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THE QUESTION OF SEARCHING FOR MISSING AND MISSING PERSONS IN THE CONDITIONS OF MILITARY AGGRESSION IN UKRAINE

Abstract. The search for missing persons in the context of the war between Russia and Ukraine has become extremely urgent. The war, which began in 2014 and escalated into a full-scale aggression in 2022, has caused massive human losses and numerous cases of disappearances. A particularly tragic chapter of this war was the battle for Mariupol – a city that endured brutal fighting and prolonged shelling. Under these conditions, many Ukrainians went missing, leaving their families in despair and uncertainty. According to official data, as of October 2023, around 28,000 Ukrainians were considered missing under special circumstances – either in Russian-occupied territories or on the front lines.

Out of these 28,000 missing persons, 11,000 are civilians, while the rest are servicemen of the Armed Forces of Ukraine. Every day, the relatives of soldiers receive notifications that their husband, son, or brother is considered missing, which causes tremendous stress and countless questions. They often do not know how to act, whom to turn to for help and support. Military actions and occupation create extremely challenging conditions for the search and identification of missing persons, requiring coordinated efforts from state agencies and international organizations.

The war in Ukraine has been ongoing for three years, and with each passing month, the number of missing persons increases. The battles for Mariupol, Bakhmut, Avdiivka, Kherson, Sievierodonetsk, and other cities have become symbols of Ukrainian resistance and profound tragedy. The defenders of these cities demonstrated incredible heroism, but many were captured or killed, significantly complicating the process of identification and return of their bodies. Relatives often remain without comprehensive information about the fate of their loved ones, intensifying the feelings of uncertainty and pain. The lack of information and confirmation about the status of the missing forces people to live in constant tension and hope for the return of their relatives.

The situation in temporarily occupied territories also poses numerous challenges for the search for missing persons. Occupation forces often hinder search operations, making it difficult to access information and locations where the missing might be. Relatives of the missing continuously search for the truth, appealing to various state and international authorities. They organize volunteer groups, spread information on social media, and engage the media in an attempt to find any traces of their loved ones. This places a tremendous psychological burden on the families of the missing, but it is also an example of unyielding hope and the fight for justice.

Key words: *legal status, missing person, missing person under special circumstances, court decision, legal protection, property, inheritance, Unified Register of Persons, National Police, Commissioner, temporary occupation, armed conflict, military actions, emergency situation.*

Островський С. О., Зима В. М. Питання пошуку зниклих безвісти та безвісно відсутніх осіб в умовах військової агресії в Україні

Анотація. Пошук зниклих безвісти осіб в умовах війни Росії з Україною набуває надзвичайної актуальності. Війна, що розпочалася у 2014 році та перетворилась у повномасштабну агресію у 2022-му, спричинила масштабні людські втрати та численні випадки зникнень. Особливо трагічною сторінкою цієї війни стала битва за Маріуполь – місто, яке зазнало жорстоких боїв і тривалих обстрілів. У цих умовах

багато українців зникли безвісти, залишивши своїх рідних у відчаї та невідомості. За офіційними даними, станом на жовтень 2023 року близько 28 тисяч українців вважались зниклими безвісти за особливих обставин – на тимчасово окупованих Росією територіях або на фронті.

З цих 28 тисяч зниклих, 11 тисяч є цивільними, решта – військовослужбовці Збройних сил України. Щодня рідні бійців отримують повідомлення, що їхній чоловік, син чи брат вважається зниклим безвісти, що викликає надзвичайний стрес і безліч запитань. Вони часто не знають, як діяти, до кого звертатися за допомогою та підтримкою. Військові дії та окупація створюють надзвичайно складні умови для розшуку та встановлення місцезнаходження зниклих, що вимагає скоординованих зусиль з боку державних органів і міжнародних організацій.

Війна в Україні триває вже третій рік, і з кожним місяцем кількість зниклих безвісти зростає. Битви за Маріуполь, Бахмут, Авдіївку, Херсон, Северодонецьк та інші міста стали символами українського спротиву і водночас глибокої трагедії. Захисники цих міст проявили неймовірний героїзм, але багато з них були взяті в полон або загинули, що значно ускладнює процес ідентифікації та повернення їхніх тіл. Рідні часто залишаються без вичерпної інформації про долю своїх близьких, що підсилює відчуття невідомості та болю. Відсутність інформації та підтвердження про стан зниклих змушує людей жити в постійному напруженні та надії на повернення своїх рідних.

Ситуація на тимчасово окупованих територіях також створює численні виклики для пошуку зниклих безвісти. Окупаційні війська часто перешкоджають пошуковим операціям, що ускладнює доступ до інформації та місць, де можуть перебувати зниклі. Родичі зниклих безвісти залишаються в постійному пошуку правди, звертаючись до різних державних та міжнародних інстанцій. Вони організують волонтерські групи, розповсюджують інформацію в соціальних мережах та залучають ЗМІ, намагаючись знайти будь-які сліди своїх близьких. Це величезний психологічний тягар, який лежить на сім'ях зниклих, але також це приклад непохитної надії та боротьби за справедливість.

Ключові слова: правовий статус, особа, зникла безвісти, особа, зникла безвісти за особливих обставин, судове рішення, правовий захист, майно, спадщина, Єдиний реєстр осіб, національна поліція, уповноважений, тимчасова окупація, збройний конфлікт, воєнні дії, надзвичайна ситуація.

Problem statement. The issue of searching for missing persons in the context of the war between Russia and Ukraine has become extremely urgent. This conflict, which has been ongoing for several years, has resulted in significant human losses and numerous cases of disappearances, particularly among military personnel and civilians who find themselves in conflict zones. The problem is compounded by the fact that many relatives do not receive comprehensive information about the fate of their loved ones, which intensifies feelings of uncertainty and pain. Under these conditions, it is essential to investigate how the search for missing persons is organized and the legal status assigned to such individuals. Special attention is given to those who have disappeared under special circumstances, particularly in connection with armed conflicts and the temporary occupation of parts of Ukraine. The increasing number of missing persons creates an urgent need for effective search methods and legal support for their relatives. State authorities and international organizations play a significant role in this process, striving to coordinate search efforts and provide assistance to affected families. Temporarily occupied territories and active combat

zones pose additional challenges, complicating access to information and the identification of the missing. In these challenging circumstances, the relatives of missing persons continue to fight for the truth, organizing volunteer groups and engaging the media.

Analysis of recent research and publications. In Ukraine, a considerable amount of scientific research has been conducted and numerous academic papers have been published concerning the realization and protection of human rights and civil liberties. Notably, scholars such as Dmytro Boychuk, Viktoriia Hozhii-Demydenko, Oleksandr Zaichuk, Vitalii Zhuravskiy, Oksana Iliashko, Nataliia Kaminska, Alla Klychkova, Ihor Koloshko, Olha Mazurok, Larysa Prypolova, Maksym Perepelytsia, Liubov Fesechko, and others have worked on the issue of the legal status of missing persons. However, the exploration of problematic aspects of the legal status of persons missing during armed conflicts remains a promising and urgent area for both legal science and the normative-legal framework of Ukraine, highlighting the need for their optimization.

Objective of the article. The objective of the article is to explore the legal status of persons

missing under the conditions of armed conflicts, particularly the war between Russia and Ukraine. It aims to examine the specific features of the normative-legal regulation of the search for missing persons, identify major issues, and propose solutions. The article analyzes current data on the number of missing persons, their legal support, and search mechanisms. It also identifies the roles of state authorities and international organizations in the search and protection of the rights of missing persons and their relatives, and formulates recommendations for optimizing legal norms and procedures to effectively address the issue of missing persons in Ukraine.

Presentation of the main research material. The problem of searching for missing persons has gained particular urgency due to the military aggression in Ukraine. According to the Law of Ukraine «On the Legal Status of Persons Missing Under Special Circumstances», a missing person is defined as an individual for whom there is no information about their whereabouts at the time a search request is filed by an applicant. A person missing under special circumstances is defined as an individual who has disappeared in connection with an armed conflict, military actions, temporary occupation of part of the territory of Ukraine, or emergencies of natural or man-made origin. Such status is acquired from the moment information about the missing person is entered into the Unified Register of Persons Missing Under Special Circumstances [1].

It is crucial to emphasize that the distinction between the categories «missing person» and «person missing under special circumstances» is important from the perspective of legal status and the circumstances under which the disappearance occurs. The key differences between these two concepts are as follows:

1. A missing person can disappear under any circumstances, whereas a person missing under special circumstances disappears in conditions associated with armed conflicts, military actions, temporary occupation, or emergencies of natural or man-made origin.

2. A missing person, according to the general definition of the Law of Ukraine, is an individual for whom there is no information about

their whereabouts at the time a search request is filed by an applicant. Disappearances can occur under any circumstances, including everyday situations such as going missing in a city or nature. The status of such a person is regulated by general legislation on the search for missing persons and does not necessarily include additional measures related to special circumstances. A person missing under special circumstances, according to the same article of the Law of Ukraine, is an individual who has disappeared in connection with an armed conflict, military actions, temporary occupation of part of Ukraine, or emergencies of natural or man-made origin. Disappearances occur under specific circumstances requiring a special approach to the search, such as an armed conflict or a natural disaster. The status of such a person is regulated by special legislation, which provides for additional measures and procedures, including the entry of information into the Unified Register of Persons Missing Under Special Circumstances, and the involvement of relevant bodies to organize the search.

Thus, the main difference between these two categories lies in the circumstances of the disappearance: a missing person can disappear under any circumstances, whereas a person missing under special circumstances disappears in conditions associated with armed conflicts, military actions, temporary occupation, or emergencies of natural or man-made origin.

The Law «On National Security of Ukraine» establishes that an armed conflict is defined as an armed confrontation between states (an international armed conflict, an armed conflict at the state border) or between opposing parties within one state's territory, typically with external support (an internal armed conflict) [2]. This definition is crucial for understanding the context in which disappearances occur, as many cases of disappearances are associated with such conflicts. Recognizing a person as missing under special circumstances has legal consequences, including the ability to manage the person's property and protect the rights of their relatives.

A person can be declared missing if their whereabouts have not been established within a certain period. The relevant decision is made by a court based on an application from inter-

ested parties. This decision has important legal consequences, including the ability to manage the property of such a person and protect the rights of their relatives. A court decision can also facilitate a more effective organization of the search and ensure legal protection for all interested parties.

If a person is not found within a long period, a court can declare them deceased. This decision is made based on evidence indicating the likelihood of the person's death under certain circumstances. Declaring a person deceased has serious legal consequences, including the possibility of opening an inheritance and other legal aspects. This process is very delicate and requires careful consideration of all circumstances. Thus, court procedures regarding the declaration of a person deceased are an important component of protecting the rights and interests of the relatives and loved ones of the missing person.

Continuing the analysis of the content of the above-mentioned concepts, it should be noted that Article 9 of the Law of Ukraine «On the Legal Status of Persons Missing» highlights the specific features of the legal status of persons authorized to perform state functions. According to part 1 of Article 9, an individual authorized to perform state functions who went missing during an armed conflict, military actions, internal disturbances, or in connection with the performance of duties to eliminate the consequences of natural or man-made emergencies retains their place of work, position, and average salary at the enterprise, institution, or organization, regardless of subordination, until the moment such a person is declared deceased by law. It is important to note that the definitions of «person missing in connection with an armed conflict» and «person missing under special circumstances» do not mention such categories of persons. However, part 2 of Article 9 refers to the guarantees provided by the Law of Ukraine «On Social and Legal Protection of Military Servicemen and Members of Their Families» [3] for persons missing during military service as a result of armed conflict or military actions. This leaves open the question of which category of missing person this article applies to, based on the definitions provided in Article 1 of the same

Law (missing in connection with an armed conflict or under special circumstances).

This requires clarification through amendments to the legislation to clearly define the legal status of persons missing under different circumstances. This includes clarifying the definitions of «person missing in connection with an armed conflict» and «person missing under special circumstances», as well as applying appropriate social guarantees and legal protection for these categories. To ensure legal certainty, it is necessary to:

- Clarify the definitions in Article 1 of the Law of Ukraine «On the Legal Status of Persons Missing», adding specific criteria for the categories of persons missing in connection with an armed conflict and under special circumstances, namely:

- Include clear definitions for persons missing in connection with an armed conflict, which will include circumstances related to combat, capture, and other situations arising during the war.

- Specify that persons missing under special circumstances include those who have disappeared as a result of natural or man-made disasters, terrorist acts, mass disturbances, and other emergencies not directly related to military actions.

- Amend Article 9 of the same Law to include persons authorized to perform state functions in the category of persons missing under special circumstances, with a clear indication of social guarantees and legal mechanisms for their protection. Emphasize that such persons retain their place of work, position, and average salary until they are declared deceased or another decision is made according to the law. Provide additional guarantees of social and legal protection, particularly regarding the rights of their families to receive assistance and support.

- Ensure consistency with other normative-legal acts, such as the Law of Ukraine «On Social and Legal Protection of Military Servicemen and Members of Their Families», to provide effective legal protection for persons missing during military service.

Such measures will help eliminate legal uncertainty, ensure adequate protection of the rights of missing persons and their families, and

improve coordination of efforts by state bodies and international organizations in the search and support of these individuals.

The Law of Ukraine «On the Legal Status of Persons Missing» also establishes that a foreigner or stateless person who disappeared in Ukraine acquires the legal status of a missing person if they were legally present in Ukraine.

According to Iryna Hozhii and Ihor Solonchuk, Article 20 of the Law of Ukraine «On Private International Law» is logical because the institutions of declaring a person missing and declaring them deceased can significantly differ in the legislation of various countries or may even be unknown. It is noted that the legislation of Austria and Hungary also uses a conflict of laws approach to the last known personal law of the missing person when determining the applicable law for declaring a person missing or deceased. For example, § 16 of Hungary's Decree «On Private International Law» states that the declaration of a person missing and the declaration of death or the establishment of the fact of death are determined by the law that was the personal law of the missing person. Meanwhile, Article 41 of the Swiss Federal Act on Private International Law assigns the competence to the Swiss court at the last known place of residence of the missing person to consider the issue of declaring a person missing, with the conditions and consequences of such a declaration being determined by Swiss law.

To improve the legal regulation of international relations and deepen cooperation between states, Ukraine concludes bilateral agreements. One such agreement is the Treaty between Ukraine and the Republic of Moldova on Legal Assistance and Legal Relations in Civil and Criminal Matters. According to Article 23 of this Treaty, the competent court in cases of declaring a person missing or deceased is the court of the state of which the person was a citizen. At the same time, the court of another state may declare a foreign citizen deceased or establish the fact of their death based on a request from persons whose rights are based on the legislation of the state making the decision.

Regarding the research topic, it is necessary to consider certain provisions of the Instruction on the Implementation of International Human-

itarian Law in the Armed Forces of Ukraine, approved by the Order of the Ministry of Defense of Ukraine No. 164 dated March 23, 2017. Point 19 of Part 2, «Basic Terms and Concepts of International Humanitarian Law», defines victims of armed conflict as including the wounded and sick; shipwrecked persons; missing persons; deceased persons; prisoners of war or other persons whose freedom is restricted in connection with the armed conflict; civilians in areas of hostilities and occupied territories. Point 44 of the Instruction provides a definition of missing persons as those who disappeared during hostilities, and their whereabouts are unknown.

It is worth noting that the definitions proposed in the Instruction are based on a range of international legal acts in the field of international humanitarian law ratified by Ukraine. The definition of «missing persons» in the Instruction shows a significant difference from the similar concept in the Law of Ukraine «On the Legal Status of Persons Missing».

The International Committee of the Red Cross (ICRC) plays a significant role in searching for missing persons. The ICRC's Advisory Service on International Humanitarian Law emphasizes that in situations of armed conflicts, the ICRC should have access to all persons deprived of liberty in connection with the conflict, according to the Geneva Conventions. The ICRC is also responsible for organizing and ensuring the operation of the Central Tracing Agency for Prisoners of War and the Central Tracing Agency for Persons Under Protection. These agencies collect and transmit all available information about prisoners of war and other vulnerable groups, including children. The Geneva Conventions provide for the establishment of information bureaus to centralize information collection about prisoners of war and civilians belonging to the enemy country and conduct investigations to determine the whereabouts of missing persons.

Conclusion. The issue of missing persons in the context of the war between Russia and Ukraine remains a critical and urgent matter. The ongoing conflict has resulted in numerous cases of disappearances, affecting both military personnel and civilians. The complexity of this issue is compounded by the lack of comprehensive information available to the

families of the missing, leading to feelings of uncertainty and distress. The legal status of missing persons, particularly those who disappear under special circumstances, such as armed conflicts and natural or man-made disasters, requires clear definitions and effective legal frameworks.

State authorities and international organizations play a crucial role in coordinating search efforts and providing support to the affected families. The legal distinction between general missing persons and those missing under special circumstances is significant, as it determines the applicable legal protections and procedures. Ensuring legal clarity and consistency in the definitions and regulations concerning missing persons is essential for the effective protection of their rights and the rights of their families.

The examination of various legal provisions, including international humanitarian law and national legislation, highlights the importance of a well-coordinated approach to address the issue of missing persons. The role of international agreements and cooperation between states is also vital in managing cases involving foreign nationals and stateless persons. The involvement of organizations such as the International Committee of the Red Cross underscores the necessity of comprehensive and humane strategies to handle this challenging humanitarian issue.

Overall, the issue of missing persons during armed conflicts demands continuous attention and effort from both national and international entities to ensure that the rights of the missing and their families are adequately protected and upheld.

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