation, as the termination of further dissemination of information that humiliates the honor, dignity, and reputation of an individual (Article 278 of the Civil Code of Ukraine), provides for two types of termination of the circulation of information: 1) when the right is violated, 2) when the right has already been violated. This method of protection is focused on application to mass dissemination of information. The difference between this method of protecting information rights and refuting false information lies not only in the purpose of using these methods but also in the fact that the prohibition of the dissemination of information (which is being prepared for dissemination or which has already been disseminated) can also be applied in the case of dissemination of information, regardless of whether it is unreliable or absolutely true. The plaintiff only proves that the specified information violates his personal non-property rights.

At the same time, if the information that violates the personal non-property rights of a person is reliable, the requirements for its refutation cannot be satisfied. A special procedure for refuting false information is provided for cases when this information has become widespread through a document adopted (issued) by a legal entity (Part 5 of Article 277 of the Civil Code of Ukraine). In this case, a document containing false information that discredits the personal non-property rights of individuals must be withdrawn. When satisfying the claim, the court must indicate in the operative part of the decision whether the personal non-property right of the person has been violated, what information is recognized as unreliable and discredits the dignity, honor, or business reputation of the plaintiff, as well as indicate the method of protecting the violated personal non-property right[12].

At the same time, in practice, such a method of protecting information rights as the removal of information that discredits dignity, honor, or business reputation cannot be used.

This conclusion was formulated by the Civil Court of Cassation within the Supreme Court in its Resolution of 14 July 2021 in case No. 757/14418/20-ц (proceedings No. 61-4424sv21).

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[11] On judicial practice in cases of protection of dignity and honor of an individual, as well as business reputation of an individual and legal entity: Resolution of the Plenum of the Supreme Court of Ukraine dated 27.02.2009 No. 1. URL: https://zakon.rada.gov.ua/laws/show/v_001700-09/conv#o4.

[12] Review of the judicial practice of the Civil Court of Cassation within the Supreme Court in cases of protection of dignity, honor and business reputation. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Ogliad_KCS.pdf

As follows from the case materials, the plaintiff asked the court to oblige the NGO «Anti-Corruption Action Center» to refute the information by removing data about him on the Internet in the Register of National Public Figures of Ukraine since 2017. He has not been a national public figure. Since 2014 he has not been a people's deputy of Ukraine. He noted that the Financial Monitoring Service of Ukraine included the register in the Methodological Recommendations for Monitoring Financial Transactions of Public Figures, and this complicates the interaction of such persons with banks and other financial institutions.

The district court satisfied the claim, recognized the specified information as unreliable, and obliged the defendant to refute the information by removing the disputed data from the register since the plaintiff is no longer a national public figure.

The Court of Appeal overturned the previous decision. It dismissed the claim since the posted information did not violate the plaintiff's rights but related to the period when he was a people's deputy.

The Supreme Court, consisting of a panel of judges of the First Judicial Chamber of the Civil Court of Cassation, upheld the decision of the Court of Appeal, making the following legal conclusions.

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone has the right to freedom of expression.

In accordance with Part 2 of Art. 63 of the Law of Ukraine «On Elections of People's Deputies» in the version effective at the time of the emergence of disputed legal relations, the information contained in the documents submitted to the Central Election Commission for the registration of candidates is open.

Art. 3, 4, 6 of the Declaration on Freedom of Political Debate in the Media, approved on February 12, 2004 by the Committee of Ministers of the Council of Europe, states that political figures are subject to careful public control.

The disputed information is not unreliable and does not violate the plaintiff's rights. Therefore, it is not subject to judicial protection. This information is valid and reliable and does not discredit the plaintiff's honor, dignity, and business reputation.

The content of the claims set out in the statement of claim does not contain any specific references to what information (statements) disseminated in the register should be recognized as unreliable and degrading to the plaintiff's dignity, honor, or business reputation.

The information posted in the register refers to the period when the plaintiff was a people's deputy (December 2012 – November 2014). In addition, similar information is contained on the official website of the Verkhovna Rada of Ukraine.

The applicant's arguments that his designation as a national public figure makes it difficult for him to interact with banks and other financial institutions do not refute the correctness of the conclusions of the court of appeal since it is not the subject of consideration in the case of protection of honor, dignity and business reputation[13].

In order for the method of protection of information rights provided for by law, determined by the parties to the contract or by a court decision to be applied by the injured citizen, it must meet certain criteria.

From the standpoint of the legislation of Ukraine and judicial practice, such criteria are the effectiveness and appropriateness of the method of protecting information rights and its compliance with the norms of the law.

The court is obliged to find out the nature of the disputed legal relations (subject matter and grounds of the claim), the presence/absence of the violated right or interest, and the possibility of its renewal/protection in the chosen way.

In the case of providing a legal assessment of the appropriateness of the method of protection chosen by the interested person, the courts should also consider its effectiveness from the point of view of Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In its judgment of November 15, 1996, in the case of Chahal v. the United Kingdom, the ECtHR noted that the above-mentioned provision guarantees at the national level effective legal means for the exercise of the rights and freedoms provided for by the Convention, regardless of how they are expressed in the legal system of a particular country.

The essence of this article boils down to the requirement to provide a person with such remedies at the national level that would allow the competent state authority to consider the merit of complaints of violations of the provisions of the Convention and provide appropriate judicial protection. However, the States Parties to the Convention have some discretion as to how they ensure the fulfillment of their obligations.

In addition, the ECtHR pointed out that in some circumstances, the requirements of Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms can be ensured by the entire set of means provided for by national law[14].

The requirement for the protection of the subjective right must correspond to the content of the violated right and the nature of the offense, ensure the

[13] Resolution of the Supreme Court dated July 14, 2021 in case No. 757/14418/20-ц (proceedings No. 61-4424sv21) -. URL: https://reyestr.court.gov.ua/Review/98454238

[14] *Chahal v. the United Kingdom,* 15 November 1996, *Reports of Judgments and Decisions1996-V*

restoration of the violated right, and, if such renewal is impossible, guarantee the person the possibility of receiving appropriate compensation.

That is, an effective remedy should be one that corresponds to the content of the violated right and ensures the real restoration of the rights of the person for the protection of which he/she applied to the court, in accordance with the requirements of the law.

3. Grounds for the application of methods of protection of information human rights by the courts of Ukraine

Implementing the mechanism for protecting information human rights provided for in the norms of national legislation is possible only if there are sufficient grounds.

The grounds for the protection of information rights are a set of regulatory, legal and factual conditions provided for in the norms of the legislation of Ukraine or established in the terms of contracts, which indicate the violation of a specific right of the subject of information legal relations and allow him or another authorized representative to initiate the restoration of the violated right of the injured person, and in cases determined by the legislation of Ukraine, his property status.

In the structure of the grounds for the protection of the information rights of a person, three main groups can be distinguished – normative, legal, and factual.

– The essence of the normative grounds is manifested in the definition in the norms of the Laws of Ukraine of the range of information rights protected by the state, the types of violations of these rights, as well as the methods, procedures, and subjects of their protection and restoration.

It should be noted that if the violation is related to natural human information rights, in particular, the right to protection of personal data, freedom of thought and speech, free collection, storage, and dissemination of information from non-prohibited sources and non-prohibited means, their legislative recognition in the sense of a regulatory basis for renewal or protection is not required.

– Legal grounds are manifested in the direct violation (non-recognition, restriction, prohibition of sale, challenge) of one or a group of information rights of an individual or legal entity, which violates the requirements of the legislation of Ukraine, the terms of contracts, or the prescriptions of an individual law enforcement act, as well as in the appeal of the aggrieved person to the competent state body with a complaint, petition, lawsuit for their renewal.

According to the form of external manifestation, legal grounds for the protection of information rights can be manifested through violation,

contestation, or non-recognition of the specified group of rights or any of them by the subject of information legal relations.

Violation of the right is a consequence of the unlawful behavior of the other party to information legal relations, which manifests itself in the deliberate restriction, denial, or prohibition of the implementation of any of the information rights by their bearer.

It should be emphasized whether a restriction or temporary ban on the exercise of information rights or a separate type is not considered a violation, provided that such actions meet certain legal criteria.

These criteria were first laid down in Part 2 of Art. 8 and Part 2 of Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and implemented in the norms of the Constitution of Ukraine, in particular, Part 2 of Art. 32, Part 2 of Art. 34.

«Giving an official interpretation of the provisions of parts one and two of Article 32 of the Constitution of Ukraine in systemic connection with part two of Article 34 of this Constitution, the Constitutional Court of Ukraine came to the conclusion that the collection, storage, use and dissemination by the state, local self-government bodies, legal entities or individuals of confidential information about a person without his/her consent is an interference in his/her personal and family life, which is allowed only in cases determined by law and only in national security, economic well-being and human rights, *(paragraph four of paragraph 5 of the reasoning part of the Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Zhashkiv District Council of Cherkasy region regarding the official interpretation of the provisions of parts one, two of Article 32, parts two, three of Article 34 of the Constitution of Ukraine of January 20, 2012* **No. 2-rp/2012***)*.[15]

Therefore, it is not a violation of the information rights of a person, and it cannot be considered an unlawful restriction or termination of human rights in the information sphere if it is carried out on the basis of a reasonable law, pursues a legitimate goal, and is also necessary in a democratic society.

Non-recognition of information law consists of passive objection to the presence of subjective information right in a person, which does not directly harm the subjective right but creates uncertainty about the legal status of the holder of such a right.

[15] Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Zhashkiv District Council of Cherkasy Oblast regarding the official interpretation of the provisions of parts one, two and two of Article 32, parts two, three of Article 34 of the Constitution of Ukraine dated January 20, 2012 No. 2-rp/2012. URL: https://ccu.gov.ua/sites/default/files/ndf/2-rp/2012.doc

A dispute is the existence of a dispute between the subjects of information legal relations about the presence or absence of a right of one of the parties.

– The essence of the factual grounds for the protection of human information rights is manifested through the commission by a person by the violator of specific factual actions aimed at creating artificial obstacles in the exercise of information rights, their restriction, contestation, or non-recognition, which are subject to legal qualification.

The following factors influence the determination of the existence of grounds for the protection of the information rights of a person in a particular case:

At the same time, for the presence of legal signs of violating a person's information right, it is unnecessary to cause harm, loss, or any other non-property consequences. Such a violation can be manifested only in the very fact of restriction, violation, or non-recognition by a person of the information rights assigned to him/her.

– It is mandatory to obtain procedures and methods for the protection of information human rights.

– Compliance with the rules for recording and documenting the facts of violations of information human rights, taking into account the manifestations of the negative consequences of the war.

– The presence of the will of the injured person regarding the implementation of methods for the protection of information rights provided for by the legislation of Ukraine.

The legal procedural basis for enacting the mechanism of judicial protection of information rights is the claim of the injured subject of information legal relations, which sets out the requirement for the restoration of its violated, unrecognized or disputed rights.

In the statement of claim, the plaintiff sets out his claims regarding the subject of the dispute and their justification.

In cases of protection of the right of access to public information, plaintiffs are individuals and legal entities whose rights are directly violated by the public information manager. In accordance with paragraph 1 of part 1 of Art. 13 of the Law of Ukraine «On Access to Public Information», for the purposes of this Law, the subjects of power are recognized as information administrators – state authorities, other state bodies, local self-government bodies, authorities of the Autonomous Republic of Crimea, other entities that exercise power management functions in accordance with the legislation and whose decisions are binding.

The defined concept of «subject of authority» does not cover officials and officials of state authorities or local self-government since, by their status and range of powers, they do not fall under the understanding of a public authority

and other subjects specified in paragraph 1 of part 1 of Art. 13 of the Law of Ukraine «On Access to Public Information. In this regard, such persons cannot (do not have the ability) to perform the duties of an information manager, including the obligations to record and disclose public information. In case of filing a claim against such persons, the courts must dismiss it due to the inadequacy of the defendant (inability of such a defendant to violate the plaintiff's rights), provided that the plaintiff refuses to replace them with a proper defendant and/or the court does not find grounds for involving the second defendant[16].

An individual may file claims for the protection of dignity, honor, or business reputation in case of dissemination of false information about him/her that violates his/her personal non-property rights, as well as other interested persons (in particular, members of his/her family, relatives) if such information directly or indirectly violates their personal non-property rights. When disseminating such false information regarding minors, minors, or incapacitated persons, their legal representatives have the right to apply to the court with a corresponding lawsuit. If false information about a deceased person is disseminated, his/her family members, close relatives, and other interested persons have the right to file a lawsuit, citing the following circumstances in the application: the nature of their relationship with the person about whom false information has been disseminated; how this violated the personal non-property rights of the person applying to the court.

In the case of protection of dignity, honor, or business reputation, the defendants are the individuals or legal entities that disseminated false information and the author of this information.

If a lawsuit is filed to refute information published in the media, then the proper defendants are the author and editorial board of the relevant media or other institution performing its functions.

In the case when the information was disseminated in the media with reference to the person who is the source of this information, this person is also a proper defendant.

When publishing or otherwise disseminating the disputed information without specifying the author (for example, in an editorial), the defendant in the case must be the body that produced the media products.

If the plaintiff makes claims against one of the proper defendants who jointly disseminated false information, the court has the right to involve another co-defendant in the case only if it is impossible to consider the case without his participation.

[16] On the practice of application of legislation on access to public information by administrative courts: Resolution of the Plenum of the Supreme Administrative Court of Ukraine dated 29.09.2016 No. 9. URL: https://zakon.rada.gov.ua/laws/show/v0010760-16/conv#n18

The defendant, in case of dissemination of information submitted by an official or official in the performance of his/her official (official) duties, in particular when signing a characteristic, etc., is the legal entity in which he/she works. Considering that the consideration of the case may affect the rights and obligations of this person, the latter may be involved in considering the case according to the rules of judicial proceedings, according to which the case is considered. In case of dissemination of such information by an official or official, in order to determine the proper defendant, the courts need to find out on whose behalf this person acts. If an official or official does not act on behalf of a legal entity and not in the performance of official (official) duties, then he or she is the proper defendant.

The proper defendant in case of dissemination of disputed information on the Internet is the author of the relevant information material and the owner of the website whose identity the plaintiff must identify and indicate in the statement of claim. If the author of the disseminated information is unknown or his/her identity and/or place of residence (location) cannot be established, as well as when the information is anonymous and access to the site is free, the proper defendant is the owner of the website, on which the specified information material is posted since it created the technological opportunity and conditions for the dissemination of false information. Daton, the website owner, may be requested in accordance with the provisions of the Civil Procedure Code from the administrator of the system of registration and accounting of domain names and addresses of the Ukrainian segment of the Internet. If inaccurate information that discredits dignity, honor, or business reputation is posted on the Internet on an information resource registered in accordance with the procedure established by law as a mass media, then when considering the relevant claims, the courts should be guided by the norms governing the activities of these subjects of information activity[17].

Thus, when determining the circle of persons who can be plaintiffs and defendants in cases on the protection of information rights, the courts first all proceed from whether the person who filed the claim is endowed with the information right, the renewal of which he seeks and whether the person against whom the claim was filed could violate the rights that are determined by the subject of judicial protection.

The rules on jurisdiction and jurisdiction of information disputes established in the norms of procedural legislation are of great importance for the proper judicial protection of information rights as individuals.

[17] On judicial practice in cases of protection of dignity and honor of an individual, as well as business reputation of an individual and legal entity: Resolution of the Plenum of the Supreme Court of Ukraine dated 27.02.2009 No. 1. URL: https://zakon.rada.gov.ua/laws/show/v_001700-09/conv#o4

In resolving this issue, procedural legislation applies two main approaches: it directly determines the jurisdiction of specific information disputes as an independent category of cases or defines it through the prism of a broader category of cases.

An example of the first approach is cases on the protection of the right of access to public information, which, in accordance with paragraph 7 of Part 1 of Art. 19 of the Code of Administrative Procedure of Ukraine, cases on disclosure by a bank of information containing bank secrecy regarding legal entities and individuals, paragraph 11 of Part 2 of Art. 293 of the Code of Civil Procedure of Ukraine, etc.

Examples of cases on the protection of information rights for which no special jurisdiction has been established are, in particular, cases on invalidation of agreements, cases on the protection of the rights of personal data subjects, on appealing against decisions, actions, or inaction of supervisory authorities in the field of telecommunications, and others.

As for the jurisdiction of cases on the protection of information rights, it is primarily influenced by such factors as the legal status of the parties to the dispute and the nature of the disputed legal relations.

CONCLUSIONS

A study of the judicial protection of information human rights in the context of the war in Ukraine has shown a significant impact of martial law on the implementation and guarantee of these rights. Analyzing general and special methods of protection, the paper characterizes their legal nature, in particular, mechanisms for refuting false information, prohibiting the dissemination of information that violates human rights, and providing access to socially significant information.

Special attention is paid to the issues of compensation for property and moral damage caused as a result of violation of information rights. In this context, the European Court of Human Rights and the Supreme Court's legal positions are considered. It was found that even in wartime, courts must ensure the proportionality of restrictions and the effectiveness of legal protection.

An important aspect of the study is the substantiation of the legal grounds for applying methods of protecting information rights, as well as the legal analysis of Ukraine's derogation from some obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms. It has been found that such a derogation should be minimally necessary and should not create preconditions for uncontrolled restriction of information rights.

The grounds under which the judicial protection of information rights is justified and effective, particularly the criteria of proportionality, legality, and the presence of a real violation, are considered. The paper focuses on the need

to improve judicial practice on information rights, especially in the context of war, which causes new threats, such as cyberattacks, censorship, and personal data leaks.

On the basis of the analysis, recommendations are proposed to increase the effectiveness of judicial protection of information rights, including the development of judicial practice on compensation for moral damage, expanding the grounds for applying special methods of protection, and improving the mechanisms of judicial control over the restriction of access to information.

Thus, the results obtained can be used to improve legislation, judicial practice, and law enforcement in the field of protection of information human rights, which is especially relevant under martial law in Ukraine.

SUMMARY

This study provides a detailed analysis of the methods for protecting human information rights that can be applied by Ukrainian courts, considering the legal framework of martial law. The relevance of the research is determined by the current state of human information rights protection in Ukraine and the challenges posed by the war, which has led to a significant increase in violations of these rights.

The author thoroughly examines both general and specific methods of protecting human information rights, offering a detailed legal characterization based on national judicial practice. The study formulates an original definition of the concept of «protection of human information rights» and identifies the legal properties of this mechanism. Special attention is given to specific protection methods, such as refuting false information, prohibiting the publication of materials containing harmful or prohibited content, and preventing restrictions on access to information of public interest.

Additionally, the research addresses the issue of the award of pecuniary and non-pecuniary damages to individuals as participants in information relations. In this context, the study analyses the scope of losses subject to compensation in information relations and the peculiarities of applying these protection methods. To ensure the practical significance of the research, the legal positions of the European Court of Human Rights and the Supreme Court of Ukraine are extensively used.

The conclusions highlight key aspects of implementing judicial protection mechanisms for human information rights in the context of wartime challenges. The study also proposes specific recommendations for the development of judicial practice in relevant disputes.

References

1. Венгер В., Заярний О. Правовий аналіз основних моделей інституалізації державного контролю у сфері персональних даних та доступу до публічної інформації в Україні. Київ. 2020 р., 30 с. URL: https://rm.coe.int/legal-analysis-data-ua/16809ee077

2. Конвенція про захист прав людини і основоположних свобод від 04.11.1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004.

3. Конституція України від 28.06.1996 р. URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр.

4. Довідник із застосування статті 8 Європейської конвенції з прав людини – Право на повагу до приватного і сімейного життя, житла і кореспонденції. Рада Європи/Європейський суд з прав людини, 2018. 118 с. URL: https://www.echr.coe.int/Documents/Guide_Art_8_UKR.pdf.

5. Astol, L. Legal Analysis of the Derogation Made by Ukraine under Article 15 of the European Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights / L. Apostol. – Strasbourg: Council of Europe, 2022. – 40 p. URL: https://rm.coe.int/legal-

6. Постанова Великої Палати Верховного Суду у справі № 925/1265/16 від 22.08.2018 року. URL: view-source:https://zakononline.com.ua/court-decisions/show/76474144

7. Кохановська О. В. Інформація як немайнове благо та захист інформаційних прав: науковий висновок. URL: Верховний Суд України

8. Заярний О. А. Адміністративна деліктологія в інформаційній сфері: проблеми теорії та практики: дис. докт. юрид. наук: спец. 12.00.07. Київ, 2018. С. 318 URL: http://scc.univ.kiev.ua/upload/iblock/d52/dis_Zaiarnyi%20O.A..pdf

9. Цивільний кодекс України : Закон України від 16.01.2003 р. № 435-IV (редакція від 14.08.2021). URL: https://zakon.rada.gov.ua/laws/show/435-15.

10. Про судову практику у справах про захист гідності та честі фізичної особи, а також ділової репутації фізичної та юридичної особи: Постанова Пленуму Верховного Суду України від 27.02.2009 року № 1. URL: https://zakon.rada.gov.ua/laws/show/v_001700-09/conv#o4.

11. Огляд судової практики Касаційного цивільного суду у складі Верховного Суду у справах про захист гідності, честі та ділової репутації. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Ogliad_KCS.pdf

12. Постанова Верховного Суду від 14 липня 2021 року у справі № 757/14418/20-ц (провадження № 61-4424св21). URL: https://reyestr.court.gov.ua/Review/98454238

13. *Chahal v. the United Kingdom*, 15 November 1996, *Reports of Judgments and Decisions 1*996-V[1] Постанова колегії суддів Касаційного господарського суду у складі Верховного Суду**.** URL: Єдиний державний реєстр судових рішень**.**

14. Рішення Конституційного Суду України у справі за конституційним поданням Жашківської районної ради Черкаської області щодо офіційного тлумачення положень частин першої, другої статті 32, частин другої, третьої статті 34 Конституції України від 20 січня 2012 року № 2-рп/2012. URL: https://ccu.gov.ua/sites/default/files/ndf/2-rp/2012.doc

15. Про практику застосування адміністративними судами законодавства про доступ до публічної інформації: Постанова Пленуму Вищого адміністративного суду України від 29.09.2016 року № 9. URL: https://zakon.rada.gov.ua/laws/show/v0010760-16/conv#n18

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