УДК 341.217
DOI: 10.37635/jnalsu.28(2).2021.25-33

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СУЧАСНІ ВИКЛИКИ МІЖНАРОДНІЙ БЕЗПЕЦІ ТА ЗАХИСТУ ПРАВ ЛЮДИНИ (МІЖНАРОДНИЙ ТА УКРАЇНСЬКИЙ КОНТЕКСТ)

Анотація. *На сьогодні в Україні можна виділити два механізми захисту прав людини: звернення до Європейського суду з прав людини на міжнародному рівні та звернення до Уповноваженого з прав людини на національному рівні. При цьому діяльність омбудсмена спрямована на виконання державою прийнятих на себе зобов'язань на міжнародному рівні щодо забезпечення національного механізму захисту прав людини. В Україні омбудсмен діє за зразком класичного парламентського Уповноваженого з прав людини. Крім того, поряд з парламентським Уповноваженим з прав людини, який має конституційний статус, в Україні діє ряд урядових уповноважених («квазі-омбудсмени»), діяльність яких не має спеціального статусу і може бути припинена за волею уряду в будь-який час. Враховуючи вищевикладене, мета цього дослідження полягає у всебічному аналізі сучасних викликів міжнародній безпеці та впливу цих факторів на дотримання прав людини в Україні (з використанням методів як міжнародного права, так і класичної правової методології), а також вивчення ролі омбудсмена в цьому процесі. Проведений аналіз дозволив зробити висновок, що причини порушень прав людини криються не лише у власних проблемах країни, але й є наслідками глобальних процесів. Величезним викликом правам і свободам в Україні є поглиблювана бідність населення, що саме по собі є порушенням прав людини і не дозволяє реалізовувати всі інші права. Крім того, бойові дії в районі Донбасу призвели до грубих, масових і систематичних порушень прав людини: жителі прифронтових територій стикалися одразу з двома викликами – небезпекою, яка виникає через неможливість забезпечення безпеки безпосередньо поблизу зони бойових дій та одночасно зростаючі ризики бідності*

Ключові слова: *виклики правам людини, захист прав людини, омбудсмен, Європейський суд з прав людини, міжнародна безпека*

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MODERN CHALLENGES TO INTERNATIONAL SECURITY AND PROTECTION OF HUMAN RIGHTS (INTERNATIONAL AND UKRAINIAN CONTEXT)

Abstract. *At the moment, two mechanisms for protecting human rights can be distinguished in Ukraine: an appeal to the European Court of Human Rights at the international level and an appeal to the Commissioner for Human Rights at the national level. Therewith, the activity of the ombudsman constitutes the state's performance of its obligations at the international level to ensure the national mechanism for the protection of human rights. In Ukraine, the Ombudsman acts according to the model of the classic parliamentary Commissioner for Human Rights. In addition, along with the parliamentary Commissioner for Human Rights, which has a constitutional status, there are government commissioners ("quasi-ombudsmen") in Ukraine, whose activities do not have a special status and can be terminated at the will of the government at any time. Considering the above, the purpose of this study lies in a comprehensive analysis of modern challenges to international security and the impact of these factors on the observance of human rights in Ukraine (using the methods of both international law and classical legal methodology), as well as studying the role of the ombudsman in this process. The analysis allowed to conclude that the causes of human rights violations lie not only in the country's problems, but are also the consequences of global processes. A huge challenge to the rights and freedoms in Ukraine is the intensifying poverty of the population, which in itself is a violation of human rights and allows to exercise all other rights. Furthermore, the hostilities in the Donbas region led to gross, massive, and systematic violations of human rights: residents of the front-line territories were faced with two challenges at once – the danger that arises due to the impossibility of ensuring security in the immediate vicinity of the war zone and the increasing risks of poverty*

Keywords: *challenges to human rights, protection of human rights, ombudsman, European Court of Human Rights, international security*

INTRODUCTION

Human rights can be viewed in an international and national context. International and national human rights law constantly interact. Therewith, in Ukraine, historically, a situation has developed when the fundamental human rights and the mechanism for their protection were assumed by the country in the form of international obligations, and then implemented into national law. Sovereign states are free to join international organisations, sign bilateral and multilateral agreements. State sovereignty is a key issue in the implementation of international treaties. States have broad freedom to choose the means and methods of performing their obligations under international law. However, such a procedure almost always requires the involvement of a government body charged with the task of enacting legislation: the national legislature. At the same time, in case the state violates its obligations, there is usually no possibility of contacting international law enforcement agencies. Therewith, the state cannot ignore its obligations and is often responsible before international tribunals, which are not law enforcement, but a kind of judicial body.

Vivek Sehrawat, studying the fundamental dichotomy in the conclusion of international treaties and approaches to this issue at the level of national constitutional law on the example of India, notes the great role of the courts in the implementation of international treaties [1]. Dedefo Bedaso addressed the fact that international law comprises unique rules, principles, and procedures for its application in relations between states. The relationship between the national laws of the state and international laws is developing based on monistic and dualistic theories. These theories were developed mainly to determine the interrelation between domestic and international law [2]. The theory of monism assumes that both law systems are separate components of the body of legal knowledge or a single legal system. This theory follows the unitary principle that domestic and international law must coexist and form part of the same universal legal order. Furthermore, international law and human rights are at the top and prevail over the national laws of states.

The second approach to the study of the interrelations between national and international law is based on a dualistic or pluralistic theory. According to this theory, national and international provisions do not have a direct or automatic impact on each other, do not have the superiority of one system over another, do not change or challenge each other's rules, and do not function as a dual legal system. International law applies only between sovereign states and depends on the common will of these contracting states. International law becomes binding and enforceable if it is directly incorporated into the national legal system of

states. Whenever national law and international law conflict, national law should take precedence in court. At present, at the statutory level, the focus is still on the monistic theory, since the general rule for the implementation of international treaties stipulates that a state that has violated a rule of international law cannot justify itself by referring to its national law. Article 27 of the 1969 Vienna Convention on the Law of Treaties[1] clearly states this principle. In accordance with the principle "treaties must be executed", the state is obliged to comply with its international obligations, even if this means a change in national legislation.

Paola Gaeta points out the difficulties in regulating state responsibility. The author investigated the circumstances precluding wrongfulness and the consequences of an internationally wrongful act (with particular emphasis on the obligation to provide reparation). The researcher also stressed the importance of ensuring compliance with international law by states acting individually, that is, decentralised enforcement, including by their courts, and also through retortion or countermeasures (once called reprisals). This is a typical form of enforcement under conventional international law [3]. At the same time, enforcement can be carried out through measures taken by states acting collectively, that is, through mechanisms that include the use of collective measures, such as measures taken at the UN (or other international organisations) level, which may lead to sanctions. The author pointed out that at the international level there is a ban on the use of armed force in international relations; therefore, all coercive measures taken by states on an individual basis must be peaceful [3].

Deplano pointed out the complexities of doing research in international law. After all, performing such a study is neither a fixed nor a standardised activity. This requires several skills and experience of the researcher. In addition to studying authoritative sources: international agreements, international litigation, diplomatic practice, it is necessary to analyse the effectiveness of international law in the national system of law, which is a rather complicated procedure. Indeed, in this case, the competence of a researcher in a foreign jurisdiction is required, including a foreign language, related skills and abilities, as well as a deep understanding of the legal culture of another country [4].

Based on the above, the problem of protecting human rights and international security today is in many ways a key issue for the national legislation of Ukraine. With an in-depth study of this subject, various mechanisms for the implementation of the obligations assumed, both at the legislative level and at the level of law enforcement practice, are of particular importance.

Considering the above, the purpose of this study is a comprehensive analysis of modern challenges to international security and the impact of these factors on the observance of human rights in Ukraine (using the methods of both international law and classical legal methodology), as well as studying the role of the ombudsman institution in this process.

1. LITERATURE REVIEW

The protection of human rights in Ukraine is based both on the provisions of the Constitution and laws of Ukraine, and on international acts, among which the European Convention on Human Rights and Fundamental Freedoms[2] occupies a special place. In this regard, in Ukraine, the protection of human rights is carried out both at the national and international levels. Among international mechanisms, the main role belongs to the European Court of Human Rights. This body was established in accordance with the European Convention on Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950 and entered into force on September 3, 1953. The Court has jurisdiction in the field of human rights over states that have ratified the Convention not only in relation to administrative and executive acts, but also to acts of the judicial and legislative authorities. The court comprises a number of judges equal to the number of members of the Council of Europe. The jurisdiction of the court is limited by the fundamental provisions of the Convention. The jurisdiction of the court extends to all matters concerning the interpretation and application of the Convention which the contracting states or the commission may refer to it. The court is also competent to decide on the application of the additional protocols to the convention.

Peter Hilpold pointed out that the signed European Convention on Human Rights (ECHR) in Rome in 1950 was an overtly revolutionary document. The human rights standards proclaimed by the Convention have become the gold standard around the world. At the same time, the problem of this court is a large percentage of the complaints rendered inadmissible and a very long time for the consideration of cases. The author also pointed to very different statistics on the number of complaints from different countries. For example, in 2019 only 198 complaints from Austria were submitted to this court, 182 of them were declared inadmissible, and only 5 were satisfied [5]. For comparison, in relation to Ukraine, the ECHR is considering 8,833 cases.

Marijana Mojsilović pointed out that the European Court of Human Rights is the crown of the international human rights protection system. In recent years, the Court has been a victim of its own success. In response to a growing number of complaints, the Council of Europe over the past five years has considered numerous proposals for restructuring the European human rights regime and reorganising the European Convention on Human Rights [6].

Bardarova pointed out that the European Court of

1. Vienna Convention on the Law of Treaties. (1969, May). Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

2. European Convention on Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf.

Human Rights is competent to decide on the application and interpretation of the European Convention on Human Rights only in cases where any of the guaranteed rights is violated by a member state of the Council of Europe that has ratified the Convention. In fact, a member state that has ratified the European Convention on Human Rights undertakes to integrate guaranteed rights into the national legal system and to ensure their legal protection [7]. At the same time, Patricia Popelier sharply criticised the current system of the European Court of Human Rights due to the review procedure being too lengthy and other organisational issues [8].

Therewith, as pointed out by Paulo Sergio Pinheir, state strategies in the field of human rights are critical for their protection and enforcement. Since states work to become responsible members of the international community, the design and implementation of these strategies is essential to perform the undertaken obligations to protect the human rights of those living within the borders of such states. One of the main tools used in defining these government strategies is the establishment of human rights institutions at the national level [9].

Zemskova, analysing the specific features of the Ombudsman's status, noted that the main goal of the Ombudsman is to protect the rights of citizens in case of their violation by the executive authorities. The ombudsman's activities are a priority in almost all countries of the world. The author identified three models of the functioning of the ombudsman: 1) an executive ombudsman ("quasi-ombudsman") is an official whose activities are subordinate to the president or the government, 2) an independent ombudsman working outside the system of three branches of government, 3) a parliamentary ombudsman who is elected by the lower house of parliament, and is subordinate to it. In this case, the institution is built as a parliamentary body, but with broad powers that determine the distance from the legislative branch of government and independence from it [10].

Also, as Nikolaos Sitaropoulos pointed out, for the protection of human rights in the European Union, the European Commissioner for Human Rights works as a separate body with a special status [11].

Réka Friedery concluded that the founding of a European Ombudsman office was the result of a long journey shaped by many positions in the European Parliament and its Petitions Committee. The office of the European Ombudsman can be considered as an extension of the parliamentary branch of government. However, this additional function does not imply a dependent role of the ombudsman, but symbolises a coordination relationship, which, among other things, mainly reinforces the fact that in most European countries the ombudsman's mandate also extends to parliament [12].

C. Lacatus analysed the right to peaceful assembly from a human rights perspective. The researcher pointed out the exceptional importance of this right, not least because citizens use this right as the most effective means of expressing dissatisfaction with their position, status or specific actions of the government. The implementation of this right entails a positive obligation on states to protect and contributes to the protection of human rights, although states can impose restrictions on peaceful assembly in the conditions stipulated by legal provisions [13]. The legal regulation of the status of the ombudsman in Ukraine is determined by the Constitution of Ukraine and the Law of Ukraine "On the Human Rights Commissioner of the Verkhovna Rada of Ukraine"[1]. Moreover, Article 55 of the Constitution of Ukraine stipulates the right of everyone to appeal for the protection of their rights to the Ombudsman, and the main goal of the ombudsman's activities lies in the exercise of parliamentary control over the observance of the rights and freedoms of citizens in various fields.

In this regard, one can agree with the position of Petryshyna, who emphasised the special role of the Human Rights Commissioner of the Verkhovna Rada of Ukraine as an element of the mechanism for protecting human rights in Ukraine. The researcher pointed to the special constitutional status of the Commissioner, since the recognition and protection of human and civil rights and freedoms is a guarantee of democracy and the rule of law [14]. Petryshyna addressed the guarantees of the Ombudsman's activities, namely: a ban on interference in his or her activities by state authorities, local authorities, associations of citizens, enterprises, institutions, organisations, regardless of the form of ownership, and their officials, including a prohibition to demand from him or her an explanation of the merits of unfinished or pending cases; inviolability; financial independence; termination of the activities of the Commissioner; list of powers; fundamentals of activity; requirements for the candidate for the position; the duty of the Commissioner to submit to the Verkhovna Rada of Ukraine an annual report on the state of observance and protection of human rights and freedoms [15].

2. MATERIALS AND METHODS

When preparing this study, the works were analysed both on the methodology of legal research and those related to the use of specific international legal instruments. The work of Deplano, which is the latest research in the field of legal and international legal methodology, was largely used as the methodological base in terms of the study of international law methodology [4]. In the study, the author draws attention to the fact that International Legal Research (ILR) is an area at the intersection of legal librarianship and legal research. The author also believes that in addition to state practice and practice of international courts and tribunals, as well as international organisations, ILR sources should formally include the practice of non-state actors, including

1. Law of Ukraine No. 776/97-VR "On the Human Rights Commissioner of the Verkhovna Rada of Ukraine". (1997, December). Retrieved from https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text.

non-governmental organisations, soft law instruments, and social media interactions, when they are used by the state.

Deplano additionally addressed the fact that, apart from studying authoritative sources, such as international agreements, international litigation, and diplomatic practice, it is necessary to analyse the effectiveness of international law in the national legal system, which is a rather complicated procedure [4].

Therewith, recently the process of collecting and storing primary data and sources of ILR itself has become the subject of scientific research. As an autonomous field of research, ILR deals directly with the study of both types of sources of international law: international agreements and national legislation (which differs from the national law of the researcher and constitutes an analysis of foreign law from his standpoint). Within the framework of this study, the task was slightly facilitated by the fact that this study does not imply a detailed comparison of the provisions of Ukrainian legislation on the status of an ombudsman with foreign legislation (this will become the subject of subsequent developments), but is aimed at studying the specifics of the functioning of the mechanism for protecting human rights in Ukraine at the national and international levels. Nevertheless, the study investigates national and international legislation, as well as the practice of its application, including the instruments of "soft law".

Nowadays, most Ukrainian and foreign legal journals that carry out double-blind peer review require the inclusion of a section on methodology in their articles. As Semchuk notes, too little attention is paid to methodological issues in Ukrainian legal science [14].

The methodological framework of the study in its classical legal aspect is the well-known study by the professor of Yale University, Tom R. Tyler. The author recommends statutory analysis of the law (doctrinal analysis) as the main method of classical legal research, which includes attempts to understand the best balance of rights and obligations within the framework determined by legislation. Such research is primarily a process of collecting and analysing facts, identifying and solving legal issues, searching, analysing and synthesising legal powers and determining whether a law is effective. It is based on moral, legal, and political philosophy. In this case, the analysis is built around the question of how it should be [16].

3. RESULTS AND DISCUSSION

At the same time, the study also provides some factual data, however, taking into account their specificity, which was pointed out by J. Monahan & L. Walker [17], as well as S. Diamond & P. Mueller [18]. Therefore, the study contains some factual data, but they do not turn it into a sociological study in the field of law, but only serve as additional argumentation for some theoretical positions.

Considering the above, the study used the classical legal method as the main one, as well as the method of international legal research (ILR), as an additional method. At the time of the adoption of the Constitution in 1996, the institution of the Ombudsman was an absolutely new direction of extrajudicial protection of human rights and freedoms for Ukraine, which was supposed to influence the situation, mainly by the strength of its moral authority, based on international human rights standards. Ukraine was very far from meeting international standards in the field of human rights and freedoms, and they had to be actively promoted in the minds and law enforcement practice. Therefore, the Ombudsman had to develop an individual strategy of action to promote both international standards and the rule of law. One of the main directions of the work of the First Ombudsman of Ukraine on the development of a legal culture and the implementation of international standards in the field of human rights and freedoms was to promote Ukraine's accession to international documents in the field of human rights and their effective implementation into national legislation. Due to the initiative of the Ombudsman, a number of international and European conventions have been ratified, including the 1951 UN Convention relating to the Status of Refugees[1]; the 1977 European Convention on the Legal Status of Migrant Workers[2]; the 2000 UN Convention against Transnational Organised Crime and its Protocol on Preventing and Combating Trade people, especially women and children, and the punishment for it[3]; 2006 UN Convention on the Rights of Persons with Disabilities[4]; 2002 Optional Protocol to the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment[5].

The Ombudsman's reports with conclusions and recommendations are the source of the so-called "soft law". For "soft law" serves as the basis for the specific activities of the Ombudsman on the application of international public and private law. In fact, this law can be called the

1. United Nations Convention relating to the Status of Refugees. (1951, July). Retrieved from https://www.ohchr.org/en/professionalinterest/pages/statusofrefugees.aspx.

2. European Convention on the Legal Status of Migrant Workers. (1977, November). Retrieved from https://rm.coe.int/1680077323.

3. United Nations Convention against Transnational Organized Crime and the Protocols Thereto. (2000, November). Retrieved from https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

4. United Nations Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf.

5. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (2002, December). Retrieved from https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx.

"case law of the Ombudsman" as indicated by the First Ombudsman of Ukraine – N. Karpachova [19].

The powers and activities of the Ombudsman of Ukraine were assessed at the UN level as fully consistent with the Paris Principles, approved by Resolution 48/134 of the UN General Assembly on December 20, 1993[1], regarding the status of national institutions engaged in the promotion and protection of human rights. First of all, this refers to independence, openness of activities, as well as an impartial position in upholding and protecting human rights and freedoms. Therefore, in March 2009, by the decision of the Bureau of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights at the UN, the Ombudsman of Ukraine was granted the highest accreditation status "A", which gives the right, in particular, to be directly involved in meetings of the UN Human Rights Council and speak on the issues under discussion along with official delegations. At the same time, the causes of human rights violations are rooted not only in the problems of the country itself, but are also the consequences of global processes. Thus, a huge challenge to the rights and freedoms in the country is the intensifying poverty of the population, which in itself constitutes a violation of human rights and makes it impossible to exercise all other rights. Over 70% of Ukrainian citizens have been and remain below the poverty line [19]. This trend, unfortunately, is typical not only for Ukraine, but also for the entire Europe, as follows from the report of the European Network of the National Human Rights Institutions (2019) [20]. As stated in the above report, poverty is not only a lack of income; it is a lack of access to goods, services, and the community involvement that is necessary to enjoy human rights. Poverty is both a cause and a consequence of human rights violations and must be tackled first. Due to the global financial and economic crisis, the level of economic decline in Ukraine has further exacerbated this problem. The rural population, large families and pensioners are especially affected. A specific attribute of Ukrainian poverty is its spread even among the working population and the emergence of such a phenomenon as hereditary poverty. In some regions of Ukraine, poverty turns into destitution and transforms entire regions into depressive ones. One way or another, this problem is affected by the overwhelming majority of citizens' appeals that come to the Ombudsman (and their number since 1998 has been approaching 2 million).

As Karpachova pointed out, the most vulnerable social groups of the population have always been the priority of the Ombudsman: children, disabled people, elderly people, homeless people, minorities, women. Considering the intensity of stratification of the Ukrainian society into the poor and the rich, special attention was paid to the issues of discrimination against people on social grounds: for example, it was possible to protect the right of a talented young poet Yulia Manzhula, a wheelchair person suffering from severe cerebral palsy, to receive higher education; to restore justice and protect the rights of the tragically deceased teacher Yuriy Murashov, chairman of the Ukrainian committee "Helsinki – 90" [21]. Poverty also violates the poor's right to a fair trial. Even having achieved a court decision in their favour, ordinary people are forced to seek its implementation for years, since more than 70% of decisions of national courts are not enforced. Therefore, the number of applications to the European Court of Human Rights is growing. And then in Ukraine, 95% of decisions of the European Court are not fully implemented, since the state has not solved systemic problems associated with improving legislation, law enforcement practice, and taking comprehensive measures to implement pilot decisions of the ECHR. Despite the fact that currently a new mechanism for the enforcement of the ECHR judgments has been introduced, given the volume of accumulated debts and the number of complaints against Ukraine, Ukraine is still far from resolving the issue of non-enforcement of the ECtHR judgments.

It was poverty and unemployment that prompted millions of Ukrainians to seek greener pastures outside the country. This led to the emergence of such a phenomenon as the mass migration of Ukrainian citizens abroad in search of earnings and a better fate. As Karpachova noted, the labour activity of migrants without a formalised status, in unsatisfactory conditions and with irregular working hours, in case of non-observance of safety measures and performance of work associated with a risk to life and health, manifestations of disrespect for the honour and dignity of a person – all these problems concern not only donor countries, but also recipient countries of migrants. Therewith, in 2003, the Ombudsman presented to the Parliament a Special Report "The state of observance and protection of the rights of Ukrainian citizens abroad" (2003), which became a generalised act of the Ombudsman's response to numerous facts of violation of the rights of Ukrainian citizens – labour migrants [22]. It provides not only a comprehensive analysis of the problem, but also recommendations and proposals, the implementation of which should contribute to the development of a long-term national policy in the field of migration relations, taking into account the prospects for global development, the interests of Ukraine and its citizens. Another important step along this path was the presentation of the Ombudsman to the President of Ukraine on the need to ratify the 1977 European Convention on the Legal Status of Migrant Workers[2]. Parliament ratified this convention on March 16, 2007.

A new challenge to human rights and freedoms in the world, born of the global financial and economic crisis,

1. Resolution 48/134 of the United Nations General Assembly. (1993, December). Retrieved from https://www.legal-tools.org/doc/b38121/pdf/.

2. European Convention on the Legal Status of Migrant Workers. (1977, November). Retrieved from https://rm.coe.int/1680077323.

was the growth of international terrorism, which has become the main threat to the fundamental human right – the right to life. The reasons for this threat are as follows: unfair access to resources and national wealth in many countries of the world; massive poverty; intensifying polarisation of the world into rich and poor countries; gross violations of fundamental human rights; dominance of the law of force in international relations as opposed to the force of law, when economically dominant countries allow themselves to declare the territories of other countries as a zone of their national interests, destabilise the situation, inciting internal conflicts and civil wars, including carrying a threat to the deployment of military bases in many countries of the world [23; 24]. The manifestation of international maritime terrorism in the modern world manifested itself in the unprecedented pirate attacks and the seizure of merchant ships in the Gulf of Aden. Not only Ukraine, but also other states turned out to be unprepared for this modern challenge to human rights and freedoms.

In addition, hostilities in Donbas region led to gross, massive, and systematic violations of human rights: hostage-taking, torture, rape and ill-treatment, killings and extrajudicial executions, forced labour, looting and robberies, trafficking in persons and weapons, lack of medical aid and medicines, considerable restriction of the right to freedom of movement, impossibility of making social payments for pensioners, disabled people, children, women. Residents of the front-line territories were simultaneously faced with two challenges – the danger that arises from the impossibility of ensuring security in the immediate vicinity of the war zone and, at the same time, the growing risks of poverty. The solution to this issue cannot be found exclusively at the national or exclusively at the international level – it requires the simultaneous and coordinated application of both mechanisms for protecting human rights. As the results of study suggest, the institution of the ombudsman has a dual nature – the basis of its status is determined by national legislation, and the specifics of its work are largely determined by international provisions. It is this dual role that ensures the special place of the Commissioner for Human Rights in the mechanism for the implementation of international law in the field of human rights protection. The matter of the way the states implement the provisions of such international instruments into their national legislation also becomes particularly relevant, as states must adhere to the changing horizons of international law: respect the concepts of the past, meet the requirements of the present, and work for the future. Therefore, in many respects, the main issue is the problem of implementation of the obligations assumed by the state at the international level into the national law. This refers not only to the ways of statutory consolidation of the operation of such international law provisions at the national level, but also the practice of their application.

Vivek Sehrawat pointed out that the application of international law relies on the state apparatus for implementation at the national level [1]. In this case, the mechanisms for the implementation of international law can be conditionally divided into two groups: 1) direct incorporation, according to which the status of duly ratified international agreements as part of national legislation is established at the legislative level – in this case, the adoption of additional legislative acts or separate mechanisms for the implementation of such agreements at the national level is not required; 2) implementation – in the event that, for the practical implementation of the obligations assumed, the country must adopt additional regulations, e.g., make provision for liability for certain actions under the threat of punishment or develop a national mechanism to protect certain rights.

In the activities of the ombudsman, both mechanisms are used – the direct incorporation of international documents on human rights to ensure the legal basis of his or her activities and the use of the implementation mechanism, because the very activities of the ombudsman represent the performance of the obligations undertaken by the state to ensure the national mechanism for the protection of human rights. Justin Malbon suggested implementing a global ombudsman service to improve access to justice for those who are negatively impacted by (global) corporate manufacturing or investment activities. The proposed mechanism will offer a low-cost, relatively quick and fair means of obtaining reimbursement. This would overcome most of the jurisdictional barriers faced by plaintiffs suing global corporations in their national jurisdictions [25]. Tero Erkkilä pointed out that the institution of the ombudsman has spread throughout the world, covering all regions and most independent states. Along with the spread of the institution, its institutional development has also become global, which means that its national divisions are increasingly involved in transnational processes where the institution is being developed [26]. The institution of the ombudsman sits between the semantic fields of administrative law, human rights, and good governance.

At present, two mechanisms for protecting human rights can be distinguished in Ukraine: the right of citizens to appeal to the European Court of Human Rights at the interstate level and the right to appeal to the Commissioner for Human Rights at the national level. Both mechanisms have common features (the procedures are carried out without additional payment, and the appeal itself does not make provision for the obligatory participation of a professional lawyer at the initial stage) and substantial differences. At the current stage in Ukraine, the activities of the Commissioner for Human Rights (Ombudsman) constitute the basis of the national mechanism for the protection of human rights. H.V. Muliar stated that the institution of the Human Rights Commissioner of the Verkhovna Rada of Ukraine occupies an important place in the system of guarantees of the rights and freedoms of citizens, since it is an intermediary institution for resolving disputes arising with the participation of state bodies or officials, as well as an effective authority overseeing the observance of human rights and freedoms in various spheres of life [27].

CONCLUSIONS

Human rights have two aspects: international and national. International and national human rights law constantly interact. In Ukraine, historically, a situation has developed when the fundamental human rights and the mechanism for their protection were assumed by the country in the form of international obligations and then implemented into national law. At the time of the adoption of the Constitution of Ukraine in 1996, the institution of the Ombudsman was an absolutely new direction of extrajudicial protection of human rights and freedoms for Ukraine, which was supposed to influence the situation, mainly by the strength of its moral authority, based on international human rights standards. Ukraine was very far from meeting international standards in the field of human rights and freedoms, and these standards had to be actively promoted in the minds and law enforcement practice. One of the main directions of the work of the First Ombudsman of Ukraine on the development of a legal culture and the implementation of international standards in the field of human rights and freedoms was to promote Ukraine's accession to international documents in the field of human rights and their effective implementation into national legislation. The Ombudsman's reports with conclusions and recommendations are the source of the so-called "soft law". For "soft law" is the foundation of the specific activities of the Ombudsman on the application of international public and private law. In essence, this law can be called the "case law of the Ombudsman".

At the same time, the causes of human rights violations are rooted not only in the problems of the country itself, but are also the consequences of global processes. Thus, a huge challenge to the rights and freedoms in the country is the intensifying poverty of the population, which in itself constitutes a violation of human rights and makes it impossible to enjoy all other rights. The growth of international terrorism, which has become the main threat to the fundamental human right – the right to life – has become a new challenge to human rights and freedoms in the world, born of the global financial and economic crisis. In addition, the hostilities in the Donbas region led to gross, massive, and systematic violations of human rights: residents of the front-line territories were faced with two challenges at once – a danger that arises due to the impossibility of ensuring security in the immediate vicinity of the war zone and the increasing risks of poverty. The solution to this issue cannot be found at the national or at the international level exclusively – it requires the simultaneous and coordinated application of both mechanisms for the protection of human rights.

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Suggested Citation: Karpachova, N.I. (2021). Modern challenges to international security and protection of human rights (international and Ukrainian context). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(2), 25-33.

Submitted: 14/02/2021
Revised: 10/04/2021
Accepted: 06/05/2021