CHEPKOVA K. O.,
Candidate of Legal Sciences,
Doctoral Student at the Scientific
and Organizational Department
*(Military Institute of Taras Shevchenko
National University of Kyiv)*

UDC 342.9
DOI https://doi.org/10.32842/2078-3736/2025.2.39

PUBLIC INTEREST OF CHILDREN DURING ARMED CONFLICT

The author of the article investigates the public interest of children during armed conflict. First of all, the author analyzes the studies available in the Ukrainian administrative law doctrine on the public interest as a basic concept. In particular, the author takes into account the position of the judiciary on the definition of the concept of "public interest". The author analyzes relatively recent amendments to the legislation which legalized the concept of "public interest" – the Law of Ukraine "On Administrative Procedure". For comparison, the author reviews the approaches of foreign parliaments to the definition of the above concept (Australia, the United Kingdom and the French Republic).

Based on the preceding, the author concludes that the public interest may be present in any sphere of public life in a certain historical period of time for any category of society. The article argues that during an armed conflict, the public interest of children is relevant. The period of armed conflict is accompanied by increased risks to the life and existence of children in all parts of the State, considering modern means and methods of warfare. Not to mention the creation of conditions for children's full development.

In this situation, there is a mutual public interest of several parties (the state, children, and their legal representatives). The public interest of children in general, and during armed conflict in particular, is based on their rights enshrined in law. The public interest of children during armed conflict is the important needs of persons under the age of 18 (majority, if the law does not provide for the rights of an adult earlier), which are provided and implemented by public administration entities during armed confrontation between states or between belligerents within the territory of one state.

Key words: *public interest, children, armed conflict, public administration.*

Чепкова К. О. Публічний інтерес дітей під час збройного конфлікту

Автором статті досліджено публічний інтерес дітей під час збройного конфлікту. Першочергово автором статті проаналізовано наявні в українській доктрині адміністративного права дослідження стосовно публічного інтересу, як основного поняття. В тому числі, взято до уваги позиція судової гілки влади щодо визначення поняття "публічний інтерес". Проаналізовані відносно недавні зміни до законодавства, якими легалізовано поняття "публічний інтерес" – Закон України "Про адміністративну процедуру". Для порівняння здійснено огляд підходів зарубіжних парламентів до визначення зазначеного вище поняття (Австралія, Велика Британія та Французька Республіка).

На основі вищевикладеного, автором зроблено висновок, що публічний інтерес може бути наявним в будь-якій сфері суспільного життя в певний історичний проміжок часу для будь-якої категорії суспільства. У статті стверджується,

що під час збройного конфлікту наявним є публічний інтерес дітей. Період дії збройного конфлікту супроводжується підвищеними ризиками для життя та існування дітей у всіх куточках держави, враховуючи сучасні засоби та методи ведення воєнних дій. Не говорячи вже про створення належних умов для їх повноцінного розвитку.

У цій ситуації є наявним взаємний публічний інтерес декількох сторін (держави, дітей, а також їх законних представників). В основі публічного інтересу дітей в цілому, так і під час збройного конфлікту зокрема, є закріплені на законодавчому рівні їх права. Публічний інтерес дітей під час збройного конфлікту – це важливі потреби осіб віком до 18 років (повноліття, якщо за законом особа не набуває прав повнолітньої раніше), які забезпечують та реалізують суб'єкти публічної адміністрації, в період збройного зіткнення між державами або між ворогуючими сторонами в межах території однієї держави.

Ключові слова: *публічний інтерес, діти, збройний конфлікт, публічна адміністрація.*

Introduction. The relatively new category of "public interest" is becoming more and more used both in the doctrine of Ukrainian law and in legislation. The emergence and widespread use of the concept of "public interest" has become natural, given the need to find a balance between the interests of the state and certain groups/individuals. The "public interest" is crucial for public law relations, as they are based on meeting the needs of society or a significant number of individuals. Children, as one of the main categories of any society, have their own public interests at any historical period of time. This issue becomes more acute during any armed conflict, given that this category of society is the most vulnerable and unprotected.

Domestic legal research has already made a number of developments regarding the public interest as a basic concept. In particular, V.V. Halunko, M.M. Halay, T.O. Kolomoyets, I.V. Kosyak, R.S. Melnyk, O.I. Mykolenko, L.O. Zolotukhina, etc. Separately, the issue of children during armed conflict has been repeatedly raised in legal science (L.R. Nalyvaiko, O.M. Ryhina, N.V. Stepanenko, V.M. Ternavska, and others). However, no studies have been conducted on the public interest of children during armed conflict.

Formulation of the problem. The purpose of the work is to analyze the public interest in general and the public interest of children during armed conflict in particular, based on the developments of the national doctrine of administrative law and current legislation.

Results of the study. The concept of "public interest" is relatively new to the Ukrainian doctrine of administrative law in particular, and to law in general. Nevertheless, legal scholars have already made developments on this issue.

The public interest, according to V. Halunko, is the needs of a significant number of individuals and legal entities that are provided by public administration in accordance with the legally established competence [1, p. 180].

O.P. Dzisiak and D.M. Shershenkov consider that the public interest should be understood as a set of needs recognized by the state, the realization of which is ensured through public administration and contributes to the protection of human rights and freedoms [2, p. 50].

In her dissertation research, L.O. Zolotukhina provided her own vision of the definition of public interest as a set of historically established and situational objectively existing needs, aspirations, goals of public associations, certain social groups, territorial communities, society, nation and other participants in legal relations recognized by the state, the mechanism of implementation and protection of which is determined in accordance with the current legislation of Ukraine [3, p. 17].

M.M. Halay and I.V. Kosyak understand public interest in administrative law as a set of private interests in administrative legal relations, which (set) is ensured by appropriate legal means and realized through administrative acts of the executive branch [4, p. 39].

Representatives of the judiciary also express their opinions on the public interest. For example, S. Stetsenko, a judge of the Supreme Court of the Administrative Court of Cassation, suggests that the public interest should be perceived as an objectively existing set of interrelated interests of society and the state, which ensures the satisfaction of the dominant needs of ordinary citizens and corresponds to the state of development of society. S. Stetsenko believes that the public interest is not a mere combination of private interests [5].

As an interim conclusion regarding the concept of "public interest", the doctrine has two approaches to its formulation. The first is through the word "needs" of a certain category of society, which are realized by authorized public administration entities. The second approach is to formulate this definition through the word "interests".

When formulating any concept, the rules of defining it should be followed. One of the most common mistakes in defining a concept is tautology (when part of the definition completely duplicates the concept itself).

That is why the second approach to the definition of "public interest" is not successful and does not reveal the essence of this concept.

Ukrainian doctrine also has developed approaches to the classification of the public interest. In particular, M.M. Halay and I.V. Kosyak argue that today there is a classification of public interest into state, territorial, and social.

This division is based on the subject that holds the interest. The territorial interest is understood as the territorial community's own perceptions of issues that are important at the territorial level. At the same time, territorial interest has two levels: regional and local. The social interest is defined as the interest of society or the interest of a representative of this society related to ensuring its welfare, stability, security and development. A legal interest is a type of social interest, the realization of which is carried out within the framework of legal relations. One of the obligatory elements of legal relations is the subjects. Public and private entities have a respective interest. Depending on which subject it is, its interest is determined as public or private. In the state, there will always be a difference between public and private interest. The state interest is a type of public interest, the holder of which is the state represented by the relevant state bodies. The question arises: what will constitute the public interest? And what will be ensured in the realization of the public interest? Scholars tend to believe that the content of the public interest is a combination of private interests. However, the question remains as to how much private interest is necessary to transform it into public interest [4, p. 39].

O.I. Mykolenko divides the interests of subjects of legal relations into three types:

– interests of an individual or a small group of individuals, which are recognized and protected by the state (material well-being, decently paid work, etc.);

– interests of society, which are recognized by the majority of society and ensured by the state (reduction of the level of crime by ensuring public order, protection of health and life of people through the elimination of the consequences of accidents, disasters, etc.

At the same time, O.I. Mykolenko emphasizes that within the framework of administrative law it is methodologically incorrect to use only the term "public interest" which simultaneously characterizes both state interests and social interests. If the administrative law clearly distinguishes between state and social interests, this will allow to discover and pay attention to new features of administrative and legal regulation of Ukraine in modern conditions [6, p. 103].

A much broader classification of the public interest is proposed by L.O. Zolotukhina, namely, according to the following criteria: 1) by subjective composition (public interest of groups of people, territorial communities, society, nations, peoples, states, international organizations); 2) by the territory to which it applies (local, limited to territorial units, regional (extends to the territory of several territorial units of the state), state (spread within one state), international (extends to the territory of several states), as well as internal and external); 3) by the time of existence (permanent, periodic, short-term, long-term); 4) by the importance for the holder of the public interest (fundamental and secondary); 5) by the area of implementation (public interest in defense, public order, economy, energy, construction, medicine, culture, etc.); 6) by the way the holders of the public interest interact (common public interest and mutual public interest) [3, p. 18].

The classification proposed by L.O. Zolotukhina is the one that more fully reveals the essence and areas/levels of the public interest, and therefore it will be used in the future.

I.E. Berestova in her study of the public interest based on a systematic approach made, from the point of view of the author, very good and logically reasoned conclusions. The scientist named a number of features of the public interest as a legal category:

1) the universal nature of the public interest (purpose of the public interest);

2) connection with the masses (quantitative aspect);

3) recognition by the State and legal protection (statutory recognition, representation of essential social values or generally allowed by law as a certain manifestation of the State's concern for the stability of law and order); 4) possibility of their realization through measures of a state power nature [7, p. 25].

Also, based on the analyzed previous scientific studies, I.E. Berestova argues that constitutional guarantees of human rights, which are abstractly declared in Section III of the Supreme Law of Ukraine and enshrined in the form of a general permission in acts, create all the necessary legislative grounds for recognizing them as a public interest. The perception of society or significant social groups forms a public interest which acquires the features of a public interest and cannot be mechanically removed from the latter [7, p. 26].

M.V. Udod and V.S. Pirogov believe that the Constitution of Ukraine plays an exceptional role in the normative consolidation of the public interest as a social contract which establishes the most important needs of society, which are unquestionably recognized by the State and which the State must in any case protect and create appropriate conditions for their realization. Therefore, when determining the legal nature of the interest, one should first of all be guided by the provisions of the Supreme Law of Ukraine, which, given the content of Article 8, should be applied to the social relations regulated by them directly and obligatorily [8, p. 232].

So, in essence, public interests are based on those social benefits, rights, and freedoms that are enshrined in the Fundamental Laws of each individual state.

As for the legislative definition of "public interest," it was absent until recently. However, in 2022, the national legislator adopted the Law of Ukraine "On Administrative Procedure" [9], the main task of which is to regulate the relations of executive authorities, authorities of the Autonomous Republic of Crimea, local governments, their officials, and other entities authorized by law to perform public administration functions with individuals and legal entities in the consideration and resolution of administrative cases through the adoption and execution of administrative acts.

The concept of "public administration" and everything related to it has long been the subject of research in Ukrainian science. However, there was no legislative understanding of this concept until 2022.

With the entry into force of the Law of Ukraine "On Administrative Procedure", a number of important concepts, primarily for administrative law, were legalized.

Among them, an administrative body is an executive authority, an authority of the Autonomous Republic of Crimea, a local government body, their official, or other entity authorized by law to perform public administration functions.

Among other things, the Ukrainian parliament has fixed the definition of "public interest", which means the interest of the state, society, territorial community, as well as interests and needs important for a large number of people.

From the point of view of logic, namely the rules for defining a concept, the wording of this definition is not entirely successful. The definition should not form a circle (Latin circulus vitiosus). If the content of the concept being defined (Dfd) is revealed through the defining concept (Dfn), the content of which, in turn, is revealed through Dfd, then such a definition forms a circle or circulus vitiosus. A common type of circle is a tautology (from the Greek word for "same"), an incorrect definition in which Dfn repeats Dfd. For example, "criminal – a person who has committed a crime", "linguist – a specialist in linguistics", "differential equation – an equation that contains a differential", etc. Such definitions are called definitions of "the same thing through the same thing" (idem per idem) [10, p. 195].

It is more likely that the definition of "public interest" is based on possible types. Thus, the legislator names the following types of public interest: state interest, social interest, interest of the territorial community, and the fourth type – interests and needs important for a large number of persons.

The approach of foreign parliaments to defining the concept of "public interest" is interesting.

In Australia, the definition of the "public interest" itself was rejected. At the same time, the Australian Parliament believes that the new Act should include the following non-exhaustive list of public interest matters which a court may consider:

(a) freedom of expression, including political communication;

(b) freedom of the media to investigate, and inform and comment on matters of public concern and importance;

(c) the proper administration of government;

(d) open justice;

(e) public health and safety;

(f) national security;

(g) the prevention and detection of crime and fraud; and

(h) the economic wellbeing of the country.

"Public interest" should not be defined, but a list of public interest matters could be set out in the Act. The list would not be exhaustive, but may provide the parties and the court with useful guidance, making the cause of action more certain and predictable in scope. This may in turn reduce litigation.

Including a non-exhaustive list of public interest matters seems more helpful than a definition of public interest, which might necessarily have to be overly general or overly confined and inflexible [11].

This notion of public interest is not defined abstractly by French law. It is through its role that we can understand its meaning. This concept is at the base of the French public law, constitutional and administrative. It appears in the jurisprudence of the Constitutional Court and the Supreme Administrative Court, the Council of State. What is the technique of creation of the public interest? According to the traditional view, written in the Declaration of 1789, it is the law, that is to say the Parliament, expression of the general will, which has to define the public interest. This is the first method of production of this concept, the political debate. Especially since the introduction of the current Constitution, adopted in 1958, the action of the executive power and the public administrations of the state and other public authorities have to be mentioned. Administrative acts issued by the Executive power and other public bodies are with the law the second mode of normative action. They help to define the public interest, subsidiarily [12].

In the UK, the Joint Committee on Privacy and Injunctions concluded that there should not be a statutory definition of the public interest, as "the decision of where the public interest lies in a particular case is a matter of judgment, and is best taken by the courts in privacy cases" [13].

From my point of view, the definition of "public interest" is more successful and reveals the essence of the concept of "public interest" as defined by the decision of the Supreme Court of Ukraine. According to the opinion of the Grand Chamber of the Supreme Court in its decision of February 13, 2019 in case No. 233/4308/17 [14], the position is expressed that the "public interest" is the needs of a significant number of individuals and legal entities that are important for a significant number of individuals and legal entities, which, in accordance with the legally established competence, are provided by public administration entities. In administrative law, the term "public administration" should be understood as a system of state executive authorities and executive bodies of local government, enterprises, institutions, organizations and other entities vested with administrative and managerial functions that act to ensure both the interests of the state and the interests of society as a whole, as well as a set of these administrative and managerial actions and measures established by law.

Consequently, the public interest can be present in any sphere of public life in a certain historical period of time for any category of society.

During an armed conflict, the existence of a public interest of children can be stated. Children are the future of every state, and there will be no state without children. It is a well-known fact that children are the category of the population most in need of protection, attention, care, control, etc. The period of armed conflict is accompanied by increased risks to the lives and existence of children in all parts of the country, in view of modern means and methods of warfare. Not to mention the creation of conditions for their full development.

The preamble to the Law of Ukraine "On Protection of Childhood" [15] states that protection of childhood in Ukraine is a strategic national priority, which is important for ensuring the national security of Ukraine and the effectiveness of the state's domestic policy. The state of Ukraine assumes the responsibility to ensure the realization of the child's rights to life, health care, education, social protection, comprehensive development and upbringing in a family environment. The establishment of the basic principles of state policy in this area is based on ensuring the best interests of the child.

That is why it can be argued that in this situation there is a mutual public interest of several parties. On the one hand, there is the state, which is interested in its future existence and, therefore, in the preservation of children. On the other hand, it is the children themselves, as the least protected category of society.

There is also another party to consider – the legal representatives of children, as they, more than anyone else, are interested in ensuring that their children are least exposed to danger, have favorable conditions for development, etc.

The public interest of children in general, and during an armed conflict in particular, is based on their rights enshrined in law. The public interest of children is closely intertwined with the rights of children, which will be the topic for further research.

Conclusions. The public interest of children during armed conflict is the important needs of persons under the age of 18 (majority, if the person does not acquire the rights of an adult earlier), which are ensured and implemented by public administration entities during armed confrontation between States or between belligerents within the territory of one State.

References:

1. Галай М.М., Косяк І.В. Публічний інтерес в адміністративному праві. *Економіка. Фінанси. Право*. 2021. № 5/1. С. 37-40.

2. Галунько В.В. Публічний інтерес в адміністративному праві. *Форум права*. 2010. № 4. С. 178-182.

3. Дзісяк О.П., Шершеньков Д.М. Розвиток наукової думки щодо поняття "публічний інтерес". *Legal Bulletin.* 2024. № 3 (13). С. 46-51.

4. Золотухіна Л.О. Публічний інтерес як адміністративно-правова категорія : дис. … д-ра юрид. наук : 12.00.07. Запоріжжя, 2019. 334 с.

5. Стеценко С. Публічний інтерес доцільно сприймати як сукупність взаємообумовлених інтересів суспільства і держави. *Судова влада України.* URL: https://supreme.court.gov.ua/supreme/pres-centr/news/1034963/ (дата звернення : 09.03.2025).

6. Миколенко О.І. Публічний і приватний інтерес в адміністративному праві. *Правова держава.* 2016. № 24. С. 100-104.

7. Берестова І.Е. Правова категорія "публічний інтерес" з позицій системного підходу. *Правова держава*. 2019. № 33. С. 19-28.

8. Удод М.В., Пирогов В.С. Публічний інтерес у визначенні юрисдикційної належності земельних спорів. *Юридичний науковий електронний журнал.* 2020. №4. С. 231-233.

9. Про адміністративну процедуру : Закон України від 17.02.2022 № 2073-IX. URL: https://zakon.rada.gov.ua/laws/show/2073-IX#Text (дата звернення : 09.03.2025).

10. Конверський А.Є. Логіка: Підручник для студентів юридичних факультетів. К.: Центр учбової літератури, 2008. 304 с.

11. Meaning of public interest. *Australian Government*. URL : https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-dp-80/8-balancing-privacy-with-other-interests/meaning-of-public-interest/ (дата звернення: 09.03.2025).

12. Joint Committee on Privacy and Injunctions, Privacy and Injunctions, House of Lords Paper No 273, House of Commons Paper No 1443, Session 2010–12 (2012) 19.

13. Bernard Even. The concept of Public Interest in French public law. Law institute of Lithuania conference *"Public interest versus legitimate expectations",* 12th of September 2014. P. 3.

14. Постанова Верховного Суду України від 13.02.2019, справа № 810/2763/17 (К/9901/44258/18), провадження № 11-1228апп18. URL: https://reyestr.court.gov.ua/Review/79883398 (дата звернення: 09.03.2025).

15. Про охорону дитинства : Закон України від 26.04.2001 № 2402-III. URL: https://zakon.rada.gov.ua/laws/show/2402-14#Text (дата звернення: 09.03.2025).