

## THE CURRENT STATE IN LEGAL PROVISION OF SOCIAL PROTECTION OF COMBATANTS

### СУЧАСНИЙ СТАН ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ СОЦІАЛЬНОГО ЗАХИСТУ УЧАСНИКІВ БОЙОВИХ ДІЙ

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The article deals with the legal acts on social protection of combatants. The current legal acts regulating social relations in the field of combatants' social protection are summarized. The authors identify the main range of issues that require further legislative regulation of social protection of combatants.

It is emphasized that the Constitution of Ukraine states in importance for the State to support and pay special attention to combatants and their families, which is fully consistent with international and European social security provisions enshrined in the Universal Declaration of Human Rights, the European Social Charter and other international documents.

Blocks in the system of legislative acts of Ukraine that directly or indirectly relate to the social protection of combatants have been identified. The financial basis for social protection of combatants is provided by the Budget Code of Ukraine and the Law of Ukraine "On the State Budget of Ukraine for 2023". The funds planned for this purpose are financed under programs managed by central and local executive authorities.

The relevance of developing military medical rehabilitation and the appropriate infrastructure have been proved, given the fact that the rapidly increasing number of disabilities caused by the hostilities in Ukraine. In such circumstances, there is a need to increase investments by the state and local governments in the development of modern rehabilitation infrastructure and to attract investments from other entities in this important area. The problem raised in this article is an important stage in the development of a new social insurance system. A principal area for further improvement of the regulatory framework is the construction of a mechanism for providing assistance and joint responsibility of the state and local authorities for life insurance of their residents from among combatants.

**Key words:** social protection, combatant, regulatory and legal support, social guarantees.

В статті розглянуті нормативно-правові акти з забезпечення соціального захисту учасників бойових дій. Узагальнено чинні нормативно-правові акти, що регулюють суспільні відносини у сфері соціального захисту учасників бойових дій. Визначено основне коло питань, які потребують подальшого законодавчого регулювання соціального захисту учасників бойових дій.

Наголошено, що в Конституції України зазначено про важливість підтримки та особливої уваги держави до учасників бойових дій, членів їхніх сімей, що повністю узгоджується з міжнародними і європейськими положеннями соціального забезпечення, закріпленими у Загальній декларації прав людини, Європейській соціальній хартії та інших міжнародних документах.

Визначено блоки у системі законодавчих актів України, що прямо чи опосередковано стосуються сфери соціального захисту учасників бойових дій. Фінансова основа соціального захисту учасників бойових дій забезпечується Бюджетним кодексом України та Законом України «Про Державний бюджет України на 2023 рік». Фінансування запланованих для цієї мети коштів здійснюється за програмами, розпорядниками яких є центральні та місцеві органи виконавчої влади.

Довели актуальність розвитку військово-медичної реабілітації та відповідної інфраструктури, враховуючи те, що швидкими темпами зростає інвалідність унаслідок військових дій в Україні. За таких обставин виникає потреба посилення інвестицій держави, місцевого самоврядування у розвиток сучасної реабілітаційної інфраструктури, залучення інвестицій інших суб'єктів у цю важливу сферу. Проблема, порушена у статті, це важливий етап у розробці нової системи соціального страхування. Важливим напрямом для подальшого удосконалення нормативно-правової бази є побудова механізму з надання допомоги та спільної відповідальності держави та місцевих органів влади щодо страхування життя своїх жителів з числа учасників бойових дій.

**Ключові слова:** соціальний захист, учасник бойових дій, нормативно-правове забезпечення, соціальні гарантії.

**Statement of the problem.** At present it is extremely important for Ukrainian scholars to monitor the impact of the war on the social protection system in the country, in particular, the social protection of combatants. In our opinion, this work should record the most important decisions and events in the social sphere and outline the main challenges.

That is, there are many problematic issues, but we aim to consider the legal acts on social protection of combatants.

**State of the research.** Proper social protection creates incentives to participate in repelling and deterring the armed aggression of the Russian Federation and overcoming its consequences, affects the level of social protection of combatants and creates the right conditions to ensure a decent standard of living, health, education, work, etc. However, despite

the fact that Russia's war against Ukraine has been going on for many years, the legal regulation of social protection of combatants is still being formed and improved. Therefore, today the topic of this article is quite relevant.

The theoretical and methodological foundations of the study of social protection issues were made by Ukrainian scholars such as S. Berezina, O. Zhuk, O. Kyrylenko, E. Libanova, T. Kryshchal, M. Malyovanyi, O. Nasibova, N. Telichko, M. Yuriy. As part of the study of social protection of combatants in Ukraine, certain aspects have been investigated by such scholars as: V. Bashtannyk, T. Bezverhnyuk, P. Vitko, V. Volianskyi, N. Hnydiuk, V. Diulina, V. Kozakov, M. Pylypchuk, K. Spyska, S. Chukut, I. Shpektorenko and others.

However, despite the considerable number of scientific works, the issue of scientific research on improving the legal regulation of social protection of combatants in Ukraine requires further study.

**Summary of the main research material.** It would seem that Ukraine has been defending its territorial integrity since 2014, and the issue of the status of Ukrainian citizens who took up arms to participate in repelling and deterring the armed aggression of the Russian Federation should be settled, but in reality, this is not entirely true.

The main legal documents regulating this issue are the Law of Ukraine No. 3551-XII “On the Status of War Veterans, Guarantees of their Social Protection”, the Procedure for granting and depriving of combatant status to persons who defended the independence, sovereignty and territorial integrity of Ukraine and directly participated in the anti-terrorist operation, ensuring its conduct or in the implementation of measures to ensure national security and defense, repulsing and deterring the armed aggression of the Russian Federation in Donetsk and Luhansk regions, and the Law of Ukraine No. 3551-XII “On the Status of War Veterans, Guarantees of their Social Protection”.

As it turned out, these legal acts do not provide for a procedure for granting the status of “combatant” to persons who stood up to defend the sovereignty of the state in connection with the military aggression of the Russian Federation against Ukraine. They refer to persons who may be granted the status of combatants who joined the Armed Forces of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Police, the National Guard of Ukraine, the Security Service of Ukraine and other formations and took direct part in the anti-terrorist operation, ensuring its conduct or in the implementation of measures to ensure national security and defense, repulse and deter the armed aggression of the Russian Federation in Donetsk and Luhansk regions, and ensuring their implementation.

That is, the circle of persons in which formations they were to serve and in which administrative-territorial units they were to serve was clearly defined.

Therefore, in order to adapt the Laws of Ukraine to the realities of today, the Resolution of the Cabinet of Ministers of Ukraine by October 21, 2022, No. 1193 amended the Resolution of the Cabinet of Ministers of Ukraine by August 20, 2014, No. 413 (hereinafter – the Resolution by August 20, 2014, No. 413) [9].

Based on the above, we will use the following terms and definitions as terminological concepts and definitions combatants are the following:

– servicemen (reservists, persons liable for military service, volunteers of the Territorial Defence Forces) of the Armed Forces, the National Guard, the Security Service of Ukraine, the Foreign Intelligence Service, the State Border Guard Service, the State Special Transport Service, servicemen of military prosecutors’ offices, rank and file and senior officers of the operational support units of the SFS anti-terrorist operation zones police officers, rank-and-file and senior officers, servicemen of the Ministry of Internal Affairs, the State Protection Department, the State Special Communications Service, the State Emergency Service, the State Criminal Executive Service, the Judicial Protection Service, and other military formations formed in accordance with the laws of Ukraine that defended independence, sovereignty and territorial integrity of Ukraine and took direct part in the anti-terrorist operation, ensuring its implementation, being directly in the areas of the anti-terrorist operation during its implementation, in the implementation of measures to ensure national security and defence, repulsion and deterrence of the armed aggression of the Russian Federation in Donetsk and Luhansk regions, ensuring their implementation, being directly in the areas and during the implementation of these measures, in measures necessary to ensure the defense of

Ukraine, protection of the security of the population and the interests of the state in connection with the military aggression of the Russian Federation against Ukraine [9];

– persons who, as part of volunteer formations formed or self-organized to protect the independence, sovereignty and territorial integrity of Ukraine, directly participated in the anti-terrorist operation, being directly in the areas of the anti-terrorist operation during its conduct, provided that such volunteer formations, according to the list determined by the Anti-Terrorist Center at the SSU and the General Staff of the Armed Forces, were later included in the Armed Forces, the Ministry of Internal Affairs, the National Police, the National Guard, and other military formations and law enforcement agencies established in accordance with the laws of Ukraine [9];

– persons who, in the period prior to the entry into force of the Law of Ukraine “On Peculiarities of the State Policy on Ensuring the State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions”, as part of volunteer formations formed or self-organized to protect the independence, sovereignty and territorial integrity of Ukraine, directly participated in the anti-terrorist operation, being directly in the areas of the anti-terrorist operation during the period of its conduct for at least 30 calendar days, including by the total number of days spent in the areas of its conduct, in cooperation with the Armed Forces, the Ministry of Internal Affairs, the National Police, the National Guard, the Security Service of Ukraine and other military formations and law enforcement agencies established in accordance with the laws of Ukraine [9].

The basis of any legal relationship is the norms and provisions of the law. The peculiarities and specifics of social protection of combatants are due to the fact that combatants have the right to meet their social needs and guarantees of social protection, which are regulated by special legislation.

According to their legal force, the legal acts in the field of social protection of combatants are divided into laws and bylaws (Decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, etc.)

The Constitution of Ukraine is the main law that defines the general principles of regulation of social protection of combatants. In particular, the guarantees of social protection of this category of persons are defined in Article 17, which declares that “the state provides social protection of citizens of Ukraine who serve in the Armed Forces of Ukraine and other military formations, as well as members of their families” [7]. This provision of the Constitution of Ukraine is the basis for other legislative acts on social protection of combatants, which specify and regulate in more detail various aspects of social protection of this category of citizens.

In fact, the Constitution of Ukraine refers to the importance of support and special attention of the state to a certain category of persons and their families, which is fully consistent with international and European provisions of social security enshrined in the Universal Declaration of Human Rights [5], the European Social Charter [3] and other international documents.

A subgroup of legal acts can also include codified legislative acts that regulate relations in various spheres of public life and contain relevant norms that regulate certain elements of social protection in the area under study, in particular, the provisions of the Tax Code of Ukraine (on granting tax benefits to combatants) [8], the Housing Code of Ukraine (on obtaining housing for combatants) [4] and the Land Code of Ukraine (on allocating land plots to combatants) [6].

The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection” is one of the key laws in this area and reflects, in particular, the system of state guarantees in Ukraine. The status of a combat participant entitles a person to various benefits and assistance [1].

For example, the Law of Ukraine “On the Status of War Veterans, Guarantees of their Social Protection” enshrines a rather extensive list of benefits, social services and allowances for combatants (more than twenty). In our opinion, the most important ones are: free receipt of medicines, pharmaceuticals, immunobiological drugs, and medical supplies; payment of temporary disability benefits in the amount of 100 percent of the average salary, regardless of length of service; priority right to retain employment in case of reduction in the number of employees; priority provision of housing and land plots for personal construction, gardening, and horticulture, repair of houses and apartments of such citizens and provision of fuel. The same law also laid down the legal basis for the implementation of social partnership in the field of protection of the social rights of combatants.

The Law of Ukraine “On Social and Legal Protection of Servicemen and Members of their Families” [14] establishes a unified system of social and legal protection of servicemen and members of their families, and guarantees favorable conditions for the realization of their constitutional duty to protect the Motherland in the economic, social and political spheres. In particular, paragraph 2 of Article 15 of this Law provided for the accrual of a one-time financial allowance to mobilized servicemen, which should be paid on the day of demobilization. This Law also provides for the right to a one-time financial assistance in case of death of a serviceman or loss of disability. It is worth noting that the amount of the allowance does not depend on the military rank, salary and length of service of the serviceman.

An important block in the system of legislative acts is a number of laws of Ukraine that directly or indirectly relate to the social protection of combatants, in particular, the Law on Rehabilitation of Persons with Disabilities in Ukraine [13] and the Law on the Fundamentals of Social Protection of Persons with Disabilities in Ukraine [12], the provisions of which are consistent with international documents in this area.

The financial basis for social protection of combatants is provided by the Budget Code of Ukraine [1] and the Law of Ukraine “On the State Budget of Ukraine for 2023” [10]. Funds planned for this purpose are financed under programs managed by central and local executive authorities.

According to some domestic and international experts, certain provisions of the above laws remain declarative today. First of all, the approaches and methods to observance and realization of the constitutional rights of persons with disabilities, including those resulting from war (to which combatants are equated), need to be changed; urgent problems of this category of persons need to be addressed, including: accessibility of services, equal opportunities, including taking into account their individual needs, and the issues of employment and inclusion in the full life of society [16].

It should be emphasized that the legislator has provided for the receipt of state social assistance for persons with disabilities resulting from a number of external circumstances, including in connection with professional activities. In the context of the topic under study, it should be noted that the Law of Ukraine “On the Status of Veterans of Military Service, Veterans of Internal Affairs, Veterans of the National Police and Some Other Persons and Their Social Protection” establishes that such veterans are “persons with disabilities of groups I and II, whose disability occurred as a result of injury, contusion, mutilation or disease related to the performance of military service, service in the military reserve during direct participation in the anti-terrorist operation, in the implementation of measures to ensure national security and defence, repulse and deter the armed aggression of the Russian Federation in Donetsk and Luhansk regions, being directly in the areas and during the implementation of these measures, or in the performance of official duties to protect public order, fight crime and eliminate the consequences of emergencies” [15].

As you know, the temporary occupation of a part of Ukraine’s territory by an external aggressor has resulted in, among other things, the loss of part of the rehabilitation infrastructure. At the same time, the development of military medical rehabilitation and related infrastructure is becoming increasingly important in Ukraine, given the rapidly growing number of disabilities caused by the hostilities in Ukraine. In such circumstances, there is a need to increase investments by the state and local governments in the development of modern rehabilitation infrastructure and to attract investments from other entities in this important area.

Social insurance is particularly relevant for combatants, given the known risks associated with their participation in the war.

An important area for further improvement of the regulatory framework is to build a mechanism to provide assistance and joint responsibility of the state and local authorities for life insurance of their residents who are combatants. Undoubtedly, this requires a scientifically based calculation of the number of financial resources in the budgets of the respective level. However, there are already precedents in Ukraine when not private insurance companies conclude contracts for life insurance of military personnel (actual and/or potential combatants), but local authorities introduce elements of the so-called municipal insurance for this category of persons.

We agree with the opinion of K. Spytka that the following laws should be included in the subgroup of legal normative legal acts in the field of social protection of combatants in Ukraine: “On State Social Assistance to Persons Not entitled to a Pension and Persons with Disabilities”, “On State Social Standards and State Social Guarantees”, “On Housing and Communal Services”, “Fundamentals of Ukrainian Legislation on Health Care”, etc. Regarding the guarantees of pension provision for combatants, the main norms and provisions are contained in the Laws of Ukraine “On Compulsory State Pension Insurance” and “On Pension Provision for Persons Discharged from Military Service and Some other Persons” [16].

Subordinate legal acts in the field of social protection of combatants in Ukraine include decisions of the President of Ukraine, central and regional executive authorities, as well as local self-government bodies.

The category of bylaws and regulations in the field of social protection of combatants in Ukraine also includes a list of decisions adopted by the Government to improve the social protection of combatants, such as: “On Approval of the Procedure for Granting the Status of a War Disabled Person to Persons who Sustained Disability as a Result of Wounding, Contusion or Injury Sustained During Direct Participation in the Anti-Terrorist Operation or Ensuring its Conduct” [11], “Some Issues of Payment of a One-time Financial Assistance in 2022 Provided for by the Laws of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection” and “On Victims of Nazi Persecution” [2], etc.

In general, the results of the analysis of legal acts, including sectoral ones, show that the state has formed a normatively regulated system of social protection of combatants. Among the achievements of recent years in the field of state regulation of social protection of combatants, in our opinion, the most significant are the following.

Firstly, it is the possibility of receiving financial compensation for the purchase of housing by combatants and their families. Secondly, the issue of obtaining the status of combatant among volunteers, which is supported by the desire of public authorities to relieve social tension (prevent its occurrence) among members of volunteer formations who were not included in military formations or law enforcement agencies regulated by law and did not receive social benefits and state guarantees. Thirdly, the Government adopted the State program for physical, medical, psychological rehabilitation

and social and professional rehabilitation of ATO participants and persons who participated in the implementation of measures to ensure national security and defense, repulse and deter the armed aggression of the Russian Federation in Donetsk and Luhansk Regions, and ensure their implementation, for the period up to 2022 [16]. Its significance is enhanced by its targeted nature and the inclusion of a set of measures to support the moral and psychological state, addressing urgent issues of medical, psychological, physical, professional, physical culture and sports rehabilitation.

In the course of the analysis of the regulatory mechanism of the State regulation of social protection of combatants, the authors identify a number of problematic issues that are outside the regulatory framework, in particular, in relation to missing persons and prisoners of war – combatants, and the lack of generally accepted standards (protocols) for social and psychological rehabilitation of combatants. In order to minimize cases of violation of the rights of this category of persons who purchase housing by investing in housing construction projects, the developer's liability for violations of the commissioning of real estate and the provision of documents on the ownership of housing upon completion of construction needs to be regulated.

A serious drawback of the existing system of privileges for combatants is the situation in which most of the available benefits are compensatory rather than motivational. Accordingly, the existing system of benefits is not able to ensure a decent standard of living for combatants. That is why the formation of a system of privileges for this category of citizens requires a fundamentally different approach that will create conditions for their adaptation to peaceful life, acquisition of competencies and skills necessary for successful self-realization.

The need to legislate and expand the activities of volunteer organizations also remains relevant. There is an urgent need to improve legislation to create the conditions necessary for the rehabilitation and social adaptation of combatants at the level of central and local government, with the involvement of business, volunteer, public and international organizations.

According to the current regulations, upon completion of service in the Armed Forces, military personnel become civilians and, as a result, lose the right to receive care in military hospitals. In this regard, it is important to provide

demobilized servicemen with the opportunity to treat post-traumatic syndromes and other diseases that arose as a result of military service in military hospitals, not in civilian hospitals, where they can receive specific, highly qualified care even after completing their military service.

In order to improve the regulatory and legal mechanisms of public administration in the field of social protection of combatants, it is important to involve civic and veteran organizations, trade unions, and other parties to social partnership in the lawmaking process. As practice shows, their members are well aware of all the problematic issues of social protection of combatants and are ready to offer their own constructive approaches to solving them.

Undoubtedly, the sphere of social protection of combatants is developing dynamically and needs to be improved, studying foreign best practices and ways to implement them in practice and in Ukraine.

**Conclusions.** In the framework of the analysis of the legal framework for social protection of combatants in Ukraine, the legal acts have been systematized and their classification by legal force (legal acts, by-laws) have been proposed. The author highlighted the achievements of recent years in the field of legal regulation of social protection of combatants in Ukraine, in particular, the regulation of the status of volunteers, the possibility of monetary compensation for the purchase of housing, the adoption by the government of state programs aimed at physical, medical, psychological rehabilitation and social and professional rehabilitation of combatants until 2022. A number of problematic issues that are outside the legal framework, in particular, regarding missing persons and prisoners of war who are combatants, and the lack of generally accepted standards (protocols) for the social and psychological rehabilitation of combatants have been identified and fixed.

The need to expand the possibilities of providing additional social guarantees to combatants at the level of united territorial communities has been proved. These may include measures aimed at financial, social, legal, and psychological support for citizens who are in or sent to the combat zone and their families; solving problems of material and household support for people who participated in combat operations, as well as family members of those killed during the war, providing all types of assistance to combatants, and social support for their families.

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