

# A PERSON AND THEIR SECURITY AS A VALUE IN THE SPECTRUM OF PUBLIC POWER: LEGAL PROBLEMS OF RECOGNITION THROUGH A CIVILIZATIONAL PERSPECTIVE

**How to cite this article [Chicago]:** Omelchuk, Vasyl, Oleksandr Kalinichenko, Inna Naida, Mykola Romanov and Tetiana Havrylenko. "A Person and Their Security as a Value in the Spectrum of Public Power: Legal Problems of Recognition through a Civilizational Perspective." *Novum Jus* 16, núm. 1 (2022): 107-132.

<https://doi.org/10.14718/NovumJus.2022.16.3.5>

Vasyl Omelchuk

Oleksandr Kalinichenko

Inna Naida

Mykola Romanov

Tetiana Havrylenko





# A PERSON AND THEIR SECURITY AS A VALUE IN THE SPECTRUM OF PUBLIC POWER: LEGAL PROBLEMS OF RECOGNITION THROUGH A CIVILIZATIONAL PERSPECTIVE

VASYL OMELCHUK

OLEKSANDR KALINICHENKO

INNA NAIDA

KYIV COOPERATIVE INSTITUTE OF BUSINESS AND LAW

MYKOLA ROMANOV

NATIONAL UNIVERSITY OF OSTROH ACADEMY

TETIANA HAVRYLENKO

“KROK” UNIVERSITY

---

## Abstract

The recognition of the human being, their life, health, honor, dignity, inviolability, and security, as the highest social value is a key principle of the Constitution of Ukraine and its implementation in the spectrum of public authority has been the subject of in-depth theoretical and legal analysis. The historical origins of the modern perception of human value, reaching the depths of the birth of the Christian faith, the revolutionary events in the European past, the world wars, and the adoption of the UN Universal Declaration of Human Rights are reflected in many states' constitutions, including modern Ukraine's. At the same time, certain problems are obvious, including differences in the perception of the content of human rights between Western and Eastern civilizations, Christian and Muslim beliefs, and the diverse constitutional declarations with their legislative implementation, as well as the separation of new human rights, problems that are increasingly attracting the attention of scholars and practitioners.

**Keywords:** constitution, responsibilities, guarantees freedom, natural law, rule of law, conservatism.

**The authors:** Vasyl Omelchuk, Department of Law, Kyiv Cooperative Institute of Business and Law, 030022, 18 Lomonosova Str., Kyiv, Ukraine

Oleksandr Kalinichenko, Department of Law, Kyiv Cooperative Institute of Business and Law, 030022, 18 Lomonosova Str., Kyiv, Ukraine.

Inna Naida, Department of Law, Kyiv Cooperative Institute of Business and Law 030022, 18 Lomonosova Str., Kyiv, Ukraine.

Mykola Romanov, Department of Political Science and National Security, National University of Ostroh Academy, 35800, 2 Seminarska Str., Ostroh, Ukraine.

Tetiana Havrylenko, "KROK" University, 03113, 3-32 Tabirna Str., Kyiv, Ukraine.

**Received:** February 18, 2022; **Evaluated:** August 22, 2022; **Accepted:** August 26, 2022

# LA PERSONA Y SU SEGURIDAD COMO VALOR EN EL ESPECTRO DEL PODER PÚBLICO: PROBLEMAS JURÍDICOS DE RECONOCIMIENTO DESDE UNA PERSPECTIVA CIVILIZATORIA

VASYL OMELCHUK

OLEKSANDR KALINICHENKO

INNA NAIDA

KYIV COOPERATIVE INSTITUTE OF BUSINESS AND LAW

MYKOLA ROMANOV

NATIONAL UNIVERSITY OF OSTROH ACADEMY

TETIANA HAVRYLENKO

“KROK” UNIVERSITY

---

## *Resumen*

El reconocimiento de una persona, su vida, salud, honor, dignidad, inviolabilidad y seguridad como el valor social supremo, es un principio fundamental de la Constitución de Ucrania. Asimismo, su implementación en el espectro del poder público ha sido objeto de numerosos estudios teóricos y análisis jurídicos. Los orígenes históricos de la percepción moderna del valor humano, llegando a las profundidades del nacimiento de la fe cristiana, los eventos revolucionarios de la historia europea, las guerras mundiales y la adopción de la Declaración Universal de Derechos Humanos de la ONU, se reflejan en muchas constituciones de Estados, incluida la de Ucrania moderna. Al mismo tiempo, ciertos problemas son obvios en esta área, como las diferencias en la percepción del contenido de los derechos humanos entre las civilizaciones occidentales y orientales, entre las creencias cristianas y musulmanas, la diversidad de las declaraciones constitucionales y su implementación legislativa, así como la separación de nuevos derechos humanos, problemas que están atrayendo cada vez más atención de académicos y profesionales. El presente artículo investiga estos conceptos.

**Palabras clave:** constitución, responsabilidades, garantías libertad, ley natural, estado de derecho, conservadurismo.

**Los autores:** Vasyl Omelchuk, Department of Law, Kyiv Cooperative Institute of Business and Law, 030022, 18 Lomonosova Str., Kiev, Ucraina.

Oleksandr Kalinichenko, Department of Law, Kyiv Cooperative Institute of Business and Law, 030022, 18 Lomonosova Str., Kiev, Ucraina.

Inna Naida, Department of Law, Kyiv Cooperative Institute of Business and Law 030022, 18 Lomonosova Str., Kiev, Ucraina.

Mykola Romanov, Department of Political Science and National Security, National University of Ostroh Academy, 35800, 2 Seminarska Str., Ostroh, Ucraina.

Tetiana Havrylenko, "KROK" University, 03113, 3-32 Tabirna Str., Kiev, Ucraina.

**Recibido:** 18 de febrero de 2022; **evaluado:** 22 de agosto de 2022; **aceptado:** 26 de agosto de 2022

## Introduction

In Ukraine, the constitutional recognition of the human being as the highest social value<sup>1</sup> and the implementation of this idea in practice are essentially a multifaceted applied and scientific-theoretical problem. This problem is the subject of research in philosophy, sociology, economics, other scientific fields, and certainly in law. The effectiveness and success of its solution determines the level and quality of the socio-economic development of society and the state. But even a preliminary look at this fundamental constitutional thesis raises the following question. Is the indisputable importance of the human being as the highest social value the basis for such definition in the Basic Law of the Ukrainian state? Or, on the contrary, is the definition in the fundamental article of the Constitution of Ukraine of the human being as the highest value what causes such recognition in the state and society?

Reflecting on the deep perspectives of this problem, we will analyze its individual facets. First of all, it is important to note that the very fact that mankind recognizes the human being as one of the living beings endowed with consciousness and the ability to evaluate the world and transform is symbolic. According to religious Christian dogmas, the human being was created by God in his likeness. These and other ideas about the recognition of the significance and value of the human being are concentrated in the philosophy of anthropocentrism —an anthropological paradigm, the basis of which is reflected in the famous saying of the ancient Greek philosopher Protogor: “man is the measure of all things”.

In the Middle Ages, the Renaissance, and especially during the French Revolution, anthropocentrism gained greater social and legal significance, when its basic principles were enshrined in the Declaration of Human and Civil Rights of 1789 and other important political and legal documents of the time. Even then, the socio-legal basis of modern European values was established. These values attract scientists because the priority of the human interests and the individual freedom, as a principle of natural law and a significant component of such values, is considered more progressive and is prioritized by a certain part of the human community, with advantages over other modern legal concepts.

However, even in those distant historical periods, in addition to the value of the human being and his rights and freedoms, another somewhat alternative component

---

<sup>1</sup> Verkhovna Rada of Ukraine, *Constitution of Ukraine*, 1996, <http://zakon3.rada.gov.ua/laws/show/>

of the socio-economic European values emerged, namely the property rights. This was a manifestation not so much of democratic or political liberalism as of economic liberalism, based on the principles of free trade, and, at the same time, hired labor<sup>2</sup>. And this inevitably led to human exploitation and an alternative to it —building a system of protection of its social interests through the formation of a social and legal state. And then the modern European social-democratic state really becomes a real expression of this instead of a pretended example.

However, it is appropriate to note that what characterizes the modern European values is the idea of conservatism, which was also established in the late 18th and early 19th centuries. At its core, it primarily defended the principle of order. As for human rights, the most important of them was the right to security. Current European conservative ideas regarding the value of the human being and his rights and freedoms are successfully summarized by the modern French scholar of philosophy of law Alain de Benoist in his famous work “On the other side of human rights”<sup>3</sup>.

Furthermore, emphasizing the second part of Article 3 of the Basic Law of Ukraine, according to which human rights and freedoms and their guarantees determine the content and direction of the state, we emphasize that it makes the human being responsible for his activities. Moreover, the establishment and protection of human rights and freedoms is constitutionally defined in Ukraine as the main duty of the state<sup>4</sup>. In practice, these principles should be decisive for understanding the social axiological guidelines of the current formation period of the Ukrainian statehood in general and the public authorities in particular. The state must implement these constitutional principles through power and the tools of power. We emphasize that we are talking about the norm of Article 5 of the Constitution, which states that the only source of power is the people, who exercise power through public authorities and local governments, which under Article 7 of the Constitution is recognized and guaranteed. But for Article 6 of the Basic Law of Ukraine, state power is exercised through its division into legislative, executive and judicial branches. It is important to note that the Constitution of Ukraine, as established under Article 8, has the highest legal force and is actually the result and consequence of the implementation of the

---

<sup>2</sup> I. Britchenko, A.P. Monte, I. Kryvovozzyuk, and L. Kryvoviazziuk, “The Comparison of Efficiency and Performance of Portuguese and Ukrainian Enterprises,” *Ikonomicheski Izsledvania* 27, no. 1 (2018): 87-108.

<sup>3</sup> A. de Benoist, *Beyond Human Rights. In Defense of Freedoms* (Moscow: Institute of General Humanitarian Research, 2015), 54.

<sup>4</sup> Verkhovna Rada of Ukraine, *Constitution of Ukraine*.



legislative power of the state. That is why the constitutional and legal mechanism for recognizing a human being, his life and health, inviolability and security as the highest social value, is essentially aimed at establishing and ensuring human rights and freedoms as the main duty of the Ukrainian state.

However, the real level of implementation of this principle in the socio-economic reality, as reflected in the indicators of life, health, and safety of the Ukrainian people remains low in many respects compared to many other European countries. The problem of immigration of Ukrainian citizens to the countries of the European Union is also an evidence of this. These perspectives of the problem unite the scientific interests of the authors of this article, and constitute an actual scientific-theoretical and applied problem, which requires the attention of scientists and practitioners.

## **Methodological Framework**

The methodological support of science guarantees the accuracy of the scientific research methods, which help researchers find new ways to understand the processes and phenomena under study and their adequate reflection in the system of scientific knowledge. Since the study of law is methodologically based on previous theoretical studies, the authors have them as a basis to develop a new understanding of the essence of the studied phenomenon. Thus, the methodology contributes to the development and implementation of the theory and practice of the law, including its transformation and improvement.

In the course of the study, the authors resorted to a system of general scientific, philosophical and special methods to ensure the reliability and implementation of the results. The main research methods were analysis and synthesis. They were the main ways to approach the legal problem of recognizing human security as one of the values in the spectrum of public power. The historical method was one of the principal methods for studying the modern legal understanding of the value of a person and their perception in the spectrum of public power. The method provided the authors with the opportunity to examine the socio-legal basis of the modern European values regarding human life.

The authors used the legal method to analyze the international legal acts, compare the legislation of Ukraine and other countries, and study the legal acts of international organizations related to the identification of the person as the highest social value in the spectrum of public power. The systematic method made it possible to generalize

the materials and highlight some theoretical, legal, and applied issues regarding the acknowledgment of the person, their life, and security as the highest value in the spectrum of public power in the Ukrainian and world contexts. Thus, it allowed the authors to determine the theoretical and practical contradictions regarding the current socio-legal state of development of the human community.

With the comparative method the similarities and differences between the individual concepts used in the article were established. The authors resorted to this method to examine the rule of law in Ukraine and in foreign countries, the disagreements in the perception of the content of human rights in the Western and Eastern civilizational spaces, as well as in the Christian and Muslim beliefs, analyzing also a multilateral constitutional declaration and its subsequent legislative and applied implementation.

The methodological framework of this study is based on the concepts of leading scientists in the field of human rights and the philosophy of law. The authors determined that the recognition of the value of a person, their life, health, and security should become real, and not only a declarative duty of the state and all the branches and varieties of power.

## Results

### Analysis of Recent Research on Human Value

In our review of the scientific research and publications on this subject, we focused not only on those scholars who take a unanimous position in support of established views, but also on those that embrace polemical reasoning. Among the wide range of areas studied in this article, we focused on works in the fields of general philosophy, theory and law centered on understanding human value.

In this regard, first of all, it is worth paying attention to the iconic general philosophical thesis of the famous Ukrainian philosopher Myroslav Popovich, who, reflecting on the question of what a person is, quite rightly stated that the very nature of the human being, including its value, is determined by the human being himself<sup>5</sup>. And he is a priori right, because in the view of today's human civilization, only the human being is endowed with a level of consciousness, making his value the highest

---

<sup>5</sup> M. Popovich, *To Be Human* (Kyiv: Kyiv-Mohyla Academy Publishing House, 2011), 11.

among the living beings. But on what scale is such an assessment realized? Who or what is compared to a person? And at what other level of value is the human being placed? And if we consider more generally the elements of the universe, then maybe this involves also the natural environment in general, like the flora and the fauna.

If we consider a person within the social coordinates as the highest social value, then along with the person, his life, health, honor, dignity, inviolability and security, i.e. his vital interests, we should put the interests of a community of people, a society, a state, as it is perceived in other philosophical and legal systems. Or maybe if, given the Christian idea that man is the image and likeness of God, then his value is higher than the value of God himself? Such rhetorical questions and answers suggest the need to search for a logical and reasonable answer.

The peculiarities of the researched problem and the search for theoretical and applied ways to solve it have also been the object of scientific discussions in authoritative Ukrainian publications. For example, S.P. Golovaty has emphasized in her publications that the human being is a work of Nature, and not of society. And that is why she (the human being) and her dignity need protection<sup>6</sup>.

At the same time, it is worth considering the scientific position of Yuval Noah Harari, a professor at the Hebrew University and researcher of the history of mankind. Analyzing the achievements of scientists in various fields of knowledge, he makes quite strong arguments about the “intelligent human being” as a direct natural ancestor of the modern human being, which somewhat breaks the common notion of the inherent positive qualities of the human being himself. It is the intelligent human being, this scientist emphasizes, who caused the extinction of other members of the human race on Earth. Thus, Harari emphasizes that *Homo sapiens* took first place among the living organisms in the extinction of most species of plants and animals, and therefore has the dubious honor of being the deadliest species in the annals of biology<sup>7</sup>. That is why the intelligent person, as a work of nature, should not be idealized in relation to other representatives of the human race using such modern criteria as humanism, virtue, and morality. But it is this implementation of the principle of natural selection in favor of the existence in nature of the primitive

---

<sup>6</sup> S.P. Golovaty, “The Triad of European Values. The Rule of Law, Democracy, Human Rights as the Basis of the Ukrainian Constitutional Order. Part Three: Human Rights (Article 3 of the Constitution of Ukraine)”, *Law of Ukraine* 1 (2015): 13-92.

<sup>7</sup> Y.N. Harari, *The Man is Smart. The History of Mankind from the Past to the Future* (Kyiv: Klub Simeinoho Dozvillia, 2016), 44.

man, *Homo sapiens*, that gave the opportunity to the human being living in the modern civilization to reach a new conscious level of its existence, forming such social regulators as morality, law in general and natural law in particular, which is clearly different from the laws of nature<sup>8</sup>.

Such a past of ours, as some scientists say, should not be silenced or ignored. At the same time, it does not contradict the current notion of natural law. According to social naturalism, which scientists consider as the basis of natural law, law as well as morality follow, not from human nature, but from the nature of human social life, i.e., from social nature<sup>9</sup>. That is, even if the current view of public life in Neanderthal times, the morality of the time, corresponded to the actions of the *Homo sapiens*, his actions were necessary both for the survival of the individual and the human race as a whole, of which we are now members, its modern representatives. And that's why O.M. Kostenko is right in that the social has no antibiotic character as an end in itself, just as the biological has no antisocial character. But, in our opinion, both at the time of the extinction of Neanderthals and now in our time, the human community, i.e., the society, or a certain part of it, is harmful because of its activities (industry, development and application of destructive flora and fauna and, in general, biological, and even chemical armaments, etc.), albeit not purposefully. Therefore, is this not a manifestation of one of the laws of social nature, mentioned by Kostenko, which do not depend on the will of man?

In view of such considerations, it is worth returning to the argument of Golovatyι regarding the documents of the Venice Commission "... on the compliance of the Constitution of Ukraine with European standards, which states that a significant shortcoming of the Ukrainian founding act is the just unfounded and unjustified recognition in Article 3 of the human being as 'the highest social value'". Such a socially-oriented understanding of the human being, according to Golovatyι, is extremely harmful because it does not create any problems to perceive man as a "social product". Moreover, the human being can be conceived as an element that comes from society or "belongs to society" (and hence to its political institution, the state), in relation to property rights<sup>10</sup>. However, in such statements Golovatyι

---

<sup>8</sup> J.G.D. Mantilla, J.A.S. Mesa, and A.H.M. Durán, "Enforced Disappearance in the Context of Judicialization and Reparation of Superior Values from Michael Sandel's Ethics of Justice," *Novum Jus* 15, no. 2 (2021): 177-197.

<sup>9</sup> O.M. Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology* (Odesa: Helvetica Publishing House, 2021), 36.

<sup>10</sup> Golovatyι, "The Triad of European Values", 88; S. Golovatyι, *About Human Rights* (Kyiv: Dukh i Litera, 2016), 5.

is not convincing enough. After all, the origin of society cannot be perceived as an alternative to it, especially on property rights. But there is no doubt that legal science really should get rid of the syndrome of exaggeration of the role of the state in relation to the person.

The obvious argument for this doesn't even need the controversy over "state ownership". The realities of the Ukrainian present are more convincing, when millions of members of our society and, accordingly, citizens of the state ignore such "ownership", migrating to other societies and state formations more acceptable to them, thus realizing the possibility of choosing the world where it is acceptable for a person to maintain his identity<sup>11</sup>. It is significant that in the comments on the translation of the Venice Commission document "The Rule of Law" for the Ukrainian user, in paragraph 90, when the relationship between the three concepts (law, democracy, human rights) is considered, as illustrated in a special document of the Committee of Ministers of the Council of Europe, freedom of movement is mentioned as an example of human rights<sup>12</sup>.

In fact, this is a manifestation of the implementation of the constitutional principle of the perception of the human being as the highest social value and the respect for his dignity in the context of growing globalization. It is obvious that globalization has been progressing more spontaneously and chaotically, leading to civilizational polarization and even to international or interstate conflicts and, more importantly, affecting the inefficient and weak states. Libanova<sup>13</sup> is right when she affirms that the reason for the departure of Ukrainian citizens abroad is not only a desire to solve their financial and material problems, but mainly the persistent inequality in various spheres between countries, which causes in the Ukrainian citizens a lack of vision for a better future in their state.

This situation is in fact evidence of a passive political protest, of the disagreement of citizens with the state policy, without seeking political asylum, without loud statements, but nevertheless a protest. However, not every citizen of the state can use this form of protest. Thus, citizens of the state who are civil servants are legally

---

<sup>11</sup> M.O. Ovcharenko, O.V. Tavolzhanskyi, T.M. Radchenko, K.D. Kulyk, and N.V. Smetanina, "Combating Illegal Drugs Trafficking Using the Internet by Means of the Profiling Method," *Journal of Advanced Research in Law and Economics* 11, no. 4 (2020): 1296–1304.

<sup>12</sup> European Commission for Democracy through Law, *A Measure of the Rule of Law*, 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-ukr](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-ukr).

<sup>13</sup> E.M. Libanova, "Most Ukrainians do not Migrate Because of Low Wages," 2021, <https://www.ukrinform.ua/rubric-society/3283796-bilsist-ukrainciv-migrut-ne-cerez-nizku-zarplatu-libanova.html>

deprived of this right to travel abroad. As evidenced by the socio-political realities, this problem exists today and there are also many such examples in the past. For example, during revolutionary events, wars, and other social cataclysms, migration tendencies were much stronger. These events should be perceived as a manifestation of the social nature. Therefore, the main factor in migration is inequality between countries, and Ukrainians mostly leave not only to get higher wages, but also because a lack of vision for a better future for their state<sup>14</sup>. Regarding the criticism by the Venice Commission of the provisions of the Ukrainian Constitution regarding the recognition of the human being as the highest social value, it should also be noted that according to Article 3 of the current Basic Law of Ukraine, the highest social value recognized is not only the person, but also his life, health, honor and dignity. That is, the norm itself emphasizes that a person is recognized as a holistic value with certain components and qualitative characteristics.

In one of the draft amendments to the Constitution of Ukraine, P.M. Rabinovych and the team of scholars led by him proposed to formulate this basic norm in another wording: "The human being, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social values"<sup>15</sup>. In this case many values are mentioned. But even in this version of the constitutional norm, the criticism of the European institution and Golovatyi is quite fair. Evidence of this is the fact that in the practice of constitutional legislation the normative definition of "the human being as a higher value" (not social, as in our country) is common in the post-Soviet space (Belarus, Russia and some others). Whereas for the states of Western and Central Europe such constitutional definition is not used.

Thus, the Polish Constitution is only about guaranteeing civil rights, respect for freedom and justice and ensuring freedom and human rights, as well as the security of citizens. And the French Constitution proclaims a commitment to human rights. The German basic law states that human dignity is inviolable. It is the duty of all public authorities to respect and protect it. The Spanish Constitution proclaims the desire (effort) to ensure the realization of human rights. And the highest values of the Spanish legal order, as a legal, democratic, social state, are justice, equality, and political pluralism. There are other examples of the proclamation of human

---

<sup>14</sup> J. Abrahám, I. Britchenko, M. Jankovic, and K. Garškaite-Milvydiene, "Energy Security Issues in Contemporary Europe," *Journal of Security and Sustainability Issues* 7, no. 3 (2018): 387-398.

<sup>15</sup> Lviv Laboratory of Human and Civil Rights, "Draft Materials of the Lviv Laboratory of Human and Citizen Rights of the Research Institute of State Building and Local Self-Government of the National Academy of Sciences of Ukraine," *Law of Ukraine* 10 (2015): 14-58.

relations in the constitutions of states, as in the constitutions of Japan and South Korea, which even enshrine the human right to achieve or strive for happiness<sup>16</sup>.

O.M. Borislavska<sup>17</sup> quite rightly notes that the human rights, according to the European model of constitutionalism, are one of the necessary attributes of constitutional government. At the same time, she rightly emphasizes that there are a number of different doctrines and concepts of human rights and, referring to the views of others, emphasizes the lack of agreement on how the basic institutions of constitutional democracy should be organized to meet fair conditions for free and equal citizens.

## **Constitutional Norms on the Human Being as the Highest Value**

An important component of the study of the constitutional norm on the human being as the highest value is the need to determine the gradation of these values. If we are talking about the highest degree of value, it is quite logical to ask what other values are comparable to it. The need to consider this scientific problem in law has been discussed by both foreign and domestic scientists. Thus, Max Scheler, the famous sociologist of the early twentieth century<sup>18</sup>, considered one of the founders of modern Western European philosophical anthropology, the doctrine of nature and the essence of man that is the basis of various branches of science, considered values as a phenomenon of human feeling and established the need to form and organize the hierarchy of values in general and in relation to the person in particular, ordering them both in material and formal sense.

The modern German philosopher-pragmatist Hans Joas<sup>19</sup>, whose subject of research is the value of human rights, in his thorough work "The Origin of Values", explores a wide range of scientific views on the formation, change and loss of values and argues that sociality, as a basis for the definition of values, cannot contradict universal approaches and be reduced to the resolution of conflicts, interests and distribution of benefits, without taking into account the normative potential in various social formations, even with antagonistic features.

---

<sup>16</sup> A.C. Pérez, "New Legal Realism: A Promising Legal Theory for Interdisciplinary and Empirical Research about the 'Law-In-Action'", *Novum Jus* 16, no. 1, (2022): 209-228.

<sup>17</sup> O.M. Borislavska, *European Model of Constitutionalism: System-Axiological Analysis* (Kharkiv: Pravo, 2018), 13.

<sup>18</sup> M. Scheler, *Formalism in Ethics and Material Ethics of Values. Selected Works* (Moscow: Gnozis, 1994), 34.

<sup>19</sup> H. Joas, *The Emergence of Values* (St. Petersburg: Aleteya, 2014), 4.

The Ukrainian lawyer M. Savchin<sup>20</sup>, in his scientific works, building on his concept of the hierarchy of constitutional values and in the context of globalization, states that the human being, as noted in the text of the constitution, is not mentioned along with other general categories such as human rights or human dignity. In a polemic with the co-author of the article, Savchin argues that this is immoral and illogical and backs his argument with the realities of Ukraine's war in the east, where thousands of people have died.

In our view, the value and life of a person are comparable only to the value and life of another person. At the same time, in the Ukrainian legislative and legal field there has been a certain comparison of values on this issue. Thus, in the Law of Ukraine "On the Fundamentals of National Security of Ukraine" adopted in June 2003, which, however, expired with the adoption of the Law of Ukraine "On the National Security of Ukraine" on June 21, 2018, defining the objects of national security, the legislator quite rightly put on par with the human being and the citizen their rights and freedoms, as well as the society (its spiritual, moral and ethical, cultural, historical, intellectual and material values), the information and the environment, and the natural resources and the state (its constitutional order, sovereignty, territorial integrity and inviolability). That is, the values of all these objects of national security at this legislative level, which regulate the security issues at the strategic national level, have been balanced.

But already in the Law "On the National Security of Ukraine" of 2018, this rule is missing. However, the National Security Strategy of Ukraine, implemented on the basis of the above Law in 2020, states, among the priorities of national interests and security, that a person, his life and health, honor and dignity, inviolability and security, is the highest social value in Ukraine, and that the implementation of this constitutional norm is the main goal of the state policy of national security<sup>21</sup>. Such specific features of the legislative and legal regulation of the constitutionally defined main duty of the state during the years of its existence, in our opinion, do not contribute to its success.

---

<sup>20</sup> M. Savchin, *Modern Tendencies of Constitutionalism in the Context of Globalization and Legal Pluralism* (Uzhhorod: RIK-U, 2018), 8.

<sup>21</sup> President of Ukraine, Decree no. 392/2020, "On the Decision of the National Security and Defense Council of Ukraine of September 14, 2020, on the National Security Strategy of Ukraine", 2020, <https://www.president.gov.ua/documents/3922020-35037>.



Given the general approach to understanding human rights and their significance, it is worth mentioning others that are in some ways contrary to traditional views. In this regard, the position of the Canadian scientist and politician Michael Ignatiev deserves attention. He draws attention to the problem of the relationship between the foundations of human rights and human rights themselves. In his opinion, belief in the “right” foundations cannot be more important than the “right” attitude to people, based on the respect for people<sup>22</sup>.

Rudolf Challen, the Swedish scholar-lawyer of the 19th and 20th centuries, in his famous work *The State as a Form of Life*, which he wrote in 1916, expressed a rather unusual opinion for our time, namely that happiness is worth the cost in life, as is the improvement of personal qualities for the sake of the greatest possible improvement. Thus, the improvement of the qualities of the people becomes the final task of the state, and only then it becomes happiness<sup>23</sup>.

The French thinker Alain de Benoit also emphasizes that the protection of human rights reflects Western values. They are imposed on other societies, which must abandon their social practices and deep cultural values and adopt anthropological and theological ideas and the use of the terms like “law” and “human rights”<sup>24</sup>.

American lawyer Bob Black<sup>25</sup>, who positions himself as a utopian anarchist, sees the very idea of human rights as a myth that serves the political functions of a particular social practice. In his criticism of human rights he draws attention to several issues such as: the human rights recognized by the UN Universal Declaration of Human Rights in 1948 are acceptable to the standards of Western civilization, but do not take into account the views of others, like eastern civilizations; human rights cannot be the highest priority, because man is not the center of the universe; in various cultures, like the Muslim or the Far Eastern, the concept of human dignity is radically different from that of the European culture; and there are certain contradictions between different human rights, between human rights belonging to different subjects, as well as between human rights and the interests of the state.

But in this regard, returning to the Ukrainian domestic problems, another question arises, namely if it's worth establishing a gradation of the values or social values

---

<sup>22</sup> M. Ignatiev, *Human Rights as Politics and as Idolatry* (Moscow: Novoye Literaturnoye Obozreniye, 2019), 15.

<sup>23</sup> R. Challen, *The State as a Form of Life* (Moscow: ROSSPEN, 2008), 6.

<sup>24</sup> de Benois, *Beyond Human Rights*, 51.

<sup>25</sup> B. Black, *The Myth of Human Rights* (Moscow: Izdatelskiye Resheniya, 2021), 9.

referred in the Article 3 of the Constitution of Ukraine to take into account values such as nature, the environment or other similar categories. It is not absurd to deny the origin and significance of the phenomenon of natural law, but its understanding and application require a scientific and theoretical approach. Therefore, in this article we will focus more on such issues.

First of all, it is worth referring to a statement by O.M. Kostenko<sup>26</sup>, for whom the actual existence and operation of the laws of social nature does not deprive a person of their liberty. Its manifestation, in the form of non-fulfillment of obligations imposed on a person by the law of social nature, is a violation of these laws. In fact, this violation is a natural basis for establishing legal liability in the legislation<sup>27</sup>. But then, in our opinion, the opposite manifestation of human will in the form of claiming to ensure certain rights should become a natural basis for guaranteeing and exercising such human rights by state authorities, both legislative and executive and judicial, as well as local self-government. But public authorities, as is unfortunately the case, do not properly exercise such functions and guarantee the human rights for their citizens and others. And they don't for various reasons, for example, because they are unable due to the capacity of the state, or for subjective reasons of the performers. Then, would it not be logical to say that the will of man in the form of public actions to defend their rights on the principle of social naturalism is not able to influence this process and that its consequences depend only on the laws of social nature?

Moreover, if a person's free will can in no way abolish or change the social laws of nature, but only fulfill or not fulfill them, then such a person, as a constitutionally determined highest social value, is not a subject of social processes, but above all their object? According to Kostenko<sup>28</sup>, the concept of rule of law, which is actually its basis, belongs to the constitutional recognition of man and his rights and freedoms as the highest social value, provided that the rule belongs to the laws of natural law. And according to the doctrine of legal positivism, the principle of the rule of law presupposes the rule of the Constitution and other legislation. Thus, according to Kostenko, there is an opportunity to grant the status of supremacy to any legislative act established arbitrarily, i.e. contrary to the laws of natural law. However, there

---

<sup>26</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 33

<sup>27</sup> N. Lytvyn, H. Andrushchenko, Y.V. Zozulya, O.V. Nikanorova, and L.M. Rusal, "Enforcement of Court Decisions as a Social Guarantee of Protection of Citizens Rights and Freedoms," *Prawo i Wiez*, no. 39 (2022): 80-102.

<sup>28</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 31

is no reason to claim that the Constitution of the state was adopted arbitrarily and cannot claim supremacy. Another significant example of the importance of the supremacy of the laws of social nature over human value is the logical statement according to which the social function of the state is to ensure compliance with the laws of social nature through the management of public life.

It is quite logical, but it would be more appropriate to note that the state, as the main administrative regulator, ensures the implementation of laws and other legislative acts produced by it, which must comply with the laws of social nature. Because without the presence of such acts of governance only on the laws of social nature will be ineffective, especially the provision of human rights. This is why the state functions, as its main constitutionally defined duty is to affirm and ensure the human rights and freedoms. And it seems that all branches of government are used to effectively fulfill this duty —legislative, executive and judicial, as well as local self-government.

But an important thesis of Kostenko<sup>29</sup> referring to the views of famous thinkers of the past and present, supporters of the concept of natural law, is that the state's compliance with social laws has a mandatory quality —the state must be legal. Moreover, there must be a legal society and a legal person. The main criterion for this quality is the perception as a basis for the priority of natural law, rather than positive legislation. In our opinion, there is an unconditional logic in this. But is it equally important that the state be not only legal but also social and democratic, as well as sovereign and independent? This is exactly what is recorded in Article 1 of the Constitution of Ukraine. And these principles must become not only constitutional principles, but must also be legally and socially embodied.

## **Analysis of the Principle of the Rule of Law**

As for the functions of the state, it is worth considering the position of Hans-Adam II<sup>30</sup>, the Ruling Prince of Liechtenstein, who in his work *The State in the Third Millennium*, on the example of the functioning of Western European states, convincingly offers ways to reform modern states. It is significant, affirms Kostenko, that according to the principle of the rule of law, both natural human rights and their natural responsibilities arising from natural law are interrelated. However, to ensure their implementation in public life, these rights and responsibilities must be enshrined

---

<sup>29</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 29

<sup>30</sup> Hans-Adam II, *The State in the Third Millennium* (Kyiv: DIPA, 2018), 17.

in positive legislation, namely in the constitution and other legislation. At the same time, the interconnectedness of natural rights and natural responsibilities is an important, balancing need, which itself stems from natural law. Violation of this balance leads to permissiveness for people (if they ignore their responsibilities), as well as permissiveness for the state (if it ignores human rights), which, in one way or another, can have devastating consequences for public life.

Aleyda Assman<sup>31</sup>, a Western European scientist is right when she states that there are very different human responsibilities: to the state, to God, to nature, to life. However, it is not about these general responsibilities, but mainly about responsibilities to other people. And therefore the question arises whether categories such as God or nature, should be considered, together with the person, its life, health, safety as the highest values, in the list specified in the Ukrainian constitution.

But if we specify this problem, then the question is far from rhetorical for the scientific community —what is the natural duty of man that corresponds to his determining natural right to life? Perhaps if we take into account the principle that ignoring the balance of natural rights and responsibilities, hypertrophy of some due to malnutrition of others, in the search for the relationship of the human right to life is its natural duty —to ensure the proper state of life. But without going into too much detail, nature itself questions the causal link between this right and the duty of the individual.

Returning to the thesis on enshrining the laws of natural law as natural human rights and its natural responsibilities in the form of positive legislation, we consider this thesis quite valid<sup>32</sup>. However, in the realities of public life there is no division between purely natural rights and responsibilities and other rights and human responsibilities, which are also enshrined in the acts of positive legislation. And the very gradation of human rights and responsibilities into natural and unnatural would certainly not be in favor of man and would obviously not be natural. This is stated in the work *Man and the State* of the French philosopher of the 19th and 20th centuries Zh. Mariten<sup>33</sup>, where he devotes a chapter to human rights, in which he considers natural law as a philosophical basis. At the same time, he analyzes

---

<sup>31</sup> A. Assman, *Human Rights and Responsibilities. In Search of a New Social Contract* (Kyiv: Dukh i Litera, 2020), 22.

<sup>32</sup> I. Levchenko, O. Dmytriieva, I. Shevchenko, I. Britchenko, V. Kruhlov, N. Avanesova, O. Kudriavtseva, and O. Solodovnik, "Development of a Method for Selected Financing of Scientific and Educational Institutions through Targeted Capital Investment in the Development of Innovative Technologies," *Eastern-European Journal of Enterprise Technologies* 3 (2021): 55-62.

<sup>33</sup> Zh. Mariten, *Man and State* (Moscow: Ideya-Press, Dom Intellektualnoy Knigi, 2000), 10.

them holistically and thoroughly, emphasizing even details such as the opposition of some of the so-called “old” rights to the “new” human rights.

As for the proposal of Mariten to supplement the Declaration of Rights with the Declaration of Duties, proposal backed up by Kostenko, a certain realization of such an idea could be feasible only if the content of the Declaration of Human Rights itself is radically changed, possibly even by making a change in the name, calling it the “Declaration of Human Rights and Responsibilities.”

It is also worth mentioning the problem formulated by Kostenko<sup>34</sup> about human freedom and human security. Its essence is the realization of human freedom so that it is not detrimental to human security and at the same time ensures that human security does not restrict human freedom. Kostenko considers that the safety of people is not harmed by freedom, but pseudo-freedom, which is not consistent with the laws of natural law. And human freedom is limited by pseudo-security, which is not based on the laws of natural law. On the basis of such considerations, he concludes that only the coordination and establishment of freedom and security on the basis of the natural law can ensure their harmonious coexistence.

Kostenko is a well-known Ukrainian scholar-lawyer and a supporter of the theory of natural law, but such an idealized, humanistic vision of the solution to this really important problem is far from the current social realities of legal regulation. First of all, it should be noted that the comparison of human subjects —people, as a certain community of them—, used in these theses to consider the security mechanism is insufficiently substantiated. It is generally accepted and quite logical, in view of the laws of social nature, to consider a number of subjects of security in the form of human being, society, state. For the human being, security is seen as one of the basic needs for existence or, from another perspective, the right to security is really one of his natural rights.

The level of security of the person, the society, and the state depends on several factors. We will pay attention first to threats of natural character, mentioned by Kostenko<sup>35</sup>, considering the situation with the COVID-19 pandemic. But another series of security threats produced by other states or by criminal elements are no less threatening to humans. In this series of threats, the pseudo-freedom of man,

---

<sup>34</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 31

<sup>35</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 33

which is not in accordance with the laws of natural law, is not, when compared to others, so significant and threatening.

The issue of human value and human rights and freedoms in emergencies is relevant to security issues. One of such emergencies is the COVID-19 pandemic which has been going on for almost 2 years now. Considering the current aspects of this situation, Kostenko<sup>36</sup> quite rightly emphasizes that anti-epidemic measures must meet natural needs and then be adequate.

However, attention should be also paid to the current Ukrainian social realities, as well as the peculiarities of legal regulation, the actual martial law and the full-fledged military hostilities in eastern Ukraine. In such emergencies, a person's value, life, health, integrity and security are already in a system of criteria and values that differ from those established in peacetime. Among such values, given the realities of social nature, the most important are the security of the state and its interests (sovereignty, territorial integrity, economic and information security, as the most important functions of the state), as stated in Article 17 of the Constitution of Ukraine, where it is recognized as a matter of all the Ukrainian people.

In this regard, it is logical to say that the state of emergency, even in a limited area of the state, affects the values of the entire territory regarding the human being, his life, health, inviolability and security, as constitutionally recognized in Ukraine. This statement is based on the fact that representatives of the Ukrainian people, citizens of Ukraine, are protecting the sovereignty and territorial integrity of the state serving in military formations, regardless of their place of residence in the territory. Then, according to the relevant laws of natural law and to part 4 of Article 17 of the Constitution of Ukraine, the state grants social protection for those citizens who are in military service, as a certain compensation for the threat to their lives, health, inviolability and security. But for Ukrainian realities, it would be important that the value of the life of a human citizen of Ukraine—a serviceman who can be involved in a risky military operation in advance— was calculated as a determining criterion.

Alvarado<sup>37</sup> is right in this regard when he notes the reality of the process of modifying the natural rights and responsibilities of citizens in connection with the natural

---

<sup>36</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 31

<sup>37</sup> C.B. Alvarado, "A Reminder of the Determination of the Core Content of Fundamental Rights, Considering the Situation of the COVID-19 Pandemic in the State of Colombia," *Novum Jus* 15, no. 1 (2021): 17-40.

necessity of transitioning from a normal situation to an emergency. However, his observation is made in the context of the government's response to the COVID-19 pandemic. But, in our opinion, this also applies to the hostilities in eastern Ukraine. The volunteer movement of patriotic people, both citizens of Ukraine and others, at the initial stage of the military confrontation, when the state and its armed forces in particular were unable to properly resist Russian aggression, was a clear reflection of the manifestation of natural responsibilities. And indeed, if we apply analogies with the position of Kostenko, a logical consequence of such social cataclysms should be a legal reflection about the functioning of all branches of government, as well as municipal authorities in the regions, in order to reproduce responsibilities in laws and regulations and their proper implementation, and protect the proper rights of all participants in the hostilities and the members of their families. Problems in the activities of state authorities to fulfill these natural responsibilities are clearly manifested in the shortcomings of pensions for both combatants and servicemen, the allocation of land provided by law (this applies primarily to the scope of municipal authorities), the lack of proper psychological rehabilitation for those who returned to a peaceful life after the war, among other examples.

The consequence of these type of socio-legal factors is in fact a legal modification, in some other states, as noted by Kostenko<sup>38</sup>, and suggests the use of the institution of derogation in legal regulation, i.e. the application of the right of the state to repeal a particular law as a way of waiving the obligations assumed. Such a procedure is mostly used in international legal relations between states and unions of states. However, the case of a state which, under the pressure of natural necessity in emergencies may waive some of its international human rights obligations, suspending national legislation in particular, is quite appropriate and relevant for today's Ukrainian realities. It would be more appropriate to recognize the suspension of a certain legislative act than ignoring it in the course of implementation, given the limited financial and economic potential and budgetary resources. However, when applying such a mechanism of legal regulation there is a dilemma, because of the Article 22 of the Ukrainian Constitution which establishes the impossibility of narrowing the content and scope of existing rights and freedoms when adopting new laws or amending existing ones.

---

<sup>38</sup> Kostenko, *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*, 28

## Conclusion

According to the results of the consideration of theoretical and legal and applied problems of recognition of man, his life and security as a value in the spectrum of public power in Ukraine and the world, it becomes clear that there cannot be an unambiguous understanding of the importance and value of the human being and his rights.

There are theoretical and applied contradictions, problems of applied implementation both in the Ukrainian society and state and in other countries and international organizations. But their philosophical, religious, historical, civilizational, and regional basis, and the diversity of legal systems should not diminish the importance of the human being.

Recognition of the human values, life, health, and security must really become a real, not a declarative, main duty of the state and the content and direction of all branches and types of government. At the same time, the current social and legal state of development of the human community clearly indicates the need for further understanding of the human values, their interests and their comparison with other values of nature.

## References

- Abrahám, J., I. Britchenko, M. Jankovic, and K. Garškaite-Milvydiene. "Energy Security Issues in Contemporary Europe." *Journal of Security and Sustainability Issues* 7, no. 3 (2018): 387-398.
- Alvarado, C.B. "A Reminder of the Determination of the Core Content of Fundamental Rights, Considering the Situation of the COVID-19 Pandemic in the State of Colombia." *Novum Jus* 15, no. 1 (2021): 17-40.
- Assman, A. *Human Rights and Responsibilities. In Search of a New Social Contract*. Kyiv: Dukh i Litera, 2020.
- Black, B. *The Myth of Human Rights*. Moscow: Izdatelskiye Resheniya, 2021.
- Borislavska, O.M. *European Model of Constitutionalism: System-Axiological Analysis*. Kharkiv: Pravo, 2018.
- Britchenko, I., A. P. Monte, I. Kryvovyazyuk, and L. Kryvoviazziuk. "The Comparison of Efficiency and Performance of Portuguese and Ukrainian Enterprises." *Ikonomicheski Izsledvania* 27, no. 1 (2018): 87-108.
- Challen, R. *The State as a Form of Life*. Moscow: ROSSPEN, 2008.



- De Benois, A. *Beyond Human Rights. In Defense of Freedoms*. Moscow: Institute of General Humanitarian Research, 2015.
- European Commission for Democracy through Law. "A Measure of the Rule of Law." 2017. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-ukr](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-ukr)
- Golovaty, S. *About Human Rights*. Kyiv: Dukh i Litera, 2016.
- Golovaty, S.P. "The Triad of European Values —the Rule of Law, Democracy, Human Rights—as the Basis of the Ukrainian Constitutional Order. Part Three: Human Rights (Article 3 of the Constitution of Ukraine)." *Law of Ukraine* 1 (2015): 13-92.
- Hans-Adam II. *The State in the Third Millennium*. Kyiv: DIPA, 2018.
- Harari, Y.N. *The Man is Smart. The History of Mankind from the Past to the Future*. Kyiv: Klub Simeinoho Dozvillia, 2016.
- Ignatiev, M. *Human Rights as Politics and as Idolatry*. Moscow: Novoye Literaturnoye Obozreniye, 2019.
- Joas, H. *The Emergence of Values*. St. Petersburg: Aletya, 2014.
- Kostenko, O.M. *Fundamentals of Socio-Naturalistic Jurisprudence and Criminology*. Odesa: Helvetica Publishing House, 2021.
- Levchenko, I., O. Dmytriieva, I. Shevchenko, I. Britchenko, V. Kruhlov, N. Avanesova, O. Kudriavtseva, and O. Solodovnik. "Development of a Method for Selected Financing of Scientific and Educational Institutions through Targeted Capital Investment in the Development of Innovative Technologies." *Eastern-European Journal of Enterprise Technologies* 3 (2021): 55-62.
- Libanova, E.M. "Most Ukrainians Do not Migrate Because of Low Wages." 2021. <https://www.ukrinform.ua/rubric-society/3283796-bilsist-ukrainciv-migruiut-ne-cerez-nizku-zarplatu-libanova.html>
- Lviv Laboratory of Human and Civil Rights. "Draft Materials of the Lviv Laboratory of Human and Citizen Rights of the Research Institute of State Building and Local Self-Government of the National Academy of Sciences of Ukraine." *Law of Ukraine* 10 (2015): 14-58.
- Lytvyn, N., H. Andrushchenko, Y.V. Zozulya, O.V. Nikanorova, and L.M. Rusal. "Enforcement of Court Decisions as a Social Guarantee of Protection of Citizens Rights and Freedoms." *Pravo i Wiez* 2022, no. 39 (2022): 80-102.
- Mantilla, J.G.D., J.A.S. Mesa, and A.H.M Durán. "Enforced Disappearance in the Context of Judicialization and Reparation of Superior Values from Michael Sandel's Ethics of Justice." *Novum Jus* 15, no. 2 (2021): 177-197.
- Mariten, Zh. *Man and State*. Moscow: Ideya-Press, Dom Intellektualnoy Knigi, 2000.
- Ovcharenko, M.O., O.V. Tavolzhanskyi, T.M. Radchenko, K.D. Kulyk, and N.V. Smetanina. "Combating Illegal Drugs Trafficking Using the Internet by Means of the Profiling Method." *Journal of Advanced Research in Law and Economics* 11, no. 4 (2020): 1296–1304.

- Pérez, A.C. "New Legal Realism: A Promising Legal Theory for Interdisciplinary and Empirical Research about the 'Law-In-Action.'" *Novum Jus* 16, no. 1 (2022): 209-228.
- President of Ukraine, Decree no. 392/2020, "On the Decision of the National Security and Defense Council of Ukraine of September 14, 2020, on the National Security Strategy of Ukraine." 2020. <https://www.president.gov.ua/documents/3922020-35037>
- Popovich, M. *To Be Human*. Kyiv: Kyiv-Mohyla Academy Publishing House, 2011.
- Savchin, M. *Modern Tendencies of Constitutionalism in the Context of Globalization and Legal Pluralism*. Uzhhorod: RIK-U, 2018.
- Scheler, M. *Formalism in Ethics and Material Ethics of Values. Selected Works*. Moscow: Gnozis, 1994.
- Verkhovna Rada of Ukraine. *Constitution of Ukraine*. 1996. <http://zakon3.rada.gov.ua/laws/show/>