

## **DEROGATION FROM RIGHT TO LIFE RESULTING FROM LAWFUL ACTS OF WAR**

The right to life is enshrined in the constitutions of many countries and declared as the highest legal norm for society. The right to life is a fundamental principle of all other rights as all other rights lose their meaning and value in the case of death of the person.

At the universal level protection of the right to life is guaranteed by the norms of the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the Second Optional Protocol to the International Convention on Civil and Political Rights. It is recognized as such in the UN Charter, the violation of which threaten international peace and security [1; 4]. The development of international humanitarian law shows an intention on the part of states to offer protection by the various multilateral treaties applicable during an international armed conflict or an occupation of territory for individuals. Under the art. 2 Convention for the Protection of Human Rights and Fundamental Freedoms 1950, a person may be deprived lawfully of his life if this is absolutely necessary in defence of any person from unlawful violence or in order to quell a riot or insurrection [2]. Also, in according with art. 15 Convention High Contracting Party may take measures derogating from its obligations, including from right to life resulting from lawful acts of war. For example, this article provides immunity from responsibility for the state, in case of death of members of its own armed forces. However, this provision applies to lawful acts of war in situations of armed conflict.

The practice of European Court of Human Rights is saturated on the situation in the area of derogation from right to life. Prime example is judgment in the case of *Cyprus v. Turkey*. The Court held that there had been the following 14 violations of the Convention, including a continuing violation of Article 2 (right to life) of the Convention concerning the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances [5]. Also case of *Meryem Çelik and others v.*

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Turkey. This case is concerned of the claimed invasion of the village near Hakkari (southeast Turkey) committed by Turkish security services in July 1994. Applicants -14 Turkish citizens of Kurdish origin that are close family (wife, brothers and fathers) 13 persons disappeared, and one person that allegedly killed during the raid. The Court found a violation of Article 2 (right to life) of the Convention due to disappearance and likely death of 12 relatives of the applicants, the murder of a family applicants and ineffective investigation of these disappearances and murders [7].

As for the situation in Ukraine, it is define as anti-terrorist operation (ATO). UN Special Rapporteur on the extrajudicial, summary executions or arbitrary executions Christof Heyns, published a report on the visit to Ukraine. The document titled «Lives lost in an accountability vacuum» published by the Office of the UN High Commissioner for Human Rights. Heyns visited during 8-18 September 2015 several cities, including staying in the area ATO where he met with officials of various levels, representatives of government, human rights activists, lawyers, representatives of NGOs, diplomats, including Russian and OSCE observers.[3]

As a result of his visit, Christof Heyns expressed concern about fulfillment by Ukraine obligations in the guarantee of the rights and freedoms of all persons who are subject to its overbearing influence, including the proper reaction to civilian casualties. «I am particularly concerned by the allegations of indiscriminate shelling, armed forces of both sides taking positions and placing artillery in civilian-populated areas (including at schools and hospitals) and the use of weapons with indiscriminate effects,» the expert said. Actually, there is a situation in which the state is using Art. 15 of the European Convention on Human Rights in part of lawful acts of war, but legally don't have a right to do it.

Even within the ATO should start from the fact that according to Art. 3 of the Constitution of Ukraine and international obligations (for example, under European Convention on Human Rights, the Universal Declaration of Human Rights and other legal acts), ensuring human rights and freedoms is the main duty of the state. Based on this rules Ukraine has all responsibility in case of inability to perform obligation, including, in the case of armed conflict or an occupation of territory. Unfortunately, the question of specific legal mechanisms of state responsibility for violations of human rights during the conflicts in the ATO is not provided, because the qualification of the conflict remains open. Generally, there are two points of view on the situation in Ukraine.

On the one hand, the terms «terrorism», «ATO», «area of ATO holding », are used in the Law of Ukraine «On Combating Terrorism», signed on March 20, 2003. It had made six changes, which has actualized document under the Ukrainian-Russian situation in 2014-15 years. The law gives the definition of terms. Another state as a figurant of conflict or reason is not mentioned in this law. Thus, the anti-terrorist operation is regarded as an internal conflict and taking name «conflicts not of an international character» Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.

On the other hand, the situation in Ukraine is considered as aggression of Russia and has the character of international conflict, as evidenced by PACE Resolution «The progress of the Assembly's monitoring procedure (October 2013-September 2014)» №2018(2014). The resolution of the Parliamentary Assembly of the Council of Europe is recognizes the direct military intervention of Russia in Ukraine. Also it required to stop providing any military support to militants to withdraw its troops from the east of Ukraine, to refrain from any actions that exacerbate the situation in the region. Actually, as in the European Parliament resolution of 18 September 2014 on the situation in Ukraine and the state of play of EU-Russia relations (2014/2841(RSP), it was confirmed the presence of Russian forces in the Ukraine. Consequently, Ukraine may refer to the art. 15 Convention for the Protection of Human Rights and Fundamental Freedoms and derogation from right to life resulting from lawful acts of war, which is supported by domestic resolution of Parliament «On Ukraine derogation from certain commitments under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms» (art.10) [6]. According to art. 2 Russian Federation as a state that is actually occupied and controls of Donetsk and Lugansk regions, responsible for the observance and protection of human rights in these territories both international humanitarian law and the international law of human rights.

But situation requires more concrete legal determination of Ukrainian situation from politicians.

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## **СПІВРОБІТНИЦТВО УКРАЇНИ З РАДОЮ ЄВРОПИ У СФЕРІ ЗАХИСТУ ПРАВ ЛЮДИНИ ЯК КРОК У ЄВРОПЕЙСЬКИЙ ПРОСТІР**

Як демократична, правова, незалежна держава Україна прагне піднятися на рівень високорозвинених країн, тому спрямовує зусилля на інтеграцію у Європейський простір. Досягнення мети можливе, але тернистим шляхом реформування національного законодавства відпо-

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