

НС(Р)Д, – надзвичайно сприяло виникненню секретних чатів, використання «сірих» телефонів, сім-карт та телефонних номерів інших країн.

Поряд з цим збільшується кількість судових проваджень за фактами протиправного використання працівниками правоохоронних органів технічних засобів контролю, незаконного одержання та збуту інформації про телефонні з'єднання, «прослуховування на замовлення», збут спеціальних технічних засобів. При цьому, навіть кількість вироків у справах цієї категорії жодним чином не дає уяви про масштаб застосування правоохоронними органами власних можливостей для контролю за поведінкою громадян. Однією з причин такої тенденції є таємність проведення НС(Р)Д, що хоча і є необхідною їх властивістю, проте надає можливість уникати належного контролю з боку держави та суспільства.

## **INTERNATIONAL AND NATIONAL MECHANISMS OF GUARANTEEING THE PROTECTION OF THE RIGHTS OF VICTIMS IN THE CONDITIONS OF ARMED CONFLICT**

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***Problem statement and its connection with important scientific or practical tasks.*** The protection of civilians, the wounded and the sick, as well as prisoners of war and children, is confirmed by the provisions of the first Additional protocol to the Geneva Conventions [1]. They extend the scope of such protection to any person under the authority of a party, which is involved in the conflict and do not enjoy a more favorable treatment under the Geneva Conventions in the context of an international armed conflict[1]. The commission of a number of acts is prohibited and will remain prohibited

at any time and in any place, regardless of whether they are committed by representatives of civil or military bodies (violence against life, health and physical and mental condition of persons; outrage to human dignity; taking hostages; collective punishment; coercion into prostitution or indecent assault in any form [1]. Some of these actions are considered serious violations of international humanitarian law, such as: murder, torture, mutilation and hostage-taking (serious violations of the Geneva Conventions and the Additional protocol); abuse of human dignity, collective punishment and committing sexual violence, including coercion into prostitution (war crimes in accordance with customary international humanitarian law), for the commission of which the criminal liability must be provided.

As it is noted in the scientific literature with reference to specific facts, most cases of sexual violence, that are related to the armed conflict in eastern Ukraine took place in the context of the deprivation of liberty by illegal armed formations. In such cases, sexual violence was directed against both men and women. Beating and electric shock to the genital area, rape, threats of rape, and forced exposure were used as methods of torture and cruel treatment to punish, humiliate, or confess. Facts of detentions, abductions, rapes, injuries or killings of victims' relatives, including their children and women, are known. In most cases, sexual violence was also used to force detainees to give up their property or perform other acts that were required by perpetrators as an obvious condition of their safety and release, in areas, which had been controlled by illegal armed formations [2].

At the national level, the Constitution of Ukraine enshrines the fundamental principles of non-discrimination and humane treatment, and provides that everyone has the right to respect for his or her dignity, religious beliefs and practices in all situations (Constitution of Ukraine, 1996). With regard to the establishment of criminal liability for serious violations of international humanitarian law, it should be noted that the content of the provisions of the art. 438 (Violation of laws and customs of war) of the Criminal code of Ukraine is generalized enough, for covering the full range of serious offenses, such as murder, torture, hostage-taking, pimping or Involvement of a person in prostitution, etc.

First of all, let's turn to the basic guarantees that are provided to women internationally and nationally during an international armed conflict.

Under the first Additional protocol, women are given special protection when their freedom is restricted for reasons that are related to the armed conflict [1]. For example, they are kept in rooms that are separate from those for men (or if women are part of families, such women are kept in the same room with their families), in addition, they are under the direct supervision of women [1]. Cases of pregnant women and mothers of young children on whom such children depend, who are arrested, detained or interned for

reasons that are related to the armed conflict, are considered as a matter of priority [1].

It should be noted that the Criminal Executive Code of Ukraine and the Criminal Procedure Code of Ukraine define specific mechanisms for the protection of women and families in peacetime. However, these provisions were not intended to be applied in time of armed conflict, but remain relevant today as they can be applied for the implementation of international humanitarian law and be an informative source of recommendations for an appropriate approach. In particular, the Penal Code provides for the separate detention of women and men during detention [4]. In addition, the Criminal Procedure Code of Ukraine stipulates in the art. 535 that imprisonment may be postponed in the case of pregnancy of a convicted person or in the availability of a child under the age of three. Also, this article stipulates not only that during the execution of sentences the court in criminal cases should consider women's cases as a matter of priority (in accordance with the international standard), but also that the judge should consider releasing pregnant women and women with children under the age of three from liability [5].

The guide to the application of norms of international humanitarian law in the Armed Forces of Ukraine contains a similar provision that provides for the separation of men and women during captivity (Order of the Minister of Defense of Ukraine, 2004). However, the Guide to the application of norms of international humanitarian law in the Armed Forces of Ukraine do not contain provisions regarding most international requirements, namely: families should be kept in family blocks; women should be under the direct supervision of women; the cases of pregnant women and mothers of young children on whom such children depend, who are arrested, detained or interned for reasons that are related to armed conflict, are considered as a matter of priority.

In **conclusion**, International humanitarian law places considerable emphasis in its provisions on providing the protection of women, in particular protection against rape, coercion into prostitution or any other form of encroachment on their morality (Geneva Convention, 1949). Thus, committing sexual violence, in particular rape (the article 152 of the Criminal Code of Ukraine) and pimping or involving a person in prostitution (the article 303 of the Criminal Code of Ukraine) (Order of the Minister of Defense of Ukraine, 2004), constitutes a serious violation of the international humanitarian law in accordance with its customary norms. Progressive ones, given the prospects of the specified by us problem regarding developing legal mechanisms of restoring the rights of victims, which are violated as a result of armed aggression in the East of Ukraine, are the provisions of the draft Law of Ukraine «On protection of property rights and other real rights of persons, who are affected by the armed aggression», that was registered

under № 5177 from 01.03.2021, the purpose of which is the protection of property rights of persons that are violated as a result of armed aggression through the introduction of mechanisms of restitution, as well as the compensation for property damage that has been caused to victims of the armed aggression in accordance with international and European human rights standards, in particular the practice of the European Court of Human Rights.

#### **References:**

1. Additional Protocol I to the Geneva Conventions, 1977. URL: <https://ihl-databases.icrc.org/ihl/INTRO/470>
2. Victims of the armed conflict in eastern Ukraine in 2014-2018 Kyiv 2019. URL: [https://civilmplus.org/wp-content/uploads/2019/01/Web\\_Victim\\_A5\\_ukr.pdf](https://civilmplus.org/wp-content/uploads/2019/01/Web_Victim_A5_ukr.pdf).
3. Constitution of Ukraine, Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996 URL: <https://rm.coe.int/constitution-of-ukraine/168071f58b>
4. Criminal Enforcement Code of Ukraine: Law of Ukraine of July 11, 2003 № 1129-IV. URL: <https://www.legislationline.org/documents/action/popup/id/16257/preview>
5. Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012 № 4651-VI. URL: <https://rm.coe.int/16802f6016>

### **ОСОБИСТЕ ЗОБОВ'ЯЗАННЯ, ЯК ОДИН ІЗ АЛЬТЕРНАТИВНИХ ВИДІВ ЗАСТОСУВАННЯ ЗАПОБІЖНИХ ЗАХОДІВ, НЕ ПОВ'ЯЗАНИХ З ТРИМАННЯМ ПІД ВАРТОЮ**

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Із запровадженням нового КПК України на всіх стадіях кримінального провадження відбулось суттєве законодавче реформування. Реформи торкнулись і питань застосування запобіжних заходів.

Так, у новому КПК України зникли через застарілість та неефективність архаїчні запобіжні заходи, які були «успадковані» від СРСР, а