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THE RIGHT TO FREEDOM OF EXPRESSION OF POLITICAL VIEWS IN THE CONTEXT OF ARMED CONFLICT: CURRENT HUMAN RIGHTS CHALLENGES

The article is devoted to a comprehensive study of the right to freedom of expression of political views during armed conflict. It examines the nature of this right as one of the fundamental elements of a democratic society, defines its content, functions, international legal guarantees, and national mechanisms for its realization and limitation. Given the ongoing armed aggression against Ukraine, the issue of the permissible limits of state interference in freedom of expression under the pretext of national security protection has become particularly relevant. The article analyzes the norms of international law, including the provisions of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the European Convention on Human Rights (ECHR), recommendations of the Council of Europe, and the positions of the OSCE, the United Nations, and leading international organizations such as ARTICLE 19 and CPJ. Special attention is given to the case law of the European Court of Human Rights, which establishes key approaches to the protection of political expression even under crisis conditions. The study presents a number of real-life examples from the Ukrainian context, such as the blocking of media outlets by decisions of the National Security and Defense Council, illegal surveillance of journalists, administrative pressure on editorial offices, and increased self-censorship under martial law. These phenomena are analyzed in terms of their compliance with the Constitution of Ukraine and international legal standards. It is determined that the existing legal protection mechanisms are insufficient or ineffective, which threatens the democratic balance of power during wartime. The author proposes a set of specific measures to maintain the balance between security needs and freedom of expression, including the harmonization of national legislation with international standards, the creation of independent institutions to monitor restrictions on freedom of speech, the enhancement of legal and physical protection for journalists, the development of digital and media literacy among the population, as well as cooperation with technology platforms to ensure transparent content blocking procedures. It is concluded that the right to freedom of expression of political views plays no less important a role during wartime than in peacetime: it serves as a safeguard against authoritarianism, an indicator of governmental legitimacy, and a foundation for the post-war democratic reconstruction of the state. Ignoring this dimension not only violates Ukraine's international obligations but also poses a threat to internal political stability in the context of national recovery.

Key words: *freedom of expression, the right to freedom of expression of political views, armed conflict, human rights, ECHR, national security, journalists, democratic society.*



Балинська О. М., Слинко Т. М. Право на свободу вираження політичних поглядів в умовах збройного конфлікту: сучасні виклики прав людини

Стаття присвячена комплексному дослідженню права на свободу вираження політичних поглядів в умовах збройного конфлікту. У ній розглядається природа цього права як одного з фундаментальних елементів демократичного суспільства, визначається його зміст, функції, міжнародно-правові гарантії та національні механізми реалізації й обмеження. З огляду на триваючу збройну агресію проти України, актуалізовано питання щодо меж допустимого втручання держави у свободу вираження під приводом захисту національної безпеки. У статті здійснено аналіз норм міжнародного права, зокрема положень ст. 19 Міжнародного пакту про громадянські і політичні права, ст. 10 Європейської конвенції з прав людини, рекомендацій Ради Європи, позицій ОБСЄ, ООН та доктрини провідних міжнародних організацій. Особливу увагу приділено практиці Європейського суду з прав людини, які закріплюють ключові підходи до захисту свободи політичного висловлення навіть у кризових умовах. У межах дослідження представлено низку реальних прикладів з українського контексту, таких як блокування медіаресурсів за рішенням РНБО, незаконне стеження за журналістами, адміністративний тиск на редакції та збільшення самоцензури в умовах воєнного стану. Ці явища проаналізовано з точки зору відповідності нормам Конституції України та міжнародного права. Визначено, що наявні механізми правового захисту виявляються недостатніми або неефективними, що створює загрозу демократичному балансу влади в період воєнних дій. Запропоновано систему конкретних заходів для збереження балансу між потребами безпеки та свободою вираження, зокрема гармонізацію законодавства з міжнародними стандартами, створення незалежних інституцій контролю за обмеженнями свободи слова, посилення юридичного і фізичного захисту журналістів, розвиток цифрової та медіаграмотності серед населення, а також співпрацю з технологічними платформами щодо прозорих механізмів блокування контенту. Зроблено висновок, що свобода вираження політичних поглядів у воєнний час виконує не менш важливу функцію, ніж у мирний: вона слугує запобіжником авторитаризму, індикатором легітимності влади та фундаментом післявоєнної демократичної реконструкції держави. Ігнорування цього аспекту не лише порушує міжнародні зобов'язання України, а й загрожує внутрішній політичній стабільності в умовах відбудови.

Ключові слова: *свобода вираження, право на свободу вираження політичних поглядів, збройний конфлікт, права людини, ЄСПЛ, національна безпека, журналісти, демократичне суспільство.*

Introduction. Freedom of political expression is a cornerstone of a democratic society and one of the basic human rights enshrined in national legislation and international treaties. However, in the context of an armed conflict, in particular during a full-scale war in Ukraine, the exercise of this right faces serious challenges. The state is forced to respond to threats to national security, fight against hostile propaganda, spread of disinformation and manipulative content, which often leads to restrictions on freedom of speech, blocking of media resources, and persecution for expressing alternative opinions. Such restrictions require in-depth legal analysis, as they must comply with the principle of proportionality, be legal, justified and necessary in a democratic society. In the light of new challenges – hybrid warfare, information campaigns, and the massive spread of social media as channels of political communication – there is a need to rethink the limits of permissible state interference with freedom of political expression. Particular attention should be paid to the protection of human rights in a state of emergency or martial law, when the temptation for the state to tighten control over the information space becomes particularly strong. Accordingly, the study of



the legal aspects of freedom of political expression during an armed conflict is extremely relevant given the need to preserve democratic principles and counteract authoritarian practices in the most difficult conditions.

The issue of freedom of expression in emergency situations and conflicts is reflected in the works of such Ukrainian scholars as M. Blikhar, who studied the socio-political and administrative-legal dimensions of freedom of political opinion, O. Minchenko, who analyzed the balance between freedom of expression and protection of reputation in the case law of the ECHR, and M. Yarmol, who examined the mechanisms of legal protection of freedom of opinion in Ukraine. A comprehensive theoretical and practical study of the constitutional guarantees of this right was carried out by K. I. Barnych. The international legal aspects of freedom of expression and political thought are thoroughly covered in the works of E. Fox-Disent and E. Criddle, who examined the legal limits of human rights during the state of emergency. D. McGoldrick analyzed in detail the relationship between the emergency powers of states and international law, and M. Novak in his commentary on the International Covenant on Civil and Political Rights provided a thorough interpretation of freedom of speech. Despite the significant scientific achievements in this area, the issue of the correlation between freedom of expression and state restrictions in the face of threats remains open and requires further research.

Problem statement. The purpose of the article is to analyze the theoretical and practical aspects of the right to freedom of political expression in the context of armed conflict, to study the existing challenges to human rights in this area, and to substantiate the legal mechanisms which allow for a balance between democratic freedoms and the interests of state security.

In the current military context, in particular during Russia's full-scale aggression against Ukraine, the right to freedom of expression is of strategic importance. It encompasses three integral components: the right to have an opinion, the right to receive and impart information, and the right to participate in socio-political discourse – enshrined in Article 34 of the Constitution of Ukraine [3], Article 19 of the International Covenant on Civil and Political Rights (ICCPR) [5] and Article 10 of the European Convention on Fundamental Rights and Freedoms (ECHR) [2]. These freedoms are the foundation of a democratic system, and their restriction, even under martial law, poses a real threat of turning a democratic system into an authoritarian one. In particular, if freedom of expression is viewed solely as a tool of national security and not as an integral part of democracy, it can contribute to its transformation into a means of state control. Thus, the spread of unjustified restrictions under the guise of security needs actually creates preconditions for the consolidation of authoritarian tendencies [4, p. 44-46].

In general, freedom of expression performs a number of key functions: informational (providing access to socially important information), communicative (participation in the formation of public opinion), control (public oversight of the authorities), and identification (formation of personal and political identity). In wartime, these functions become even more important, as the loss of freedom of critical thinking and expression creates conditions for uncontrolled power.

Ukraine's legal framework allows for temporary restrictions on freedom of expression and speech, including the blocking of media and Internet resources. However, the lack of clear criteria – legality, necessity, proportionality – creates a risk of a legal vacuum. As correctly noted in the scientific literature, «restrictions on freedom of speech should be adapted through constant monitoring and a balance between security and the democratic principle» [6, p. 12-16]. This means that even in wartime, the state has no right to interfere in public discourse without justification.

At the international level, experts insist on the need for clear guarantees of freedom of expression during armed conflicts. OSCE representatives on freedom of the media in their speeches repeatedly emphasize the unconditional protection of journalists as civilians in conflict situations, stressing that any violation of this status is a direct violation of international humanitarian law. This position is fully in line with the Geneva Conventions, which recognize journalists as persons who should enjoy the same guarantees as civilians in times of conflict.

A special concern is the position of the Council of Europe, set out in the report «Not a target» (2022), which explicitly states that states should not only not interfere with the work of journalists



in the conflict zone, but also actively ensure conditions for their safety. The document emphasizes the obligation to prevent not only physical attacks, but also psychological, administrative or legal pressure on media representatives [13]. As practice in Ukraine shows, the lack of effective mechanisms to control the actions of law enforcement agencies in this regard leads to abuses, such as surveillance of journalists, blocking of critical media and attempts to discredit investigators. ARTICLE 19, a reputable international organization, in its Joint Declaration on Freedom of Expression in Armed Conflict (2022) proposed four basic principles that should guide states in imposing any restrictions: legality, legitimate aim, necessity in a democratic society, and proportionality [11]. These principles are part of the case law of the European Court of Human Rights (ECHR), which also forms the doctrine of legal interpretation of the limits of freedom of speech in the face of threats. This is clearly evidenced by the ECHR judgment in the case of *Lyashko v. Ukraine* (2006) [7], where the Court found a violation of Article 10 of the ECHR, as the accusation of defamation against the journalist for criticizing government officials was not justified in the context of the public interest. In the case of the *Institute of Economic Reforms v. Ukraine* (2016) [9], the ECtHR confirmed the right to political satire and critical exaggeration as permissible forms of journalistic expression. In the equally important case of *Sedletska v. Ukraine* (2021) [8], the ECtHR protected the journalist's right not to disclose sources of information, recognizing the interference of the authorities as disproportionate.

This is complemented by the position of the UN Special Rapporteur on the Protection of Freedom of Expression, Irene Khan, who in her speech in 2024 stated that in today's conflict situation, media representatives and journalists often face unprecedented levels of persecution, legal pressure, and criminalization of criticism of the authorities [10]. She emphasized the importance of adhering to international standards even in countries that are engaged in a defensive war, because war does not abolish fundamental human rights, but only puts them in a more complex legal framework where the balance between freedom and security is extremely important.

Thus, the international legal doctrine clearly states that armed conflict is not a ground for uncontrolled restriction of freedom of expression, and guarantees of protection of journalists, as well as the public right to information, should be subject to priority protection by the state. Here, it is worth emphasizing a number of possible threats and challenges.

1. Censorship under the guise of security, without appeal procedures.

In wartime, the state has the right to restrict information to protect national security, but in Ukraine, there are cases when this right is used not to curb hostile propaganda, but to suppress criticism of the government. The absence of a procedure for appealing such decisions contradicts the rule of law and violates Articles 6 and 10 of the European Convention on Human Rights [2].

2. Illegal surveillance and pressure on journalists, which violates both the Constitution and the Geneva Conventions. During the war, there are cases when law enforcement agencies organize surveillance of journalists or try to influence the content of materials, which violates Article 31 of the Constitution of Ukraine [3] and international norms on the protection of journalists as civilians. An example is the case of Bihus.info journalists, who were subjected to covert video surveillance without a court order [1].

3. Internet blocking that restricts the right to information.

Military-civilian administrations or law enforcement agencies may impose restrictions on access to the Internet in certain regions. In some cases, such actions are not accompanied by official justification, which contradicts the principles of necessity and proportionality. Restrictions on the digital rights of citizens undermine not only the right to information, but also hinder the work of the media, digital human rights defenders and volunteers.

4. Impunity for violators, which destroys trust in the judicial system.

In cases of violation of journalists' rights, interference with editorial policy or physical attacks, pre-trial investigation bodies either do not open cases or close them without proper investigation. This creates a sense of impunity and undermines the legitimacy of the human rights protection system in the eyes of the public.

5. Self-censorship out of fear, which reduces the quality of public debate.



The level of self-censorship is growing in the media environment. This leads to a narrowing of the information field, weakening of public control and loss of trust in independent media.

Given these threats and challenges, a comprehensive strategy to protect freedom of expression should be implemented, which will include the following: harmonization of legislation with international standards (national legislation should include provisions that clearly establish the limits of state interference with freedom of expression and speech during martial law; legislation should contain mechanisms for verifying the legality of restrictions, including the possibility of judicial review, and this should be in line with the principles established in Article 19 of the ICCPR and Article 10 of the ECHR); creation of independent monitoring (judicial, parliamentary, media regulator) (it is advisable to create independent depoliticized supervisory bodies (for example, a media ombudsman or a parliamentary committee) that will monitor compliance with standards of freedom of speech in conflict conditions, provide recommendations and stop illegal actions of state institutions in relation to the media); protection of journalists as civilians (journalists should receive a clearly defined status provided for by international humanitarian law, it is necessary to ensure: the physical safety of journalists (even in front-line regions); protection of personal data and information sources; lack of criminal prosecution for the performance of professional duties); fair investigation of crimes against the media, with the possibility of applying to the ICC, ECHR (law enforcement agencies should respond to all cases of violations of journalists' rights, as well as carry out an effective investigation in compliance with ECHR standards; in case of inaction of the national authorities, journalists have the right to apply to international judicial institutions); cooperation with IT-platforms for transparent blocking of content and appeals (it is necessary to develop algorithms for cooperation of the state with technology companies, such as Meta, Google, Twitter, regarding transparency in blocking content, platforms must notify the user about the reasons for blocking and provide mechanisms for appeal).

Conclusions. The issue of freedom of expression of political views in conditions of armed conflict is not only a legal, but also a political, social and moral challenge. The analyzed international standards, positions of scientists, ECHR cases and specific examples from Ukrainian practice show that armed conflict is not and cannot be an excuse for uncontrolled restriction of freedom of speech. In Ukraine, despite the objective need to protect the information space, there are cases of excessive interference with the work of journalists, impunity, blocking access to information without transparent procedures, and increased self-censorship. This creates risks of gradual erosion of democratic principles, in particular in terms of the political responsibility of the authorities to society. International legal mechanisms, including ECHR decisions, ARTICLE 19 joint declarations, the positions of the OSCE and the Council of Europe, clearly state: freedom of expression should be limited only in exceptional cases, in accordance with the principles of legality, necessity, proportionality and ensuring independent control. The proposed strategy for the protection of freedom of expression in time of war – harmonization of national legislation with international standards, creation of independent institutions of control, ensuring legal protection of journalists, effective investigation of crimes, development of media literacy and transparent cooperation with technological platforms – is a prerequisite not only for respect for human rights, but also for the long-term functioning of a democratic state. Preserving freedom of expression even in the most difficult times is the key to preventing authoritarianism, the basis for restoring citizens' confidence in institutions and guaranteeing political stability in the conditions of the post-war reconstruction of the country.

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