

CIVILIAN HOSTAGE LEGAL PROTECTION IN TIMES OF WAR: PURSUING EFFECTIVE TOOLS TO ENSURE THEIR CONSTITUTIONAL RIGHTS AND FREEDOMS

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Abstract. This article explores the issue of legal protection for civilian hostages in times of war. The authors of the article set out to answer the question of whether effective instruments for safeguarding the rights and freedoms of this specific category of citizens can exist. The study delves into the procedural differences and challenges inherent in the legal protection of civilian hostages, which deviates significantly from the conventional mechanisms of citizen legal protection. In the article, the authors present arguments suggesting that the establishment of specialized legal clinics is one of the effective instruments to ensure the constitutional rights and freedoms of civilian hostages. However, such initiatives should be undertaken in collaboration with civil organizations specializing in matters related to this category. Furthermore, another crucial tool for their protection lies in seeking assistance from international human rights institutions and actively working towards their release from captivity. The authors conclude that this comprehensive approach constitutes an effective system for the legal protection of civilian hostages in times of war.

Keywords: European Court of Human Rights, implementation of the rule of law, national law, rule of law, rule of law index.

1. INTRODUCTION

Since 2014, the widespread occurrence of unlawful detention of civilian citizens who are held or have been held in investigative detention facilities or correctional institutions in the Russian Federation has been observed in Ukraine. This issue has intensified since the beginning of the large-scale armed aggression against Ukraine, which commenced on February 24, 2022. Ukrainian civilian citizens who have been unlawfully deprived of their freedom are among the most vulnerable individuals in terms of the protection of their constitutional rights.

As of July 2023, the ombudsman reports that over 25,000 civilian hostages remain in Russian captivity. Therefore, it is imperative to clearly define the tools for their liberation,

repatriation, and the safeguarding of their constitutional rights (Ukrainian Parliament Commissioner for Human Rights, 2023).

The protection of constitutional rights of civilian individuals is determined by the Convention on the Protection of Civilian Persons in Time of War. According to this convention, during times of war, a range of actions against persons who are not taking an active part in hostilities is prohibited. This includes the seizure of hostages and the imposition of penalties without prior judicial decisions rendered by a properly constituted court, which provides judicial guarantees recognized as civilized by nations.

Furthermore, Article 49 of this Convention establishes that an occupying state should not detain persons who are under its protection in territories that are especially dangerous due to ongoing hostilities unless it is necessary for the security of the population or due to exceptionally serious military reasons. In our case, civilian individuals have been detained without the aforementioned reasons (The Convention for the Protection of Civilian Persons in Time of War of August 12, 1949).

Civilian hostages located within the territory of the Russian Federation are deprived of the ability to inform their relatives about their whereabouts, access adequate legal and medical assistance, and are held in inhumane conditions. Torture is applied to civilian hostages, physical suffering is inflicted to extract confessions, and they are forcibly transferred to the Russian Federation for judicial proceedings and serving sentences. All of these actions directly violate the norms of international humanitarian law.

Moreover, the Law of Ukraine „On Social and Legal Protection of Persons Whose Personal Freedom Has Been Deprived Due to Armed Aggression Against Ukraine and Members of Their Families” establishes legal and social protection for civilian hostages. This includes reimbursement of expenses for professional legal assistance, the right to free secondary legal assistance during and after deprivation of personal freedom, medical and rehabilitation assistance, and provision of temporary housing upon their return to the territory of Ukraine (About the social and legal protection of individuals who have been deprived of personal freedom as a result of armed aggression against Ukraine and their family members: Law of Ukraine dated January 26, 2022). However, this law does not define instruments for protecting the rights of individuals during their presence on the territory of the Russian Federation (Law of Ukraine, 2022).

2. LEGAL CLINICS: FOUNDATIONS AND INTERNATIONAL PERSPECTIVES

The methodological basis of this article is anchored in the systematic application of analytical and synthetic methods, complemented by the use of both quantitative and qualitative indicators. This multifaceted approach has facilitated a detailed examination of legal facts, thereby paving the way for the development of a nuanced and comprehensive understanding of the critical issue of legal protection for civilian hostages during times of armed conflict. The crux of the analysis concentrates on the innovative concept of establishing specialized legal clinics within higher education institutions (Alley, 2010). This initiative is not only academically significant but also holds practical relevance in addressing real-world legal challenges. The article ambitiously sets out to delineate a clear and actionable

algorithm for these specialized legal clinics, focusing specifically on their approach to cases involving unlawfully detained individuals. It meticulously examines the strengths and weaknesses inherent in the operations of these clinics, providing an insightful critique and suggestions for improvement. Moreover, the article delves into the specific operational conditions necessary for these legal clinics to function effectively in their mission to protect the rights and freedoms of individuals who have been unlawfully detained. The ultimate goal is to furnish a well-reasoned and compelling argument that underscores the vital role these specialized legal clinics can play in upholding legal norms and human rights in the face of wartime adversities. This discussion not only contributes to academic discourse but also offers practical guidelines for enhancing the efficacy of legal aid provided by educational institutions in times of crisis.

The quest for robust and efficient mechanisms to safeguard the constitutional rights and freedoms of civilian hostages during wartime is a critical concern that has guided the research of the authors. This pursuit has culminated in the conviction that the establishment and functioning of specialized legal clinics are indispensable steps for Ukraine and its citizenry (Anderson, 2021). The rationale behind this belief is grounded in the understanding that only a comprehensive and holistic application of tools dedicated to protecting constitutional rights and freedoms can yield substantive and meaningful outcomes. Such an approach is deemed necessary to achieve the dual objectives of efficacy and efficiency in legal protection. In this context, the inception of specialized legal clinics within higher education institutions emerges as a pivotal strategy. These clinics are envisioned not merely as academic entities but as practical platforms where theoretical knowledge converges with real-world legal challenges, particularly concerning the release of civilian hostages. Their operation is characterized by an innovative blend of educational objectives, legal practice, and human rights advocacy. Furthermore, the significance of these clinics is amplified when considering their potential for collaboration with both national and international civil and human rights organizations. This synergy is expected to create a formidable network of legal support, enhancing the capacity to effectively address and resolve the complex legal issues surrounding civilian hostages in war zones. Such collaboration is envisaged to foster a more coordinated and impactful approach, leveraging the unique strengths and resources of various organizations.

By integrating the expertise and efforts of these diverse entities, specialized legal clinics are positioned to play a pivotal role in ensuring the protection of the constitutional rights and freedoms of civilian hostages. The envisioned model is one where these clinics not only provide immediate legal assistance but also contribute to broader efforts aimed at shaping legal frameworks and policies that uphold human rights during times of armed conflict. The broader implications of this approach extend beyond immediate legal interventions, potentially influencing policy decisions and contributing to the establishment of more resilient legal protections for civilians caught in the crossfire of war.

One of the instruments to ensure the constitutional rights of civilian hostages is the establishment of specialized legal clinics that provide free legal assistance to the specified category of citizens. These legal clinics are created within higher education institutions, with law students and instructors among their consultants.

3. CHALLENGES AND SOLUTIONS IN LEGAL CLINIC OPERATIONS

Analyzing recent scholarly research regarding the operation and creation of specialized legal clinics, Karl Kubillos-Vega, Maria Jose Jorquera, and Ines Robles Carrasco discuss the activities of legal clinics as a tool for the protection and representation of individuals who suffered from crimes against humanity between 1973 and 1990, based on the practice of the University of Valparaiso in Chile. This allowed underprivileged citizens to access justice and the process of human rights redress. Furthermore, senior-level student consultants gained the necessary knowledge and skills for handling cases related to crimes against humanity, as well as practical experience (Cubillos-Vega et al., 2022).

Omar Madlum and Irene Antonopoulos addressed the issue of creating a universal template for legal clinics grounded in education about justice and access to justice. This approach facilitates communication among all clinics with different specializations and enables the sharing of experiences and resources for addressing injustices. Establishing a universal legal clinic template requires defining a single source of values, codified and internationally recognized (Madhloom & Antonopoulos, 2022).

Juliana Guevara Flores and Carlos Eduardo Uc Rios focus on the implementation of information and communication technologies in the activities of legal clinics for social integration in the provision of social services, including access to justice. The use of specific technological tools enhances the dynamics of access to government services and legal assistance for individuals regardless of their social, economic, cultural, ethnic, physical, or age-related status (Flórez & Uc Ríos, 2021).

Rajashree Kempaiya (2021) asserts that legal clinics should serve as a crucial element in advancing human rights and ensuring equal access to justice based on respect for human rights. Furthermore, clinical legal education should be aligned with the theory of social justice and should never be synchronized even in the era of globalization and modernization. The primary focus of most legal aid clinics worldwide is on addressing issues of social justice because clinical legal education is not only a pedagogical method for educating future lawyers but also a means of providing legal services to citizens to achieve social justice (Kempaiya, 2021).

In the article by Franchina Cantatore, David McQuoid-Mason, Valeska Geldres-Weiss, and Juan Carlos Guajardo-Puga, the activities of students in legal clinics are examined through the lens of gaining experience, practical knowledge, and skills that will serve their future employment and work prospects (Cantatore et al., 2021).

Their research focuses on the challenges faced by legal clinics when providing free legal assistance, using legal clinics located in Virginia that assist veterans as an example. These challenges include the lack of clinic funding, time, and personnel. In this context, solving these problems is only possible through collaboration between legal clinics and Virginia healthcare institutions (Timko et al., 2020). A similar viewpoint is held by Jelinic, Z., who emphasizes the importance of legal clinics collaborating with foreign donors, whose funding allows for the active provision of free legal assistance (Jelinic, 2018).

Attention is also drawn to the ethical aspects of legal clinic activities because, in addition to purely legal knowledge, it is necessary to focus on a range of personal values to address the problems of vulnerable groups (Torres-Villarreal & Bernal-Camargo, 2019). Certainly,

one of the main drawbacks of the specialized legal clinic's activities is the lack of practical experience among students, as these cases are extremely complex and require competence and professionalism from the members, of the team. However, this deficiency is compensated by the motivation of the participants and their sincere desire to change the situation for the better, taking exhaustive measures to provide legal and other assistance to individuals who have become victims of illegal imprisonment.

In this context, let's consider the case of the illegal capture and detention of the mayor of Hola Prystan, Oleksandr Babych, who has been in Russian captivity since March 2022. According to information from open sources, he is held in a detention center in the Autonomous Republic of Crimea. There is no access to him whatsoever, which increases the likelihood of torture for refusing to cooperate with the occupiers. The Russian authorities do not allow defenders and seek to psychologically and physically break the civilian hostage. There is also no official confirmation from the Russian Federation that the mayor of Hola Prystan, Oleksandr Babych, is indeed in captivity, which complicates the task of providing him with legal assistance and taking measures for his release. Such complex cases require qualified training and an analysis of the existing practical experience in the release of „prisoners” who are unlawfully detained (The occupiers kidnapped the mayor of Hola Prystan, 2023)

4. STUDENT ENGAGEMENT, COLLABORATIONS, AND MOBILE CLINIC MODELS

Therefore, let's proceed to analyze the algorithm of actions for the protection of civilian hostages, as determining the primary steps for their protection is crucial for taking measures to release such individuals. Civil society organizations, such as the Center for Civil Liberties, have similar experiences. Its members can provide methodological assistance to participants of specialized legal clinics. The main guidance for individuals who find themselves in places of detention is to preserve their lives, obtain long-awaited freedom, restore violated rights, and hold the responsible parties accountable. It is essential to know how to act for individuals whose relatives have been arbitrarily detained.

- The first step is to report to the police and initiate a criminal case (obtain the criminal case number and be prepared to communicate with the investigator).
- The second step is to inform the National Information Bureau at the number 1648 about the disappearance. It is advisable to do this in writing to ensure that the report is registered and documented properly.
- The third step is to send a letter to the International Committee of the Red Cross (both the Geneva and Ukrainian offices) to open a case of enforced disappearance or arbitrary detention.
- The fourth step is to inform the Coordination Headquarters for the Treatment of Prisoners of War about what has happened to your loved one.

To go through all the outlined steps, it is necessary to prepare the required package of documents, which, among other things, specialized legal clinic members can assist with.

Additionally, it is advisable to utilize all available mechanisms for the protection of unlawfully detained individuals. For instance, to register individuals taken as hostages as a result of armed aggression against Ukraine, a state-owned enterprise called the „Ukrainian National Center for Reintegration” is responsible. This center operates under the Ministry for

Reintegration of Temporarily Occupied Territories of Ukraine and performs the functions of the National Information Bureau following the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949).

We believe that systematic efforts to release unlawfully detained individuals can contribute to positive outcomes, and specialized legal clinics play a crucial role in protecting the rights and freedoms of those in need. In times of war, conscientious students, even in their first year of law school, demonstrate a willingness to consolidate their efforts to resist the aggressor and join the legal battle. Legal clinical education provides them with this opportunity, and there are already examples of legal clinics choosing unique (specific) directions for legal assistance. There is a specialized legal clinic for documenting war crimes. The next step is the activation of legal clinics specializing in reparations and compensation for Ukrainian citizens who have lost property due to Russia's armed aggression against Ukraine.

In an academic style, here is the translation of the provided text from Ukrainian to English: „We are informed about the experience of our Polish colleagues, where legal clinics effectively work in tandem with civil organizations. This is related to the fact that the leaders and consultant-instructors of legal clinics are founders of various civil organizations, which possess stronger institutional capabilities for the protection of human and citizen rights. Working in specialized legal clinics allows their clinicians to determine their future professional direction, deepen their knowledge, instill social responsibility in themselves, and develop a high level of legal culture.

The basis for creating specialized legal clinics should be civil organizations dedicated to the protection of human and citizen rights (Ukrainian Helsinki Human Rights Union, Center for Civil Liberties, etc.), as well as having lawyers and human rights activists on their staff. Members of civil organizations have the opportunity to provide technical support and attract grant funding for the development and establishment of specialized legal clinics. This enhances collaboration with the public, as specialized legal clinics receive additional funding for their activities and can develop unified action algorithms for the effective protection of civil rights.

In the context of war, conscious students, even in their first year of law school, show a desire to consolidate efforts to resist the aggressor and join the legal battle. The platform of legal clinical education has provided them with this opportunity, and there are already examples where legal clinics have chosen a unique (specific) direction in legal assistance, such as documenting war crimes.

Furthermore, legal clinics collaborate with a variety of civil organizations, which helps develop action algorithms for civil hostages and their family members. Clinical students focus on a single direction of work, thereby continuously improving their practical skills and deepening their theoretical knowledge (Hubbard et al., 2019).

As scholars have rightly pointed out (Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949), legal clinics serve as the foundation for upholding constitutional principles aimed at ensuring the right of every individual to defense and a fair trial.

An important aspect of establishing and operating specialized legal clinics is the involvement

of motivated and highly qualified instructor-curators who, in turn, will support clinicians in providing legal assistance. The professionalism and expertise of instructor-curators should be determined not only by theoretical knowledge but also by practical experience in pre-trial investigation authorities, the legal profession, prosecution, and the judiciary (Sainchyn et al., 2022).

One of the directions of work for instructor-curators is the continuous deepening of clinicians' knowledge of the legal mechanism for the protection of human and citizen rights in criminal proceedings, including the study of decisions of the European Court of Human Rights and national courts. In addition, clinical students and instructor-curators should be proficient in foreign languages, which will enable them to represent the interests of victims at the international level and cooperate with various international organizations.

It is interesting to note the experience of Nepal, where mobile legal clinics have been established to assist people affected by natural disasters and domestic violence. In extreme circumstances, accessing justice and legal assistance is much more challenging. Therefore, mobile clinics are a valuable tool as they are not dependent on government funding and provide assistance to the population and the government. Another advantage is that they move to different communities and can provide comprehensive legal assistance to many vulnerable segments of the population. Thus, Nepal's mobile legal clinics specialize in specific situations and are mobile in their operation.

This model of work of legal clinics is acceptable and extremely useful for Ukraine. To create it, it is necessary to organize motivated law students who will provide legal assistance in a specific direction, in our case – the protection of the constitutional rights of civilian hostages, and with the support of governmental and non-governmental organizations, they will be able to move freely to places of rehabilitation of returned illegally imprisoned civilians.

5. CONCLUSION

In conclusion, the establishment of specialised legal clinics emerges as a critical strategy for advancing legal protection in times of armed conflict, particularly with regard to the rights and freedoms of unlawfully detained civilians. The wealth of international perspectives examined in this discourse underscores the multifaceted nature of legal clinics, ranging from addressing crimes against humanity to integrating technology for social inclusion and justice.

Challenges, both practical and ethical, are acknowledged, highlighting the need for a comprehensive approach to clinical legal education. While the lack of practical experience among students is recognised, their motivation and sincere commitment to redressing injustice is an important contribution to bridging the gap. The case study of Oleksandr Babych's illegal detention is a poignant reminder of the complexities involved in providing legal aid and highlights the urgency of systematic efforts. The proposed algorithm for the protection of civilian hostages provides a structured framework and emphasises the importance of cooperation with national and international bodies. The experience shared by civil society organisations, such as the Centre for Civil Liberties, further confirms the importance of legal clinics in releasing unlawfully detained persons and upholding their rights.

The involvement of motivated and highly qualified teacher-curators is identified as

crucial, with an emphasis on continuous learning and familiarity with international legal mechanisms. The model of cooperation with civil organisations, as demonstrated by the experience of the Polish colleagues, shows the potential for improved institutional capacity and uniform algorithms of action. The case of Nepal's mobile legal clinics presents an innovative approach that can be applied to Ukraine, providing a valuable tool for providing legal assistance in difficult circumstances. It is clear that legal clinics, with their diverse specialisations, not only contribute to immediate legal interventions, but also play a crucial role in influencing policy and establishing robust legal protection for civilians affected by armed conflict.

In the pursuit of constitutional rights, the engagement of conscientious students, collaboration with civil society organisations and the adoption of mobile clinic models together form a solid foundation. The holistic integration of theoretical knowledge, practical experience and ethical considerations within legal clinics demonstrates their indispensable role in shaping a just and rights-respecting society, even in the face of wartime adversity

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