

Implementation of the Right to Protection of Civil Rights under Martial Law

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Abstract. The relevance of the study is conditioned by the peculiarities of martial law and its impact on the implementation of the rights of individuals and legal entities. The issue of giving each person the opportunity to use their powers to protect their benefits, which is guaranteed by the state, in the conditions of martial law, has become of great importance. The paper is aimed at defining and disclosing the concept of "protection of civil rights" and the possibility of its implementation under martial law. The leading methods of research are dialectical and systematic, which allow considering the legal nature of the category "protection". A systematic approach helped determine the most effective legal ways to protect rights under martial law. The study defines the concept of "protection of civil rights under martial law", reveals the specifics of the implementation of the right to protect one's rights, considering the peculiarities and restrictions of wartime, examines the most effective ways to protect civil rights and the possibility of their application under martial law, describes the jurisdictional and non-jurisdictional forms of civil rights protection. The theoretical value of the study is to define the concept of "the right to protection of civil rights", considering the specifics and restrictions caused by martial law, which can become the basis for further scientific research of related issues. The practical value of the study is the disclosure of the specifics of the implementation of the right to protection in the territories where military operations are conducted, and to determine effective forms and methods of protecting civil rights under martial law

Keywords: forms of protection, wartime, Civil Code, political conflict, authorities, mediation

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Introduction

The ability to ensure the implementation of individual rights and freedoms is the highest indicator of the functioning of a democratic state. Military actions on the territory of the entire state or in its individual regions carry significant restrictions on rights and/or the impossibility of exercising rights and interests. Decree of the President of Ukraine No. 64/2022 of February 24, 2022, imposed martial law on the territory of Ukraine [1]. To ensure the possibility of implementing measures related to the legal regime of martial law, the rights provided for by law and the interests of a person and citizen may be restricted. During the period of martial law, the rights and freedoms consolidated in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine are restricted [2]. Despite certain restrictions that currently apply on the territory of Ukraine, the state still guarantees an individual and citizen an adequate level of protection in case of encroachment on their rights under civil law.

The Civil Code of Ukraine (Article 16) provides that citizens are given the right to apply to the court in order to protect their personal property and non-property rights and interests granted to them by law [3]. This right cannot be subject to restrictions. In addition, according to articles 10 and 26 of the Law of Ukraine “On the Legal Regime of Martial Law”, during the period of operation of the military regime, the powers of courts are not terminated [4].

Admittedly, life in the conditions of war has undergone significant changes. The values and priorities of each individual have changed. The changes affected both individuals and legal entities. However, despite such changes, everyone protects their rights and interests in a way that is not prohibited by law. The grounds for applying for the protection of rights under civil law are an encroachment on them. Violation of a civil right is an illegal action that led to its restriction, which as a result deprived the person who is endowed with it of the opportunity to use it in full or in a certain respect. The concept of non-recognition of civil law should be understood as an act of a person who is endowed with a passive civil duty, which, in turn, is associated with the denial of the civil right of an authorised person, resulting in the deprivation of the opportunity to exercise their rights in whole or in part. Negative conditions can arise under the conditions of absolute, as well as relative civil law relations. As for the challenge of civil law, it includes the state of civil legal relations, which is characteristic of the existing dispute between its subjects regarding the ownership of subjective law by them. The contested civil law may not be related to its violation, while a certain ambiguity in the law is formed, which provokes the impossibility of its implementation to any extent [5].

In addition, this issue has attracted special attention from researchers who study it in the doctrine of civil law to this day. In particular, M.K. Suleimenov *et al.* characterised the general content of the concept of civil rights protection [6]. The researcher established what belongs to its content and described its properties and characteristics. A.K. Sheremetyeva *et al.* studied international legislation, investigating the protection of civil rights. The researcher revealed the features of legislative consolidation of such a mechanism in different states [7]. This allowed analysing international experience to use it in the future. E. Titko *et al.* managed to specifically consider approaches and tools for protecting civil rights in the context of military operations [8].

The researcher described the main risks of such activities and revealed approaches to their elimination. V. Panasiuk *et al.* established the peculiarities in social and legal life that are formed as a result of the introduction of martial law [9]. Thus, she was able to describe what changes are being undergone in the main public spheres of life of the state on the territory of which military operations are taking place. Attention was also drawn to the conclusions by S. Bardutzky, obtained as a result of a study of the most common civil rights groups that are negatively affected by external interference [10]. In this context, it was investigated which civil rights of citizens are most often violated. Based on the results obtained, it is possible to form a mechanism for preventing such offences and satisfying the interests of citizens.

The scientific originality of the study lies in the fact that its provisions allow revealing the institute of civil rights protection under martial law, previously unknown in the history of independent Ukraine. This is explained by the fact that the scientific discourse has not yet presented positions on the specifics of the implementation and protection of personal property and non-property interests of citizens during hostilities. That is why this paper in the context of the war of the Russian Federation against Ukraine allows fully revealing approaches to the protection of civil rights by citizens in specific social conditions established as a result of the war.

The purpose of the study is to determine the organisational and legal basis for a citizen to use the possibility of protecting their rights and interests under martial law provided for by civil legislation. Based on this, a number of tasks were formed, namely:

- reveal the characteristic features of citizens’ use of the opportunity to protect civil rights under martial law;
- define the concept of “protection of civil rights under martial law”;
- consider the effectiveness of certain methods of protecting civil rights that can be applied during martial law;
- describe the jurisdictional and non-jurisdictional forms of civil rights protection under martial law;
- identify factors that influence the choice of how to protect civil rights.

Materials and Methods

To achieve the current goal and objectives, a wide range of methodological tools were used in the study. General scientific methods include analysis and synthesis, induction and deduction, system and structural, which, in turn, belong to the system of formal and dialectical logic. The dialectical method was used to investigate the legal nature of some concepts, in particular, “protection”. The relationship and connection between the concepts of “protection of civil rights” and “relations in the field of civil rights protection” were established and revealed. Based on the historical and legal method, it was possible to investigate the peculiarities of the development of the institute for the protection of civil rights. The study used the formal legal method to describe the content of such legal concepts as “protection of civil rights”, “forms of protection of civil rights”, the concept of “alternative dispute resolution”, and “judicial protection”. Using the systematic method, the place of the mechanism for protecting civil rights in the system of state-guaranteed rights, freedoms, and legitimate interests of citizens was considered and established. Using the comparative method, jurisdictional and non-jurisdictional forms of protection of

rights were investigated. The analysis of the provisions of legislative norms regulating the right to protection was carried out based on the logical and dogmatic method, and the interpretation of legal norms. In addition, the method of theoretical and legal modelling was used to prove the author's recommendations aimed at developing the doctrinal definition of the concept of "the right to protect civil rights under martial law".

This study was carried out in three stages. At the first stage, the theoretical basis of the issue was considered, which was subsequently used for further scientific study as the main foundation. A range of basic concepts was outlined, which must be defined to fully and comprehensively cover the mechanism for implementing the right to civil rights protection. At the second stage, an analytical investigation of the forms of civil rights protection and the effectiveness of using each of them under martial law was carried out. In addition, an analytical comparison of the results obtained with the results and conclusions of other researchers who were engaged in the development of issues related to judicial protection of civil rights and out-of-court conflict resolution was carried out. This can help expand the prospects of scientific research in the field of civil rights protection, judicial resolution of disputes, and alternative resolution of civil disputes, considering the specifics and restrictions that arise under martial law. At the final stage of the study, a number of conclusions were formulated taking into account the results obtained, which can be used in the future in the context of an effective theoretical basis for analysing issues aimed at protecting civil rights during martial law.

Results

The conducted study of the implementation of the right to protect civil rights under martial law gave the following results. Numerous political conflicts taking place in the world require a quick response, as a result, the authorities impose martial law in the country or in its individual territories. The purpose of introducing a legal regime of martial law is to prevent danger, resist a military attack, ensure state security, and eliminate threats of danger to the national sovereignty of Ukraine and its territorial unity [4]. Since the 19th century, 81 countries of the world have been forced to impose martial law on their territories. These countries include China, Canada, Japan, Libya, Syria, and Turkey [11]. Therefore, the question of the possibility of exercising the right to protect civil rights during martial law requires careful study in order to determine effective ways to protect civil rights. Protection of civil rights is an action to prevent and stop violations of rights or restore the violated rights of individuals and legal entities. The protection of civil rights is aimed at eliminating adverse consequences that were caused by a violation of rights or a threat of such violation. The exercise of the right to protect one's civil rights may be complicated by the consequences of military operations in certain territories of the country. Such complications can be expressed in external factors that do not depend on the parties to the conflict, and personal factors that depend on the ability of the parties to the conflict to apply one or another method of protecting civil rights.

Thus, the protection of civil rights under martial law is a set of methods, techniques, and various procedural actions by which the prevention, suppression of an offence, or restoration of a violated civil right of a person is carried out,

which can be applied in the conditions of special measures carried out by the state to stop armed aggression, ensure the independence of the state, its territorial integrity, providing for the granting of a certain number of power subjects with powers for defence, civil protection, public security and order, protection of the rights, freedoms, and legitimate interests of citizens. Effective protection of civil rights in times of armed conflicts is impossible without the full implementation of the protective function of civil law, which is a natural manifestation of the security principle inherent in private law [12].

The moment when the right to protection of civil rights arises is a specific fact that has legal significance, due to which there is an encroachment on the civil rights of other persons, including its challenge, and a legal fact that, in the opinion of a person, is a violation of their civil rights. Civil legislation provides numerous means of protecting rights and provides for specific forms of implementing civil rights and protecting them.

There are two approaches and methods of protecting civil rights, which include jurisdictional and non-jurisdictional. The jurisdictional form of civil rights protection includes general and administrative protection. General protection is provided by the courts, and administrative protection is provided by state authorities. A non-jurisdictional form of protection includes self-defence, which can be implemented either independently by the parties (without involving third parties), or with the involvement of competent persons who are not state authorities. Non-jurisdictional methods include ways to protect rights, which are combined into a group of so-called "alternative dispute resolution" (ADR) methods. The system of methods of protecting civil rights provides effective protection for participants in absolute (property and personal non-property), and binding (primarily contractual) relations. Both individuals and legal entities have the right to apply for protection of their rights. Judicial protection of civil rights under martial law is carried out by the judicial authorities. The advantages of judicial protection of civil rights under martial law are: 1) mandatory enforcement of court decisions; 2) judicial protection can extend to an unlimited number of persons; 3) the court is a specialised competent state body charged with administering justice and resolving a dispute about law; 4) the decision is made by a neutral, impartial person; 5) justice is carried out by the court in accordance with clearly established rules and norms. In addition to the advantages, judicial protection of rights also has its drawbacks, which should be considered when choosing a method of protection during a state of war or emergency. Such disadvantages are: 1) the length of the trial; 2) due to military aggression, the presence of participants in the trial is excluded; 3) judicial protection becomes financially costly; 4) the decision made by the court, most often, cannot satisfy both parties.

The administrative (special) procedure for protecting civil rights provides for applying to state bodies with an application or complaint. Undoubtedly, civil rights can be violated by various sectoral offences and are protected not only by civil law, but also by all public law branches and by bodies whose powers may be provided for by exercising influence to stop the offence or recognise the right. An example is an appeal to the state enterprise "Ukrainian Institute of Intellectual Property" to recognise the rights to an intellectual property object as invalid. Thus, one person may believe that the created object of intellectual property

violates their personal non-property rights (honour or dignity). In this case, the state authority may stop the offence with its authority and, as a result, the person protects their rights in an administrative manner. It is worth noting that this method is not common in the protection of civil rights. Often, individuals consider it more effective to apply to the court as a state body authorised to protect their rights.

In accordance with the provisions of Article 4 of the Law of Ukraine "On the Legal Regime of Martial Law" in areas where martial law has been introduced, temporary state institutions called military administrations can be formed to implement the Constitution and laws and regulations of Ukraine, implement together with the military leadership the introduction and implementation of measures of legal regulation of martial law, civil defence, protection of the rights, freedoms, and legitimate interests of persons [4]. Therefore, applying for protection of their civil rights to state authorities will not be effective due to the fact that state authorities during such a period perform functions related to ensuring measures of the legal regime of martial law.

According to Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law", the powers of courts cannot be terminated, in addition, a ban is also imposed on slowing down or speeding up all forms of legal proceedings [4]. However, the judicial system is not without the consequences of military operations. Such consequences are a change in the territorial jurisdiction of court cases and the possibility of remote consideration of cases. These changes are certainly positive in nature and were aimed at ensuring the exercise of their right to participate actively in court sessions, due to which, to carry out the content of their legislative opportunity for an impartial trial.

Such changes in the context of military operations and armed conflicts cannot fully provide an individual with effective protection of their rights. In addition to the trial, separate ADR methods must be applied. Only such a dualistic system, consisting of jurisdictional and non-jurisdictional protection of civil rights, can provide full protection for individuals. Considering the specifics of civil rights, it can be stated that such rights are suitable for protection both by jurisdictional bodies and by competent persons who are not representatives of state authorities or parties to the conflict independently.

Methods of alternative dispute resolution during martial law are aimed at protecting the rights of a person based on contractual and voluntary principles. Due to their flexibility, versatility, and informality, such methods can be used in times of military operations and armed conflicts. Alternative dispute resolution methods that can be applied under martial law include mediation, negotiations, a settlement agreement, dispute resolution with the participation of a judge, and facilitation. Various communication platforms can be used as auxiliary mechanisms for effective protection of civil rights online. When choosing a method of protecting civil rights, the key point is to determine the nature of the actions performed, that is, the legality or illegality of the actions. The right to protection for a person arises in the event of a conflict between the parties, and the conflict can be caused by both legitimate actions and illegal ones. For example, the freedom of creativity of one person acting within the framework of the law may cause a conflict with another person who believes that the result of creativity violates their personal non-property civil rights – the right to honour, dignity, and reputation.

Speaking about the exercise of the right to protect civil rights under martial law, this is a state-guaranteed opportunity to choose any method of protecting their rights that is not prohibited by law. Considering the peculiarity of martial law and the restrictions that apply during military operations, this concerns the effectiveness not only of judicial protection of civil rights, but also of the high efficiency of ADR methods. The advantages of functioning systems of jurisdictional and non-jurisdictional protection under martial law are: rapid settlement of a conflict situation and termination or even prevention of violation of rights; establishment of a decision that satisfies the interests of both subjects; making a fair decision by a competent person; the possibility of enforcement of the decision; ensuring the claim; maintaining professional contacts; normalising professional interaction; confidentiality of the case and preserving the business reputation of subjects.

Mediation and negotiations can establish communication between conflicting parties and quickly, without unnecessary financial and time costs, resolve the conflict without contacting state authorities and the court. These ADR methods are universal and can be used for any conflict. Conclusion of a settlement agreement and settlement of a dispute with the participation of a judge are reconciliation procedures that are aimed at exhausting a dispute that has reached the court. Facilitation can be used to resolve group conflicts and establish a dialogue between a large number of people (for example, a conflict involving residents of an apartment building).

With the development of technology, it has become possible to transfer conflict resolution procedures to the digital environment. Such new mechanisms for resolving conflicts and disputes are called "online dispute resolution" (ODR). This is an alternative way to resolve a conflict or dispute, in which the reconciliation process takes place using a negotiation platform. The platform is chosen by the parties at their sole discretion or by a third party. As practice shows, the most convenient communication platforms are Zoom, Viber, Telegram, Skype, etc. International experts focus on three main options for resolving a dispute online: conducting negotiations between the parties without involving intermediaries, mediation, and arbitration.

Nowadays, it is necessary to create initiative groups for the implementation of educational activities. The public should be informed of the possibility and accessibility of exercising their rights to protection. Such an initiative group should be tasked with developing reference materials describing various ways to protect civil rights, their advantages, disadvantages, jurisdiction of cases, and bringing to the attention of individuals through various possible ways of spreading information about the possibility of protecting rights not only through applying to the court, but also through forms of alternative dispute resolution. Such educational activities should be carried out regularly: during the period of martial law and after the end of hostilities. Currently, it is also necessary to take measures to increase the information awareness of judges and defenders of the parties regarding alternative ways of resolving disputes (to increase their knowledge about mediation; about the advantages of mediation over judicial proceedings; about facilitation as a group negotiation process aimed at resolving a conflict between a group of persons or establishing a dialogue; about resolving a dispute with the participation of a judge as an ADR method;

about conducting negotiations without involving third parties); to pay attention to the need to explain to the participants of the case their powers to pre-trial conflict resolution; and to emphasise the importance of communication during the activities of judges and lawyers with mediators, in order to ensure conditions for an effective mechanism for protecting citizens' rights).

Discussion

Scientific research on the protection of civil rights and interests has been carried out for a long time, but there are still no significant scientific achievements in the science of civil law on the implementation of the right to protection of civil rights during martial law. For a comprehensive study of this issue, it is necessary to determine the legal nature of the concept of "protection of civil rights". The category of "protection of civil rights" in legal science, legal literature, and laws and regulations is often utilised as a commonly used term, devoid of specific content. Some scientific studies in this area are narrow and incomplete. The lack of a complete doctrinal study of the concept of "protection of civil rights", including during martial law, can lead to serious shortcomings in legislation and reduce the level of trust in the state. Often, researchers, investigating the concept of "protection", correlate it with the concept of "security". The difference between the security of rights and their protection is revealed in the fact that regulations aimed at protecting the right determine adverse consequences for violators of these rights, and are applied in the case when the right is violated.

Studying the concept of "protection of rights", Ye.O. Kharitonov defines that the protection of rights includes certain characteristic parts: first, it is the ability of the authorised person to apply the legally permitted means of coercive influence on the violator of rights or the ability of the right holder to protect the right belonging to them by their own actions without applying to state bodies (self-defence); second, it is the use by the authorised person of legal measures of operational influence on the person who violated civil rights (operational sanctions); third, it is the ability of the person to apply to the competent state and non-state bodies with the requirement to perform certain actions to the violator of rights in order to stop the offence and restore rights [13].

The authors of the study agree with the opinion of Yu.N. Andreev, who notes that the category "protection of civil rights" has both a substantive and procedural nature and concerns material methods of protection and procedural approaches that are closely interrelated [14]. To confirm this position, A. Shtanko notes that "protection methods are dynamically implemented together with tools and approaches: methods are provided with tools according to a certain algorithm as a result of the implementation of human rights powers by jurisdictional bodies and directly authorised entities, and protection tools usually depend on its form" [15].

In the literature, there is no single view on the relationship between the concepts of "forms of protection" and "methods of protection". M.I. Braginsky does not distinguish between the concepts of "form" and "method" of protection, pointing out that there is such a way to protect rights as applying to the competent authority. Another scientific position is held by M.V. Grygorchuk, who points to different, qualitative characteristics of these concepts. The researcher suggests considering the concept of "method" as a collective concept for certain actions aimed at the subject, and "form"

acts as a boundary reference point in space in relation to a particular object [16]. The study suggests that it is impossible to identify the concepts of "form" and "method". A form of protection is a set of orderly organisational measures to protect subjective rights. The method of protecting rights is defined as a certain action aimed at protecting rights or removing obstacles to the exercise of a subjective right.

Such researchers as N. Bashurin [17], G. Ulianova [18] and L. Galupova [19] indicate that the protection of civil rights can take place both in a jurisdictional form and in a non-jurisdictional one. The jurisdictional form of protection of rights provides for a person to apply to the court or state authorities for the protection of their civil rights. Judicial protection is also called general protection. Protection carried out by state authorities is called administrative or special protection. A non-jurisdictional form of protection consists of certain methods that are implemented independently by the parties (without involving third parties) or with the involvement of competent persons who do not belong to state bodies. Non-jurisdictional methods include ways to protect rights, which are combined into a group of so-called methods of alternative dispute resolution. According to the authors of this study, this position is substantiated, because here the criterion for distribution is the subject (body) competent to perform the function of protecting civil rights.

One of the most commonly used forms of protection of rights provided for by civil legislation is judicial protection. The introduction of martial law does not formally affect the process of conducting legal proceedings. The Law of Ukraine "On the Legal Regime of Martial Law" (Article 26) prohibits slowing down or speeding up any form of justice under martial law [4]. At the same time, as practice shows, it is impossible to ensure the smooth operation of the court in some regions of the country during the period of armed aggression. To resolve this issue, on 02/24/2022, the Council of Judges of Ukraine adopted a decision "On Taking Urgent Measures to Ensure the Sustainable Functioning of the Judiciary in Ukraine in the Context of the Termination of the SCJ and Martial Law in Connection with Armed Aggression by the Russian Federation" [20]. According to this decision, the work of the court should continue even in conditions of martial law or a state of emergency. In the same decision, there is an indication that "provided that there is a danger to the health and life of visitors and staff of the court, the implementation of legal proceedings by the court is terminated until the elimination of the factors that provoked the threat to citizens." Thus, the work of the court is determined by the specifics of the current situation in the region where the court is located. To date, the decision of the Supreme Court has changed the territorial jurisdiction of more than 100 courts that cannot operate during military operations. The authors agree with the position of K. Chernilevska that the state in times of war should ensure proper access to justice, and the courts should quickly adapt to new, temporary conditions – martial law [21].

The team of authors, including O.I. Kharitonova, Ye.O. Kharitonov, K.G. Nekit *et al*, distinguish the following: ways of judicial protection of civil rights and interests: 1) the court may recognise the right of a certain subject; 2) the court may declare the transaction invalid; 3) the court may impose an obligation on the guilty subject to stop the act by which he infringes on the rights of others; 4) the court may restore the violated civil right and the situation that

existed before the violation of the right; 5) the court may oblige a certain person to fulfil the obligation in kind – to perform the task or refuse to implement it; 6) the court may apply other ways to protect civil rights and interests. The list of methods of protecting rights regulated by the norms of civil legislation is not absolute, since the civil legislation of Ukraine defines other approaches and tools for implementing protection [22].

To be able to correctly choose the most effective way to protect civil rights, it is necessary to correlate judicial protection and protection using ADR methods. To do this, it is necessary to identify the differences between these categories. For the most part, they consist of:

- subject system of the parties to legal relations: the subjects of court proceedings are persons established by procedural rules (employees of the court, parties to the trial, other participants in this process); the subjects of the ADR process are conflict parties, other participants who are intermediaries (mediator, arbitrator, judge who allows the parties to resolve the conflict through an alternative approach), and other subjects whose participation is possible at the request of the parties;
- grounds for the emergence of legal relations: the basis for judicial protection is a statement of claim, the basis for protection with the help of ADR is an agreement between the parties;
- subordination of participants: the judge has power, intermediaries at the ADR, except for the arbitration court, do not have power;
- procedure for attracting persons who contribute to the settlement of the conflict: the judge is elected using systems and automatic distribution of the case; when protecting civil rights using ADR methods, the parties can choose an intermediary at their own discretion;
- the nature of the execution of the act: the court decision has a mandatory character and is binding; the decision adopted and fixed using the ADR approach (with the exception of the arbitration court) is characterised by contractual features [22].

Various types of civil rights are subject to protection both by judicial procedure and by ADR methods. When choosing a more convenient and effective method during the period of martial law, a person should pay attention to territorial accessibility to the court, the duration of dispute resolution, the ratio of the price of the claim and the actual value, emotional costs, and the desire to remain in good business relations. Most researchers who deal with the issues of alternative resolution of certain civil disputes, including L.I. Galupova, V.Ye. Prushchak, and O.M. Spector, indicate that such methods are primarily aimed at the reconciliation of the parties and exhaustion of the conflict [19; 24; 25]. The authors of the study agree with researchers and emphasise that the purpose of introducing ADR is to help jurisdictional authorities unload a large number of cases and reconcile the parties. Although it should be noted that not all ADR methods are primarily aimed at reconciliation. For example, arbitration proceedings, as one of the types of ADR, quite rarely make a decision that would reconcile the parties. With this resolution of the dispute, one side won, the other lost. Under such conditions, the parties cannot reconcile.

Today, ADR methods are used in many countries of the world and make a positive impression on the parties to the conflict. ADR was first used in the United States. Initially, ADR methods were used to resolve family and commercial disputes. Nowadays, various ADR methods can be used to

resolve almost all conflicts. Researchers refer the following methods to ADR: mediation, negotiations, facilitation, arbitration proceedings, dispute settlement with the participation of a judge, settlement agreement, and other hybrid methods, such as mini-court and mini-process [19].

One of the most effective ways to resolve a conflict situation is through negotiations. There is no consensus in the scientific community about the legal nature of such a method of conflict resolution as negotiations. Some researchers point out that negotiations are an independent way to resolve a conflict situation [26; 27], while other researchers do not refer negotiations to a separate independent method of ADR [28]. According to the authors of this study, negotiations can be considered as an independent way of ADR, when the parties resolve the conflict without involving intermediaries, and as an integral part of other ways of ADR. Thus, mediation is a negotiation process between the parties with the participation of a third neutral party, facilitation is negotiations between a group of individuals to resolve a conflict, the parties come to a settlement agreement through negotiations, etc.

Special attention should be paid to such a form of ADR as mediation. It is because of this that ADR is often identified with mediation. However, the latter should be understood as a dispute resolution procedure involving a third impartial party. At the moment, it is possible to mention such mediation centres that implement their activities in Ukraine as the National Association of Mediators of Ukraine, the Ukrainian Centre for Understanding, and the Ukrainian Academy of Mediation. The purpose of creating these centres is to train professional mediators and resolve various conflicts [29; 30]. Such scientists as L.D. Romanadze [31] and Yu.D. Prytyka [32] report the effectiveness of mediation as a way to resolve conflicts. Indeed, today mediation has proven its effectiveness in different countries of the world, as evidenced by statistics. The effectiveness of mediation as a way to resolve conflicts is about 70-90%: in the United States, China, South Korea, and the United Kingdom [33; 34]. Other ADR methods can be used under martial law, considering the specifics of conflicts, disputes, and the ability of the parties to make a mutually beneficial, compromise solution.

In turn, D. Huber notes that civil rights cannot be properly protected during war [35]. The researcher analyses the experience of Lebanon and Iraq. He managed to find out that during military operations the sphere of civil legal relations is particularly affected. Therefore, the researcher considers it appropriate to restrict citizens in certain rights, in particular, civil ones, in order to avoid abuse by other citizens. However, to a greater extent, such imperativeness was negative for individuals, which led to a narrowing of their powers and the possibility of using their own property and personal non-property objects. According to the researcher, this approach is unacceptable, since it violates the constitutional principles. At the same time, the researcher agrees that during martial law, it is civil rights that most often become the object of offences. Therefore, he believes that in such conditions it is necessary to form a special state mechanism designed to provide citizens with civil rights and enable them to freely exercise them.

S.F. Jones also studied the approaches of various states to regulating civil legal relations during military operations [36]. He analysed the experience of Georgia in 2008, during the war with the Russian Federation. He established that there were no significant restrictions imposed

by state bodies on citizens, as well as their rights. However, the researcher drew attention to the fact that special procedures were applied that changed the procedure for providing certain services to citizens during the exercise of their civil rights. This approach allowed protecting the property rights of individuals, which made it possible to avoid the occurrence of negative consequences for private entities. According to the authors of this study, similar approaches, taking into account modern conditions, are used in Ukraine. However, in the context of using international experience, it would be advisable to develop a special institution that would ensure the protection of civil rights in the territories under occupation. This can be done through information technologies, in particular, special annexes that would provide citizens with the maximum level of protection from arbitrary encroachment on their rights during military operations.

Conclusions

The conducted scientific study of the possibility of exercising the right to protect civil rights under martial law has yielded the following conclusions. The right to protection may not be infringed or restricted during martial law, but the exercise of the relevant rights may be hindered by external factors inherent in the period of military operations in certain territories or in the country in general. The protection of civil rights under martial law is a set of methods, techniques, and various procedural actions by which the prevention, suppression of an offence, or restoration of a violated civil right of a person is carried out, which can be applied in the conditions of special measures carried out by the state to stop armed aggression, ensure the independence of the state, its territorial integrity, providing for the granting of a certain number of power subjects with powers for defence, civil protection, public security and order, protection of the rights, freedoms, and legitimate interests. Under the conditions established as a result of the introduction of martial law, the state must provide citizens with the opportunity to

appeal both to jurisdictional forms of protection (appeal to the court or state authorities) and to non-jurisdictional forms of protection (methods of alternative dispute resolution).

When choosing an effective way to protect civil rights, it is necessary to pay attention to the following criteria: the ability to overcome the necessary distance to the court (territorial accessibility), the possibility of long-term dispute resolution, the ratio of the price of the claim and the actual cost, the willingness to bear emotional costs, the ability to remain in good business relations with the other party to the dispute. Applying to the court for protection of civil rights during martial law is effective when the copyright holder needs a mandatory act, when the parties are confident that there will be no obstacles to the full consideration of the case (the possibility of involving other participants in the process, the parties will be able to freely appear in the courtroom, the parties are not abroad) and that it will not be possible to resolve the conflict independently. The use of alternative dispute resolution methods is effective when the parties wish to remain in good business relations and continue cooperation in the future, the parties (or one of the parties) are abroad or at a great distance from each other, the parties want to resolve the conflict without significant monetary costs, the parties understand the possibility of making a decision that would satisfy both parties.

Consequently, under martial law, the parties cannot be restricted in the right to protection and in choosing the method of exercising this right. The non-exhaustion of ways to protect civil rights allows the parties to a conflict or dispute to weigh all external factors in the form of the consequences of military operations and personal factors – the ability of a person to apply one or another method of protection when choosing the most effective way to protect their civil rights. In future studies, it is advisable to focus on the specifics of providing administrative services to citizens during the war in Ukraine, in particular, both in the territories under its control and in the occupied ones.

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Анотація. Актуальність заявленої тематики наукового дослідження зумовлено особливостями воєнного стану та його впливу на реалізацію прав фізичних і юридичних осіб. Великого значення набуло питання надання кожній особі можливості використати повноваження на захист своїх благ, яке гарантує держава, в умовах воєнного стану. Статтю спрямовано на визначення та розкриття поняття «захист цивільних прав» та можливість його реалізації в умовах воєнного стану. Провідні методи дослідження цих питань – діалектичний та системний, які дають змогу розглянути правову природу категорії «захист». Системний підхід допоміг визначити найбільш ефективні законні способи захисту прав в умовах воєнного стану. У статті визначено поняття «захисту цивільних прав в умовах воєнного стану», розкрито особливості реалізації права на захист своїх прав з урахуванням особливостей та обмежень воєнного часу, розглянуто найбільш ефективні способи захисту цивільних прав та можливість їх застосування в умовах воєнного стану, охарактеризовано юрисдикційну та неюрисдикційну форми захисту цивільних прав. Теоретична цінність науково-дослідної роботи полягає у визначенні поняття «право на захист цивільних прав» з урахуванням особливостей та обмежень, зумовлених воєнним станом, що може стати основою для подальшого наукового дослідження суміжних питань. Практичною цінністю науково-дослідної роботи є розкриття особливостей реалізації права на захист на територіях, де проводяться військові дії, та визначення ефективних форм та способів захисту цивільних прав в умовах воєнного стану

Ключові слова: форми захисту, воєнний час, цивільний кодекс, політичний конфлікт, органи влади, медіація