

Problems of legal protection of civilian persons deprived of personal liberty as a result of the armed aggression of the Russian Federation against Ukraine

Problemas de protección jurídica de las personas civiles privadas de la libertad personal como consecuencia de la agresión armada de la Federación Rusa contra Ucrania

Problemas de proteção legal de civis privados de liberdade pessoal como resultado da agressão armada da Federação Russa contra a Ucrânia

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Received: July 16th, 2024

Accepted: September 14th, 2024

Available: December 2nd, 2024

How to cite this article:

Viktor Filatov, Oksana Zuieva, Inna Yefimova, Anzhelika Pylypenko & Yevhen Leheza. *Problems of legal protection of civilian persons deprived of personal liberty as a result of the armed aggression of the Russian Federation against Ukraine*. DIXI, vol. 27, n°. 1, enero-junio 2025, 1-13.

DOI: <https://doi.org/10.16925/2357-5891.2025.01.04>

Research article. <https://doi.org/10.16925/2357-5891.2025.01.04>

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Abstract

The article deals with the issues of legal protection of Ukrainian citizens detained by the aggressor state. The authors focus on civilians, who have a special international legal status in wartime. Three clusters of problems are analyzed separately: issues of national legislation, organizational and structural problems, and issues of international legal acts application. It is emphasized that the presence of these problems inhibits the process of making a special mechanism for identification and return to Ukraine of civilians held by the aggressor state. It is noted that the imperfection of national legislation causes the existence of a number of systemic problems of social and economic, and organizational and legal protection of civilians who are detained and held by the aggressor state. The reasons are given for organizational and structural problems that are mainly related to the absence of a Patron State, which also complicates the process of identification and return of Ukrainian citizens held by the aggressor state. It was established that the key problem of the international legal acts application in the researched area is the declarative nature of the forms of international institutions' influence that are unable to force the aggressor state to stop violence and systematic violations of human rights. The article offers recommendations for authorities and civil society regarding the development in Ukraine of a special mechanism for the identification and return of civilians held by the aggressor state.

Key words: Aggressor state, armed aggression, guarantee system, international legal acts, legal status, missing person, national legislation, state policy, temporarily occupied territory.

Resumen

El artículo trata sobre los problemas de protección legal de los ciudadanos ucranianos detenidos por el estado agresor. Los autores se centran en los civiles, quienes tienen un estatus legal internacional especial en tiempos de guerra. Se analizan por separado tres grupos de problemas: cuestiones de legislación nacional, problemas organizativos y estructurales, y cuestiones de aplicación de actos jurídicos internacionales. Se enfatiza que la presencia de estos problemas dificulta la creación de un mecanismo especial para la identificación y retorno a Ucrania de los civiles detenidos por el estado agresor. Se señala que la imperfección de la legislación nacional causa la existencia de varios problemas sistémicos en la protección social, económica, y organizativa y legal de los civiles detenidos por el estado agresor. Se explican las razones de los problemas organizativos y estructurales, que están principalmente relacionados con la ausencia de un Estado Protector, lo que también complica el proceso de identificación y retorno de los ciudadanos ucranianos detenidos por el estado agresor. Se estableció que el principal problema en la aplicación de los actos jurídicos internacionales en el área investigada es la naturaleza declarativa de las formas de influencia de las instituciones internacionales, que son incapaces de obligar al estado agresor a detener la violencia y las violaciones sistemáticas de los derechos humanos. El artículo ofrece recomendaciones para las autoridades y la sociedad civil sobre el desarrollo en Ucrania de un mecanismo especial para la identificación y retorno de civiles detenidos por el estado agresor.

Palabras clave: Estado agresor, agresión armada, sistema de garantías, actos jurídicos internacionales, estatus legal, persona desaparecida, legislación nacional, política estatal, territorio temporalmente ocupado.

Resumo

O artigo trata das questões de proteção legal dos cidadãos ucranianos detidos pelo estado agressor. Os autores focam nos civis, que têm um status jurídico internacional especial em tempos de guerra. Três grupos de problemas são analisados separadamente: questões de legislação nacional, problemas organizacionais e estruturais, e questões de aplicação de atos jurídicos internacionais. Destaca-se que a presença desses problemas dificulta a criação de um mecanismo especial para a identificação e retorno à Ucrânia dos civis de-

tidos pelo estado agressor. Observa-se que a imperfeição da legislação nacional causa a existência de vários problemas sistêmicos de proteção social, econômica, organizacional e jurídica dos civis que estão detidos pelo estado agressor. São apresentadas as razões dos problemas organizacionais e estruturais, que estão principalmente relacionados à ausência de um Estado Protetor, o que também complica o processo de identificação e retorno dos cidadãos ucranianos detidos pelo estado agressor. Foi estabelecido que o principal problema da aplicação dos atos jurídicos internacionais na área pesquisa é a natureza declarativa das formas de influência das instituições internacionais, que são incapazes de obrigar o estado agressor a cessar a violência e as violações sistemáticas dos direitos humanos. O artigo oferece recomendações para as autoridades e a sociedade civil sobre o desenvolvimento na Ucrânia de um mecanismo especial para a identificação e retorno dos civis detidos pelo estado agressor.

Palavras-chave: Estado agressor, agressão armada, sistema de garantias, atos jurídicos internacionais, status legal, pessoa desaparecida, legislação nacional, política estatal, território temporariamente ocupado.

I. INTRODUCTION

Since the beginning of 2014, the aggressor state has been using in Ukraine the practice of illegally detaining and holding civilians in places of captivity. After the full-scale invasion in February 2022, this problem was significantly escalated due to the expansion of the geography of hostilities and the appearance of newly occupied territories. Also, our citizens are detained on the territory of the aggressor state, where they are illegally moved. Currently, almost twenty-five thousand citizens of Ukraine are considered missing under special circumstances and illegally deprived of their personal freedom as a result of the armed aggression of the Russian Federation against Ukraine. Most of them are kept without any charges, and the information about the places of their detention is hidden from their relatives and the Ukrainian authorities.

The situation is complicated by the unresolved issues of organizational and structural nature in Ukraine. Also, the practice of involving the Patron State in matters of returning Ukrainians illegally deprived of their liberty is undeveloped. In complex, the indicated problems show the ineffectiveness and imperfection of certain directions of the state policy regarding the return of civilians who are considered missing under special circumstances and providing them and their family members with a system of social and economic and organizational and legal guarantees. In this study, basing on the analysis of current legislation, international legal acts and the practice of their application, appropriate recommendations for making in Ukraine a special legal mechanism for the identification and return of civilians illegally detained and kept by the aggressor state are developed and proposed.¹

1 N. Halaburda, Ye. Leheza, V. Chalavan, V. Yefimov & I. Yefimova. *Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine*. JOURNAL OF LAW AND POLITICAL SCIENCES, vol. 29, no. 4. 2021. P. 100-121.

II. RESULTS AND DISCUSSION

1. National Legislation Issues

Civilians who are illegally detained by the aggressor state are a rather specific category of the conflict victims as they have appropriate international legal guarantees. However, this day the situation with the status of such persons is quite ambiguous in national legislation. Thus, currently, there is no clearly defined legal status of civilians who are illegally detained in the occupied territories or in the territory of the occupying country. Currently, the state has defined the following statuses for the specified category of citizens: 1) a person deprived of freedom as a result of the armed aggression of the Russian Federation against Ukraine²; 2) family members of persons deprived of their freedom as a result of the armed aggression of the Russian Federation against Ukraine; 3) a person missing under special circumstances³; 4) civilian hostage; 5) political prisoner. Such ambiguity in the definition of legal status is objectionable, as it prevents the specification of state guarantees and complicates the process of obtaining such guarantees.⁴

The abovementioned statuses are regulated by the following legal acts: 1) Law of Ukraine "On the Legal Status of Missing Persons in Special Circumstances", dated July 12, 2018, No. 2505-viii; 2) Law of Ukraine "On Social and Legal Protection of Persons Deprived of Personal Liberty as a Result of Armed Aggression Against Ukraine, and Their Family Members", dated January 26, 2022, No. 2010-ix; 3) Civil Code of Ukraine, dated January 16, 2003, No. 435-iv; 4) Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Implementation of the Law of Ukraine "On Social and Legal Protection of Persons Deprived of Their Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members", dated November 15, 2022, No. 1281.⁵

2 "On social and legal protection of persons deprived of their personal liberty due to the armed aggression against Ukraine, and their family members". Law of Ukraine dated January 26, 2022. No. 2010-ix. Voice of Ukraine. 2022. № 107.

3 "On the legal status of persons, missing under special circumstances". Law of Ukraine dated July 12, 2018. No. 2505-viii. Voice of Ukraine. 2018. № 140.

4 Ye. Kobrusieva, Ye. Leheza, K. Rudoi, O. Shamara & V. Chalavan. *International standards of social protection of internally displaced persons: Administrative and criminal aspects*. JURNAL CITA HUKUM INDONESIA LAW JOURNAL, vol. 9, no. 3. 2021. P. 461-484.

5 Some issues of implementation of the Law of Ukraine "On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression against Ukraine, and their Family Members". Resolution of the Cabinet of Ministers of Ukraine dated November 15, 2022. P. 1281. Governmental Courier. 2022. № 246.

It should also be noted that certain issues of legal regulation of the status of civilians who are illegally detained by the aggressor state are partially regulated by current legal acts. In particular, in Ukraine, certain issues of legal status are detailed in the following delegated legislations: 1) Resolution of the Cabinet of Ministers of Ukraine, dated April 18, 2018, No. 328⁶; and 2) Regulation on the Commission on establishing the fact of deprivation of personal liberty as a result of armed aggression against Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated November 15, 2022, No. 1281.⁷

The imperfection of legislative acts and by-laws causes the existence of a number of systemic problems of social, economic, organizational and legal protection of civilians who are illegally detained and kept by the aggressor state. In particular, Ukraine does not have a single institution authorized to carry out measures to search for and return such persons, although the existence of such an institution is provided for by the abovementioned by-laws. Also, Russian authorities' representatives refuse to provide information about detained Ukrainians even to their closest relatives, who have documented their family ties. In the absence of access by international humanitarian organizations and missions to illegally imprisoned citizens of Ukraine, the aggressor state can hide their whereabouts.⁸

Under such conditions, it is very difficult to ensure the search for justice and compensation for the victims of the conflict. A separate problem is the lack of access to lawyers for civilians. Compensation for the costs of legal assistance from the state

6 "On approval of the Procedure for the use of funds provided for in the state budget for the implementation of measures to protect and ensure the rights and freedoms of individuals, who are deprived (were deprived) of their personal freedom by illegal armed formations, the occupation administration and/or authorities of the Russian Federation for political reasons, as well as in connection with the public, political or professional activities of such persons, support for the specified persons and their family members, measures on the reintegration of the population of the temporarily occupied territories, the payment of state scholarships named after Levko Lukyanenko". Resolution of the Cabinet of Ministers of Ukraine dated April 18, 2018. Governmental Courier. 2018. № 83.

7 On approval of application forms to ensure social and legal protection of persons who have been deprived of personal liberty as a result of armed aggression against Ukraine, and their family members. Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine dated December 1, 2022. № 281. Official Gazette of Ukraine, no. 99. 2022. P. 165. Article 6247.

8 E. Villasmil, Ye. Leheza & L. Holovii. *Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022*. CUESTIONES POLÍTICAS, vol. 40, no. 73. 2022. P. 16-24.

for relatives is almost not available at the stage of searching for relatives and ensuring their protection in Russian courts.⁹

The problem is complicated by the suspension of the Embassy and all Consulates of Ukraine on the territory of the Russian Federation.¹⁰ This made it impossible to perform one of the most important functions assigned to consular institutions of Ukraine in accordance with Chapter VIII of the Consular Statute of Ukraine, which consists in monitoring compliance with the legislation of the host state and treaties concluded by Ukraine with this state and international treaties to which Ukraine and the host state are parties.¹¹

The relevance of this function has increased in the conditions of an international armed conflict, as trials of civilians accused of various crimes, the punishment for which may exceeds 15 years, are currently ongoing in the Russian Federation. Moreover, citizens of Ukraine are deprived of the right to legal assistance and do not have adequate protection in court or during pre-trial investigation. All this is happening against the backdrop of the aggressor state's refusal to fulfill its international obligations and adhere to fundamental international standards in the field of human rights. It is about a direct violation of the United Nations Charter and non-compliance with the Geneva Conventions and their Additional Protocols.

It is also necessary to mention the problem of crimes qualification related to civilians who are illegally detained and kept by the aggressor state in domestic criminal legislation. In particular, Article 438 of the Criminal Code of Ukraine provides for criminal liability for violating the laws and customs of war. It is about the following actions against citizens of Ukraine: 1) ill-treatment of prisoners of war or civilians; 2) expulsion of civilians for forced labor; 3) looting of national property in the occupied territory; 4) use of means of warfare prohibited by international law. However, this article does not regulate cases of forcible detention or keep of civilians by the occupying authority.¹²

9 Anatolii Matviichuk, Viktor Shcherbak, Viktoria Sirko, Hanna Malieieva & Yevhen Leheza. *Human principles of law as a universal normative framework*. CUESTIONES POLÍTICAS, vol. 40, no. 75. 2022. P. 221-231.

10 Nataliia Zadyraka, Yevhen Leheza, Mykola Bykovskiy, Yevhenii Zheliezniak & Yulia Leheza. *Correlation of legal concepts of administrative procedure and administrative liability in the sphere of urban planning*. JURNAL CITA HUKUM INDONESIA LAW JOURNAL, vol. 11, no. 1. 2023. P. 33-44.

11 Yevhen Leheza, Karina Pisotska, Oleksandr Dubenko, Oleksandr Dakhno & Artur Sotskyi. *The essence of the principles of Ukrainian law in modern jurisprudence*. RATIO JURIS (UNAUULA), vol. 18, no. 36. P. 379-398.

12 "Criminal Code of Ukraine". Law of Ukraine dated April 5, 2001. № 2341-III. Voice of Ukraine. 2001. № 107.

This may hinder the effective investigation of such crimes and the extradition of, if necessary, criminals from the Russian Federation or third countries.¹³

An option for solving this problem is draft law No. 2689 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law", which was adopted by the Verkhovna Rada of Ukraine back in 2021, but then the Parliament canceled its decision, and the document was not signed by the President of Ukraine.¹⁴ This document provides for the introduction of a number of crucial changes to the Criminal Code of Ukraine, in particular to Article 438 "War crimes against individuals". This article details the grounds for criminal liability for: direct or indirect displacement of a part of the civilians of the occupied territory beyond its borders; forcing citizens of the opposite side of the conflict to participate in military operations against their country; deportation and forced displacement of the civilians; depriving a civilian of the right to a fair and proper trial; contempt for human dignity; taking or holding a person as a hostage; illegal deprivation of liberty; sexual violence; torture and inhuman treatment; and manslaughter of a civilian.

2. Organizational and Structural Problems

The effectiveness of the state's policy in the sphere of the release of Ukrainian citizens who are illegally detained by the aggressor state depends on the particularity of the organizational approach, that is, the formation of structures within the state that have the appropriate powers. Also, the specified state policy depends on the government's application of international legal institutions provided for by the norms of international humanitarian law. Collectively, the organizational and structural aspects make appropriate conditions for quick identification and subsequent return of Ukrainian citizens to their homes. In the future, the specified aspects affect the implementation of certain areas of transitional justice, in particular, as regards compensation for the damage caused to the victims of the conflict. The use of organizational potential also allows systematizing the evidence base for international and national courts to identify and punish guilty persons, as well as to collect reparations from the aggressor state.¹⁵

13 Yevheniia Zhukova, Kostyantyn Bryl, Larysa Svystun, Yevheniia Kobrusieva & Yevhen Leheza. *Legal regulation of public administration of education and science*. CUESTIONES POLÍTICAS, vol. 41, no. 76. 2023. P. 336-346.

14 Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law". Available at: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804

15 Vyacheslav Tylchyk, Tetiana Matselyk, Viktor Hryshchuk, Olena Lomakina, Markiian Sydor & Yevhen Leheza. *Administrative and legal regulation of public financial activity*. CUESTIONES POLÍTICAS, vol. 40, no. 72. 2022. P. 573-581.

A rather important organizational aspect is the involvement of the Patron State to resolve issues related to the release of Ukrainian citizens. Based on the analysis of the norms of the Geneva Convention relative to the Protection of the Civilian Persons in Time of War of August 12, 1949, it can be argued that the aggressor state, detaining civilians and charging them with espionage or sabotage activities, violates the norms of international humanitarian law. It should be admitted that this allows the occupation authorities to illegally detain a person, depriving them of any legal protection. Although Article 72 of the mentioned Convention provides for the right of the accused to adequate legal protection, which includes the assistance of a qualified human rights defender of his own choice, who must be able to visit the accused freely and must be provided with all the necessary means for the preparation of the defense.

For this purpose, the document envisages the practice of involving the Patron State, which can provide Ukrainians with such a defender. Today, such a practice is not applied, which complicates the process of monitoring the observance of the rights of civilians who are illegally detained by the aggressor state. A consequential role of the Patron State is also to prevent and stop the illegal persecution of civilians in the temporarily occupied territories. In addition, the Patron State has the right to monitor the legality of legal proceedings initiated by the occupying state against a person under its protection.

Among other things, representatives of the Patron State are authorized to visit all places of detention where civilians are held, especially places of internment, detention or work. That is, this day the authorities should intensify activity in the direction of finding a Patron State, which will allow solving several fundamental issues, namely: create additional guarantees of legal protection of Ukrainian citizens in the temporarily occupied territories; prevent illegal persecution and detention of our citizens; and make illegal trials against Ukrainians impossible. The search for a Patron State corresponds to the legally defined powers of the Ministry of Foreign Affairs of Ukraine. In particular, the Regulation on the Ministry, which was approved by Resolution No. 281 of the Cabinet of Ministers of Ukraine, dated March 30, 2016, states that it ensures the protection of the rights and interests of Ukrainian citizens abroad.¹⁶

Currently, the following institutions that take care of such issues as the identification and return of civilians have been created in Ukraine: Office for Missing Persons under Special Circumstances; Department for Combating Crimes Committed in Conditions of Armed Conflict of the Prosecutor General's Office; and Coordination

16 On the approval of the Regulation on the Ministry of Foreign Affairs of Ukraine. Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2018. № 281. Governmental Courier. 2018. № 86.

Headquarters for the Treatment of Prisoners of War. These institutions were created on the authorities' initiative and are endowed with the necessary executive and administrative powers. The issue of the release of civilians illegally detained by the aggressor state is also handled by the Office of the President of Ukraine, the Human Rights Commissioner of the Verkhovna Rada of Ukraine, and individual ministries that have the relevant powers.

To date, the work of the specified institutions is satisfactory due to the following problematic issues: imperfection of information exchange mechanisms between the specified institutions; inadequate level of human rights defenders' involvement in the work of powerful entities; underdevelopment of mechanisms for coordinating the activities of the specified institutions; duplication of powers, which complicates communication and negatively affects the result; lack of a single, unified mechanism for the return of Ukrainians; underdevelopment of the practice of applying non-standard solutions for the identification and return of Ukrainians; lack of formation of the appropriate regulatory and legal framework for the activities of the specified institutions; and insufficient level of international cooperation and implementation of positive experience in the Ukrainian context. Combined with the absence of a Patron State, this slows down the process of making a special mechanism for the return to Ukraine of civilians who were illegally detained and kept by the aggressor state.

3. International Legal Acts' Application Problems

Solving the problem of social, economic, organizational and legal protection of persons, missed under special circumstances, requires the state to harmonize procedural mechanisms with the relevant international legal standards. This is a rather complex and extremely important task, upon which directly depends the effectiveness of the use of international legal instruments for the protection of the rights of a certain category of persons. It should be noted that international humanitarian law is applied from the beginning of armed conflicts and goes beyond the cessation of hostilities until peace is concluded; or, in the case of internal conflicts, until a peaceful resolution of the conflict is reached. Given the international nature of the armed conflict in Ukraine, one should take into account the obligations of states to fight international crimes, the *corpus delicti* of which is defined in the Geneva Conventions I-IV and Additional Protocols I-II, III, in the Convention on the Prevention and Punishment of the Crime of Genocide, and in the Rome Statute of the International Criminal Court.¹⁷

17 Yevhen Leheza, Karina Pisotska, Oleksandr Dubenko, Oleksandr Dakhno & Artur Sotskyi, *supra*, note 11.

It should be noted that the International Criminal Court refers to customary norms regarding those states that have not ratified the Rome Statute. Therefore, to determine the status of persons who were illegally detained and held by the aggressor state and to prosecute those guilty of these crimes, our state used its terminology even before the ratification of the Rome Statute. It should be noted that before ratification our country twice recognized the jurisdiction of the International Criminal Court, in accordance with the provisions of Article 3.12 of the Rome Statute.¹⁸ The norms of the Rome Statute provide that in order to recognize the jurisdiction of the court by a state that is not a party to the statute, it may, by means of a statement, recognize the Court's exercise of jurisdiction over the relevant crime. As confirmation, let's cite the following acts of the Ukrainian Parliament: 1) Declaration of the Verkhovna Rada of Ukraine, dated February 25, 2014, No. 790-VII¹⁹; 2) Declaration of the Verkhovna Rada of Ukraine, dated February 4, 2015, No. 145-VIII.²⁰ The ratification of the Rome Statute of the International Criminal Court made it possible to expand the functionality of the national law enforcement and judicial systems.²¹

It should be noted that the Geneva Conventions contain imperfect mechanisms for forcing states to fulfill their obligations regarding the treatment of the civilians in conditions of war. The main problem is the lack of effective mechanisms for stimulating the implementation of their norms and monitoring this process in the Geneva Conventions. There are also almost no legal levers of influence that can be applied to states that do not fulfill their contractual obligations. In fact, the international

18 Rome Statute of the International Criminal Court of July 17, 1998. Available at: https://zakon.rada.gov.ua/laws/show/995_588#Text

19 On Ukraine's recognition of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity by high-ranking state officials, which led to particularly grave consequences and the massacre of Ukrainian citizens during peaceful protest actions in the period from November 21, 2013 to February 22, 2014. Declaration of the Verkhovna Rada of Ukraine, dated February 25, 2014. № 790-VII. Voice of Ukraine. 2014. № 44.

20 On Ukraine's recognition of the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity and war crimes by high-ranking officials of the Russian Federation and leaders of the terrorist organizations "DPR" and "LPR", which led to particularly grave consequences and the massacre of Ukrainian citizens. Declaration of the Verkhovna Rada of Ukraine, dated 4 February, 2015. № 145-VIII. Voice of Ukraine. 2015. № 29.

21 Volodymyr Horbalinskiy, Oleksandr Leshchenko, Olha Mashchenko, Yevhen Leheza & Kamil Prymakov. *Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience international experience*. CUESTIONES POLÍTICAS, vol. 41, no. 77. 2023. P. 324-334.

community is deprived of real mechanisms of influence on a state that does not comply with the Geneva Conventions requirements.²²

The Convention on the Protection of the Civilian Persons in Time of War also does not provide for a clear answer to the question: what status should have been given to citizens of Ukraine who were illegally detained and held by the aggressor state. Thus, the Convention articles establish that persons who do not take an active part in hostilities shall be treated humanely, without any hostile discrimination based on race, skin color, religion or belief, sex, origin or property status or any other what other similar criteria. A ban on violence against life and person, including all types of murder, mutilation, ill-treatment and torture, and hostage taking, is regulated. Considering the fact that the aggressor state will not give up its intentions to make Ukraine completely dependent, the issue of developing and implementing a mechanism for the return to Ukraine of civilians illegally detained or deprived of personal freedom by the aggressor state cannot be postponed until the beginning of the post-conflict period.

III. CONCLUSION

In the course of the study, the following problems in the field of legal protection of civilians detained and kept by the aggressor state were systematized: the ambiguity of determining the legal status of this category of persons; the absence of a single institution authorized to carry out measures to search for and return such persons; concealment of information about the place of detention of such persons by the aggressor state; lack of access of international humanitarian organizations and missions to illegally detained and imprisoned Ukrainians; lack of effective mechanisms for investigating crimes related to disappearances; lack of access to lawyers for civilians; improper qualification of crimes related to civilians who are illegally detained and kept by the occupiers in domestic criminal legislation; inconsistency in the terminology of the conflict in human rights circles and power institutions; and underdevelopment of the practice of involving the Patron State for the release of Ukrainians and return of them home.

It was found out that at the international legal level there are the following problematic aspects complicating the determination of the status of civilians detained by the Russian Federation: the imperfection of the mechanisms of the Geneva Conventions as for forcing states to fulfill their obligations regarding the treatment of the civilians;

22 Iryna Odyntsova, Kateryna Berezhna, Nataliia Yuzikova, Yevhen Leheza & Hanna Iliushchenko. *International legal standards for providing public services in combating corruption*. JOURNAL OF LAW AND POLITICAL SCIENCES, vol. 27, no. 2. 2021. P. 275-291.

the lack of effective mechanisms for stimulating the implementation of their norms and control over this process in the Geneva Conventions; and the lack of legal leverage that can be applied to states that do not fulfill their contractual obligations.

To solve these problems, it is necessary to: determine the status of Ukrainians who are illegally detained and held in the Russian Federation or in temporarily occupied territories; ensure promotion at the international level of the position regarding the making of a special tribunal, within the framework of which a legal assessment of the aggressor state's actions in Ukraine will be made; start an advocacy campaign regarding making of truth commissions in Ukraine, whose activities are extremely important given the urgency to document cases of illegal detention and keeping of Ukrainians by the aggressor state; introduce a mechanism of international observers at court hearings remotely or physically to monitor compliance with human rights in trials of Ukrainian citizens; intensify negotiations with the International Committee of the Red Cross regarding providing the Ukrainian side with comprehensive information about the whereabouts of illegally detained or convicted Ukrainians; develop the practice of involving the Patron State in solving the problems of Ukrainians who were illegally detained and deprived of liberty by the aggressor state; and to intensify the work of joint investigative groups scrutinizing war crimes committed by the Russian Federation in Ukraine.

IV. REFERENCES

- Anatolii Matviichuk, Viktor Shcherbak, Viktoria Sirko, Hanna Malieieva & Yevhen Leheza. *Human principles of law as a universal normative framework*. CUESTIONES POLÍTICAS, vol. 40, no. 75. 2022. P. 221-231. Available at: <https://doi.org/10.46398/cuestpol.4075.14>
- E. Villasmil, Ye. Leheza & L. Holovii. *Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022*. CUESTIONES POLÍTICAS, vol. 40, no. 73. 2022. P. 16-24. Available at: <https://doi.org/10.46398/cuestpol.4073.00>
- Iryna Odyntsova, Kateryna Berezhna, Nataliia Yuzikova, Yevhen Leheza & Hanna Iliushchenko. *International legal standards for providing public services in combating corruption*. JOURNAL OF LAW AND POLITICAL SCIENCES, vol. 27, no. 2. 2021. P. 275-291. Available at: https://drive.google.com/file/d/1We_a8coOoV-vSBb2biWJ7iDV8G-IDjAw/view
- Nataliia Zadyraka, Yevhen Leheza, Mykola Bykovskiy, Yevhenii Zheliezniak & Yulia Leheza. *Correlation of legal concepts of administrative procedure and administrative liability in the*

sphere of urban planning. JURNAL CITA HUKUM INDONESIA LAW JOURNAL, vol. 11, no. 1. 2023. P. 33-44. Available at: <https://doi.org/10.15408/jch.v11i1.31784>

N. Halaburda, Ye. Leheza, V. Chalavan, V. Yefimov & I. Yefimova. *Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine*. JOURNAL OF LAW AND POLITICAL SCIENCES, vol. 29, no. 4. 2021. P. 100-121.

Yevhen Leheza, Karina Pisotska, Oleksandr Dubenko, Oleksandr Dakhno & Artur Sotskyi. *The essence of the principles of Ukrainian law in modern jurisprudence*. RATIO JURIS (UNAULA), vol. 18, no. 36. P. 379-398. Available at: <https://doi.org/10.24142/raju.v18n36a16>

Yevheniia Zhukova, Kostyantyn Bryl, Larysa Svystun, Yevheniia Kobrusieva & Yevhen Leheza. *Legal regulation of public administration of education and science*. CUESTIONES POLÍTICAS, vol. 41, no. 76. 2023. P. 336-346. Available at: <https://doi.org/10.46398/cuestpol.4176.18>

Ye. Kobrusieva, Ye. Leheza, K. Rudoi, O. Shamara & V. Chalavan. *International standards of social protection of internally displaced persons: Administrative and criminal aspects*. JURNAL CITA HUKUM INDONESIA LAW JOURNAL, vol. 9, no. 3. 2021. P. 461-484. Available at: <https://doi.org/10.15408/jch.v9i3.23752>

Volodymyr Horbalinskiy, Oleksandr Leshchenko, Olha Mashchenko, Yevhen Leheza & Kamil Prymakov. *Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience*. CUESTIONES POLÍTICAS, vol. 41, no. 77. 2023. P. 324-334. Available at: <https://doi.org/10.46398/cuestpol.4177.22>

Vyacheslav Tylchik, Tetiana Matselyk, Viktor Hryshchuk, Olena Lomakina, Markiian Sydor & Yevhen Leheza. *Administrative and legal regulation of public financial activity*. CUESTIONES POLÍTICAS, vol. 40, no. 72. 2022. P. 573-581. Available at: <https://doi.org/10.46398/cuestpol.4072.33>