

LEGAL EFFECTS OF THE UKRAINIAN NATIONAL POLICE IN THE FIELD OF ENSURING THE COMPLIANCE WITH ECONOMIC RIGHTS AND FREEDOMS OF HUMAN AND CITIZEN

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Abstract. The *aim* is to analyse problematic issues related to the legal effect of the activities of the National Police of Ukraine in the sphere of ensuring the observance of economic rights and freedoms of a person and a citizen. The authors used the following *methods*: analysis (study of the subject of the article as a complex theoretical and legal category), logic (sequential and structured analysis of the topics related to the subject of the paper), interpretation (clarification of the legal content of legislative acts), systemic and structural (combination of the information obtained on the subject of research and its sequential presentation), etc. *Results.* The authors have established a stable relationship between the activities of the National Police of Ukraine and the mechanism for ensuring compliance with the economic rights and freedoms of a person and a citizen in a number of forms and segments that make up the national economic system. It was noted that the most important thing in the matter of ensuring the functioning of the specified mechanism is the stability and universality of legal norms determining the standards and limits of social and legal interaction in this sphere. This is because, as the example of the ongoing war unleashed by Russia on the territory of Ukraine shows, this destructive factor significantly endangers the functioning sustainability of all, without exception, state and social institutions. *Practical significance.* The corresponding practical component of the study is the possibility of using the above-mentioned developments in the legislative and regulatory activities, which are systematically implemented taking into account the dynamics of social and legal relations in the conditions of the active phase of hostilities on the territory of Ukraine. *Value/originality.* The authors have proved that the modern algorithm of the National Police of Ukraine functioning in the field of ensuring the observance of economic rights and freedoms of a man and a citizen is stable, although it is not without a number of shortcomings systematically affecting the relevant institution, which is confirmed by statistical data. The role and place of individual police units, which in turn directly ensure the functioning of the mechanism for ensuring the observance of economic rights and freedoms of a man and a citizen, have been defined.

Key words: law, economics, financial rights, economic stability, armed aggression, martial law, rights and freedoms, state, police activity.

JEL Classification: R14, D18, P20

1. Introduction

The issue of ensuring respect for the economic rights and freedoms of man and citizen in Ukraine and at the international level is quite acute, especially in the conditions of rapid escalation of armed aggression. For Ukraine personally, as a European state, the uncontrolled and daring large-scale military aggression of Russia, which began

on February 24 with the introduction of a colossal contingent of troops into the sovereign and independent territories of Ukraine, is a serious challenge. Subsequently, this international military precedent negatively affected the functioning of the economic system in general, almost causing its collapse or complete shutdown, as well as destructuring the procedures and mechanisms for ensuring the

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observance of economic rights and freedoms of man and citizen.

Accordingly, in the authors' opinion, the need to analyse the legal consequences of the activities of the National Police of Ukraine in the area of ensuring the observance of economic rights and freedoms of man and citizen is critically important, and this is the **main purpose** of the article. The necessity and specificity of the analysis of the outlined issues lies in the need to study specialised and narrow topics related to the **object and subject** of the study, which are social relations and economic rights in ensuring the observance of human and civil rights and freedoms, respectively.

The **methodology** of this study is characterised by the extensive use of tools taking into account the specifics of the tasks, which, in turn, is reflected in the following tools for cognition of scientific reality: *analysis* (study of the activities of the National Police of Ukraine to ensure economic rights as a complex theoretical and legal category); *formal logic* (for detailed elaboration of ways of reforming the principles of ensuring economic rights and freedoms of man and citizen); *dogmatic method* (for interpreting the main legal categories and clarifying the conceptual and categorical apparatus of the study); *description* (for the general theoretical definition and purely legal categories that characterise the institution of economic rights and freedoms of man and citizen, as well as the legal effect of police functioning in this area); *interpretation I* (explanation of the legal content of legislative acts regulating economic rights of a person and a citizen, and also the powers of the police to ensure them); *systemic and structural* (combination of information obtained about the research object and its consistent presentation).

The logic of presentation of the material under study consists of the proposed theoretical analysis and legal constructions from the general to the local, taking into account the peculiarities and subtleties of economic and legal relations, law enforcement activities and the general direction of the National Police of Ukraine as a law enforcement body.

2. Economic Rights and Freedoms of Human and Citizen in Ukraine as an Object of Protection

The Constitution of Ukraine stipulates that Ukrainian citizens have the right to freedom of association in political parties and public organisations for the purpose of exercising and protecting their rights and freedoms and satisfying their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, protection of public health or protection of

the rights and freedoms of other persons (The Constitution of Ukraine). Thus, it should be noted that the regulation of economic rights and freedoms of a person and a citizen is carried out according to the principle "everything that is not prohibited is allowed", and the only preventive mechanism in this connection can only be a clear limitation established by the legislation of Ukraine, which is actually determined by separate acts of legislation of Ukraine, such as the Criminal Code and the Code of Administrative Offences of Ukraine.

At the same time, taking into account certain content blurring and economic rights essence in the national legislation of Ukraine, in authors' opinion, there is a need for the original phenomenon additional elaboration, which is proposed to be studied not only through the prism of its implementation and law enforcement activities legal effect, but also taking into account the current legal regime of martial law in Ukraine, which has a destructive effect on the functioning institution of a person and a citizen's rights and freedoms in general, and not only in a specific segment.

A number of scientists and researchers note that the concept of economic rights and freedoms of a person and a citizen in Ukraine is defined as the ability of a person and a citizen to possess, use and dispose of economic goods, as well as to acquire and protect them in the order, limits, forms and in the manner provided by the Constitution and legislation of Ukraine (Frolov, 2005). Accordingly, the authors consider this range of rights to be perhaps the most important, since economic rights form the content and essence of many fundamental things, such as "adequate standard of living", "property", "profit" and others, which affect the functioning of society in general and of individuals in particular.

Along with this, it should be noted that a number of researchers do not distinguish economic rights of a citizen into a separate category, but generalise them with social rights, forming a mixed category.

A. Kovban, citing international legal instruments, points out that socio-economic rights play a major role in ensuring the legal status of a person, as is clearly stated, for example, in the International Covenant on Economic, Social and Cultural Rights, adopted in 1966. In addition, the United Nations General Assembly, in a resolution of December 4, 1986, proclaimed the indivisibility and interdependence of economic, social, cultural, civil and political rights. At the same time, the above-mentioned international legal act states that "the ideal of a free human person, free from fear and need, can be realised only by creating conditions under which everyone can enjoy equally his economic, social and cultural rights, as well as his civil and political rights", which may seem internally contradictory

when analysing different points of view (Kovban; International Covenant on Economic, Social and Cultural Rights; Declaration on the Right to Development). This, in the authors' opinion, highlights the importance of economic rights and freedoms of man and citizen in the context of the functioning of the rule of law in the absence of emergency legal regimes, which, in the context of the large-scale war unleashed by Russia on the territory of Ukraine, only increases the need for close scientific attention to this issue.

The obligation of states in the field of protection of socio-economic rights is to carry out progressive economic and social reforms, ensure the full participation of their people in the process and benefits of economic development, and use their resources to provide everyone with equal opportunities to enjoy these rights. As emphasised in Article 7 of the Charter of Economic Rights and Duties of States of December 12, 1974, each State is responsible for promoting the economic, social and cultural development of its people (Kovban; Charter of Economic Rights and Duties of States). Furthermore, it should be clarified that the state, which has undertaken to ensure the full range of economic rights, also has the powers and responsibilities to combat crime in this area, violations of these rights by various actors, regardless of the method, after establishing the unlawfulness of such an act and depending on its severity.

The Constitution of Ukraine refers to the systems of economic rights: the right of everyone to own, use and dispose of his/her property and the results of his/her intellectual and creative activity; the right to use state and municipal property and the property of the Ukrainian people (Art. 41); the right to engage in business activity (Art. 42), etc. (League 360). Accordingly, the spectrum of these rights defined by the Constitution of Ukraine correlates with the norms of the Code of Administrative Offences of Ukraine and the Criminal Code of Ukraine, which logically determine the responsibility for the violation of these rights depending on the severity, manner and other material characteristics of the committed offence. This, according to the authors, is the main indicator of the legal effect of the National Police of Ukraine's activities to ensure the observance of economic rights and freedoms of man and citizen.

Scientists systematically present the results of sociological studies that confirm the negative consequences of the pandemic and the terrible consequences of the military invasion of Ukraine, demonstrating the losses that will have a long-term impact on various aspects of Ukrainians' lives. In

addition, attention was drawn to the importance of humanitarian and charitable international assistance to Ukraine (Shumska, Gaidai, Bliznyuk, 2023). Accordingly, it should be emphasised that all the above has a negative impact both on the economic state of social life and on the activity of the National Police of Ukraine as a law enforcement subject, especially in the sphere of ensuring compliance with the economic rights and freedoms of a person and a citizen. It should also be noted that the encroachment on the state economic system, in the complex and systematic form of violation of the economic rights of individual citizens (in this case as a result of armed aggression), brings the issue of ensuring observance of the economic rights and freedoms of a person and a citizen to a new, nationwide (nationwide) level.

M. Savchyn rightly asserts, based on the decision of the Constitutional Court of Ukraine, that the determination of the permissible limits of interference in economic processes raises not only traditional issues of jurisprudence concerning its legitimacy, the permissible limits of restriction of human rights, but also issues related to the economic order. The state institutional capacity to determine the most optimal model of regulation of economic relations from the point of view of support and growth of business activity and ensuring sustainable development of the national economy is also on the agenda (Savchyn, 2020)¹. Accordingly, the measures are aimed at bringing to legal responsibility persons who violate the economic rights of individual citizens, as well as are an element of the system of ensuring the sustainable development of the national economy, and have a doctrinal legal influence on the relevant circle of legal relations, as they form the architecture of secure relations in the economic sphere and contribute to the formation of trust and mutual obligation (bilaterality) of the relevant relations.

The European standard of economic and social human rights can be considered as the possibility for a person to satisfy his/her needs in the economic and social sphere of life, enshrined in the relevant regional international agreement. Signs of such standards are their exemplary character, determination of the minimum limit of the standard, its normative fixation, sufficient freedom of national discretion in its application (Shcherbatyuk, Shevchuk-Klyuzheva). The authors believe that this thesis forms a meaningful idea and essence of preventive mechanisms in the context of promoting the sustainable functioning of the legal system of economy and society by the National Police of Ukraine and the relevant units within its structure which are actually entrusted with such a duty.

¹ Decisions of the Constitutional Court of Ukraine are available on its official website at: <http://ccu.gov.ua/> The number of the decision is indicated, its type ("пн" or "п" after a hyphen is a decision, "с" is a conclusion, and after the slash – the year of adoption). KSU decision No. 3-пн/2015, 3-пн/2016, 2-пн/2017, 3-пн/2018

The civilised development of the modern world community is based on the establishment of civilised rules governing the circulation of property. From this point of view, property rights and related non-property rights (which have no economic significance, but by their nature play an important role in ensuring civil circulation) are the most important among the social relations that are the subject of civil law regulation (Makovii, Kuchuk, Filianina, 2023). Accordingly, the above is understood as an axiom, a statement not only about the necessity and necessity of stable and unimpeded functioning of the system of ensuring the observance of economic rights and freedoms of a person and a citizen, as well as the implementation of prevention in this social and legal sphere, which will also contribute to strengthening the principles of legal statehood in this segment of legal relations.

3. The Activities of the National Police of Ukraine and its Legal Effects on the Mechanism of Ensuring the Compliance with Economic Rights and Freedoms of Human and Citizen

The first argument in providing a description of the nature, activity and its legal effect of the Ukrainian National Police regarding the ensuring observance mechanism of the economic rights and freedoms of a person and a citizen is that, to date, a number of the Criminal Code of Ukraine (hereinafter – CCU) embody protection mechanisms and protection of certain aspects of realisation of economic rights and freedoms of a person and a citizen.

For example, the authors of this paper support the opinion of V. Franchuk, which is extremely relevant and timely in today's conditions, that against the background of general measures to counteract crime, there is a group of crimes in the economic sphere, which attracts special attention of the world community. In accordance with the issues raised, the requirements of international legal acts are reflected in the following Articles of the current criminal legislation:

- 199 (production, storage, acquisition, transportation, shipment, importation into Ukraine for the purpose of use in the sale of goods, sale or sale of counterfeit money, government securities in paper form, state lottery tickets, excise tax stamps or holographic security elements);
- 200 (unlawful actions with transfer documents, payment cards and other means of access to bank accounts, electronic money, equipment for their production);
- 209 (Legalisation (laundering) of the proceeds of crime);

- 209-1 (intentional violation of the requirements of legislation in the field of prevention and counteraction to legalisation (laundering) of proceeds of crime, financing of terrorism and financing of proliferation of weapons of mass destruction);
- 229 (illegal use of a trademark, trade name, qualified indication of the origin of goods);
- 306 (usage of funds derived from illicit trafficking in narcotic drugs, psychotropic substances, their analogues, precursors, poisonous or potent substances or poisonous or potent medicines) of the CCU (Franchuk, 2015).

The authors believe that in the context of the active phase of hostilities on the territory of Ukraine for the territorial integrity and independence, not only these criminal offences, but also a number of others related to state security and territorial integrity in particular pose a particular threat. In addition, in view of the provisions of the Criminal Procedure Code of Ukraine on the prosecutor's ability to entrust the pre-trial investigation to any pre-trial investigation body, outside the limits established by CCU Article 216 (Prosecution), the ability of the National Police of Ukraine to conduct pre-trial investigation of this range of criminal offences and in the segment of operational and investigative measures are open to implementation and directly affect the Ukrainian economic system and strengthening the institution of economic rights and freedoms of a person and a citizen.

Moreover, R. Fyl, for example, notes that post-industrial countries of the world, having experienced serious economic losses due to intellectual property crimes, have developed effective countermeasures. However, the extension of legal protection to new intellectual property requires constant adaptation of these strategies to the norms of international and national legislation, and also to new ways of developing criminal law protection of industrial property rights (Fyl, 2017).

At the same time, it should be emphasised that the direct legal impact of the National Police of Ukraine on the exercise of economic rights and freedoms of a person and citizen, in particular in this segment, lies in its law enforcement capabilities and responsibilities to review applications and reports of criminal offences and other events.

Another point to note is that economic relations are protected not only by criminal law, but also by administrative law, which is clearly enshrined in the Code of Administrative Offences and correlates with the relevant provisions of the system of administrative and legal protection of public relations.

O. Krupytskyi rightly emphasizes that the administrative-legal protection of the economy has its own normative base, the external expression of which are the provisions of the Constitution

of Ukraine, several codes, other Ukrainian laws and dozens of subordinate normative-legal acts. These are implemented by authorised subjects of public administration, both general and of special competence (Krupytskyi, 2022). Simultaneously, it is the criminal law protection of the relevant range of legal relations that ensures the proper level of observance of human and civil rights and freedoms, especially in the economic sphere. In addition, the law enforcement aspect of the mechanism of legal protection of human and civil rights and freedoms and its implementation and, in fact, the effect of the activities of the National Police of Ukraine is a separate problematic issue.

The practice of law enforcement in the sphere of realisation of social and economic rights, as V. Kosovych has noted, is connected with the difficulties of application of the normative legal provisions of the newly adopted normative legal acts to the legal relations regulated by other valid normative legal acts (if the new normative document does not clearly determine its actions) (Kosovych, 2013). In addition, the practice of law enforcement is complicated by the simultaneous recognition of the expediency of application of such two legal principles of regulation of social relations as the principle of supremacy of the law adopted later and the principle of supremacy of the norm of a special law (Oliynyk, 2020). It is important to pay close attention to how Ukrainian legislation is applied during both the pre-trial investigation and the trial. This has a significant impact on law enforcement and the gathering of evidence in criminal proceedings.

For example, V. Franchuk notes that after analysing 244 guilty verdicts, it was found that the most common punishment for economic crimes is a fine (49%), the amount of which mostly reaches the lower limit (73%) of the sanction. Among those sentenced to imprisonment for a fixed term, 14% actually serve their sentence. In view of this, it is inappropriate to specify a certain period of time in the sanction of the article on imprisonment, and therefore it is necessary to introduce a fine as the main punishment for economic crimes (Franchuk, 2015). According to the authors, such a position may have a predominantly positive impact on the content and scope of legal consequences of the National Police of Ukraine's activities in the course of exercising its powers in the area of criminal proceedings and administrative activities. This will inevitably lead not only to the protection and defence of human and civil rights and freedoms in the economic sphere, but will also strengthen the State financial and economic infrastructure and enable the development of the relevant segment of social and legal relations.

4. Suggestions and Recommendations

According to the analysed data results, it is necessary to form the position that the strengthening of the economic system of Ukraine as a result of the activities of the National Police of Ukraine is possible in the way making the processes of pre-trial investigation of criminal offences in the economic sphere more efficient, if such number of acts, provided by the CCU, has been included.

Undoubtedly, it would have a positive effect on the law enforcement mechanism and the content and essence, as well as the legal scale of the activities of the National Police of Ukraine on the mechanism of ensuring compliance with the economic rights and freedoms of a person and a citizen. First of all, it is necessary to emphasize the changes introduced into the CCU in terms of reformatting sanctions for crimes committed against the state economic system and the economic rights and freedoms of individual citizens in the format of a sanction-penalty policy, restrictions on the right to travel freely outside the state territory, and the obligation to compensate both the actual damage and the amount of moral damage.

A separate issue, according to the authors, is to strengthen the institutional capacity of the National Police of Ukraine to respond to and conduct pre-trial investigations of a separate category of crimes in the field of economic relations. This applies to both those that actually fall within the competence (jurisdiction) of the police and those where it belongs to other pre-trial investigation bodies (in terms of involving operational units in this process to conduct investigative (detective) actions on behalf of these entities (investigators, detectives).

In addition, given the broad functionality of the National Police of Ukraine, the legal impact of the National Police of Ukraine on the mechanism of ensuring the observance of economic rights and freedoms of man and citizen also includes educational (anti-fraud) work with individuals and legal entities, which is a preventive police activity.

5. Conclusions

The theoretical and legal analysis constructions, which are the content of the legal effect of the activities of the National Police of Ukraine regarding the observance of the economic rights and freedoms of a man and a citizen, made it possible to form an idea that the economic rights and freedoms of a man and a citizen are protected both by the Constitution of Ukraine and other national legislation, the lion's share of which is the CCU.

The system of economic rights in Ukraine is based on the definition of the principles of the relevant institution in the national legislation, which directly determines the capabilities of a person and a citizen

in the sphere of material goods use (mostly includes the principles of production, distribution and exchange).

The specific features of the functioning of the National Police of Ukraine and the legal consequences of this process are strengthening the state's ability to ensure the observance of economic rights and freedoms of man and citizen by preventing relevant unlawful acts, and also by conducting certain forms of educational work. In this context, the main task of the police is to bring to administrative responsibility and combat crime in the economic sphere.

The legal effect of ensuring the observance of economic rights and freedoms of a human and a citizen by the National Police of Ukraine consists in the practice of bringing to legal responsibility persons who violate economic rights defined by the Ukrainian legislation. This creates conditions for promoting their observance (provides prevention), and also promotes the restoration of already violated rights (directly or, more often, indirectly, since the authorised body is the court).

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