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THE RIGHT TO PEACE: LEGISLATION AND PRACTICAL REALIZATION. ANALYSIS ON THE EXAMPLE OF THE RUSSIAN-UKRAINIAN WAR

ПРАВО НА МИР: ЗАКОНОДАВСТВО ТА ПРАКТИЧНА РЕАЛІЗАЦІЯ. АНАЛІЗ НА ПРИКЛАДІ РОСІЙСЬКО-УКРАЇНСЬКОЇ ВІЙНИ

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The article provides the investigation of the human right to peace as a third-generation human right and its enforcement during martial law. The relevance of this issue lies primarily in the fact that the right to peace is essential for the protection of human rights and maintenance of international peace and security. The purpose of this article is to highlight the main aspects of the right to peace and the consequences of its violation, as well as to research the awareness of Ukrainian society on issues related to the observance and protection of this right. Based on the analysis of scientific literature, international legislative and regulatory documents, the human rights of people to peace was analyzed; types of different violation of this right are characterized; the most important cases of ECHR connected to the right to peace were singled out; the awareness of this problem among today's ukrainian society is pointed out; scientific works on the topic are investigated; international treaties which contain standards of the number of basic human rights are discovered. As a result of the research, it was discovered that numerous basic human rights were violated simultaneously with the right to peace, which is confirmed in the analyzed cases of the European Court of Human Rights. Thus, the awareness of this problem needs to be spread in order to prevent similar situations from happening again in the future. This topic has the potential to be studied further due to the lack of the legislation and international law doctrine on this problem, causing the lack of research and the number of sources on this topic in general because of the novelty of the right to peace due to the fact that it is a 3rd generation right. The article also notes that the right to peace often appears in international law sources, but at the same time, the right to peace is not enshrined as an independent right. Therefore, it is necessary to disseminate information about this problem in order to prevent the recurrence of situations of violation of the right to peace in the future and to provide a mechanism for the effective enforcement of this right.

Key words: Human rights, wartime, military aggression, armed conflict, protection of civilians, the right to peace.

Стаття присвячена дослідженню права на мир як права людини третього покоління та його реалізації в умовах воєнного стану. Актуальність цього питання полягає насамперед у тому, що право на мир має важливе значення для захисту прав людини та підтримання міжнародного миру і безпеки. Метою цієї статті є висвітлення основних аспектів права на мир та наслідків його порушення, а також дослідження обізнаності українського суспільства з питань, пов'язаних з дотриманням та захистом даного права. На основі аналізу наукової літератури, міжнародних законодавчих та нормативно-правових документів проаналізовано право людини на мир; охарактеризовано види різноманітних порушень цього права; виокремлено найважливіші справи ЄСПЛ, пов'язані з правом на мир; вказано на рівень усвідомлення цієї проблеми сучасним українським суспільством; досліджено наукові праці на цю тему; виявлено міжнародні договори, які містять стандарти щодо низки основних прав людини. В результаті дослідження було виявлено, що одночасно з порушенням права на мир порушуються багато базових прав людини, що підтверджується у проаналізованих справах Європейського суду з прав людини. Тому необхідно поширювати інформацію про цю проблему, щоб запобігти повторенню подібних ситуацій у майбутньому. Дана тема має потенціал для подальшого вивчення через недостатній рівень кодифікації та невелику кількість доктринальних праць, де порушується дана проблема, що зумовлює недостатню кількість досліджень та джерел права у цій сфері в цілому, через новизну самого поняття права на мир, оскільки воно є правом 3-го покоління. В статті також зазначено, що право на мир часто фігурує у джерелах міжнародного права, але разом з цим право на мир не закріплено в жодній міжнародно-правовій нормі в якості самостійного права. Тому необхідно поширювати інформацію про цю проблему, щоб запобігти повторенню ситуацій порушення права на мир у майбутньому та забезпечити механізм ефективного забезпечення даного права.

Ключові слова: права людини, воєнний час, військова агресія, збройний конфлікт, захист цивільного населення, право на мир.

The current situation in the world is characterized by a great number of misunderstandings and tension that escalate into the form of military conflicts. In particular, a bright example of this would be the outbreak of a full-scale war between the Russian Federation and Ukraine in 2022, also military conflicts in the Middle East have increased the overall uncertainty about the future development of the whole of humanity. Thus, there is a real need for a detailed analysis and reevaluation of the main paradigms of modern development of conflicts on the one hand and to dive into traditions of it on the other.

The issue of rapid changes in the context of armed conflicts is closely related to the issue of understanding of the concept of individual human rights and problems that arise from their implementation in practice. Thus, it is important to understand the idea itself of the human right to peace and to comprehend the problem of its implementation in the modern world as it is a third generation right and the common understanding is yet to be formed. In general, it can be noted that the thorough research of any third-generation right is a rather complicated process itself due to the fact that the vast majority

of the third-generation rights (which the right to peace is too) are still at the stage of formation and perception and thus, the lack of both legislation and understanding of this concept in international law doctrine underlines the importance of the research of the right to peace in the context of, unfortunately, numerous ongoing armed conflicts.

Scholars studying war and peace law note that the search for various effective means to combat violence and armed conflicts is one of the most important vectors that the entire global community should work on. It can be concluded that the right to peace comprises a large number of legal norms aimed at introducing and supporting the practice of peaceful conflict resolution and restrictions on the use of military force. In fact, the right to peace is based on several basic principles, such as the principle of non-interference in the internal affairs of states, the non-use of force or threat of force, equality and self-determination of peoples, and the territorial integrity of states. Many scholars have studied these issues and general issues related to the main topic. In her research, scholar I. Ivankiv reveals the concept of the right to peace as a basic condition for the observance of human rights. D. Belov and S. Sukhan explain the main approaches to understanding the essence of the right to peace, which are relevant in view of current events. I. Peresh and O. Barna study the peculiarities of the right to peace and its place in the human rights system.

To begin with, the right to peace is enshrined in many legal documents. The UN Declaration on the Right of Peoples to Peace [1] and the UN Declaration on Education of Peoples in the Spirit of Peace [2] that proclaim that the right to peace is an important element of the entire human rights system, because without the right to peace, it is impossible to ensure and protect other fundamental rights. It is also worth noting that the right to peace was first recognised in 1978 by the UN General Assembly in its Declaration on the Preparation of Societies for Peace [1]. It is in this document that it is stated that peace is the main guarantee of the development of society and the maintenance of its welfare. In addition, the preamble to the Declaration states that the right to peace is inalienable to states and individuals and therefore must be realized under all conditions. The Rome Statute of the International Criminal Court, signed by 155 states and ratified by 123 states, also recognises aggression as an international crime [3]. Speaking of the ICC, it is worth mentioning that aggression as an international crime falls under the jurisdiction of the International Criminal Court, which is undoubtedly one of the most significant contributions to the protection of the right to peace. Also, in the context of legislation of the right to peace, it is worth mentioning Article 20 of the International Covenant on Civil and Political Rights [4], where the issue of the need to prohibit war propaganda is mainly raised.

In recent years, the whole world has been in a state of 'uncertainty'. This is also what Josep Borrell spoke about at a meeting of European Union ambassadors on 10 October 2022. In his speech, he emphasized that the world is facing uncertainty as a rule – events that should never have happened are now taking place [5]. A striking example is the beginning of the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022. This war, which has actually been going on since 2014, has become the largest armed conflict since the multipolar world system was established. This war has also already completely destroyed the security system that was created after World War II. Undoubtedly, the Russian-Ukrainian war gives grounds to believe that there is a risk of the vast spreading of the war to the territories of other states, which means that other actors in the international arena would be forced at some point or are already forced to be involved in it. Thus, the abovementioned shows that the events that began in 2014 and reached the highest level of intensity from 2022 demonstrate the inability of international legal mechanisms to ensure the right to peace. It is also quite clear that warfare and the use of force as a means of resolving inter-

national conflicts leads to violations of other human rights, besides the right to peace, which shows that the right to peace has an extremely close interconnection with a number of other human rights such as right to life, security, liberty and security of person, and others.

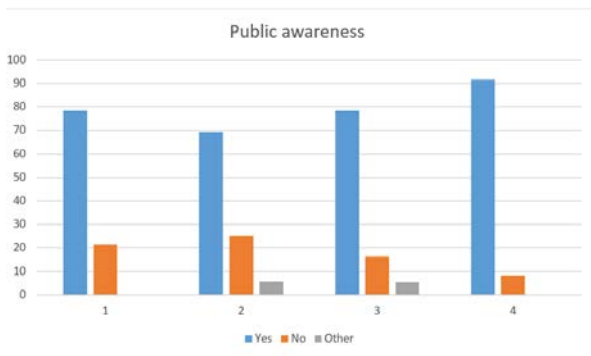
In this context, the case of *Al-Skeini and Others v. the United Kingdom* analysis would be up to topic [6]. In this case, the applicants argued that their family members were under the jurisdiction of the United Kingdom when they died in Iraq and that there had been no investigation into the circumstances of their deaths in accordance with Article 2 of the European Convention on Human Rights. The conclusion is based on the fact that the United Kingdom is responsible for violations of the rights of Iraqi citizens on the territory of Iraq. To understand the main idea of the case, it is important to mention that the United Kingdom was a member of the coalition whose goal was to disarm Iraq and the coalition itself was created to implement UN Security Council Resolution 1441 of 8 November 2002 [7]. Another aspect that was described during the consideration of this case by the European Court of Human Rights, it was recognised that the United Kingdom had violated the procedural aspect of the right to life. This case is of great importance to us, as the facts described and the resolution show that violation of the right to peace entails violation of other human rights, such as the right to life, security, liberty and security of person, and others.

In addition, the case law of the European Court of Human Rights clearly demonstrates that there is a place for application of the instruments described in the European Convention on Human Rights to those rights that are not directly included in this Convention, which also applies to the right to peace. A bright example of this would be the case of *Umayeva v. Russia* [8]. As for the facts of the case, the applicant was evacuated from the city of Grozny, as her house had been destroyed due to the shelling of the city by Russia, the evacuation took place through the humanitarian corridor. However, after Umayeva passed the checkpoint, there was artillery shelling by Russian soldiers. As a result, this woman was injured, causing irreparable damage to her health. The European Court of Human Rights found the federal military forces guilty in this case for shelling civilians who were trying to evacuate Grozny. The federal military forces thus violated the right to life enshrined in the European Convention on Human Rights. As a result of the consideration of this case, we can conclude that the violation of the right to life and other human rights was preceded by a violation of the right to peace, which is not directly enshrined in the Convention [8], but is of great importance in this case.

It also seems crucial to raise the question here, how to prevent violations of the human right to peace and, more generally, of fundamental human rights at the global level? To begin with, it is important to mention the 1978 Declaration on the Preparation of Societies for a Life of Peace [9] because in this document the right to peace was firstly declared as an integral factor in the further development of society. In addition, the Preamble to the Declaration emphasizes that the right to peace of individuals, as well as of states and all mankind, must be exercised without any restrictions [9]. Based on this, it can be concluded that the right to peace is not only collective, but also individual. As a result, the basis of the right to peace is the desire to resolve conflicts peacefully, without the use of force, at the macro and micro levels. The culture of peaceful dispute resolution and the absence of conflicts involving the use of force, even between citizens of individual states, is an integral part of the development of the society of that state and, in the long run, of all mankind.

The right to peace is a fundamental human right, however, current events expose the limitations of existing legal mechanisms in ensuring it. Fostering a strong moral environment within society alongside legal frameworks is crucial for upholding the right to peace and protecting other intercon-

nected human rights. Thus, the survey was conducted, where the level of public awareness on this topic was researched, and the results are presented below:



Analyzing the data collected, first of all, the majority of respondents demonstrate a clear understanding of the concept of the right to peace. They go beyond a basic definition, associating the right to peace with the right to live in a state of tranquility and the right to resist oppressive regimes. This indicates a deeper comprehension of the multifaceted nature of this right by ukrainian people.

However, despite the fact that the right to peace is enshrined in international legal instruments, such as the UN Declaration on the Right of Peoples to Peace [1] and the UN Declaration on the Education of Peoples in the Spirit of Peace [2], legal mechanisms for protecting and regulating this right are considered as not effective and the respondents (78,4%) agree with this opinion. The full-scale war between the Russian Federation and Ukraine in 2022 demonstrates that existing legal mechanisms have limitations in protecting the right to peace, which shows that while international law provides a frame-

work for addressing aggression, its effectiveness depends on strong enforcement mechanisms and a commitment to upholding the rule of law.

Continuing this issue, it should be noted that the violation of this right, as witnessed in the devastating consequences of armed conflicts, has far-reaching repercussions, often leading to the infringement of other fundamental human rights, which is agreed by a large number of respondents (91,7%). In the face of armed conflict, governments often impose limitations on individuals' freedoms in an attempt to maintain order and security. While these measures may be necessary to some extent, they can also lead to the restriction of fundamental rights. The rights that are violated include right to life, right to respect for human dignity, right to liberty and security of person, right to freedom of thought and expression etc.

Unfortunately, as practice shows, the sources of international law, which are the main foundations and starting points in the process of ensuring the right to peace, are unable to protect the right to peace in modern societies. In this context, it is worth noting that one of the most important prerequisites for the successful implementation of the right to peace in practice is the creation of a favorable moral environment in society itself. Improving the state and quality of the moral environment can be achieved by creating an effective link between the main regulators of society, namely law and morality. The moral progress of the whole society, which is the main desired and expected consequence of the coordination of such a link, will demonstrate certain positive changes in the state of consciousness of the subjects of this society. Thus, they will be oriented towards the realization and improvement of the ideals of humaneness, including the observance of fundamental human rights. From this we can conclude that violations of human rights and the right to peace as such cannot in practice be limited to the legal context, as the vision of morality in society also plays an important role.

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