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TRANSITIONAL JUSTICE AND HUMAN RIGHTS IN UKRAINE

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It was found that transitional justice in Ukraine is a set of measures and methods by which social justice is restored, the restoration of violated human and civil rights is guaranteed, and the observance of fundamental human rights is ensured. Transitional justice in Ukraine during military operations is aimed at restoring the violated rights of citizens due to military operations and russia’s armed aggression against Ukraine. This concerns compensation for material and moral damage, in particular, to those persons recognized as internally displaced persons, as well as those who are in temporarily occupied territories. Such a process is activated after the cessation of hostilities. The basis of transitional justice in Ukraine should be international legal standards and transnational experience.

It is noted that the concept of transitional justice, which encompasses a set of processes and mechanisms aimed at overcoming large-scale violations of human rights, is very relevant today for Ukrainian society, because russia ignores all the rules of warfare. Human rights and children’s rights are being violated on a massive scale, particularly in areas where active hostilities are taking place and in temporarily occupied territories. The aggressor state russia must be held accountable for war crimes committed in Ukraine. The world community and international legal organizations must contribute to this.

The article emphasizes that today in Ukrainian society it is important to ensure the rights of internally displaced persons who are forced to leave their homes due to hostilities. This category of citizens requires comprehensive support from the state and society. In particular, providing housing, social guarantees, providing the opportunity to fully exercise the right to education and guaranteeing the rights of children.

Currently, Ukraine does not have a law on transitional justice, but active work is underway to adopt it. The draft law on transitional justice was created to legislatively consolidate state policy during the transformation period, which provides for a set of measures in response to russia’s armed aggression against Ukraine.

Keywords: transitional justice, human rights, justice, military actions, moral norms.

Formulation of the problem. The war realities in Ukraine prove that the protection of human and citizen rights and freedoms is the main task of the state and a social value. Today, the Ukrainian people are fighting a cruel and unprincipled enemy who neglects the fundamental principles of the existence of

humanity and civilized society. Undoubtedly, preserving the sovereignty, independence of the state, as well as the life and safe living environment of citizens during martial law requires significant efforts from state bodies and society as a whole.

The reforms that were initiated in Ukraine in the pre-war period in the law-making, law-enforcement and law-enforcement system are continuing to the maximum extent today. But due to Russia's military aggression against Ukraine, society is forced to change priorities and fight for the survival and preservation of the nation.

The transitional period of the development of society in Ukraine is marked by a crisis-catastrophic state. A number of socio-legal norms are not in effect, or cannot sufficiently regulate social relations. To avoid chaos and crisis, it is important that the justice system functions fully. Transitional justice has the task of ensuring a social and legal balance based on the norms of law and morality.

It is important that society does not lose faith in justice. Therefore, it is necessary that transitional justice directs its activities to restoring the truth, violated human and civil rights and freedoms, in particular those that occurred during military operations.

Analysis of the study of the problem. A problematic aspect of the study of transitional justice in crisis and transitional periods of society's development as the basis for stable state and legal development of society and ensuring human and citizen rights is the vagueness of the interpretation and understanding of the very concept and phenomenon of "transitional justice". For a comprehensive analysis and understanding of the presented issues, it is advisable to rely on the scientific and theoretical potential of the works of domestic and foreign legal scholars, historians, sociologists and philosophers.

For a comprehensive coverage of the topic, understanding the norms of the Constitution of Ukraine, which reveal the content and essential features of justice [1].

The term "transitional justice" and the features of society's transition to such a state are characterized by the Laboratory of Legislative Initiatives [2]. Modern world experience and concepts of transitional justice in the field of legal science are highlighted by A. Blaga and O. Martynenko [3]. E. Tkachenko reveals the aporia of the constitutional and legal mechanism for creating the concept of transitional justice [4], and M. Hrushko and K. Manuilova analyze an important problem for today – the concept of transitional justice in the context of armed conflict in Ukraine [5]. The Ukrainian Helsinki Human Rights Union reveals the role of transitional justice after an armed conflict in the context of reconciliation of people after de-occupation [12]. A. Baginskyi interprets transitional justice based on an analysis of the functional features of this phenomenon [10]. The conclusions of the Committee on Human Rights, National Minorities and Interethnic Relations on the topic of transitional justice as a way to overcome the consequences of conflict and armed aggression [13] are relevant.

V. Filatov reveals the historical aspects of the formation of the concept of transitional justice in the theory of international law [6], and O. Chervyakova analyzes the mechanisms and processes of transitional justice based on international experience to restore the sovereignty and national security of Ukraine [7].

The interpretation of the Constitutional Court of Ukraine of the right of supremacy [8] and the rights, freedoms and obligations of man and citizen [14] is important. G. Hristova presents a vision of the specifics of the application of the Constitution in the context of transitional justice [9]. Human rights activists and scholars analyze the draft law on transitional justice, which was created to legislatively consolidate state policy during the transformation period [11].

The purpose of the article. The goal is to analyze, from a philosophical and legal perspective, those issues that are most relevant to the problems of understanding transitional justice and ensuring human rights in Ukraine.

Presentation of the main material. The Constitution of Ukraine states that "justice in Ukraine is administered exclusively by courts. Delegation of the functions of courts, as well as appropriation of these

functions by other bodies or officials, is not allowed. The jurisdiction of the courts extends to any legal dispute and any criminal charge. In cases provided for by law, courts also consider other cases. The law may determine a mandatory pre-trial procedure for resolving a dispute. The people directly participate in the administration of justice through juries. Ukraine may recognize the jurisdiction of the International Criminal Court on the conditions specified in the Rome Statute of the International Criminal Court” [1].

The term “transitional justice” refers to a set of processes and mechanisms aimed at overcoming the consequences of large-scale conflicts, repression and serious human rights violations. Its task is to ensure that those responsible are held accountable, justice is established and historical truth is restored. The main goal of transitional justice is to ensure the transition from a period of conflict, when the national justice system and law enforcement agencies are unable to function properly and human rights are violated on a large scale, to a peaceful and stable state of society, in which citizens’ rights have been restored and reforms have been implemented to prevent similar events from happening again in the future [2].

Every society at some point experiences a state of socio-legal anomie. This state is characterized by the fact that some norms do not apply, while others have not yet been adopted, or their effect is impossible due to objective crisis states of society.

Modern world experience can offer Ukraine at least the following:

- the concept of transitional justice;
- the concept of peacebuilding;
- security sector reform;
- the program “Disarmament, Demobilization and Reintegration of Former Combatants” (DDR);
- the concept of confidence-building measures [3, p. 30–35].

Today, the support of the international community is important for Ukraine not only in the fight against an external aggressor, but also in ensuring the stable functioning of all spheres of social and legal life. The stable functioning of the judicial and law enforcement systems is a guarantee of maintaining law and order and guaranteeing the rights of citizens.

Today, the support of the international community is important for Ukraine not only in the fight against an external aggressor, but also in ensuring the stable functioning of all spheres of social and legal life. The stable functioning of the judicial and law enforcement systems is a guarantee of maintaining law and order and guaranteeing the rights of citizens.

The model of “transitional justice” is one of the key tools not only for overcoming the deep consequences of armed conflicts, but also for ensuring the restoration of the rights of victims and bringing the perpetrators to justice. At the same time, it is important to realize that transitional justice is a holistic system of processes and tools aimed at overcoming serious violations of human rights and the norms of international humanitarian law. In this regard, the integration of the provisions of international criminal and humanitarian law into national legislation is of particular importance [4, p. 118–123].

European integration processes have become the basis for reforming national legislation and introducing innovations based on world experience and international law. In particular, norms aimed at the implementation and provision of fundamental human rights, protection and preservation of human dignity are actively being adopted.

M. Hrushko, K. Manuilova consider the concept of transitional justice as one of the few effective ways to overcome the serious consequences of armed conflict, restore the violated rights of victims and hold perpetrators accountable for crimes committed. Given that this concept encompasses a set of processes and mechanisms aimed at overcoming large-scale violations of human rights and international humanitarian law, an integral part of its implementation should be the inclusion of the provisions of international humanitarian and criminal law into national legislation [5, p. 312–316].

This approach is very relevant today for Ukrainian society, because Russia ignores all the rules of warfare. Human rights and children's rights are being violated on a massive scale, in particular in the territories where active hostilities are taking place and in temporarily occupied territories. The aggressor state Russia must be held accountable for war crimes committed in Ukraine. The world community and international legal organizations must contribute to this.

In the process of developing the transitional justice model, two interrelated phenomena occur: on the one hand, the very concept of transitional justice as a holistic system is being formed, and on the other hand, individual mechanisms and forms of regulating situations that arise in post-conflict and post-totalitarian periods in the history of states are developing. Regarding the first process, it is worth noting that its implementation is complicated by the limited institutional capabilities of state authorities, which are often in a state of transformation or have not yet completed the stage of formation. In contrast, the development of specific instruments and approaches to regulation is progressing more dynamically, which is due to the presence of developed theoretical foundations and relevant legal structures [6, p. 221–226].

We support the opinion of O. Chervyakova that, despite its name, transitional justice is not limited exclusively to judicial procedures, as it also includes extrajudicial elements, in particular hybrid forms of legal response, educational initiatives, the activities of quasi-judicial structures to establish the truth, etc. This type of justice should be understood as a comprehensive process aimed at understanding and overcoming human rights violations committed during the period of armed conflict or repression. It reflects the desire of society for qualitative changes, the key feature of which is the establishment of democratic principles [7, p. 135–142].

We emphasize that it is important to ensure the principle of the rule of law in the state, because the implementation and observance of this principle is a guarantee of observing the fundamental rights and freedoms of citizens, as well as preserving a legal, democratic state in the international space.

According to Part One of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and ensured in the state. This concept means the dominance of law in all spheres of public life. The implementation of this principle imposes on the state the obligation to implement it in norm-making and law enforcement practice, in particular in legislation, which should reflect the values of social justice, freedom, equality and other fundamental principles. The rule of law also implies that the legal system is not limited exclusively to the norms of the law, but also includes other social regulators – moral norms, customs, traditions – which are recognized by society and are based on its cultural and historical development. All these components of law are united by a common feature – compliance with the idea of justice, which is reflected in the provisions of the Constitution of Ukraine [8].

In Ukrainian society, moral norms and customs are recognized as important socio-cultural regulators of citizens' life. Norms of law and moral norms closely interact in the process of restoring social justice. Preservation of national identity, customs and traditions is a guarantee of preservation of Ukrainian statehood.

In the international context, the concept of “justice” is understood as the embodiment of the principles of fairness and responsibility aimed at protecting and restoring rights, as well as preventing violations and punishing perpetrators. Justice involves not only respecting the rights of the accused, but also taking into account the interests of victims and ensuring the common good for society. The concept of “transitional justice” encompasses a wide range of processes and tools through which society seeks to understand and cope with serious violations of the past in order to ensure accountability, establish justice and achieve social reconciliation. These measures can include both judicial and non-judicial mechanisms – with varying degrees of participation of the international community or without it at all. These include individual prosecution of perpetrators, reparations mechanisms, truth-seeking processes, institutional reforms, lustration procedures and other similar actions or combinations thereof [9].

Transitional justice is a set of measures and processes through which society attempts to reach an understanding of the consequences of serious violations of the past in order to establish responsibility, ensure justice and achieve reconciliation. The main functions of this justice include: supporting democratization processes, reducing the level of human rights violations, fixing the events of the conflict past at the legislative level, providing compensation (including material) to victims, and promoting social reconciliation. The implementation of transitional justice mechanisms involves reforming legislation, creating and strengthening democratic institutions, conducting investigations and establishing the objective truth about the events of the past. Key elements on the path to sustainable peace include focusing on the needs of victims, developing

mediation practices in communities, transforming the political system of Ukraine and mechanisms for compensating for losses at the expense of the aggressor state [10, p. 74–78].

In the context of the above, today in Ukrainian society it is important to ensure the rights of internally displaced persons who are forced to leave their homes due to military actions. This category of citizens requires comprehensive support from the state and society. In particular, providing housing, social guarantees, providing the opportunity to fully realize the right to education and guaranteeing the rights of children.

Currently, Ukraine does not have a law on transitional justice, but active work is underway to adopt it.

The draft law on transitional justice was created to legislatively consolidate the state policy during the transformation period, which provides for a set of measures in response to Russia's armed aggression against Ukraine. Its goal is to contribute to the restoration of the territorial integrity and sovereignty of Ukraine, restore the functioning of government bodies in the temporarily occupied territories, overcome the consequences of the war, integrate the deoccupied territories and their population, as well as ensure sustainable peace and prevent a recurrence of occupation in the future.

During all stages of public consultations, human rights organizations twice provided their comments on the draft developed by the Ministry for the Reintegration of Temporarily Occupied Territories. Some of these comments were taken into account when preparing the final text.

At the same time, the government draft law contains a number of controversial provisions that may create gaps in the current legislation. This, in turn, requires serious revision of the document. There is a risk that the adoption of the draft in its current form will cause legal conflicts, violations of the Constitution of Ukraine and the state's international obligations, as well as ambiguity in the interpretation and application of legal norms, which will contradict the principle of legal certainty. In general, the draft law has more features of a political declaration than a clear regulatory legal act, which raises doubts about the real possibility of its implementation [11].

The essence of transitional justice is a set of processes and mechanisms that allow society to deal with the legacy of large-scale violations of the past. The main tasks of such justice are to establish control, do justice and achieve reconciliation.

This can be done through both judicial and non-judicial means, which may involve varying degrees of international cooperation or operate autonomously. These measures include, but are not limited to: holding perpetrators accountable, reparations, establishing the truth, institutional reforms, lustration, or a combination of these approaches.

The concept of transitional justice operates in four main directions:

- compensation for harm suffered by persons affected by the conflict;
- holding perpetrators accountable and preventing their impunity;
- ensuring access to the truth about the armed conflict;
- implementing measures to avoid future conflicts [12].

Transitional justice as a tool for overcoming the consequences of conflict and armed aggression became the central topic of the roundtable organized by the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations with the assistance of the Ukrainian Helsinki Human Rights Union and the USAID Human Rights in Action project.

The event discussed the possibilities of using international experience in the field of transitional justice to resolve the armed conflict in Ukraine and restore the country in the post-conflict period. In particular, it was about preventing impunity, effective investigation of war crimes, implementing innovative approaches to supporting victims of the conflict and restoring legal ties with the population of the occupied territories.

The foundations of transitional justice provide that the state must ensure fundamental human rights. This includes the obligation to:

- stop human rights violations;
- provide guarantees that similar violations will not be repeated;

- investigate committed violations;
- bring those responsible to justice;
- restore violated rights and provide compensation to victims [13].

These approaches are supported by international legal acts and the practice of the European Court of Human Rights.

The foundation of the existence and development of the Ukrainian people are constitutional rights and freedoms; therefore, the state is obliged to create effective organizational and legal instruments for their implementation. The absence of such instruments turns constitutional rights and freedoms into empty declarations, which is absolutely unacceptable for a state governed by the rule of law.

The priority of Ukraine, as a state governed by the rule of law, is to guarantee the rights and freedoms of man and citizen. To this end, the state must implement legal norms that comply with the Constitution and are necessary to ensure the implementation and effective restoration of the rights and freedoms of each person. At the same time, certain constitutional values, in particular the inviolability of the person – as a guarantee of protection from encroachments on rights and freedoms, and primarily on the fundamental right to freedom – require increased guarantees of protection [14].

Conclusions. Thus, we have come to the conclusion that transitional justice in Ukraine is a set of measures and methods by which social justice is restored, the restoration of violated human and civil rights is guaranteed, and the observance of fundamental human rights is ensured.

Transitional justice in Ukraine during military operations is aimed at restoring the violated rights of citizens due to military operations and Russia's armed aggression against Ukraine. This concerns compensation for material and moral damage, in particular, to those persons recognized as internally displaced persons, as well as those who are in temporarily occupied territories. Such a process is activated after the cessation of hostilities. The basis of transitional justice in Ukraine should be international legal standards and transnational experience.

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ПЕРЕХІДНЕ ПРАВОСУДДЯ І ПРАВА ЛЮДИНИ В УКРАЇНІ

З'ясовано, що перехідне правосуддя в Україні є комплексом заходів і способів, за допомогою яких відновлюється соціальна справедливість, гарантується відновлення порушених прав людини і громадянина та забезпечується дотримання основних прав людини. Перехідне правосуддя в Україні під час воєнних дій спрямоване на відновлення порушених прав громадян через воєнні дії і збройну агресію росії проти України. Це стосується відшкодування матеріальної і моральної шкоди, зокрема тим особам, що визнані внутрішньо переселеними, а також тим, що перебувають на тимчасово окупованих територіях. Такий процес активізується після припинення бойових дій. Основою перехідного правосуддя в Україні повинні стати міжнародно-правові стандарти та транснаціональний досвід.

Зазначено, що концепція перехідного правосуддя, яка охоплює сукупність процесів і механізмів, спрямованих на подолання масштабних порушень прав людини, є дуже актуальною сьогодні для українського суспільства, адже росія нехтує усіма правилами ведення війни. Масово порушуються права людини, права дітей, зокрема на територіях, де ведуться активні бойові дії, і на тимчасово окупованих територіях. Держава-агресор росія повинна відповісти за воєнні злочини, вчинені в Україні. Цьому повинна сприяти світова спільнота та міжнародні правові організації.

Акцентовано увагу на тому, що сьогодні в українському суспільстві важливим є забезпечення прав внутрішньо переміщених осіб, що змушені покидати свої домівки через воєнні дії. Ця категорія громадян потребує усесторонньої підтримки держави і суспільства. Зокрема, забезпечення житлом, соціальні гарантії, надання можливості повноцінно реалізувати право на освіту та гарантування прав дітей.

На даний час в Україні нема закону про перехідне правосуддя, але ведеться активна робота щодо його прийняття. Законопроект про перехідне правосуддя був створений для законодавчого закріплення державної політики у період трансформації, що передбачає комплекс заходів у відповідь на збройну агресію росії проти України.

Ключові слова: перехідне правосуддя, права людини, юстиція, воєнні дії, моральні норми.