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Political and legal guarantees of human and civil security

Vira Tymoshenko*

Full Doctor in Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0003-2947-5627>

Larysa Makarenko

Full Doctor in Law, Senior Researcher
Institute of State and Law named after V.M. Koretsky
National Academy of Sciences of Ukraine
01001, 4, Tryochsvyatitelska Str., Kyiv, Ukraine
<https://orcid.org/0000-0002-9927-6941>

Abstract

In this article, the authors consider the essence of human and civil security, determine the factors that threaten it, and the consequences that violations of human rights, including the right to personal security, lead to. By personal security, the authors understand the state of absence of danger when interacting with objects of the external environment and the process of ensuring legal guarantees for the implementation of constitutional rights and freedoms. Security cannot exist without danger; it finds its existence with the emergence of threats. Personal security is threatened by wars, socio-economic instability, poverty, corruption, crime, domestic interethnic and religious conflicts, injustice, etc. The consequence is a violation of human rights, primarily the right to life and restrictions on its freedoms. The subject of this study is relevant. The purpose of this study was to find threats to personal security and analyse the possibilities of their elimination by political and legal means. The methodological basis of this paper was the dialectical approach, as well as several other methods: formal logical, systematic, formal legal, structural-functional. Results: personal security, as a special type of human and civil security, despite its close relationship with the security of society and the state, is an independent socio-legal phenomenon that requires special attention. Personal security is ensured, foremost, by the norms of constitutional, criminal, and administrative law. Restriction of the rights and freedoms of offenders, however, may be accompanied by restriction of the rights and freedoms of law-abiding citizens. The originality of this study lies in the investigation of political and legal guarantees of personal security and the identification of opportunities for its provision in the modern world, considering the principles of the rule of law, civil society, and justice. Security as a complex social phenomenon is an element of other complex social systems, which include a human, society, the state, as well as the economic, political, and spiritual spheres of public life. Security is an essential factor in the functioning and very existence of all social systems. The main subject that organizes the life of society is the state. The international community also plays an essential role in this process

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*Corresponding author

Introduction

Human security, life and health, honour and dignity are the highest social values in Ukraine. Personal security implies the following: the absence of threats from anyone within the borders of the state; the use by citizens of all civil, political, social, economic, and cultural rights prescribed by the Constitution; the rule of law, legal equality and justice; the opportunity to take part in public life and exercise all legitimate interests.

Any interaction with other people, communities, technical means, etc. can be a potential source of danger to humans. Six groups of hazards are distinguished by origin: natural, technogenic, anthropogenic, ecological, social, biological, which are further subdivided by the particular source and object of influence, methods of influence and consequences, possibilities of counteracting the danger, etc. This study is limited to a group of social hazards.

The exercise of the right to personal security means the duty of the state to provide its citizens with the security and protection of life, health, and freedom, which is difficult to do at the present stage of society's development, given the circumstances, primarily the war that Russia has unleashed against Ukraine. Recently, the president of Ukraine, in his speech at the GLOBSEC International Security Forum in Bratislava, stressed: "we must respond to all the challenges and dangers that the Russian Federation has created for us. Politics, economy, military sphere, food, ecology, migration – there is no area of our life in which there is no catastrophe, crisis, threat of catastrophe or crisis as a result of Russia's actions" (President of Ukraine..., 2022).

The right to personal security is proclaimed in the documents of international organizations. Specifically, the Preamble of the UN Charter stipulates: "we, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in larger freedom, and for these ends, to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure ... that armed force shall not be used, save in the common interest, have resolved to combine our efforts to accomplish these aims"¹. In connection with Russia's efforts to achieve its interests exclusively through the military plane, by force, the issue of personal security is still relevant, and it is clear that this relevance will stay for many years to come.

But this is not the only threat to personal security. The growing number of crimes and other offences that threaten personal safety forces us to constantly search for the most effective ways to deal with the danger. Furthermore, the state itself in some cases (state of emergency, martial law) is forced to restrict the personal safety of citizens, but only legally. The means and conditions for ensuring personal security are its legal guarantees, which the state must constantly improve. Presently, this duty of the state is receiving special attention. Accordingly, the subject of this study is relevant.

The purpose of this study was to identify threats to personal security and analyse the possibilities of their elimination by political and legal means.

The originality of this study lies in the investigation of political and legal guarantees of personal security and the identification of opportunities for its provision in the modern world, considering the principles of the rule of law, civil society, and justice.

The results of this study will contribute to creating conditions for real human security and the social systems to which it belongs, preserving their integrity, sustainable development, and effective functioning. This is their practical significance.

The problem of ensuring the security of individuals, society, and the state has been investigated by scientists mainly in the context of war and peace and changes in the environmental situation for the better. Specifically, F. Crump, F. Hegazi & Stacey D. Van Deveer proposed three mechanisms by which improved natural resource management in post-conflict contexts could theoretically have a positive impact on the world: a) the contact hypothesis, according to which promoting inter-group cooperation substantially reduces bias; b) dissemination of transnational norms, where the introduction of environmental and other good governance norms supports human empowerment and strengthens civil society; c) the rendering of public services when the provision of access to public services meets the instrumental needs of communities, thereby strengthening their faith in the state (Krampe *et al.*, 2021).

The impact of coronavirus on human rights and security was investigated by O. Nye, who justified the opinion that fear can change the attitude of citizens towards freedom. As global and environmental threats increase, citizens may be inclined to give up some of their constitutional rights. The desire for security can quickly undermine the desire for freedom. This leads to people choosing the authority of a leader over the ethics of democratic discussion (Nay, 2020). Citizens' perception of security issues, namely emotional responses to threats to national security, is considered by L.G. Valla (Valla, 2022). Constitutional means of ensuring human

¹Charter of the United Nations. (1945, October). Retrieved from <https://www.icj-cij.org/charter-of-the-united-nations#:~:text=The%20Charter%20of%20the%20United,integral%20part%20of%20the%20Charter>.

security were investigated by V. Tyhyi, who argued that human security is ensured by human rights, freedoms, and their guarantees, and considered security as an objective state and subjective sense of physical, social, and moral protection of a person, their rights and freedoms (Tyhyi, 2016). The specifics of human rights and security in the digital age were investigated by O. Petryshyn & O. Hyliaka, who concluded that the era of digital technologies provides entirely new and qualitatively different opportunities for their implementation, but at the same time it creates new challenges and threats to ensure these rights and freedoms (Petryshyn & Hyliaka, 2021). The recognition of security as an element of statehood, which is related to the concept of humanism and human rights, is characteristic of V. Pylypchuk, P. Bohutskyi & I. Doronin, who suggested considering the law of national security as an independent branch of law that manifests its social significance in the legal support of national security (Pylypchuk *et al.*, 2021).

These authors considered the essence of national and personal security, analysed numerous threats to national security, its connection with human rights, and determined the importance of security for human existence. However, the named scientists did not focus on political and legal guarantees of personal security and the possibilities of ensuring it in the modern world, when new, unprecedented threats emerge. The study of these issues is necessary for both legal science and political and legal practice. Such study is the task of the authors of this paper.

Materials and Methods

The methodology of this paper is based on a dialectical approach. It makes provision for concreteness, comprehensiveness, and objectivity in the consideration of political and legal institutions and phenomena, at the same time, their inherent connections and contradictions are established, the interdependence of the essence of the phenomenon and its form is characterized, etc. This allowed investigating the essence of personal security, its interpretation in connection with other social phenomena. Thanks to the dialectical approach, the causes of processes leading to security threats are explained, and the consequences of these threats for humans, society, and the state are determined.

The formal logical method was used to analyse terms, such as “security”, “personal security”, “corruption”, etc. This method helped identify logical contradictions in the structure of certain judgments, which allowed avoiding errors in scientific research. Two methods of the formal logical method – analysis and synthesis – were mainly used, as well as the laws of formal logic – identity, contradiction, excluded third, sufficient grounds.

The system method was used in the study of the components of the phenomena under study, while attention was focused on the study of their integral,

integrative properties, which are inherent in the system as a whole, but are absent from its elements. However, it will not be possible to know the system as a whole, even if one conducts an in-depth analysis of each of the elements of the system, since the properties of elements, although they affect their own systems, do not give a complete picture of them. When analysing the elements of the system, the systemic approach requires paying attention to their importance for the system as a whole, to the functions performed by the elements in the system, to the connections and relations between the elements. This method expands the boundaries of knowledge about security, since it is not the subject of research in any one science. It involves considering the entire set of objective and subjective factors that affect the formation of threats and their perception by humans, considering theoretical and practical aspects in dialectical unity and interdependence.

The formal legal method is used to formulate legal terms. This method is formed within the framework of law based on formal logic. It was used only in the study of legal categories of political and legal reality. The main functions of the formal legal method were to obtain knowledge about threats to human security and form a scientific system of legal knowledge obtained as a result of the study.

The structural and functional method helped identify the components of the security phenomenon, its functions and tasks. The use of the methodology of a systematic approach (according to structural and functional analysis) is determined precisely by the objective conditions of society's existence. A comprehensive and complete study of state and legal reality is impossible without the use of both functional and institutional, structural methods in the aggregate: in-depth knowledge of state and legal phenomena is impossible without research not only of the static structure of a given state or legal institution, but also an understanding of those aspects and properties that are actualized by this institution as a result of its functioning, achievement of the goals and tasks assigned to it, as well as the results of various areas of its activity.

Results and Discussion

The current stage of development of human civilization is characterized by the fact that it is necessary to overcome new threats, dangers, challenges that require innovative approaches to their solution (Tymoshenko *et al.*, 2021). Any threat is characterized by the most important essential signs, it is an actualized form of danger in its transformation from a possibility into reality and the intention of some subjects to harm others (Dzyoban, 2006, p. 38).

In modern Ukrainian language, the word “security” means a state when no one or nothing is threatened by anyone (Dictionary of the Ukrainian language, 2010, p. 430). Security can be considered as a state of protection

of vital interests of the individual, society and the state from external and internal threats (Khramov, 2003, p. 42).

It is worth noting that an individual, being themselves a subject and object, is present in all other security systems, thereby playing a basic system-forming role. The position of the individual is determined by the state, society, and nature. Personality is a biosocial system, and acts simultaneously in the role of both a person as a member of society and a person as a living organism that exists in the limited parameters of the environment. Being in the focus of almost all dangers, specifically, any destructive socio-political, environmental, ethnic and technical events, the individuals themselves suffer (Dudnikova, 2003, p. 13-14).

The UN Charter of 1945¹ became the first international act whose goals are based on general respect for human rights; in Articles 1 and 55, it obliged the United Nations to promote respect for human rights and fundamental freedoms for all, regardless of race, sex, language, or religion. These goals were further developed in the Universal Declaration of Human Rights (UDHR)² adopted by the UN General Assembly on December 10, 1948. In the preamble, it is stated that the recognition of the inherent dignity of all members of the human family and their equal and inalienable rights is the basis of freedom, justice, and universal peace.

The provisions of the UDHR and other international conventions and covenants have become the basis of national constitutions. The Ukrainian state declared in Article 3 of its Constitution that a human, their life and health, honour and dignity, inviolability and security are recognized as the highest social value³. The content and direction of the state's activities determine human rights and freedoms and their guarantees.

It is quite obvious that a state can be safe only if certain conditions are met, specifically, its territory is not under threat; its people feel safe regardless of their place of residence, their existence and development are guaranteed, and their rights and freedoms are protected; power is sovereign and exists pursuant to the Constitution (Gierszewski, 2018).

The global community as a whole also needs security. Without this, personal security is impossible. The problem of security of the international community includes issues of preserving and maintaining peace, international policy of preventing the escalation of conflicts and the growth of local wars, reducing weapons of mass destruction and conventional weapons, banning certain types of weapons and eliminating their reserves, etc. The doctrine of human rights can provide the necessary framework for the continued coexistence of human communities in the conditions of an

increasingly dangerous and interdependent world – a world where the collective survival of humanity is at stake. To survive and be successful, the idea of human rights must adapt to all sorts of new threats, to all sorts of new challenges. Seeing in the theory of human rights “the distillation of accumulated historical wisdom and the best level of approximation to the moral truth regarding the human condition”, it can be perceived as the best hope of people for the future of humanity itself (Holovaty, 2016).

Personal security of citizens has always been considered as an opportunity to enjoy life, health, and physical freedom without hindrance. The presence of these benefits is a necessary prerequisite for a full-fledged existence in society. The state should provide (including legislatively) favourable conditions for the enjoyment of citizens' rights concerning personal security. It is this approach that will contribute to the development of an individual as an active subject of ensuring their security, along with public and state institutions that have their own protection mechanisms. In the context of the development of civil society and the rule of law, whose interests focus on the rights, freedoms, and protection of the individual, legal problems of personal security of a human and citizen acquire special importance.

The level of development of the legal system, economy, politics, and ideology affects the ability to achieve personal security. A special role is assigned to political and legal means – a political regime, developed legislation, an effective mechanism of legal realization, and a prominent level of legal consciousness. The mere existence of legal norms that consolidate the rights of citizens to life, health, and freedom does not mean that every citizen is automatically guaranteed personal safety. Such norms are a necessary but insufficient condition for the real safety of the individual in the practice of social relations. The principal legal means of ensuring personal security, according to the authors of the article, is law enforcement. The subject of law enforcement is an active participant in law enforcement relations endowed with proper competence, who has the main role in the development and promotion of these relations towards solving particular life situations through acts of law enforcement. The enjoyment of many rights and freedoms can only be achieved through law enforcement. This applies to all those cases when, to exercise a particular right, a citizen will have to enter into legal relations with a state body, official, or organization that is competent to satisfy their particular claims for the use of certain social benefits and their demands for personal safety.

The ability to achieve human security depends substantially on the security of the entire society. In

¹Charter of the United Nations. (1945, October). Retrieved from <https://www.icj-cij.org/charter-of-the-united-nations#:~:text=The%20Charter%20of%20the%20United,integral%20part%20of%20the%20Charter>.

²Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³The Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

society, there is a common life activity of people united by common values, interests, and goals. However, such unity is possible only when the political power represented by the state creates the necessary conditions for this, allowing citizens to meet their material needs, take an active part in political life and freely fulfil their creative potential.

Presently, the state of affairs with ensuring personal security in Ukraine leaves much to be desired. The economic situation, escalating social contradictions, crime, and especially the Russian-Ukrainian war are a serious threat to individual security.

From the standpoint of the economic situation, the greatest threat to human security is corruption. Corruption is usually seen as the abuse of entrusted power for personal purposes. Corruption is currently a global issue that entails poverty, greed, unemployment, weak government institutions and lack of law enforcement, and it exists in every country at various levels, despite the efforts of national and international regulatory bodies to tackle it (Bahoo, 2020). Corruption hinders a country's economic development and adversely affects investment, competition, and government efficiency (Bui *et al.*, 2021).

In 2021, Ukraine worsened its performance in the Corruption Perceptions Index and dropped to 122nd place in the world. According to Transparency International Ukraine, Ukraine moved from 117th to 122nd place out of 180. Over the course of a year, Ukraine lost one point in the Corruption Perceptions Index and now has 32 points out of a possible hundred. Over the past few years, Ukraine has managed to become the most corrupt state in Europe and one of the most corrupt states in the world, rapidly outstripping the already "traditional" corrupt states. Currently, in the general ranking, Ukraine is next to Eswatini, Zambia, Nepal, Egypt, and the Philippines (Ukraine has lost positions..., 2022).

The most usual form of corruption is bribery. Bribery is defined as the acceptance of an offer, promise, or receipt of an unlawful benefit by an official, as well as a request to provide such an advantage for themselves or a third party before the official performs or fails to perform any action using the power or official position granted to them in the interests of the person offering, promising, or providing an unlawful benefit, or in the interests of a third party. Responsibility for this is prescribed in Article 368 of the Criminal Code of Ukraine¹.

Bribery can be formally considered in the form of its typical and common manifestations: unofficial payment or "a token of gratitude"; a gift – a material object, a thing that is given at one's own will and given free of charge to satisfy certain needs; unofficial payment as "fee for services". If an informal payment in the form of "a token of gratitude" is usually given by "those who thank" for receiving a service, then this payment as payment for a service is always made before the service itself is provided (to receive it in the proper form with the right to receiving it) or during its implementation (to "improve"

the dynamics and other qualitative characteristics of the consumed service, having the right to it; to obtain an unfair advantage against the background of other consumers of this service, e.g., advancement in the queue towards certain benefits, etc.). Based on the received bribe or as a result of other abuse of official powers, a corrupt official can provide patronage (grant illegal privileges), which in a broad sense is expressed in the fact that the corrupt official, using their position, distorting the principle of equality of human rights (predominantly in access to public service), provides advantages for one person or a group of persons, guided not by public, but by their personal interests and benefit (Buiter, 2021).

Curbing corruption in modern Ukraine is one of the urgent issues. The shadow economy, which must be substantially reduced, is no less a problem. It is necessary to simplify and make the taxation mechanism more transparent, to reduce monopolies to a minimum (through distribution or competition from the European Union). Any remaining monopolies should be regulated transparently (Hladky, 2018). Without the implementation of these tasks, personal security is impossible.

Notably, the guarantee of state security in relation to human security is related to the duty of the state to recognize, respect, and protect human and civil rights and freedoms. A considerable role in ensuring human security belongs to criminal law regulation, the implementation of the protective function of criminal law. The organization of criminal law protection of human security against criminal encroachments is only part of the multifaceted problem of ensuring personal security. The tragic events of recent times, specifically the Russian-Ukrainian war, terrorism, increasing crime rates, ubiquitous corruption, as well as the blatant inability of law enforcement officers to ensure the safety of citizens, necessitate the solution of such issues as the ratio of constitutional rights to freedom (on the one hand) and security guarantees and effectiveness of security measures currently in use (on the other hand). After all, for the sake of human security, this human's freedom can be limited (Anyanwu, 2018).

The current criminal legislation has certain shortcomings. What is humane and fair in the field of criminal-legal relations now is not unilateral softening of measures against individuals who have committed a crime, caused pain and suffering to other people, but compliance with the rights and legitimate interests of victims. More severe penalties for grave and especially grave crimes, such as a terrorist act, would be justified. Today, the world faces such challenges as the ineffectiveness of legal norms, the crisis of national identity, financial instability, unemployment, and lack of functional security. These problems make society an enabling environment for global terrorism. The latter is a social problem that spreads in the social structure of society, affects human security in medical, social, political, food, economic, and environmental dimensions (Alsawalqa, 2021).

Injustice and inequality, including economic inequality, pose a substantial threat to human security. The vast gap between the rich and the poor leads to the exclusion of people with low incomes from society, which provokes social instability and human rights violations. At first glance, human rights appear to be powerless and ineffective in the fight against growing economic inequality because they are focused on minimal or sufficient needs, and therefore they are insufficient to achieve justice. However, human rights are still the cause of limiting inequality, they can to some extent help limit national and global economic inequality and introduce global justice. If there are global norms of justice beyond human rights, they are likely to provide more reasons for the danger of material inequality (Jones, 2021).

Activities to ensure the safety of the individual involve considering the psychological component of its response to the impact of a dangerous environment. Psychological security is based on the feelings of the individual, the assessment of their personal security and safety, it is aimed at preserving mental health, and therefore safety in general.

Conclusions

Security as a complex social phenomenon is an element of other complex social systems, which include a human, society, the state, as well as the economic, political, and spiritual spheres of public life. Security is an essential factor in the functioning and very existence of all social systems. The main subject that organizes the life of society is the state. The international community also plays an essential role in this process.

As an object of scientific cognition, human security is determined by two components: objective conditions of its formation, development, and functioning, as well as subjective factors, the purpose of which is to ensure its optimal functioning for the preservation of human life and health and the enjoyment of their rights and legitimate interests.

Individual security of a human and a citizen can be presented as a special type of personal security, which includes a set of subjective rights to life, physical freedom and inviolability, honour and dignity, consolidated in the constitution and other regulations, which are ensured by the state against illegal encroachments by anyone or anything. The state is obliged to prevent threats to the well-being of society and the quality of life of the country's citizens. Therewith, objective human security conditions create new opportunities for improving the security system. Subjective factors, including the moral position of management entities, are an essential condition for maintaining the security of the system, and therefore human security.

Personal security is strengthened and ensured by many norms of various branches of law, but a special place in legal regulation is occupied by the norms of constitutional, criminal, and administrative law. The specificity of legal guarantees of personal security lies in the fact that protecting the personal safety of law-abiding citizens often has to restrict not only the rights and freedoms of offenders in the course of coercive influence on the latter, but also the rights and freedoms of law-abiding citizens themselves. The procedure and limits of this coercive influence should be clearly defined in the legislation.

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Політико-правові гарантії безпеки людини та громадянина

Віра Іванівна Тимошенко

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-2947-5627>

Лариса Олександрівна Макаренко

Доктор юридичних наук, старший науковий співробітник
Інститут держави і права імені В.М. Корецького НАН України
01001, вул. Трьохсвятительська, 4, м. Київ, Україна
<https://orcid.org/0000-0002-9927-6941>

Анотація

Розглянуто сутність безпеки людини та громадянина, визначено фактори, що їй загрожують, та наслідки, спричинені порушенням прав людини, зокрема права на особисту безпеку. Безпекою особи визнано стан відсутності небезпеки за умови взаємодії з об'єктами зовнішнього середовища та процес забезпечення правових гарантій реалізації конституційних прав і свобод. Зауважено, що безпека не може існувати без небезпеки, про неї йдеться лише за наявності загроз. Особистій безпеці загрожують війни, соціально-економічна нестабільність, бідність, корупція, злочинність, внутрішньодержавні міжетнічні та релігійні конфлікти, несправедливість тощо. Наслідком є порушення прав людини, передусім права на життя та обмеження її свобод. Зазначене підтверджує актуальність статті. Метою дослідження є визначення загроз особистій безпеці й аналіз можливостей їх усунення політико-правовими засобами. Методологічну основу статті становить діалектичний підхід, а також комплекс методів: формально-логічний, системний, формально-юридичний, структурно-функціональний. Результати: особиста безпека як особливий вид безпеки людини і громадянина, попри її тісний взаємозв'язок з безпекою суспільства та держави, є самостійним соціально-правовим феноменом, що потребує особливої уваги. Особиста безпека забезпечується передусім нормами конституційного, кримінального, адміністративного права. Обмеження прав і свобод правопорушників водночас може супроводжуватися обмеженням прав і свобод законослухняних громадян. Наукова новизна полягає в дослідженні політико-правових гарантій особистої безпеки та позначенні можливостей її забезпечення в сучасному світі з огляду на принципи правової держави, громадянського суспільства та справедливості. Безпека як складне соціальне явище є елементом інших складних соціальних систем, до яких належить людина, суспільство, держава, а також економічна, політична й духовна сфери суспільної життєдіяльності. Безпека є важливим фактором функціонування та власне існування всіх соціальних систем. Основним суб'єктом, що організує життєдіяльність суспільства, є держава. Вагоме значення в цьому процесі має й міжнародна спільнота

Ключові слова:

загроза; шкода; злочин; держава; свобода