ENSURING THE RIGHTS AND FREEDOMS OF PEOPLE IN UKRAINE

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Authors: Natalia Opolska, Natalia Chernyschuk, Andrii Pravdiuk, Tetyana Pikovska, Yelyzaveta Tymoshenko, Taisa Tomliak
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The monograph is devoted to the analysis of historical and legal foundations and practical problems of the rights and freedoms of people. It outlines the main stages in the formation of the concept of rights and freedoms of people in Ukraine Analyzes the notions and types of rights and freedoms of people. The meaning of the subjective right of freedom of creativity was analyzed. Guarantees of children's rights and freedoms were analyzed. Characterized the informational rights of people. An analysis of the protection of the best interests of the child. The work will be of interest to researchers, students, as well as the number of readers who are interested in the protection of human rights.

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PREFACE

One of the urgent issues throughout the entire existence of humanity remains the issue of human rights, the possibility of their implementation and protection. The establishment, maintenance and implementation of human rights is an important indicator of the democratic character of the state, as well as the fact that this state is a law-governed state.

Guarantees of respect for human rights and their protection are enshrined both in national and international normative actP. For example, part of Article 55 of the Constitution of Ukraine guarantees protection of one's rights, freedoms and interests from violations and unlawful encroachments by any means not prohibited by law. This approach corresponds to the manifestations of the rule of law, which is not limited only by the law, but also includes other social regulators, moral norms, traditions, customs, etc.

Ukraine as a democratic and law-based state has enshrined the principle of respect for and inviolability of human rights and freedoms, the establishment and maintenance of which is the main duty of the state. The constitutional principle of a state governed by the rule of law requires it to refrain from curtailing the universally recognized rights and freedoms of individuals.

Our state has as its priority the guaranteeing of people's rights and freedoms. To this end, the state must enforce the legal regulation, which complies with constitutional norms and principles, necessary to ensure the implementation of the rights and freedoms of every person and their effective renewal. At the same time, certain constitutional values, in particular the non-transcendence of people as a guarantee against encroachments by other persons on the rights and freedoms, especially the fundamental right to freedom, require strong guarantees for their protection.

An important problem that remains acute in today's conditions in Ukraine is the problem of ensuring the rights of children. After all, children, as a result of the specific features of the age of development, form a group of people characterized by their naivety, trustworthiness, dependence on others, susceptibility to various manipulations and abuse from the side of adults. They are one of the most protected groups of the population.

Inattention to the process of development of children, to the implementation of their rights and freedoms leads to a criticized perception of the natural world, the change of ideals, which can be reflected in the spread of child malice, deprivation of liberty, criminalization of society. Aggression develops in children who grow up in uncomfortable conditions. Violence for them is a protest against society's baidezhost, a form of self-confidence and an increase in self-esteem. Lack of legislation, declaration of children's rights and freedoms leads to the disappearance of law in their minds, and the availability of drugs, alcohol, violent video films contribute to the spread of crime in the children's environment.

Human rights and freedoms have been the subject of research by many thinkers and scholars of different age. The works of prominent thinkers and scientists of the past centuries, including Aristotle, F. Akvinski, I. Bentham, H. Hegel, T. Hobbes, M. Dragomanov, R. Iering, I. Kant, H. Kelsen, and others have become the general philosophical and theoretical basis of the study. In the process of research also used scientific works of such foreign scholars as P. Alexeev, M. Van Hook, K. Wasak, J. Carbon'e, A. Kaufmann, D. Kerimov, M. Matuzov, V. Nersesyants, R. Posner and others.

Significant contribution to the study of theoretical and legal aspects of the process of formation, development and functioning of human rights and freedoms by Ukrainian scientists: B. Andrusishin, V. Babkin, O. Batanov, P. Bobrovnik, K. Volinka, O. Golovko, V. Gorbatenko, V. Golovchenko, P. Gusariev, O. Zaychuk, A. Zayets, V. Kopeychikov, P. Lisenkov, O. Nalivaiko, N. Onischenko, M. Orzikh, N. Petrishin, V. Pilipchuk, V. Pogorilko, P. Rabinovich, O. Skakun, O. Skrypnyuk, V. Tatsiy, I. Usenko, Y. Shemshuchenko and others.

Those aspects of human rights and freedoms were touched upon by V. Bazilevich, Y. Boshitsky, I. Bogdan, A. Nersesyan, O. Orlyuk, M. Paladiy, O. Pidoprigora, R. Stefanchuk, O. Kharitonova, E. Kharitonov, R. Shishka and others.

Despite the significant interest of scientists in human rights and freedoms, today Ukrainian legal science does not have enough research devoted to general theoretical aspects of this problem. Researchers have paid attention to the genesis, legal security of human rights and freedoms, the criteria for their classification, the mechanism of security for the rights and freedoms of the child.

The goal of the monographic research is to conceptualize the phenomenon of human rights and freedoms under conditions of democratic development by analyzing and theoretically discussing their essence and content.

In order to reach the set goal the author investigated the process of formation and development of the rights and freedoms of people in Ukraine, characterized social, economical, cultural, political rights and freedoms of people, Analyzed informational rights, formulated the author's definition of the subjective right to freedom of creation, and clarified the place and role of the right to freedom of creation in the system of human rights and freedoms; Formulated suggestions and recommendations for improving national legislation in the sphere of human rights and freedoms.

Particular attention in the monograph is paid to ensuring the rights of the child, the concept and components of the mechanism of ensuring the rights and freedoms of the child. The concept of the mechanism of security for the rights and freedoms of the child as a system of social and legal factors, means and actions that interact to create the proper conditions for the implementation, protection and defense of the rights and freedoms of the child is defined. Characterized guarantees of children's rights and freedoms as a system of integrated social and economic, political, cultural (spiritual), legal conditions, tools and techniques that ensure the continuous improvement of children's rights and freedoms, protection, actual implementation and protection in case of violation (cancellation).

Due to the nature and content of the issues examined in the work, the authors are trying to approach the content of certain rights and freedoms of people in a new way. The theoretical and legal basis of human rights and freedoms became the subject of the research.

Methodological basis of the monographic research is a combination of philosophical and philosophical, general scientific, specific scientific and special scientific methods. The method of philosophical dialectics was used to study the mechanism of ensuring the rights and freedoms of the child, its components, taking into account their interaction. Using the formal-logical method allowed us to take into account the laws of formal logics when investigating the various opinions of scholars on the legal status of the child in society. The systemic and structural methods allowed us to consider the security of children's rights as an integral system of elements that are

consistent with the structural responsibility of state bodies and public organizations in the field of protection of children's rights.

The study used the method of convergence from the abstract to the concrete, which enabled the implementation of abstract definitions of human rights in the main categories of the rights and freedoms of the child. The use of historical and legal method made it possible to take into account positive and negative changes that occurred in the course of historical development. The comparative legal method allowed us to identify trends in the implementation and development of human rights. The process of formalizing the security of people's rights and freedoms into a comprehensive legal theory was carried out with the help of the theoretical and legal method. The specific legal method was used in the assessment of the functioning of the mechanism for the protection of children's rights and freedoms, and the determination of the directions of its improvement.

The monograph was made within the limits of the initiative subject of the law department of the Vinnytsia National Agrarian University "Legal security of human rights and freedoms in the conditions of European integration", which runs from January 2018 to March 2022.

It is possible to develop a legal state and civil society if all necessary conditions for universal implementation of the rights and freedoms of people are created.

This monograph is of theoretical and applied value, as it will contribute to improving the functioning of the mechanism for the protection of human rights and freedoms, the formation of legal culture and the development of legal competence. We hope that this work will be useful for scientists, students, teachers, as well as the number of readers who are interested in the protection of human rights and freedoms.

CHAPTER 1. HISTORICAL AND LEGAL CHARACTERISTICS OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE

Tetiana Pikovska – Candidate of Historical Sciences,
Associate Professor of the Department of Law,
Vinnytsia National Agrarian University

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1.1. Formation and consolidation of the institution of human rights and freedoms in Ukraine (VI-XV centuries)

A complete study of the legal nature of human rights and freedoms is impossible without understanding the historical retrospective of their development. Human rights and freedoms are a complex, rich phenomenon. At different epochs, the problem of human rights, regulated by politics and law, has also taken on a religious, ethical and philosophical significance. In the course of affirming human rights and freedoms, humanity underwent a complex and long process of gradual interdiction of state power and expansion of the principle of equality of rights to more and more people and the relations between them.

Often the struggle for human rights, for new and new degrees of freedom became a catalyst for large-scale changes in the socio-political life of this or other countries, led to a new understanding of the role of people in their relations with society and the state.

Rights and freedoms of people and citizen in Ukraine – the process of rights arising in certain forms equal in size and scope according to the level of social life at a particular stage of the historical development of Ukraine.

The phenomenon, which later began to be called human rights, has its origins in the earliest times of human history. It should be noted that it was on the Ukrainian land that the brightest example of antique democracy was created – the oath of a citizen of Chersonesus, and later in the union of the Scandinavian tribes the original was born, The original and effective for

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those times, political and social order with elements of democracy – the first paradigms of people's ownership and self-government. The Byzantine historian of the second half of the 6th century. Procopius of Caesarea wrote that "these tribes, the Slovene and Antio-Roman, are not governed by a single person, but have been living under the rule of the people for a long time, and as a result they always do well and not do well together"[1].

We can thus draw an analogy with the ancient Greeks, who, in order to prevent usurpation of power and the coming of tyranny, introduced the institutions of power (magistracies in ancient Greece), The latter were collegial power organizations composed of at least two or more persons, thus implementing the mechanism of deconcentration of power. Let us note that the ancient Greeks also knew periods of dynastic rule, but it happened only during critical periods and, as a rule, lasted for a limited period. Also the ancient Hellenes were of the opinion that only barbarians could acknowledge unrestricted power over themselves – a civilized person acknowledges only the decision of a collegial body.

Ukrainian terminology of human rights takes its roots in the Russian Pravda, international treaties and other legal acts of the "Kievan Rus'. Thus, the treaty between Byzantium and Russia of 912 enshrined the right of a person accused of a crime to have their case examined by the court: "The crime must be presented by evidence in such a way that the judges have faith in these proofs"[2].

During the Kiev Rus' period (IX-XIII centuries), which due to the low historical circumstances did not know the slave system, the unhuman treatment of the individual did not take place in the Ukrainian lands, although there were certainly some notions about the servants and the people.

The transition from the first communal order to feudalism and the establishment of Kievan Rus'. The transition from the first communal order to feudalism, the establishment of the Kievan Rus' and later on its place the Kievan, Chernigiv, Galicia-Volinsk and other independent principalities did not lead to this swagger of the rulers, the violation of human rights and legal negligence, which was attributed to the majority of European feudal

1 Kolesnykova V. Osnovni etapy rozvytku prav liudyny. *Aktualni problemy mizhnarodnykh vidnosyn*. Vypusk 83 (Chastyna II), 2009. S. 152–155.

2 Matskevych M.M. Heneza prav liudyny: pravovyi ta filosofskyi aspekt. *Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav*. 2014. Vypusk 4. S. 54–65.

powers. For example, in the Kiev Rus', although there was a difference in social status between the free, free and non-free people, the state never legally formalized the groups of the population.

The nobility had access to the so-called "people" – representatives of the lower strata of the population, any free person (even a discharged slave) could join the druzhiny, and sometimes even the princes were found among the peasants. The military volunteers, who, in essence, acquired slave status, were often "planted" on the land and converted into dependent villagers. Slaves could buy themselves out and start a family. If one of the members of a mate was free, then his status did not change after the whoremongering. The children born in this family were also free people. Our forefathers were distinguished by a remarkable tolerance, as evidenced, for example, by the norms of the Russo-Byzantine treaties in 912, 945, 971, in which the treaty parties seal the agreement by oath. The Greeks swear by the Church of St. Elijah, and the un-Christian Rus – by Perun[3].

During the period of the Kiev Rus' (IX-XIII centuries), which due to the change of low historical conditions did not know the slave system, the non-human attitude to the person did not occur in the Ukrainian lands, although there were certainly some insults about the serfs and the people. The transition from the first communal order to feudalism, the establishment of the Kievan Rus' and later on its place the Kievan, Chernigiv, Galicia-Volinsk and other independent principalities did not lead to this swagger of the rulers, the violation of human rights and legal negligence, which was attributed to the majority of European feudal powers. For example, in the Kiev Rus', although there was a difference in social status between the free, free and non-free people, the state never legally formalized the groups of the population. Any group of the population was not closed, i.e. the transition from one group to another was possible[4].

The nobility had access to the so-called «people» – representatives of the lower strata of the population, any free person (even a discharged slave) could join the druzhiny, and sometimes even the princes were found among the peasants. The military volunteers, who, in essence,

[3] Antonovych M. Ukraina v mizhnarodnii systemi zakhystu prav liudyny. Kyiv: Vydavnychyi dim "KM Academia. 2000. 262 s.

[4] Huz A.M. Istoriia derzhavy i prava Ukrainy. Dzherela prava periodu Kyivskoi Rusi ; upor. i nauk. komentari A.M. Huz. Kyiv : KNT, 2007. 72 s.

acquired slave status, were often «planted» on the land and converted into dependent villagers. Slaves could buy themselves out and start a family. If one of the members of a mate was free, then his status did not change after the whoremongering. The children born in this family were also free people. Our forefathers were distinguished by a remarkable tolerance, as evidenced, for example, by the norms of the Russo-Byzantine treaties in 912, 945, 971, in which the treaty parties seal the agreement by oath. The Greeks swear by the Church of St. Elijah, and the un-Christian Rus – by Perun.

Old customary law – the law of Russia – even though it legalized the feudal rule, but at the same time limited it, creating certain legal safeguards for the lower classes of the population, It consolidated the post-war surrender of the barbaric principles of curved rent and talon («an eye for an eye»), interfered with the freedom and regulated the everyday life of the population of the Kievan Rus'. A sign of real democracy were «rows» – agreements made by the inhabitants with their princes. The main challenge in the treaty to the prince was «not to displease the people». If the prince did not fulfill the duties he had undertaken, the people could remove him from the princely throne at a meeting. Thus, in 1067. The Kiev council expelled Prince Ilzslav from the princely throne, and the Chernigiv council of 1078 – Prince Vsevolod – Prince Vsevolod.

The legal protection of non-torture of private life dates back to the appearance of «Ruskoi Pravda», the most ancient memory of Slovenian law, which is a collection of norms of customary law and princely charters, made in the XI-XII centuries[5].

For example, if «a man takes a man away from himself or to himself, he has to pay 3 hryvnias, if the victim presents two witnesses, but if the victim is a Viking or a Kolbyag, he has to swear» (article 10 KP) As a compensation the payment of 3 hryvnias and payment to a doctor for services was foreseen. «If someone has struck someone with a cane, a rod, a pillar, a bowl (kelikh), a horn or a sword, he must pay 12 hryvnias» (article 3 of KP)[6].

[5] Holovko, O.M. Pravo Kyivskoi Rusi v doslidzhenniakh vchenykh universytetiv na terenakh Ukrainy u XIX – na pochatku XX st. : monohrafiia. Kharkiv : Konstanta, 2018. 472 s.

[6] Pravda Ruska Yaroslava Mudroho: pochatok zakonodavstva Kyivskoi Rusi : Navchalnyi posibnyk. Kharkiv : Pravo, 2014. 344 s.

he list of the listed objects that could be used to inflict a blow indicates that the law did not impose a degree of danger to the health of the weapon that was used to inflict the beating. However, it is not so much the impact that is important as the image it sets off. That is why a retaliatory strike, i.e. a pomsta, should follow immediately after the image. In the case if the person was not able to be punished immediately due to this or other reasons, the person who was punished was subjected to a fine in the same amount of 12 hryvnias. The size of the penalty also indicates that the strikes were considered as figurative.

Investigators of the Russian Pravda explain these provisions by the fact that these objects do not belong to the military, and therefore the blows are perceived by them as a ganubni, more figurative than blows in combat, so that they demonstrate the utmost contempt for the victim[7].

It seems that the legislator gave such actions an intrinsic figurative meaning regardless of their consequences. One of the ways in which the image was applied was by whipping the hair and beard, which in ancient times were used by many people as a symbol of honesty and manhood. «For the dislocated vus (to pay) 12 grivnas, and for the reaping of the beard 12 grivnas» (Art. 8 of the KP). A similar amount of penalty was stipulated by article 67 of the RP. At the same time, as is confirmed by some scholars, the beard tourniquet or the wus was particularly injurious to the victim[8].

Only the psychological image can explain the fact that a fine of 3 hryvnias was imposed for finger removal and a fine of 12 hryvnias was imposed for the removal of a nose. O.V. Sosnina notes that psychological motives prevail over physical violence in the assessment of evil deeds.

The analysis of the texts shows that the Russian Pravda was aware of atrocities against the person, her life and health, personal freedom, honesty and integrity, property rights, family and morality, as well as against the prince and the faith. Information about other kinds of evil deeds was already found in other, everyday and legislative records of the epoch. V.E. Loba and S.M. Malakhov are convinced that during the period of

[7] Motsia O. "Rus", "Mala Rus", Ukraina" v pisliamonoholski ta kozatski chasy. Kyiv : Naukova dumka, 2009. 320 s.

[8] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last access 25.02.2022)

developed communal life, honor already belonged to clearly defined understandings, though the term «dishonor» does not appear in Russian Pravda. The question of punishment for the image of not only words, but also – women and children also did not find an adequate representation[9].

Such state of the word can be explained by the fact that Ruska Pravda did not cover all legal phenomena of that time. As we know, the order of Ruskoi Pravda was the Statute of prince Yaroslav about church courts, which was a summary of decisions about crime and evil deeds. He enforced the protection of the honesty of girls and wives, established punishment of fathers for encouraging their children to enter into sexual relations. Cases of religious or moral and family nature, as reported by the sources, were considered on the basis of church legislation. Ruska Pravda took in itself only a certain totality of norms, which were used in practice, and which do not give a complete idea of the law in general, since the law in ancient and early Middle Ages Russia existed both in written and unwritten form.

Proceeding from the fact that the right of non-torture of one's life is a part of the right of people to non-torture of private life, we analyze the norms of the Russian Pravda in this aspect.

Proceeding from the fact that the right to insufficiency of one's dwelling is a part of people's right to insufficiency of private life, we analyze the norms of the Russian Pravda in this aspect. Thus, Article 17 of the CoC states: «If a peasant strikes a friend and flees to the mansion, and the lord does not want to give him up, he [the lord] may take him away after paying 12 hryvnia for him, and after that, if a peasant anywhere meets a man beaten by him, he may beat him»[10].

We should note that the norm about the servant who hit a man and stayed in his father's house, leads to a number of assumptions, including that «a man's house is sufficiently strong, and a man is sufficiently strong to reveal his servant, who, without a doubt, is looked for by an injured free man». That is, a peasant who has shown himself in his father's house cannot be excommunicated from there. Art. 65 of the RL followed the discussed article (Art. 17 of the KP) with certain amendments and additions.

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[9] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1(26). S. 39–42.

[10] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

M.M. Karamzin paid attention to the fact that by penetrating into a dwelling with the purpose of committing theft, the guilty person infringes not only on someone else's property, but also on the right of a citizen to the dwelling in the broadest sense of the word. «Whoever steals the goods in the stable or in the house pays 3 hryvnia and 30 kuna to the treasury, and whoever steals the goods in the fields pays 60 kuna». The substantiation of the severity of the sanctions, he explains by the fact that the penetration into the dwelling was considered a grave crime as opposed to (theft) stealing, because «the offender disturbed the peace of the lord at that time»[11].

O.V. Sosnina believes that the right of a slave not to be discharged on demand of the persons who interrogate him is an indication that the dwelling is not inaccessible[12].

For the slave, the house of the man is a place of hiding, he is not torn in it. A slave can be killed for the image, but not in the landlord's house itself, but behind it. The statement that the landlord's house served as a shelter for his servants was «a single and, therefore, costly indication of the lack of dwellings in our ancient times».

The absence of responsibility for violation of the right to privacy can be explained by the fact that in everyday life and lifestyle the custom about the right to privacy of the home has developed, This custom did not demand at the legislative level the introduction of any restrictions and was not reflected in the journals that have come down to this day.

So, for people who lived in the times of the Kievan Rus, the very fact of illegal penetration into someone else's home, perhaps, meant an encroachment on both for themselves and for their sanctity. Therefore, despite the lack of direct sanctions in the Russian Pravda, the right of non-transgression of the dwelling was under criminal and legal protection[13].

It is noteworthy that a woman's honor had a privileged status. However, Russian Pravda did not classify hitting a woman (wife or maid) as a particularly grave crime, but her present memoirs of law – the treaty with the Germans of 1195 – stipulated such a crime. In the case of the

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[11] Karamzyn N.M. Ystoryia hosudarstva Rossyiskoho: V 3-kh kn. Kn. 1. SPb.: Krystall, 2000. 704 s.

[12] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1(26). S. 40.

[13] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

first case, a fine for such an act was imposed, which was equivalent to a conviction for murder of an innocent person, and the same private guilt for the person concerned. The high fine at that time indicated only that the honor of the woman was highly valued. In the same Treaty the honor of the slave was protected by a separate norm, according to which for the «image» of the slave the criminal had to pay a grivna, or a higher amount. The mentioned Treaty contains a provision about the punishability of such actions against the integrity of a woman, which have nothing in common with crimes against health, namely: «Whoever takes the head cover from another woman, for that 6 hryvnias, for a waste» (article 8). In the later editions of the Church Statute of Yaroslav (article 25) the image of the word, including a woman, and the honor (unlike in the Russian Pravda) is estimated differently depending on the social status of the person treated. Article 30 of the Extended Edition of the Statute of Jaroslav according to the content of article 25 of the Short version of this document[14].

The image of a woman by using a swearing, as well as the image of action, is also punishable by a fine, depending on the social status of the victim. To call an important woman a woman of easy behavior was to severely punish not only her, but also her husband and the whole family. The article establishes liability for the image of another woman's friend by a word that is considered as disgusting[15].

Establishment of responsibility for the image of the word, according to V.O. Kluchevsky, «was the first experience of awakening in the baptized priest a sense of respect for the moral integrity of people». In the «Russian Pravda» of the enlarged edition the process of changing the legal status of a woman from equal with a man to a follower has been partially interrupted. Article 88 stated: «Whoever kills his wife is judged by the same court as the husband»[16].

In other words, in procedural law she was treated as a fully discharged person, who was not yet under the guardianship of a husband. At the same time, the same article establishes the amount of the fine for the murder of a woman. It is twice as low as the fine for the same crime against an

[14] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

[15] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk.* 2013. No 1(26). S. 40.

[16] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

innocent man. This norm is a clear indication of the fact that at this stage of historical development the right of women to equality with men was not considered.

In the church statute of Volodymyr the Great there is a rule for which the violence against the boyars' friends and daughters was punishable by fines in the amount of one to five hryvnia in gold, and for the others – up to five hryvnia in gold. This is also a strictly feudal norm, which reinforces the social nervousness of women of different statuses[17].

The existence of liability for infringement of family rights and morality, in particular, the abuse of children's rights by their parents, i.e. the refusal to agree to marry or the coercion to it, are indirectly related to the formation of the institution of individual rights and freedoms. Article 24 of the shortened Statute of Prince Yaroslav on church courts has a prohibition of parents under pain of church punishment to give a girl in marriage or to unmarry the youngster. Parents were held responsible if one of their children did something to themselves, that is, if they ended their lives by self-murder or if they tried to carry out such an intention. Article 33 of the Shortened version prohibited interfering with children's desire to marry or be married.

It appears that the right to independently choose a man or a woman is a manifestation of the realization of private life, which was partly reinforced in the norms of the time.

The enlarged version of the Statute repeats the norm of Article 24 of the Short version in a modified form. In this case, the ability of the fathers to give their daughter in exchange for force is converted into their obligation in case of their disapproval. According to Article 7, for violation of this duty the fathers were liable to public authorities. However, the change of this norm did not remove the responsibility of the fathers in the case of their daughter's self-harm as a result of such a crime.

As for the separation, the opinion of L. Podkoritovoy is interesting. Podkoritovoya, she voiced that the statutes of Volodymyr and Yaroslav testify that the princes entrusted the spiritual authorities judicial review of some family matters, but only for a limited range of issues, and the penalties were only profitable articles, necessary for the material support of

[17] Poliarush S.I. Oformlennia yurydychnoho statusu zhinky za shliubno-simeinym pravom Kyivskoi Rusi. *Naukovi zapysky. Seriia «Istorychni nauky»*. Vypusk 13. S. 102–107.

the church. Penalties for cases of severing adulterous relations were for the benefit of the church, but there was no mention of church litigation[18].

Probably more likely, the norms of civil law were active here, because the replacement of civil law by Byzantine law was also interrupted by such a factor as the popular perception of the written norms. In the old customs, the initiators of breaking up a whoremonger could be both a man and a woman. Here they had equal status. The separation procedure itself consisted in notifying the parents and neighbors in the presence of the parents and neighbors of their intention to mutually agree and agree to sever the relationship. This meeting was used to resolve the issues of property[19].

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The domain court of the local feudal lord began to announce the separation. Considering all the above, we can make a conclusion about the dominant role of customary law in the regulation of intimate relations in the Kievan Rus'. And because of it the status of a woman in family legal relations was equal to the status of a man of the same status. Although in the Old Russian state in written norms the woman was given the same personal, property and procedural rights as the man, however, the mechanism of their protection was not developed, which in the long run led to the loss of the parity status of the woman and the man. The imposition of Byzantine law and church norms in the regulation of family relations was very strong, at first it affected mainly the feminine faithful of the population and in

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[18] Pravda Ruska. URL: http://litopys.org.ua/oldukr2/oldukr51.htm (last exess 25.02.2022).

[19] Sosnina O.V. Istorychni vytoky okhorony chesti, hidnosti, ta nedotorkanosti pryvatnoho zhyttia liudyny. *Yurydychnyi visnyk*. 2013. No 1 (26). S. 40.

the end it established the dependent status of women in the family and society[20].

It is important to note that the law of the Kievan Rus' was in force after the termination of its existence. Thus, «Ruska Pravda» preserved its legitimacy in the Galician-Volynsk state and even in the conditions of servitude of the Ukrainian lands by foreign enforcers. In Galicia and other Ukrainian territories which in the 14th century were part of the Polish kingdom, Ruska Pravda was lawful until 1434. In the Ukrainian lands which were the part of the Great Duchy of Lithuania «Russkaya Pravda» functioned till 1529 and the significant part of its norms in changed form were included into the structure of the Judicial Code of Kazimir IV Yagaylovych of 1468 and the Lithuanian statutes of 1529, 1566 and 1588[21].

Analysis of the Judicial Code of Kazimir Jahailovich, which is the first collection of laws of the Grand Duchy of Lithuania, which has reached our time, shows that its rules were focused primarily on the criminal-legal protection of property relations. In the context of our study of the formation of rights and freedoms on the territory of Ukraine, article 24 of the Judicial Code, which states: «And who will lead people or people unauthorized and will be caught by a person, that person will be sentenced to the scaffold; and if he composes a foul, then the court: as this sheet says, he will be judged by it», is worth attention.

In A. Andrushko's opinion, the systematic analysis of the considered norm and its general context allow us to consider the actions it prescribes more often as property crimes than as crimes against personal freedom of the person[22].

This is very close to the criminal law offences of the era of the Kievan Rus', which relate to the extortion of another person's servant or smerd. In contrast to the «Russian Truth», the Judicial Code of Kazimir Yagaylovych

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[20] Podkorytova L. Protses rozirvannia shliubu v khrystyianskii Kyivskii Rusi. URL: www.ruthenia.info (last exess 25.02.2022).

[21] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

[22] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

for committing such an act provided for a more severe punishment – the death penalty by hanging.

1.2. The Rights and Freedoms of the People in Ukraine in the Era of the New Time (15th – early 20th centuries)

The next stage in the development of the legislation on the rights and freedoms of the people were the Lithuanian Statutes of 1529, 1566 and 1588. Thus, the First (Old) Lithuanian Statute protected the marriage of women («princesses, widows and maidens») by force; it guaranteed that «each of them, for the pleasure of her friends, is free to marry whom she pleases»[23].

Similar norms were also stipulated by the Statute of 1566. and the Statute of 1588. Whoever «without the will of his father and mother, uncles or other close parents, forcibly takes away from any place any of the above-mentioned women, and by such means he took them to the sloop,» and was subject to the strike, and one-third of his property was to be given as a dowry to the woman who had been forcibly taken by him.

Statute of Lithuania 1529 p. forbade Jews or Tatars to triumph over Christians in the Volga region. It is clear that this norm had a pronounced religious restriction, but it is still of interest for our study. It stipulated the obligation of warlords, elders and rulers to release a Christian from his freedom if they were informed that a Jew or Tatar had bought him or taken him into custody. The Statute at one time provided for a special compensation for the losses incurred in connection with such Jews or Tatars: If a landlord bought a Christian for himself, or if a serf was born of a bought wife, then such a serf, having reached the age of majority, had to live in the landlord's house for seven years, and after seven years he was to be let free. If a Jew or a Tatar took someone into custody for money, then the innocent person was to pay back the sum. In such situations, the representatives of other religions had no right to try Christians in involuntary servitude. Similar provisions were also contained in the Statute of 1566. and in the Statute of 1588. The Lithuanian statutes stipulated that «a civil person shall not be taken into penal servitude for any bad deed»,

[23] Kovalova S. Sudebnyk velykoho kniazia Kazymyra Yahailovycha 1468 r. : monohrafiia. Mykolaiv : Vydavnytstvo ChDU, 2009. 112 s.

but that the person who had suffered a loss was obliged to comply with the Statute of 1566[24].

An important provision is stipulated in Article 10, p. 11 of the Statute of 1529, in which it is stipulated that if a person sells a prisoner or his son to a captive through starvation, or sells himself to a captive through starvation, then such a contract shall not be valid. However, «if a man forces his innocent man to go through hunger or gives his innocent man to someone, so an innocent man shall be liable to the same penalty». Similar provisions were also contained in the subsequent editions of the Statute of 1588[25].

The Lithuanian statutes clearly distinguished between military people, whose rights were worthless, and non-military people, who could be sold or charged with other rights. Statute of 1529. stipulated that people were considered innocent for four reasons: First, those who have been in captivity for a long time, or who were born in captivity; second, those who have been taken captive from the enemy's land; third, those who have been condemned to the death penalty for committing a crime, by which this kind of punishment is replaced by captivity for the benefit of the injured party; their children, who are born afterwards, are also innocent; fourthly, those who had been being innocent, have knowingly armed themselves with an innocent man or woman; their children are also innocent.

In subsequent revisions of the Statute, the number of grounds for being a noncitizen has been reduced. Thus, while the Statute of 1566 no longer provided for the third of the reasons that the Statute of 1529 had chosen, the Statute of 1588 did not. In the same way, it was voted: «They cannot be citizens for any other reason than that they have been made prisoners». Other non-villagers acquired the status of fathers, i.e. they were close in legal status to the crypaks. At the same time, the Lithuanian statutes provided for the possibility of freedom for a non-citizen. Thus, in Art. 11 XI of the Statute of 1529. «If, at the time of famine, a person drove his innocent people out of the court, not being able to keep them in line, and they themselves were starved, then they would no longer be innocent, but would become innocent», it is stipulated in Article 11 of 1529.

[24] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. T. I : Statut Velykoho kniazivstva Lytovskoho 1529 r. Odesa : Yurydychna literatura, 2002. 230 s.

[25] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. Statut Velykoho kniazivstva Lytovskoho 1566 r. Odesa : Yurydychna literatura, 2003. 560 s.

Similar provisions are also contained in the next editions of Statute 12 of 1566 31 and Statute 1588[26].

The Lithuanian statutes also provided for liability for theft of a father-in-law or a servant, but the aforementioned offence was, as before, associated with the theft of property. The person guilty of the offence had to pay a fine and return the stolen property to the previous owner. In general, it can be concluded that, in comparison with the previous legislation, the Lithuanian statutes were an important step forward in the fight against crimes against the individual liberty of the people. At the time, the Statutes reflected the state of nervousness of the time, and the relevant provisions were placed in different sections, combined elements of substantive and procedural criminal law and were generally casuistic. Of particular interest for the study is the law of the Armenian communities, which during the centuries lived compactly in Lviv, Kam'yantsy-Podilsky, Stanislav, Snyatin, Berezhany, Yazlovtsy and other towns of Galicia and Podillya. Living abroad, the citizens were able to make the most of the opportunity to organize their own autonomous self-governing and judicial bodies[27].

To resolve different legal situations, the villages used their ancient law – the Judicature of Mkhitar Gosh, established in 1184-1519. The norms of the Livonian law were translated into Latin and confirmed by the Polish king Sigismund I Augustus as the Statute of the Livonian Communities. In the scientific literature this code was called «The Livonian Judicature of 1519». The Statute of the Lviv Communes regulated the legal relations among the communities of the Lviv communes of Galicia. For the sub-provincial villages in 1567. A specific statute was approved for the suburbs, which, however, in fact, repeated the text of the 1519 Vermensky Sudebnik. The main germ of these codes was the Judicature of Mkhitar Gosh. The said collection of laws provided for liability, in particular, for crimes against the individual freedom of the people. A special place in the Judicature is given to Article 24, which established the death penalty for the theft of Christians by the unbelievers. This norm appeared as a result of the widespread cases of theft of children for sale in the non-villainous markets of the West during

[26] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. Statut Velykoho kniazivstva Lytovskoho 1566 r. Odesa : Yurydychna literatura, 2003. 560 s.

[27] Statuty Velykoho kniazivstva Lytovskoho : u 3-kh t. T. I : Statut Velykoho kniazivstva Lytovskoho 1529 r. Odesa : Yurydychna literatura, 2002. 230 s.

the Middle Ages. If the stealer of the child was a Christian by profession, the death penalty was commuted to imprisonment with the obligation to return the sold person to the fatherland. If this was not possible, the guilty person was imprisoned, but his eyes were blindfolded[28].

However, the norms of the Judicial Code did not prohibit slave trade, in which wimmen took an active part. This fact is known, for example, from the decree of King Vladislav III of 1444, which regulated the problems that arose during the trade of non-citizens, which the prisoners could buy on the Black Sea markets. In the past, Lviv was plagued by bouts of arbitrary expulsion of such non-citizens by representatives of other nations without the prisoners' consent, and the king forbade this. The document, however, stipulated that if a non-prisoner had a good faith desire to purify himself, he could be redeemed for the amount that the prisoner had spent at the time of his sale. As is well known, in the medieval and early modern periods, accusations of Jews being guilty of stealing and killing Christian children for ritual purposes were widespread. Accusations of Jews being guilty of such acts were nervously followed by trials. They were also reacted against at the highest state level. Thus, on 26 June 1566. The Grand Duke of Lithuania and the King of Poland Sigismund II Augustus issued a decree on the accusation of the Jew Nahim, who had stolen, in three days he was burned at the stove and then killed a Christian child in the small town of Rososz. However, in view of the fact that the accusation against Nahim was based on the testimony of a little girl and other strong evidence, the king found the Jew innocent of the crime against him[29].

The ideals of virtue, freedom and respect for human dignity also prevailed in the «Cossack Christian republic» – Zaporozhye Sichi, which was known in the years of the national-civil war of 1648-1654. They spread all over Ukraine and became a powerful instrument of national growth. On the territory occupied by the Cossacks an original system of social-political governance was created, which was based on the democratic

[28] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka*. URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

[29] Andrushko A. Henezys zakonodavstva pro kryminalnu vidpovidalnist za zlochyny proty osobystoi svobody liudyny (X-XVIII st.). *Natsionalnyi yurydychnyi zhurnal. Teoriia i praktyka.* URL: https://ibn.idsi.md/sites/default/files/imag_file/Genezis%20zakonodavstva (last exess 25.02.2022).

principles of freedom of all administration, and on the independence of its «Cossack mass» as well. The legitimate result of the struggle of the Ukrainian people was not only the liberation from the foreign oppressors, but also a cardinal change in the legal status of the main mass of the population. The conditions were created for the restoration of national, religious and economic rights. The Cossack shtetl for a time was forced to abolish the cryptic right, the former feudal peasants became noble people, and the Ukrainian nobility and the Cossack upper class clung to the privileges and privileges of the «noble state». However, it soon became apparent that it was impossible to satisfy the interests of the landed upper class without returning to serfdom, and the Ukrainian peasants fell back into bondage.

Thus, for the first time it became possible to speak about the rights, freedoms and dignity of the people only in relation to certain religions of the Ukrainian population. After the Pereyaslavl Council, when the Ukrainian land under the Russian protectorate became an autonomous entity – Hetmanshchina, the idea of preserving «the ancient rights given by the Grand Dukes of Lithuania and the Polish kings» became popular. In all the Ukrainian-Moscow treaties (Bereznev Statutes of 1654, Pereyaslav Statutes of 1659, Baturin Statutes of 1663, Moscow Statutes of 1665, Gluhiv Statutes of 1669, Konotopsk Statutes of 1672, Pereyaslav Statutes of 1674, Kolomats'kyi Statutes of 1687, Reshetil'ivskyi Statutes of 1709, «Rishitel'nyi pts.» of 1728) it was stipulated that the Ukrainian Cossacks and the nobility shall retain their freedoms, rights and privileges, and certain status rights were guaranteed to the clergy and the townspeople[30].

In practice, this meant that the Hetman administration and the Cossack courts in Ukraine were not governed by Russian legislation, but by «Lesser-Russian rights», which meant the norms of the Lithuanian Statute, Magdeburg law and the acts of the Hetman authorities. These norms, in the opinion of contemporaries, sufficiently secured the economic interests of the Ukrainian Cossack-Slachia upper class, its constitutional rights and autonomist aspirations. In the part of Ukraine that had been under the influence of Poland or Turachchchina, they also wanted to preserve the «ancient rights» mentioned earlier.

[30] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

Thus, in the Gadyatsk Tractate of 1658. In the Gagiade of St. Ivan of Vygov with Poland, the freedom of the Cossacks «in councils, courts, and in the civil elections of their lords» was guaranteed, and the full equality of Orthodox and Catholics was specially strengthened. The Constitution of 1710, a treaty between the immigrant hetman Pilip Orlik and his brother-in-law, sanctioned by the Swedish King Charles XII, was of great importance as a source of the rights of the people in Ukraine. This document declares the idea of «rectification and restitution of their inferior rights and freedoms», and condemns the colonial hetmans who «usurped power, violating all natural law and sovereignty». In the text of the «Legal Regulations and Constitution on the Rights and Freedoms of the Zaporizhzhya Soldier» (the official name of the document), one can find the consolidation of the elements of the separation of powers between the Hetman, the General Council and the General Court, as well as of the principle of subjecting the rulers to the free will of the population. At the time of the return of Orlik to Ukraine, it was obliged to restore the rights of the Cossacks, to preserve the privileges of the towns, to ease the tax burden on the peasants, to grant state aid to widows, orphans and other socially unprotected sectors of the population. In this document there were also unacceptable, from the point of view of the contemporary statements, norms that strengthened the intolerance to religions other than the Orthodox one. In the end, however, the Constitution of Philip Orlik did not gain any real force, and therefore it has remained in history only as an original legal memory.

The development of the Cossack law can be seen as the development of the right of the people to individual will. It is quite obvious that the basis for the formation of the Cossack law was the law of conscience, which was attached to the life of the peasantry. Since the Zaporozhian people were soldiers, the norms of military law were manifested in the form of military campaigns (the holding of the Cossack council, the admission of new persons to the society, the organization of military campaigns).

Thus, for example, a new Cossack who joined the army, at the gathering of other Cossacks – his comrades-in-arms – was given a place of 3 arshires of length and 2 arshires of breadth by the curinsky otaman, who explained: «This is your home, and if you die, we will make a shorter

one»[31]. Zaporizhzhya had a new name, which was not very brutal in character, which implied a complete disregard for the world he was leaving. For the form of government, Zaporizhzhya is considered to be a democratic republic. The Cossack Council was the organ of direct democracy. It was not a representative body as in Western Europe. In the adoption of laws and the administration of affairs, only representatives of one state – the Kozaks – were directly involved. The Council was vested with all the legislative and administrative powers. It passed laws, made decisions on the most important issues of domestic and foreign policy, and controlled the activities of the governors. The council could be convened by the hetman, the metropolitan, and in military times – by simple goats and outsiders.

The sovereign power in Zaporizhzhya belonged to the Kosh, i.e. to those who were converted to the Cossack council. In total, there were 21 posadas, where several governors of the same name resided. For example, there were 38 courier otamans (for the number of couriers), 8 garmashiv (artillerymen), 20 clerks, 9 regimental scribes. In total, there were 120 command and administrative personnel in the government structures of Zaporizhzhya City. The military chiefs occupied the highest position in the administrative apparatus, and among them there was a military commander[32].

In contemporary terminology, he was the head of the Zaporizhzhya Republic, commander-in-chief of the armed forces and military commandant of Sichi. The Kosovian Ottomans, as well as the majority of the governors, stayed at the Kosovian Rada, were either dismissed from their posts or were occupied for the next term. The military commanders also included:

1. The military judge – another person in the Zaporizhzhya prison. He tried the Kozaks, recognized the chief of the artillery, and sometimes replaced the koshnyi otaman. The army scribe was in charge of the chancellery, he kept the lists on behalf of the whole Zaporizhzhya army.

2. The army observation officer supervised the order of the soldiers on the village, took care of the replenishment of the army's food supplies, organized the execution of court decisions, and kept track of the misdeeds committed both on the village and on the territory of the tents. In addition

[31] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

[32] Administratyvna vlada i sudochynstvo Zaporizkoi Sichi. URL: http://www.ukrreferat.com/index.php?referat=71878. (last exess 01.03.2022).

to the overcounted planted soldiers, the status of the army senior was also held by the kurinni otamans – the leaders of the army subdivisions, which were called kurens.

3. The middle lance of the military administration was occupied by army officials who helped the army elders to manage the Cossack army. Among them was Dovbush. He gathered the Cossacks to the council, was to be present during the execution of court orders, and organized the collection of tributes and trade duties. The army gunner commanded the Cossack artillery and was the commandant of the army prison. The army tlomach performed the duties of a commander. Kantarzei supervised the maintenance of the standard of peace and vagi in the whole territory of Zaporizhzhya.

4. The rest of the Cossack administration consisted of the marching and parachute elders. The head colonel commanded a military detachment, which was called a regiment. In addition to him, the regimental officers included a regimental sergeant major and a scribe[33].

As it was noted, the power of the palanquin elders extended to the family goatherds and representatives of other social faiths, who lived outside the borders of Sichi, in the villages and winter villages. The colonel was in charge of the palanquin and was assisted by other administrators. The colonel's duties included court functions up to the death penalty. As far as the court system and the judicial process are concerned, the number of court institutions in Zaporizhzhya was not clearly defined and legally regulated. Scholars consider the courts in Zaporizhzhya to have been pure, among which the court of first instance was the court of the palanquin or the court of the palanquin colonel. The jurisdiction of the court extended to the territory of the palanca, which was occupied by the colonel of the palanca, who was also the head of the court. Cases of misdemeanours were heard, for which minor punishments were imposed. On the shoulders of the palanquin court rested the main mass of civil cases. They acted collectively in the composition of a colonel, a colonel, a scribe. The members of the court were appointed for a term of three years. The Court of the Curia, or the Court of the Curia Otaman, was a court of second instance, which heard appeals from the palanquin court. It was heard by the Kurin Otaman, whose jurisdiction extended only to the Kozaks of one kuren. In the case

[33] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

of the caller's admissibility and the reply to different curens, the case was heard by the court of the otamans of both curens. The court of the military (general) judge heard important criminal cases in the first instance, either collegially or unilaterally. A conviction could be brought before the highest court, the court of the coroner.

The court of the koshovoy otaman – exercised jurisdiction on the whole territory of Zaporizhzhya. The terms of the court were not subject to reprimand. Kosovij pardoned and reviewed the sentence in order to reduce the sanctions. The Court of the Kozatsk Council is the supreme court of Zaporizhzhya. As a rule, it was assembled by the Kosovskiy or the punitive otaman to resolve high-profile cases. The verdict was made by voting or by voting the hats of all the Kozatsk Zagal, including those of the palanca Kozaks[34].

Manliness and youthfulness, generosity and selflessness, respect for old warriors and hospitality, simplicity and moderation, guilt and fear of death, military valour and honesty were valued at the Feast. The following were judged: boastfulness, lying, drunkenness on the march, greed, sloth, malice, dishonesty. From this system of values all legal norms were generated. The main weight of the legal influence of the court of law fell on carny and malicious crimes. However, the organic relationship between law and morality led to the total fetishization of legal norms. For any other misdeed, for any other crime, for any attempt on someone else's property, the death penalty was imposed, regardless of the authority and past merits of the accused. The alignment of jurisdiction with the moral system of values led to the fact that law in the conditions of the Church existed as a self-sufficient and self-governing phenomenon[35].

The peculiarities of the social regulation of social relations in the Cossack society had their origins in the desire of people who had gained freedom to escape from the unwillingness, the hated power of the lords and rulers. This is manifested in the peculiar structure of communal power in the Cossack environment. Kozaks were united in communities and all important issues were discussed and solved in councils. Here they robbed Kozatsk

[34] Atamanova N.V. Zabezpechennia pravovoho poriadku v Ukraini instytutsiiamy Zaporizkoho kozatstva. *Aktualni problemy derzhavy i prava : zb. nauk. prats.* 2011. Vyp. 58. S. 131–135.

[35] Yevtushenko O.N. Polityko-pravovi zasady upravlinnia Zaporizkoi Sichi. *Naukovi pratsi: naukovo-metodychnyi zhurnal.* Mykolaiv : Vyd-vo MDHU im. P. Mohyly, 2006. Vyp. 41 : Politychni nauky. T. 54. S. 117–121.

elders – otamans, osavuls, judges, heard the testimonies of rebellious people. The town council had the opportunity to influence directly the functioning of these powerful institutions of the Cossack society. The municipality was also the subject of the monetary-normative creation of regulations, which were gradually formed into the system of civil law of the Kozak people. The Kozat community strictly upheld the observance of the unwritten rules of Kozat honour. As we know, there were legends about the Cossack honesty: any river, flooded in Zaporizhzhya, was left unoccupied in the same place, where its owner could take it away anytime, even after a year. It was considered by the Zaporozhian people to make a profit on the account of the community as a bad thing, which was punished as a misdemeanour. Stealing from a comrade was considered the worst crime after the death of one's wife[36].

It is characteristic that in the Ukrainian villages of Odyshchina, which were established as a result of Cossack settlements already after the destruction of Zaporizhzhya by the tsar, the tradition of respect for property and other people's property was preserved even at the time when the communist Soviet government made a «historic» attack on private property. The Cossack order of values defined the Cossack legal ideal, which played a significant role in the development of Ukrainian society: It became a factor in the formation of the legal life not only of Zaporizhzhya, but also of all Ukrainian lands, and with all the obviousness it was materialized during the rebellion, when the Cossack orders were introduced in the liberated territory[37].

An important factor of the legal order of the Ukrainian state of the Kozatsk era was the establishment of a self-contained legal system, which was the constitutional-normative basis for the formation and maintenance of the legal order in the Ukrainian society of that time. The dominant system-creating factor of the legal order was the Cossack law – the totality of legal rules, which were established in the sphere of the Cossacks. The importance of this rule is reinforced by the fact that soon after the annexation of Ukraine to Russia the Tsar's charter of 25 March 1654. It gave the military

[36] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

[37] Makarenko O.V. Zvychaieve pravo Zaporizkoi Sichi. URL: http://intkonf.org/makarenko-ovz-vichaeve-pravo-zaporozkoyi-sichi/ (last exess 01.03.2022).

of Zaporizhzhya the right to sue «their elders according to their ancient rights», i.e. on the basis of the law of conjugation. And the basis of civil law was established in the 15th – the middle of the 17th centuries. At the same time, the law of the goat was particularly popular among Ukrainian peasants who were invaded by their landlords and authorities in the regions of the middle and lower Dnieper region.

The norms of civil law, which were established in Zaporizhia, regulated the military and administrative organization of the cossacks, some rules of warfare, the work of the courts, the order of land administration and the establishment of certain contracts, and the types of crimes and punishments. The existence of a special law in the Cossacks was determined by the Polish law. Regardless of the sovereignty or even the severity of the norms of the Cossack common law, it was «honesty great». Kozatsstvo always upheld the civil law, fearing that the written law could limit the Kozatska's freedoms [38].

It should be noted that the legal norms in Zaporozhye Sichi from the middle of the 18th c. In the 18th century the Cossack Council began to act as a legislative body, which issued legal norms that were written down in writing. Such legal changes make it impossible to interpret the legal norms at their discretion and allow the goat community to introduce rules of law. In 1762 at the council there was «made a written and circular commitment in the Zaporozhian army to always maintain and preserve the good order approved by the previous military order, namely: to prevent theft on the borders and to keep peace if anyone dared to commit any violation of the approved order or to the commander of the Kosh in what the obedience and duty... ...the elders and the Cossacks should not obstruct the punishment. It is our permission that the koshovoy otaman and the army elder should not change their rights and decrees from now on without important reasons and crimes[39].

The law of the Zaporozhians can be considered a typical example of the early stage of the formation of legal norms. This is evidenced by such historically established characteristic features: the wide use of capital punishment; the highly judicial, especially corporal, punishments;

[38] Atamanova N.V. Zabezpechennia pravovoho poriadku v Ukraini instytutsiiamy Zaporizkoho kozatstva. *Aktualni problemy derzhavy i prava : zb. nauk. prats*. 2011. Vyp. 58. S. 131–135.

[39] Tatsii V.Ia. Istoriia derzhavy i prava Ukrainy : u 2 t. Kyiv. : VD «In Yure», 2003. T. 1. 2003. 648 s. S. 190.

corporatism; the dominant role of «public law»; the limited form of expression of legal norms (in most cases); conservatism; and ritualism[40].

Important for understanding the development of the concept of the rights and freedoms of the people and the citizen are the problems of power and people, which allow to understand the tendencies of social determinations, legal norms and political practice of the given period, as an important stage of the formation of Ukrainian statehood and the formation of legal conditions for the functioning of Ukrainian society[41].

Most of the theorists of this period were connected with the Kyiv-Mohyla Academy, which became the center of scientific and civil-political life not only of Ukraine, but also of Russia and a number of European countries, thanks to its lecturers and graduates, who became well-known historical activists. For example, the philosopher and theorist of state and law Theophanes Prokopovich (1681-1736), rector of the Kyiv-Mohyla Academy, who followed the reformist approaches of Peter the Great and Pilip Orlik, developed the concept of educated absolutism. In his main treatises: «The Word on the Power and the Royal Honor», «The Truth of the Monarch's Will», «The Spiritual Regulation», referring to the ideas of the representatives of the natural law theory of the times of the European Enlightenment – T. Hobbes, S. Puffendorf, H. Thomasius, H. Volf, he formulated the conditions for the existence of the sovereign state and discussed the necessity of asserting the power of the monarch and the need to subordinate it to the spiritual power. In his opinion, the monarchical state was based on peace, goodness, love, and war, hatred and evil. To this, for the sake of the supreme protection of their rights, the people handed over power to the monarch. Between the monarch and the subjects a treaty is established, but it is one-sided, i.e., it is only about the transfer of power to the monarch, and anyone who asks for power is judged. Only the monarch shall ensure protection against foreign enemies and internal strife. And for the integrity of this monarchical power, the spiritual power must be subordinated to it. The absolute monarch, as the supreme bearer of state power, stands above all the laws of the people. All the monarch's actions

[40] Zaporizka Sich, yii politychnyi ustrii ta pravo (kinets XV st. – seredyna XVII st.). URL: http://kotovsk-live.ucoz.ua/publ/kozachestvo/zaporizka_sich_jiji_politichnij_ustrij_ta_pravo_kinec_xv_st_seredina_xvii_st/11-1-0-32 (last exess 01.03.2022).

[41] Timashov V. Pravovyi poriadok diialnosti Zaporizkoi Sichi u ploshchyni prava liudyny na osobyste volevyiavlennia. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 1. S. 116–120.

were judged to be directed at the national treasure and were therefore justified[42].

Monarch F. Prokopovich characterizes the monarch as a learned ruler – «a philosopher on the throne». In the development of education and science the author believes the basis of the historical process, the power of the state and the well-being of the people. In the author's opinion, the educated monarch himself ensures the development of science, arts, crafts and manufactures. In absolute monarchy Prokopovich sees the guarantee of rights, property interests, the development of the church, and everything necessary for the society. Thus, in his conception, the main subjects were the state and power in the form of the monarch. Such views were held by F. Prokopovich was valuable for the monarchical power, and for many years he was an advisor to the Russian Tsar Peter I in carrying out reforms in the Russian Empire.

Another representative of the Kievo-Mohyla Academy, philosopher and church-political activist Stefan Yavorsky (1658-1722) also strongly supported Peter I's reforms in the spheres of economy, army, and education. However, in his views on the priorities of world and church power he differed with Prokopovich, in fact, with his ecclesiastical policy opposing Peter I. Stefan Yavorsky criticized the church reform, protected the interests of the church, and upheld its right to handle all church affairs. And later on he proclaimed the thesis that the church is above the state and should rule both the ecclesiastical and the secular power. The autonomy of the church, in his view, allows the institution to play the role of the leading arbiter in matters of morality and social life. C. Yavorsky fostered good relations with his prominent contemporaries – Hetmans Ivan Mazepa and Pilip Orlik. With the latter he was in constant correspondence, having expressed many of the ideas that Pilip Orlik used in his Constitution – «Pacts and Constitution of the Laws and Freedoms of the Zaporozhian Army» of 1710[43].

It is also possible to state that S. Yavorsky had a significant influence on the formation of the concepts of Ukrainian statehood at this stage of the social development. A graduate of the Kyiv-Mohyla Academy was

[42] Kormych A. I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

[43] Kormych A. I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

also a prominent Ukrainian thinker Grigory Skovoroda (1722-1794), who was often compared to the ancient Greek philosopher Socrates. His philosophical and political-legal decadence were permeated by a deep faith in mankind, its possibilities, chastity, and perfection. He clearly understood mankind and nature as «microcosm» and «macrocosm», considering the main characteristic and task of mankind on the Earth to know and realize the potentiality set in it by nature. This is the way in which his journals, for example, the collection The Garden of Divine Pines, are decorated. He paid great attention to the issues of human rights. He considered the right to be happy and to be protected from injustice to be the primary rights of mankind. The happiness of mankind G. Skvoroda associated the humanity with the loving work, and the misery – with the necessity to occupy oneself with matters other than one's own. The philosopher regarded the humanity's absorption by mankind as injustice. Thus he condemned the division of the society into the rich and the poor. He called the Baggatii toilers and the working people to bjoles. The importance of G. Skovoroda gave importance to the education of the youth in accordance with the laws of nature. 50 In his understanding, God is nature, and mankind as a part of nature carries God in his heart, thus becoming a part of God, and also a creator on Earth. The philosophical and political-legal concept of G. Skovoroda, imbued with faith in mankind, laid the foundation for the epoch that was called the «Baroque epoch» and was accepted and continued by prominent scholars in the following periods of state and social development.

For example, in the nineteenth century these ideas were developed by P. Yurkevich, P. Kulish and others. This concept also influenced the views of the next epoch – the «Age of Romanticism». G. Skovoroda upheld the ideals of freedom, considering the Great War under the leadership of Bogdan Khmelnytsky as the most beautiful page of Ukrainian history. Along with this, he condemned the policy of disintegration between the peoples, especially on the religious front. The main subject of history and social development for him was always the people, not the state and power.

An important role in the development of legal ideas of this period was played by the Ukrainian and Russian enlightener, renowned legal scholar Semyon Desnitsky (1740-1789), a native of Chernigov, a graduate of the University of Chernivtsi. He was a graduate of the University of Glasgow

(Great Britain), where he became a doctor of civil and ecclesiastical law, as well as a doctor of Roman and Russian law, and a public professor of jurisprudence at the Moscow University. He criticized German law as being too bogged down in scholastic subtleties and was more accepting of the laws and courts of Great Britain. In his work «Statements on the Establishment of the Legislative, Judicial and Criminal Power in the Russian Empire» in 1768 he formulated his own concept of the organization and function of the state power. He defended the idea of the subdivision of power. He placed the legislative power in the hands of the monarch, and the judicial and penal power in the hands of the Senate and the courts with the election of judges. He compiled a glossary of legal terms, starting from the ancient legislative memories of the times of Kievan Rus’[44].

C. Desnitsky differentiated the rights of the people into several categories:

1 – natural rights, which people use to protect themselves, their honour, dignity and property;

2 – natural rights, which arise in society and depend on the status of the person in various spheres – legislative, judicial, penal;

3 – property rights and rights that arise in the relationships of people with each other – ownership, ownership, spacedom, contract, personal privileges, contract law and others;

4 – the rights of amenity, welfare, restraint and security, which prevent internal disturbances and protect against hostile attacks. Thus, it analyses the whole complex of individual and communal rights that are to be guaranteed by the state and the authorities. He links the very emergence of the state to the «social contract» for the protection of the rights of the people.

C. Desnitsky drafted a new Statute, which provided for the reformation of the government in order to protect the rights of the people and to increase local self-government. He judged the right of cryptography, called for the enfranchisement of the peasants and argued for the necessity of formal legal equality of all people. Desnitsky insisted on the priority of the rights of the people for their universal development and satisfaction of their needs. Thus, like most of the leading men of the time, he was a supporter of the priority of the rights of mankind, considering the state and the state

[44] Kormych A.I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky.* 2014. Vyp. 53. S. 350–356.

power exclusively as the guarantor of such rights. But the recognition of natural freedoms and equality was intertwined with the social and social nervousness in society. Another prominent representative of this epoch was Yakov Kozelsky (1729-1795), a philosopher, enlightener, and legal scholar[45].

His work developed the concept of the natural rights of mankind and the contractual approach of the state. His main work, Philosophical Propositions, is permeated with the ideas of liberalism and democracy. While exploring various forms of government, he was particularly sympathetic to a republic where there would be no division between the rich and the poor, and where all people would live by their own work and private property would be limited. He upheld the equality of the rights of all the peoples of the Russian Empire, called for the condemnation of slavery, and condemned the wars of secession, putting peace and peace treaties first. Kozelsky believed that the enlightenment of the people could be combined with the «good will» of the monarch to solve all complex social problems. He especially studied and promoted the ideas of the French and German enlighteners – Voltaire, Montesquieu, Rousseau, Puffendorf, Wolff, Thomasius.

He divided all existing rights into four views:

1 – divine, which are untouchable, given to mankind by God;

2 – natural, i.e., natural, given to mankind by nature;

3 – Universal, i.e., international, which are to lead the world to the world;

4 – civil, i.e., state, which are determined and guaranteed by the state[46].

Thus I. Kozelskiy defined a wide range of human rights and freedoms, defined both the sphere of action of the law and its main subject, responsible for the realization of these rights. An analysis of the views of various representatives of the period of the development of Ukrainian society allows us to conclude that most of them were concerned with the issues of securing the rights of the people and sought effective mechanisms for guaranteeing such rights, including the use of the powers of the state.

In the nineteenth century. Divided between Russia and Austro-Hungary, Ukraine in the composition of these two empires gradually entered into the turmoil of bourgeois-democratic reforms. As in other countries, this

[45] Andrusiak T.H. Istoriia politychnykh i pravovykh vchen. Lviv : LNU, 2001. 220 s.

[46] Kormych A.I. Istorychni aspekty derzhavno-pravovoho ta politychnoho rozvytku. *Aktualni problemy polityky*. 2014. Vyp. 53. S. 350–356.

process was accompanied by a steady strengthening of the state's respect for the problem of human rights. In fact, this problem was first formulated at the theoretical level and embodied in the realpolitik of the revolutionary transformations. Peasant, land, court and other Russian reforms of the second half of the XIX century. In the nineteenth century, the land reforms of the 18th century brought individual freedom to the colonial peasants, established the beginnings of local self-government in the form of zemstvos, initiated a number of democratic changes in the administration of justice, and added to the role of individuality in many other spheres of state and communal life[47].

The next step was the democratic changes brought about by the first Russian revolution. In the late summer of 1905. The Supreme Manifesto of 19 August was adopted, which established the State Duma as the supreme executive body of the Russian Empire. The beginning of the work of the State Duma was planned for the beginning of 1906. However, the All-Russian political strike of September 12-18, over 2 million people in different branches of industry were involved in the strike. people. This mysterious strike and, above all, the strike of the salaried workers, have forced the emperor to take action. In order to bring the crisis to an end, it was necessary to act in a timely manner, which forced Mikola II to take legislative powers (the entire authority of the executive power remained in the hands of the emperor). The head of the Council of Ministers of the Russian Empire S.Witte submitted to Mikola II a note on the necessity of political reforms. The Tsar, having taken note of it, after long and painful deliberations decided to issue a Manifesto, which contained the basic provisions of the message[48].

Thus, on the 30th of June 1905. the Emperor signed the Supreme Manifesto for the Improvement of the State Order, known in history as the «Manifesto of 17 September 1905» (in the old style). It was signed by the Head of the Council of Ministers of the Russian Empire S.Witte. When signing the Manifesto, Tsar Nicholas II considered that he had taken a terrible decision, which would have an unknown effect on the duty of russia. The document stated that the popular unrest and strife

[47] Andrusiak T.H. Istoriia politychnykh i pravovykh vchen. Lviv : LNU, 2001. 220 s.

[48] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

could cause «a threat to the integrity and unity of our state». Therefore, in order to ensure that popular protests against the order of the country would be put to rest, the Manifesto laid down the following conditions: By the Tsar's Manifesto of 17 September 1905, the Tsar of Russia issued a decree of 17 September 1905. It was proclaimed «the indestructible foundations of civil liberty on the ambushes of the individual, the freedom of the state, of speech, of assemblies and of associations». The power of the monarch was measured by the representative institution – the State Duma[49].

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The conditions for the transformation of Russia into a constitutional monarchy were in place, and legal political parties, trade unions and other civic organizations, liberal and radical opposition newspapers and magazines first appeared in the country. It should be noted, however, that for every democratic right or freedom that was voted for, there were numerical conditions and limitations that sometimes made it even more difficult to exercise. In the course of the XIX – the beginning of the XX centuries. The idea of the rights of humanity became more pervasive in the Russian science of international law and diplomatic practice, which was supported by the legal scholars of Kyiv, Kharkov and Odessa. The Ukrainian political-legal thought was also reflected in the program documents of the first political parties. All of them were based on the respect for the individual freedom of the people, aimed at ensuring the freedom of the person and

[49] Mahas-Demydas, Yu.I. Manifest 17 zhovtnia 1905 roku yak pidgruntia demokratyzatsii suspilstva ta rozvytku prav liudyny v Rosiiskii imperii. Litopysets: Zbirnyk naukovykh prats VI Vseukrainskoi naukovo-praktychnoi konferentsii «Prava liudyny: istorychnyi vymir i suchasni tendentsii (do 70-richchia pryiniattia Zahalnoi deklaratsii prav liudyny)» (m. Zhytomyr, 6 hrudnia 2018 roku) (14). S. 61–63.

life, freedom of society, speech, freedom of assembly, freedom of assembly, freedom of association and other democratic rights and freedoms[50].

The addition of the Ukrainian People's Republic and the West Ukrainian People's Republic was a further important step in the promotion of human rights in Ukraine. The Third Universal of the Ukrainian Central Rada proclaimed «freedom of speech, freedom of speech, freedom of belief, freedom of association, freedom of union, freedom of strike, freedom of the individual and freedom of speech, the right and the possibility of living in harmony with all the institutions of the country»[51].

The motion is about the Law of the Ukrainian Central Council «On National-Personal Autonomy» of 9 March 1918, which gave each of the nations that The Russian, Jewish, Polish and other peoples in Ukraine were given national-personal autonomy in order to ensure their right and freedom of self-determination in matters of their national life. In the Fourth Convention of the Ukrainian Central Council it was voted: «in the self-governing Ukrainian People's Republic, the peoples shall enjoy the right of national-personal autonomy recognized for them by the law of the 9th of January»[52].

The motion is about the Law of the Ukrainian Central Council «On National-Personal Autonomy» of 9 March 1918, which gave each of the nations that inhabited Ukraine «the right, within the limits of the Ukrainian People's Republic, to national-personal autonomy: that is, the right to self-government of its national life, which is exercised through the organs of the National Union...».

No other European state had such a law. Moshe Zilberfarb, the first comrade of the Secretary for Jewish Affairs in the expanded General Secretariat, compared this law with the actions of the Great French Revolution[53].

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[50] Antonovych M.M. Spivvidnoshennia mizhnarodnykh ta vnutrishnoderzhavnykh mekhanizmiv zabezpechennia prav liudyny. *Naukovi zapysky.* NaUKMA. Tom 10. Kyiv. 2000. S. 40–44.

[51] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

[52] Zakharchenko P.P. Tretii universal ukrainskoi Tsentralnoi Rady yak akt proholoshennia derzhavnoi nezalezhnosti Ukrainy. *Naukovyi chasopys NPU imeni M.P. Drahomanova. Seriia №18. Ekonomika i pravo.* 2013. Vypusk 23. S. 112-118

[53] Shevchenko V.F. Tsentralna Rada: polityka ukrainizatsii. *Naukovi zapysky Instytutu politychnykh i etnonatsionalnykh doslidzhen NAN Ukrainy im. Kurasa*. Kyiv, 2008. Vypusk 39. S. 109–110.

At the same time as the rest voted for the rights of the people, the Ukrainian law voted for the rights of nations. The Constitution of the Ukrainian People's Republic of 1918, the Draft Basic State Law of the Ukrainian People's Republic attached considerable importance to the rights of the citizens of Ukraine. Both acts contained articles on the equality of rights of men and women without «distinction of religion, nationality and origin»; no one could be imprisoned on the territory of the Ukrainian National Republic without a court order, except in the case of a hot child; a citizen's house (home hearth) was deemed to be untouchable; «revictions (cowardice)» could only be carried out on the basis of a court order and in cases prescribed by law; and «leaf secrecy» was established; the freedom of opinion and belief, as well as the freedom to change religion, was guaranteed; all those recognized by the State had the right «to hold public devotions, to perform religious rites and to found religious societies»; the full freedom of «change of the place of prostitution» (the full will to change the place of residence and to transfer one's property within the borders of the state, the right to emigrate outside the borders of the state, except in cases where it is stipulated in the law) was also proclaimed[54].

1.3. Human rights and freedoms in the Soviet period (1922-1991)

Four constitutions were adopted in Ukraine during the period of Soviet rule (1919, 1929, 1937, 1978). These acts enshrined the positive effects of the social revolution and the formal attributes of Ukrainian Soviet statehood. As far as the rights of the people are concerned, their conceptual basis for three hours was the provisions of the Declaration of the Rights of the Working and Exploited People, adopted in the beginning of 1918[55].

The Third All-Russian Congress of Councils. The necessity of solving social and economic questions as an integral part of the creation of a world of work for the workers was particularly emphasized. All Constitutions have enshrined the different legal status of the individual, the scope of his rights and freedoms. This gives the opportunity to explain the dynamics

[54] Ukrainska Tsentralna Rada: dokumenty i materialy : u 2-kh t. T. 1. Kyiv : Naukova Dumka, 1996. 587 s.

[55] Ukrainska Tsentralna Rada: dokumenty i materialy : u 2-kh t. T. 1. Kyiv : Naukova Dumka, 1996. 587 s.

of the formation and development of human rights and freedoms from the point of view of the legal status of the individual[56].

Already in the Constitutions of the USSR of 1919 and 1929. The list of human and citizen's rights was even wider than in the previous constitutional acts. And the Constitution of the USSR of 1937. The Constitution of the Republic of Poland of 1919 of 1937 enshrined a wide range of rights and freedoms, among which the following took a prominent place: Economic rights (the right to personal property and the right to the rest of personal property, the right to work, the right to rest); social rights (the right to material security in old age, in case of illness and loss of earning capacity); cultural rights (the right to education); political rights (freedom of speech, freedom of speech, freedom of assembly and meetings, freedom of public marches and demonstrations, freedom of the state, right to join community organizations); individual rights (the right to be free from torture, the right to life, the right to vote); electoral rights (which were covered by a specific section)[57].

Ukraine has undergone significant social and political changes in the area of democratization, which has been reflected in its acceptance of international legal obligations and membership in international organizations. During the Second World War, for its important contribution to the defeat of fascism, our country gained wide recognition and prestige in the international arena, and in 1945 it became a member of the United Nations. In 1945, our country became one of the founders of the Organization of the United Nations, was repeatedly elected a member of the main UN bodies, its committees and commissions. Since then, it has acted as a subject of international law and international relations. Ukraine took an active part in the preparation and adoption of international legal instruments in the field of human rights and freedoms.

For example, specific proposals of the Ukrainian side were included in the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on

[56] Skomorovskyi B.V. Rozrobka konstytutsii SRSR 1924 r. ta yii rol u pravovomu oformlenni yedynoi soiuznoi derzhavy. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V. N. Karazina № 1000. Seriia «Pravo»*. 2012. Vypusk № 11. S. 86–89.

[57] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

Economic, Social and Cultural Rights, the International Convention on the Elimination and Punishment of the Crime of Apartheid, etc.

On the basis of all previous Soviet constitutions, the Constitution of the URSS of 20 April 1978. The Constitution of the Republic of Belarus of the 18th century is distinctly different both in its structure and in the scope of the rights and freedoms enshrined in it. In it, the status of the individual was given two chapters, a separate chapter regulated the basic principles of citizenship, defined the status of foreigners and stateless persons on the territory of Ukraine, established the level of the rights of citizens before the law, the level of the rights of men and women. A whole chapter was also devoted to the fundamental rights, freedoms and obligations of the citizens, in which the fullness of the rights of the citizens in all the main spheres was proclaimed, in particular, in Art. Article 37 stipulated that the citizens of the USSR had the full range of social, economic, political and individual rights and freedoms guaranteed by the Constitution of the USSR, the Constitution of the USSR and the laws. The possibility of expanding the rights and freedoms of the citizens in the measure of realization of the program of the development of the society was voted. At the same time, the standards of human rights enshrined in the international legal instruments to which the USSR was a party were not fully respected[58].

In the system of rights and freedoms, priority was given to social, economic and cultural rights. Practically, this category of rights was the most effective in life. These include the rights to work, leisure, health protection, housing, the right to use state property, and the right to personal property, which is not very exchangeable. Among the cultural rights was the right to education, which was guaranteed by the free of charge nature of all types of education and by a regular secondary education, the right to enjoy the achievements of culture, and the freedom of scientific, technical and artistic creativity. Political, civil and individual rights and freedoms, as in previous Soviet constitutions, were given a different role. This category of rights and freedoms included: the right to take part in the management of state and communal affairs; the right to make proposals to state bodies and communal organizations, to criticize their shortcomings; freedom of speech, freedom of assembly, meetings, marches and demonstrations.

58 Tymtsunyk V.I. Reformuvannia systemy vlady ta derzhavnoho upravlinnia v URSR (1953-1964): monohrafiia. Kyiv: Vydavnytstvo NADU. 2003. 400 s.

These provisions of the law were declarative and had no corresponding mechanisms for their implementation.

The individual rights included the right to privacy and life, the protection by the state of the individual life of the citizens, and the right to vote. A new element among the individual rights was the inclusion of the right of citizens to challenge the actions of state and municipal bodies. The complaints were to be examined in the order and according to the rules laid down by law. The acts of the officials, committed in violation of the law, could be brought to court. Constitution of the USSR 1978. The Constitution of the USSR of 1978 also provided for the enshrinement of a wide range of rights and freedoms, which was unusual at that time for the constitutions of most countries of the world[59].

1.4. The development of human rights and freedoms in the first years of Ukraine's independence (1991-1998)

Voting on 24 August 1991. The independence of Ukraine opened a new page in the history of our state and its people, gave the opportunity to expand the rights and freedoms of the citizens, to give them a new meaning and significance. In the Declaration on the Sovereignty of Ukraine of 16 July 1990 and the address of the Supreme Soviet of Ukraine «To the Parliaments and Peoples of the World» of 5 December 1991. The Supreme Soviet of the Russian Federation, on the occasion of its resolution of 11 May 1991, insisted that a new, democratic, law-abiding State could join the ranks of civilized countries, which would, in particular, effectively safeguard the rights and freedoms of human beings and citizens and would be obliged to adhere strictly to the principles and norms of international law and international standards in the area of human rights and freedoms.

Social and political violations in 1985-1990 And especially the August 1991 crisis. They deeply stiffened the Ukrainian society and created favourable conditions for democratic transformations. The first legislative acts of the newly established independent state did not leave any ambiguities as to the legal framework of the set goals. It is sufficient to turn to the laws of Ukraine «On Property», «On Entrepreneurship», «On Freedom of

[59] Konstytutsiia, Zakon vid 20.04.1978 № 888-IX. URL: https://zakon.rada.gov.ua/laws/show/888-09 (last exess 02.03.2022).

the State and Religious Organizations», «On the Citizenship of Ukraine», «On the City Councils of People's Deputies and City and Regional Self-Government», «On the All-Ukrainian and Local Referendums» and others, in order to change the fact that the priority of the State's activity is to protect and ensure the rights and freedoms of the people and citizens and to create a working mechanism for their realization[60].

Adopted on 9 November 1995, the accession of Ukraine to the Council of Europe had a significant impact on the further development of human rights and freedoms of the citizen. Ukraine joined a large number of multilateral European conventions in the field of human rights and freedoms and assumed specific obligations to implement their norms in national legislation. In addition, membership of the Council of Europe stimulated the process of drafting and adopting the Constitution, the basic law of the new democratic state. The Constitution of Ukraine of 1996. It is the first measure of the modern constitutionalism in the issues of the rights and freedoms of the people and the citizen. It defined a new, contemporary status of the human being and the citizen in Ukraine, in fact, making a «humanist revolution». Human life, honour and dignity, non-violence and security were declared in the Constitution (Article 3) to be the highest social value.

The rights and freedoms of the people and of the citizen are the basis and dependence of the activity of the State. The State, in accordance with the Constitution, is accountable to the people for its actions. The affirmation and safeguarding of the rights and freedoms of the people is the primary responsibility of the State. Based on this concept, the Constitution of Ukraine devotes a special section II to the rights, freedoms and obligations of the people and citizens. This section is one of the most important in the Constitution and contains nearly one third of its articles. The Constitution of Ukraine implements all the main provisions of international legal instruments on human rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which are among the greatest achievements of 20th century humanity. In the humanistic sphere, a true «human dimension», a measure of human dignity.

[60] Bielov D. Paradyhma konstytutsionalizmu: teoretychni pytannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo»*. 2012. Vyp. 18. S. 57–60.

The Constitution of Ukraine of 1996. For the first time, instead of a fragmentary set of rights and freedoms, the Constitution of 1996 established a system of rights and freedoms in all the main spheres, providing, in particular, for civil, political, economic, social and cultural rights and freedoms of the people and the citizen[61].

The new Fundamental Law of Ukraine significantly expanded the number of constitutional rights and freedoms, providing for a low number of new rights and freedoms, and substantially reduced them by increments. It first provided for such essential rights and freedoms as the right to life (Article 27), the right to information (Article 34), the right to private property (Article 41), the right to entrepreneurial activity (Article 42), and the right to strike (Article 44, 48), freedom of transfer, freedom to choose the place of residence, the right to leave the territory of Ukraine and to return to Ukraine (Article 33), etc. The right to the right to a fair standard of living (Article 33)[62].

Some time has passed since the adoption of the Constitution of Ukraine has shown, civil and political rights and freedoms are in need of real protection. Thus, their implementation resulted in the death penalty, the establishment of more than 90 political parties, and the formation of a civil society. The Constitution guarantees rights and freedoms in every respect, and provides for a mechanism to ensure and protect them. This is evidenced, in particular, by the system of constitutional normative-legal guarantees of rights and freedoms, such as legal responsibility for violations of rights and freedoms, the integrity and inviolability of rights and freedoms, their inexhaustibility, the inadmissibility of infringements, and the meaning and scope of existing rights and freedoms. One of the greatest achievements in guaranteeing rights and freedoms is the system of legal and institutional guarantees provided for by the Constitution, among which the President of Ukraine has a particularly important role, The President of Ukraine, the Verkhovna Rada of Ukraine, the bodies of executive power and local self-government, the courts, the prosecutor's office and the Supreme Council of Ukraine on Human Rights.

[61] Konstytutsiia Ukrainy. URL: https://www.president.gov.ua/documents/constitution (last exess 02.03.2022).

[62] Bysaha Yu.M., Palinchak M.M., Bielov D.M., Dankanych M.M. Prava liudyny. Uzhhorod, 2003. 189 s.

In addition to national guarantees, the Constitution provides for the possibility of using international legal guarantees. In accordance with Art. 55 of the Constitution of Ukraine, everyone has the right, after using all national means of legal protection, to apply for the protection of his rights and freedoms to the appropriate international judicial bodies or to the appropriate bodies of international organizations of which Ukraine is a member or participant. The protection of human rights and freedoms is also an additional guarantee of the international mechanisms for the protection of human rights to which Ukraine has acceded.

An important step in this regard was the ratification of 17 July 1997. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The citizens of Ukraine were given the opportunity to apply to the European Court of Human Rights for the protection of their violated rights. In addition, after joining in 1990. In 1990, Ukraine acceded to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966, and also recognized the competence of the United Nations Human Rights Committee to consider the individual complaints of the citizens of Ukraine concerning violations of their rights and freedoms guaranteed by the Covenant. The Constitution of Ukraine has legally justified all normative transgressions on the way to ensuring the rights and freedoms of the people and citizens, declaring that the norms of the Constitution of Ukraine are norms of direct action and that recourse to the courts for the protection of the constitutional rights and freedoms of the people and citizens is guaranteedby the Constitution of Ukraine without exception.

The Constitution of Ukraine, unlike the constitutions of some other countries, has enshrined the rights of the people and the citizen, but only those which are of fundamental importance for the safeguarding of rights and freedoms: the obligation to adhere unwaveringly to the Constitution and the laws of Ukraine, not to infringe on the rights and freedoms, honour and dignity of other people (Article 68); the obligation to protect the nationality, independence and territorial integrity of Ukraine (Article 65); the obligation to pay taxes and levies in the order and in the amounts established by law, etc.; the obligation

to pay taxes and levies in the order and in the amounts established by law, etc[63].

The peculiarity of the Constitution of Ukraine is that it provides for the establishment and strengthening of a legal mechanism for the protection of human rights and freedoms. This concerns, first of all, the organization and exercise of State power in the areas of its division into legislative, executive and judicial (Article 6). The judiciary itself, as noted, is responsible for the protection of constitutional rights and freedoms. According to the Constitution, the court's penal function is subordinated to the legal and regulatory function. According to the transitional provisions of the Constitution of Ukraine and the Law of Ukraine «On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms» of 17 July 1997[64].

An important link in the mechanism of protection of the rights and freedoms of the people and citizens is the Constitutional Court of Ukraine, which exercises judicial constitutional control and protection of the foundations of the constitutional order, the fundamental rights and freedoms of the people and citizens, ensuring the rule of law and the direct application of the Constitution in the whole territory of Ukraine. By exercising constitutional control, the Constitutional Court of Ukraine exerts a significant influence on the activities of the organs of state power in the sphere of upholding and protecting the rights of the people and citizens, especially in the sphere of lawmaking (legislation), making decisions on the non-compliance of certain legal acts or their specific provisions with the Constitution, giving interpretations of constitutional norms in the consideration of specific cases, and making official interpretations of the Constitution and the laws of Ukraine, which are binding on all subjects of law. The establishment of a special institute of the Supreme Council of Ukraine for the protection of human rights is an innovation in the system of protection of human rights and freedoms in our country. The Constitution of Ukraine enshrines the right of a person to apply to the Supreme Soviet for the protection of his rights (Article 55) and establishes that the parliamentary

[63] Konstytutsiia Ukrainy. URL: https://www.president.gov.ua/documents/constitution (last exess02.03.2022).

[64] Bielov D. Paradyhma konstytutsionalizmu: teoretychni pytannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo»*. 2012. Vyp. 18. S. 57–60.

control over the observance of the constitutional rights and freedoms of a person and a citizen is exercised through him (Article 101)[65].

The status, functions and competences of the Supreme Council of Ukraine on Human Rights are laid down in the Constitutional Law of Ukraine «On the Supreme Council of Ukraine on Human Rights», adopted by the Supreme Council of Ukraine on 23 December 1997. The positive experience of the ombudsman institution in European countries was taken into account in the drafting of this law. Nowadays, this institution is a universal instrument for detecting and facilitating the resolution of violations of human and civil rights and freedoms in Ukraine. It is impossible to understand the nature, functions and mandate of the new for Ukraine democratic institution of post-judicial protection of human rights and freedoms without the analysis of similar legal institutions in democratic countries of the world[66].

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CHAPTER 2. INDIVIDUAL (CIVIL) AND POLITICAL RIGHTS AND FREEDOMS OF THE PEOPLE IN UKRAINE

Andrii Pravdiuk – Candidate of Law Sciences,
Associate Professor of the Department of Law,
Vinnytsia National Agrarian University

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2.1. The formation of civil society in Ukraine: issues of theory and practice

The solution of the complex social problems that exist in Ukraine today requires the reform of state institutions and the creation of conditions for the formation of civil society and its effective functioning. A developed civil society is a real precondition for the fullest realization of the rights and freedoms of the people and the citizen. Therefore, nowadays one of the most urgent in Ukraine is the problem of legal regulation of the process of formation and development of the civil society, and especially at the constitutional level.

The development of a democratic, legal and social state in Ukraine is strongly connected with the formation of the civil society. In the present conditions of Ukrainian democracy, the institutions of civil society are still in the process of formation, which means that they cannot exercise full control over state power. However, there are already growing trends[67].

The tendencies of the participation and increasing role of the institutions of the civil society, which are becoming more and more important, in the mechanism of the realization of the constitutional rights and freedoms of the people and the citizen in Ukraine. Thus, the institutions of the civil society should not completely neglect the state, changing the performance of its basic functions by non-state structures. Without the effective implementation

[67] Berchenko H.V. Hromadianske suspilstvo v Ukraini: konstytutsiini aspekty : monohrafiia. Kharkiv : Yurait, 2014. 208 s.

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by the state of its basic functions, the creation and development of a fully-fledged civil society in Ukraine is impossible.

At the same time, the citizenry is a source of legitimacy for the political forces in power; contacts with the citizenry's organizations are a large-scale source of information for the state about the state of the citizenry, its interests, attitudes, and attitudes towards the political power; in complex historical periods (economic crises, wars, etc.) the citizenry, as a rule, becomes a powerful force that supports and is in solidarity with the state.

The state, having facilitated the formation of the civil society in Ukraine, will give the people the maximum degree of freedom and the right to decide for themselves whether or not to use this or that constitutional right. In the latter case, of primary importance is the thorough legal culture of the population, the improvement of which in Ukraine is not given due respect[68].

The broadest, most basic definition should be considered as follows: «The civil society is a set of structures by means of which any person initiates socially significant actions without the participation of the state». Thus, in the basis of the formation of the civil society lie the actual life needs and interests of the people, and it is on the basis of the unity of the latter and the problems of their realization that the initiatives are formed by these or other civil society organizations. In this way, civil society promotes the establishment of a social bond between the individual communities.

The current constitutional development and the formation of the model of the rule of law presuppose the necessity of guaranteeing the constitutional and individual rights and legitimate interests of the citizens, among which the right and the real possibility to influence and control the public authorities are essential in the context of the formation of an effective citizenry. Particularly popular nowadays is a type of direct democracy, such as participatory democracy, the essence of which lies in the inclusion of everyone in the process of political decision-making. The grassroots has always played a special role in Ukraine, and history confirms that in independent Ukraine, at all critical stages of the country's development, the grassroots was a force for progressive change and a guarantor of democracy and the European choice.

[68] Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliev, V.D. Vodnik, O.V. Volianska ta in. ; za red. M.P. Trebina. Kharkiv : Pravo, 2013. 536 s.

One of the most important tasks of contemporary legal science is the study of the problems of civil society as a social phenomenon, which is formed beyond the boundaries of political structures, is not a social institution, one-positional with the state, communal organizations, parties, but has a strong influence on them. The importance of such studies is determined by the necessity to identify the principles and qualitative parameters that characterize the civil society, and the need to reveal the laws of social phenomena as a key problem of social development, science, theory and practice of state-building. However, the formation of the civil society is a process in which the citizens, the society and the state function simultaneously. The level of their rights and obligations is the condition for the preservation and development of the civil society. For its very existence facilitates the establishment of a political bar between society and power, ensures freedom and social justice, and significantly sets the vectors for the development of Ukraine as a sovereign and independent, democratic, social, and legal state.

Nowadays, for the successful development of the civil society, Ukraine has to make low transformations in many spheres of relations between the citizens and the state. Therefore, it is necessary to develop in Ukraine such a system that would be able to determine the forms of interaction between state bodies and the civil society in the perspective with the facilitation of the processes of formation of social minds and perceptions, sufficient and necessary for the solution of social problems[69].

The analysis of the existing international and international experience allows to reveal and formulate scientifically defined principles, goals, methods, institutional forms and concrete requirements for the further improvement of the Ukrainian civil society in the light of real conditions.

Contemporary civic society should be characterized by productive forms of intelligible generation of actual civic thought, its presentation to the authorities in the process of parity interaction with its different groups, the active forms of self-monitoring and control of joint activity and the responsibility for its results of the representatives of the authorities and civic leaders for the spiritual progress, state development and the advancement

[69] Pravdiuk A.L. Elektronna demokratiia (kraudsorynh) yak element suchasnykh prav hromadian. *Naukovi innovatsii ta peredovi tekhnolohii*. 2022. № 3 (5). S. 85–97.

of the welfare of the Ukrainian people. In this regard, it is necessary to refer to other constitutional and legislative changes, in particular to the approval of the 27.09.2021 by the Decree of the President of Ukraine the National Strategy for the Development of the Civil Society in Ukraine, on the corresponding strategic plans of the Cabinet of Ministers of Ukraine, but above all – on the people's initiative and the wisdom of its top representatives[70].

Nowadays in Ukraine the problem of civil society has become the centre of political and legal studies and discussions. The notion of «civil society» has become a part of the conceptual apparatus of the theory of state and law, political science, sociology, constitutional law, etc.

Nowadays, the terms «civil society» and «rule of law» are often used at different levels and from different sources. Some of them come from the desire to emphasize that, having declared itself sovereign and independent, Ukraine has become a democratic state governed by the rule of law, with a developed citizenry, and others from the desire to show that the development of this type of society and state is a reference of a more distant perspective. The unity of power, citizen, liberty and law, their legal equality before the law, is the basis of the citizen's society and of its non-member companion, the rule of law, although contemporary Ukrainian democracy is characterized by a low level of political and legal culture, legal nihilism, and the weakness of democratic traditions and practices[71].

Nowadays, the Ukrainian society requires the creation of such a system of social relations in every sphere, which would ensure the stability and effectiveness of the interaction of the community within the limits of the existing social order. The democratic modification of the social order and the further formation of the civic society in Ukraine have a single vector conjugation.

The current transitional stage in the development of Ukrainian statehood poses new questions for legal science concerning the formation of an open, democratic type of society. This is conditioned by its crumbling character,

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[70] Natsionalna stratehiia spryiannia rozvytku hromadianskoho suspilstva v Ukraini na 2021-2026 roky: Ukaz Prezydenta Ukrainy vid 27 veresnia. 2021 r. 487/2021. URL: https://www.president.gov.ua/documents.

[71] Korniienko V.O. Pravovi osnovy hromadianskoho suspilstva suchasnoi Ukrainy (instytutsiinyi aspekt) : avtoref. dys. ... kand. yuryd. nauk : Nats. un.-t "Odeska yurydychna akademiia". Odesa, 2007. 19 s.

the dependence of its development and essence on changes in state and social life, political, economic, social and other transformations[72].

According to Fedorenko, the social order is a system of political, economic, social, cultural (spiritual) and other types and strains of social relations, i.e., relations in all basic spheres of life and activity of the society, the system of political, economic, social and spiritual order of the society. The dimension of social relations in Ukraine is constantly changing both quantitatively and qualitatively. This also leads to the existence in Ukraine of an ideologically diverse, religiously diverse, religiously diverse, religiously diverse and religiously diverse citizenry. The social order is a system of organizational and functional forms in all spheres of life and activity of people and society, a system of institutes of the civil society.

In recent years, the social order of Ukraine has been significantly and effectively enriched by new institutions of civil society. In particular, such institutions of the social order as political parties, civic organizations, etc. are gaining their social significance. The social order and the legal foundations of the civil society, as well as the state order, are defined and guaranteed by the Constitution and the laws of Ukraine[73].

The category of "civil society" is a characteristic feature of the development of a living society in which a high level of affirmation and guarantee of human rights and freedoms has been achieved[74].

Ukraine's social order presupposes the organization and functioning of the civil society – the civil society. In the opinion of Y. Shemshuchenko, by its essence, the constitutional order becomes a specific type of constitutional-legal relations, determined by the level of development of the society and the state[75].

Contemporary scholars understand the citizenry as the most important factor in the development of a good democracy, which has its own specificity, meaning and function in comparison with other types of societies. Thus, the

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[72] Chepik-Trehubenko O.S. Teoretyko-pravovi problemy stanovlennia vidkrytoho suspilstva v Ukraini v umovakh hlobalizatsii. *Forum prava.* 2014. No 3. S. 417–422.

[73] Fedorenko V.L. Konstytutsiine pravo Ukrainy: pidruchnyk / Do 20-oi richn. Konst. Ukrainy ta 25-oi richn. nezalezh. Ukrainy. Kyiv : Vyd-vo Lira-K, 2016. 616 s.

[74] Sovhyria O.V., Shuklina N. H. Konstytutsiine pravo Ukrainy. Povnyi kurs: navch. posib. 2-he vyd., pererob. i dopov. Kyiv: Yurinkom Inter, 2012. 541 s.

[75] Konstytutsiine pravo Ukrainy. Akademichnyi kurs: pidruchnyk: U 2 t. Za zah. red. Yu. Shemshuchenka. Kyiv : Yurydychna dumka, 2008. T. 2. S. 800.

well-known Ugrian political scientist A. Arato in his «The Concept of the Citizen's Society: Similarities, Decline and Creation...» (1995) proposes to consider it in the context not only of the dyad «state – citizenry», but a «multilateral construct that includes:

1) the economic society, which is formed on the basis of forms of ownership;

2) economic associations and political society, which is based on the electoral law and political parties;

3) the citizenry;

4) citizens' associations and ruins»[76].

The Japanese professor Tujinaka conducted a study of non-commercial organizations in 13 countries of the world and concluded that all these organizations can be divided into 4 types: market (trade unions, economic organisations, rural organisations and similar), non-market (organisations engaged in social support, education, etc.), community sector organizations (engaged in politics, protection of people's rights, as well as the organization of various sports and cultural events) and others[77].

The literature, which contains the basis of the analysis of the legislation of Ukraine and the European Union the following list of types of civil society organizations is included into the institutions of civil society, and also: communal organisation; association of communal organisations; religious organisation; welfare organisation; employers' organisation; union of trade unions; creative association (other professional organisation); a body of self-organisation of the population; a private establishment; an establishment of the community of citizens or of a religious organisation or of a trade union; an enterprise of a community organisation of invalids[78].

At the current stage of the development of independent Ukrainian statehood, the creation of a civil society, democratic government and a state governed by the rule of law is a pressing issue, The rule of law in all spheres of public life, the obligation of the State itself and its organs to the law, the

[76] Osnovy hromadianskoho suspilstva: Slovnyk: Dlia stud. vyshch. navch. zakl. / N.H. Dzhyncharadze, M.A. Ozhevan, A.V. Tolstoukhov ta in. Kyiv : Znannia Ukrainy, 2006. 232 s.

[77] V Japonii net osobyh problem s narusheniem prav cheloveka. URL: http://www.hse.ru/news/recent/73374267.html.

[78] Khto ye orhanizatsiiamy hromadianskoho suspilstva v Ukraini. *Hromadianske suspilstvo*. 2009. № 2. S. 16–19.

sovereignty of individual liberty, and the protection of the rights, interests, honour and dignity of the individual are all guaranteed by law. The rule of law presupposes a broad democratization of all aspects of the life of the society, a change of emphasis towards the development of civic principles. This process is aimed at the liberation of the social forces of the society, the activity and initiative of the people».

The denial of civil rights of the people is not only the guiding principle of the relations between the society and the state. The breadth and reality of these rights, to say the least, bring this or that society to an evaluation that allows us to consider the society as a citizen's one and the state as a legal one. In the interrelationships of the latter, the mechanism of the expanded implementation of the socio-cultural and political-economic environment is formed, which, in turn, through the realization of citizens' rights and freedoms, shapes the human being in all its dimensions – as an individual, a person, a citizen[79].

Recent years have seen a sharp decline in the number of clear-cut of creative personalities who would have been recognized as the country's unchallenged moral leaders and could have led the complex popular movement to a true democracy, to the citizenry of an independent state. The stage of Ukrainian history was occupied mostly by medieval individuals, and even more so by primitive organisms, even by the Lumpen, when the people needed only talented personalities. But they were either not allowed on this stage, or they themselves did not consider it possible to stay on it[80].

We guess that in his book "Human Qualities" a member of the Roman Aurelio Peccei, a member of the Club of Rome, insisted that "for all the important role that the questions of its social organization, its institutions, legislation and treaties play in the life of contemporary society, for all the possibility of a created man-made technology, they do not in the final analysis determine the share of mankind.

The problem in the case at hand boils down to human strengths and the ways to improve them. For it is only through the development of human

[79] Ukrainskyi sotsium / Vlasiuk O.S., Krysachenko V.S., Stepyko M.T. ta in. / Za red. V.S. Krysachenka. Kyiv : Znannia Ukrainy, 2005. 788 s.

[80] Rybalka V.V. Spryiannia rozvytku osobystosti hromadianyna i diievoho hromadianskoho suspilstva zasobamy praktychnoi psykholohii: metod. rekom. Kyiv : Talkom, 2017, 90 s.

capacities and human capabilities that the change of the whole material-oriented civilization can be achieved and its great potential for good purposes can be fully utilized. A. Pechchei repeatedly stresses that in the conditions of continuous and trilateral action of global and regional crises "...the only way to decency lies through what I call human revolution – t hrough a new humanism that leads to the development of higher human qualities..."[81].

The legal conditions for the development of the civil society in the period after the independence of Ukraine were established by the Constitution of Ukraine, which was adopted by the Verkhovna Rada on June 28, 1996. The Constitution provides broad guarantees of human rights and freedoms regardless of origin, wealth, status, race, language, religion, political and other affiliations. It shall at all times restrict the activities of the organs of State, which shall be consistent with the principles of the rule of law and shall leave room for civil self-activity and initiative. Article 15 of the Constitution stipulates that "public life in Ukraine shall be based on the principles of political, economic and ideological aggrandizement"; all are guaranteed freedom of political activity, not prohibited by the Constitution and the laws of Ukraine. Articles 34 and 35 guarantee citizens the right to freedom of thought and speech, as well as the right to freedom of opinion and expression. Article 36 of the Constitution provides for the organizational formalization of pluralism through the establishment by citizens of parties and civic organizations, which is the basis for the creation of institutions of civic society in Ukraine. The provisions of the Constitution are specified in laws and other normative acts: decrees of the President, decrees of the Verkhovna Rada and the Cabinet of Ministers of Ukraine[82].

The formation of the civil society is manifested in the formation of its institutions – good civil communities (economic, cultural-artistic, educational, scientific, protection of the rights of citizens, charitable, etc.); communal collapses and political parties (the latter in the first stages of their formation, not yet established in the mechanisms of power); professional associations; independent mass media, which serve community needs and interests and shape and promote community opinion; community opinion

[81] Pechchey Aurelyo. Chelovecheskye kachestva. Moskva : Prohress, 1980. 302 s.

[82] Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliev, V.D. Vodnik, O.V. Volianska ta in; za red. M. P. Trebina. Kharkiv : Pravo, 2013. 536 s.

as a social institution; elections and referendums as a means of community will and protection of interests; and elections and referendums as a means of community will and protection of interests; independent of the community, elements of the judicial and legal system (juries, people's).

There is a tendency in the West to add to the institutions of the civil society also the institutions of the court-regulatory institutions of the state of the mysterious good[83].

Civil society is impossible without the existence of a well-developed network of civil society organisations, which are capable of actively influencing the formulation and implementation of state policy, including the development of society as a whole. Public organizations, which, by their activity in various spheres and levels of social life, better understand the essence and specificity of the relevant social problems and the ways of their solution, are the universal mediator between the citizens and the state. The presence of civic organizations in the life of the population is one of the indicators of the democratic character of the state itself. Today, one of the indicators by which the development of civil society in the country is assessed is the inclusion of citizens in the activities of civil society, in the third sector[84].

The first thing to note is that although the absolute majority of Ukrainian citizens do not belong to a single civic organization, the question of the influence of civic institutions is important. Sociological experiments illustrate that participation in community organizations is perceived as one of the most effective forms of citizen participation in decision-making and governance at the state and local levels[85]. Over the past years, there have been recent positive developments in the functioning of the third sector in Ukraine. This shows that the role of civic organizations in the social and political life of the regions of Ukraine has increased considerably. If earlier the constant ignoring of the population's inquiries conditioned the low level of activity of the NGOs, now the increase of the coefficient of the citizens' activity stimulates the constant activity of the civic organizations.

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83 Kolodii A.F. Na shliakhu do hromadianskoho suspilstva. Teoretychni zas ady y sotsiokulturni peredumovy demokratychnoi transformatsii v Ukraini: monohrafiia. Lviv: Chervona Kalyna, 2002. S. 68–69.

84 Hromadianske suspilstvo: politychni ta sotsialno-pravovi problemy rozvytku: monohrafiia / H.Yu. Vasyliev, V.D. Vodnik, O.V. Volianska ta in; za red. M.P. Trebina. Kharkiv : Pravo, 2013. 536 s.

85 Ukrainske suspilstvo 1992–2010: Sotsiolohichnyi monitorynh /NAN Ukrainy, In-t. sotsiolohii; za red. V.M. Vorony, M.O. Shulhy. Kyiv : In-t sotsiolohii NANU : TOV «Foliant», 2010. S. 621.

In other words, the increase in the scale of activity of the Ukrainian civil society is a legitimate response to the public demand for such an increase.

Among the problems of the Ukrainian civil society, it is worth noting that a significant number of civic organizations are formed to satisfy private interests, It should also be noted that a large number of community organisations are only on the books of the relevant regional justice administrations. One of the problematic factors, in our opinion, is also the absence of long-term strategic planning, and the community organizations themselves are not able to determine what they will do in even one or two months, and most of the time they are only committed to the problem, not to its solution. In our opinion, this is due to the fact that a significant number of civil society organizations are not able to independently publicize their issues, because the mass media do not always promote the visibility of this or that problem. There are also a number of other factors, such as a lack of transparency, lack of communication and support from the public that dampens enthusiasm, a reluctance to cooperate with each other and the politicisation of organisations.

Moreover, over the last three years, the degree of intensity of the division of power with the community has increased significantly. However, there is no evidence of a stable and systematic desire of the local authorities to involve the third sector in the policy-making process. It is more about the desire of certain leaders to act accordingly. Thus, the dialogue between the authorities and the public is not a strategy at all.

Unfortunately, the Ukrainian population has not yet learned enough of the power-centric stereotypes of thinking. In the relationship between the people and the state, the priority does not belong to the people. There is no effective dialogue between the organs of state power and the public in the form of its communal associations and non-legal and orderly organisations. Moreover, the citizens of Ukraine are fully aware of their rights as demands, claims to the state in the person of its authorities as to the provision and protection of these opportunities.

The formation of a civil society is the main reason for the transition from totalitarianism to the rule of law. No one and nothing governs life in a state or changes people who do not want change themselves. An economically and legally viable union, which establishes itself in the world, develops its creativity, and realizes moral values, is the basis of a civil society and the foundation of a state governed by the rule of law. A civil people takes

the state as an instrument. M. Friedman audibly emphasizes that she is not ready to submit to the state as a deity or a lord. For the real people, their state is “a collection of indivisibles that make it up, not a higher institution”[86].

We can no longer speak of the existence of a civic society as a social phenomenon in Ukraine. However, one of the main problems of its functioning is the excessive stagnation and instability of legal and political activity, which is to a large extent conditioned by the post-totalitarian syndrome of the society[87]. For this reason V. Rechitskiy appreciates: “in totalitarian countries the spontaneous political activity of the citizenry is of a marginal character and, in general, stagnates, and the constitution is no more, than a decorative legal cover of order”, since totalitarianism is based on the presumption of the monopoly of state truth in politics in all spheres of life. The political activity of the citizenry is constrained by its priorities (freedom, dynamism, tolerance), which are directed towards free initiative and pluralism[88].

A civil society is impossible in the absence of each person’s awareness of his or her own identity, because it is a society of mature individuals: people who demand from the state the realization of their rights, react to the smallest demands for their violation, and in this way prevent the exercise of their rights. The value of civil society lies in the ability of people to think autonomously and to propose solutions to social problems[89].

2.2. The place of civil and political rights and freedoms in the system of human rights

The rights, freedoms and obligations of the individual and the citizen have always been at the heart of the life of the citizen. The main issue of the 6 years of influence is the people’s access to their own life. In a state-organized government, the access of people to the government is determined by how the government engages and enhances people’s rights and feelings, and how much the government enables people to exercise their power.

[86] Milton Fridman. Kapitalizm i svoboda. Kyiv : DUKh I LITERA, 2010. 320 s.

87 Rechickij V. Svoboda i gosudarstvo. Har'kovskaja pravozashhitnaja gruppa. Har'kov : Folio, 1998. 144 s.

[88] Rechickij V. Svoboda i gosudarstvo. Har'kovskaja pravozashhitnaja gruppa. Har'kov : Folio, 1998. 144 s.

[89] Lapaeva V. Tipy pravoponimanija: pravovaja teorija i praktika: monografija. Moskva : Rossijskaja akademija pravosudija, 2012. 580 s.

The political environment of the Ukrainian population (including the population of the country's suburbs and municipalities) is pioneering in the sense of The human and the human being's and the citizen's lives are not only in the New Testament, but also in the New Testament, but also in civil regulatory and administrative acts. In the case of the citizens of the Peoples' Republic of Moldova, it was a political phenomenon, which was to be implemented by the State, the cycling and the pepto-political nature of the process and the nature of the messages are very important for this purpose. They all have a higher field of vision than the rest of the world, so they can be seen, they can be seen, they can be seen, they can be seen, they can be seen, the people and the bipolar activity, the beer and the grappling will be effective in the production of five cyclical cyclical inputs to the media.

Thus, the political nature of the human being is not only at the national and national level, but also at the international level[90].

One of the main elements of the system of human rights is citizens' rights and freedoms, which not only comprise the set of rights and freedoms of the individual and the citizen, as set out in Chapter II "Rights, freedoms and obligations of the person and the citizen" of the Constitution of Ukraine, but also the number of them is considerably greater than it was in the previous constitutions, for example in the Constitution of the Ukrainian SSR of 1978. While in the aforementioned Constitution social and economic rights prevailed, in the current Constitution of Ukraine the first place is occupied by civil rights and freedoms, which are an integral element of human freedom and ensure not only the vital conditions of existence, but also provide the individual with the actual possibility to govern himself freely, guaranteeing non-interference in the sphere of his individual life[91].

The nature and ways of mankind and the citizen are inevitable and unreliable and do not have a direct impact on human society. The principles of the humanity and humanity and humanity's life in the demographic and social environment are such as these: to establish a new national environment; to establish a new international environment; to establish a new and unique environment; to establish a new and unique environment

[90] Belbo L. Politychni prava i svobody, yikh zmist ta pravovi harantii. *Pravo i suspilstvo*. 2018. № 2(3). S. 3–9.

[91] Konstytutsiia nezalezhnoi Ukrainy: navch. posib. / za red. V.F. Pohorilka, Yu.S. Shemshuchenka, V.O. Yevdokymova. Kyiv : In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, Spilka yurystiv Ukrainy, 2000. 428 s.

and to establish a new way of life for people; to make the people and the people's lives more interesting; to make the people and the people's lives more interesting; to make the people and the people's lives more interesting.

The pumps of the better treatment (human and political) are the sources of the other human pumps, as far as they are the basis for the work. As a matter of fact, human beings' political passions and habits are linked to the country's environment and are the key to the relationship between the environment and the labour force. This approach is also important for the political and social integration of the population and the life of the population[92].

The political rights – this is a type of a person's all-round rights. They are ensuring the security of the country (presumption of innocence and freedom of speech) and they can see it, the system supposed to have a wide range of southern and southern-oriented possibilities (e.g., for example, for a long-lasting cycle of pairs). These rights are defined in the International Covenant on Civil and Political Rights[93].

The majority of the OON members are members of the Programme for Health and Social Development. The whole of the International Act, which was approved by the UN General Assembly on 16 April 1966, is a part of the UN Convention on the Rights of the Child.

In the case of the development of international relationship, which had just started in the international community, they were able to get into the field of international cooperation.

The Covenant stipulates that in case of a state of emergency in a state for which national life is endangered and the existence of which is formally declared, Participating States may only take measures derogating from their obligations under this instrument to the extent The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

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[92] Ilnytska U. Politychni prava i svobody hromadian: normatyvno-pravove zabezpechenniaia ta mehanizmy realizatsii y demokratychnyh derzhavah. *Naykovi pratsi.* Vyp. 185. Mykolaiv, 2012. S. 37–41.

[93] Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: https://zakon.rada.gov.ua/laws/main/995_043.

The International Covenant states that the transfer of residence (Article 12) and the conditions that must be established for the expulsion of foreigners who legally enter the territory of a member state (Article 13) are prohibited. The articles contain very detailed provisions on equality before courts and tribunals and on the right to a fair trial in criminal and civil proceedings (art. 14). They also provide for the retroactive application of criminal legislation (art. 15), establish the right of every person, where she has not been tortured, to be recognized as legally competent (art. 16) and fictionalize the crime of tortious or unlawful intrusion into a person's life or family, tortious or unlawful encroachment into the privacy of his or her home or the privacy of his or her family (art. 17). Furthermore, the articles protect the right to freedom of opinion, opinion and opinion (art. 18) and the right to hold opinions and to express them in an honest manner [94].

These rights and rights in different forms are practically declared in the Constitutions of ycic states of the world. They define the legal status of people in the system of socio-political relations and are associated with the participation of people in the formation of socially organized society, the exercise of local government and local self-government, participation in the social life of the community[95].

Political rights are officially recognized abilities of people, which are provided for by the law. They allow individuals to actively influence the organization and activity of the state and other actors of the political system.

Based on the concept, we can conclude that political rights are a set of rights, which are related to a common meaning and purpose (to improve people's participation in the state and public life[96].

One of the constitutional principles established in the Basic Law is the political rights and rights of political activity that are not stipulated by the Constitution of Ukraine. Political rights and rights include the following: citizenship, nationality, the right of speech; the right to unite in political parties and community organizations (Article 36); the right to

[94] Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: https://zakon.rada.gov.ua/laws/main/995_043.

[95] Zavorotchenko T. Harantii realizatsii konstytytsiinyh politychnyh ppav i svobod liudyny i hromadianyna v Ukraini. *Chasopys Kyivskoho yniversytety prava*. 2013. № 4. S. 95–99.

[96] Zavorotchenko T. Harantii realizatsii konstytytsiinyh politychnyh ppav i svobod liudyny i hromadianyna v Ukraini. *Chasopys Kyivskoho yniversytety prava*. 2013. № 4. S. 95–99.

lead and participate in the activities of political parties and organizations (Article 36). 36); the right to submit individual or collective written appeals to the authorities, local self-government bodies; the right of Ukrainian citizens to hold meetings, rallies, marches, and demonstrations (Art. 39); the right of Ukranians to participate in the management of state affairs, local referendums, and local self-government bodies (part 1 of article 38); the right of citizens to take part in public hearings, meetings, campaigns, and local self-government bodies (part 2 of article 39); the right of citizens of Ukraine to participate in public affairs and local self-government bodies (part 2 of article 39). The right to equal access to the bodies of government and local self-government (Article 38(1)); the right to equal access to the bodies of government and local self-government (Article 38(2))[97].

Therefore, political rights and rights are aimed at the realization of the citizen as an active, independent, active participant of the political process. Thus, the detachment of the people from the state is achieved and the fundamental principle of interrelations between a democratic state and its citizens is realized. They can be realized by a person and a citizen both individually and collectively[98].

Thus, the main purpose of people's rights and freedoms is to ensure the priority of individual and internal development of each person. In our opinion, it is for this group of rights part 3 article 22 of the Constitution of Ukraine establishes the requirements according to which "when adopting new laws or amending existing laws the extent and scope of existing rights and freedoms shall not be changed"[99].

Among the general features of civil rights and freedoms, which are inherent to all rights and freedoms of people and citizen, are the following: first, civil rights and freedoms of people are fundamental rights and freedoms that are not only stated in international legal acts, but also enshrined in the Constitution of Ukraine. This is the only legal act that has the right to determine their content, scope and limits of implementation. Secondly, these rights have a permanent nature and a special mechanism of implemen-

[97] Konstytutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy.* 1996. № 30. St. 141.

[98] Ilnytska U. Politychni prava i svobody hromadian: normatyvno-pravove zabezpechenniaia ta mehanizmy realizatsii y demokratychnyh derzhavah. Naykovi pratsi. Vyp. 185. Mykolaiv, 2012. S. 37–41.

[99] Konstytutsiia Ukrainy: stanom na 4 trav. 2017 r.: vidpovidaie ofits. tekstu. Kyiv : Alerta, 2017. 80 s.

tation. This means that an individual civil right or freedom does not become permanent or emerge once and for all, but is an inherent right of each participant in specific legal relations, that is, each person already possesses a set of rights and freedoms before the emergence of legal relations in a particular area. Thirdly, these rights are meaningful to people because they primarily express the relationship and ties between people and the state. Fourthly, they have a special mechanism of protection, that is, civil rights and freedoms do not oppose the state, which assumes the functions not only of protection and maintenance of these rights, but also ensures them by the entire system of national legislation, by the activities of the bodies of state power, local self-government bodies and their members, political and public organizations, and other legal and physical persons. Finally, civil rights and freedoms are universal, because they apply in all spheres of social life, on the entire territory of the country at any time. Their size and scope are the same for all people, regardless of whether they are citizens of this country or not[100].

Participation in the management of state affairs as a political right of citizens is exercised through their will at elections and referendums, by means of indirect participation of citizens in the work of legislative, legislative and judicial branches of power. Therefore, the right under conditions of a democratic state is an important right of the citizens, as well as a principle of relations between the state and the citizen.

2.3. The right to elect and be elected to bodies of public authority: theory and practice

In the opinion of J.M. Pustovit believes that political rights and freedoms are opportunities for Ukrainian citizens to participate in the management of state affairs, influence the activities of various state agencies and local self-government bodies[101].

The right to freedom of opinion, speech, opinion and beliefs as well as their manifestation and expansion, as well as the rights of public organizations of a political nature, and S. Bobrovnyk said that these rights

[100] Kyrychenko Yu. Konstytutsiino-pravove rehuliuvannia prav liudyny v Ukraini v konteksti harmonizatsii z zakonodavstvom yevropeiskykh derzhav. dys d.iu.n. Uzhhorod, 2018. 523 s.

[101] Pustovit Zh.M. Aktualni problemy prav i svobod liudyny i hromadianyna v Ukraini : navch. posib. Kyiv: KNT, 2009. 232 s.

should be respected. S.V. Bobrovnik considers them as a possibility of a citizen to participate in the process of adoption and implementation of political decisions, activity of elements of political system and formation of representative bodies of power[102]. As J.M. Pustovit states, it is political rights and freedoms that provide each person with a possibility to be a self-sufficient subject of social life. With the further development and improvement of democracy political rights and freedoms are becoming deeper, broader in content, diversified in form, which considerably increases their social and political significance and role in the social life and activity of each citizen[103].

At the same time, it should be noted that political rights and freedoms are the only condition for the functioning of all other types of rights and freedoms, because they form the organic basis of the system of democracy and act as a means of controlling power, as values on which power must orchestrate, encumber itself with these rights, recognize and guarantee them. In other words, the notion of democracy, which is used primarily in the sense of political organization of state-social relations, makes the presence of political rights of people the main factor in the designation of this or that state as democratic[104].

In addition, the main elements of the legal meaning of constitutional political rights and freedoms are: a) the right to act; b) the right to demand; c) the right to enjoy; d) the right to apply for protection. Thus, the right to freedom of association in political parties and community organizations, to participate in professional associations, which is enshrined in article. 36 of the Constitution of Ukraine, includes the following possibilities: to found any association, to join actively the association in full and to leave it, to realize the statutory objectives and goals of the association, to enjoy the rights, granted by the membership in the association, etc.

As stated by V. M. The majority of constitutions reflect the interpretation of political rights and freedoms in the context of interaction of a person or a citizen with the entire political system of society, which is determined

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[102] Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini: monohrafiia / kol. avtoriv; za red. N.M. Onishchenko, O.V. Zaichuka. Kyiv : Yuryd. dumka, 2007. 424 s.

[103] Pustovit Zh.M. Aktualni problemy prav i svobod liudyny i hromadianyna v Ukraini : navch. posib. Kyiv : KNT, 2009. 232 s.

[104] Kyrychenko Yu. Konstytutsiino-pravove rehuliuvannia prav liudyny v Ukraini v konteksti harmonizatsii z zakonodavstvom yevropeiskykh derzhav. dys d.iu.n. Uzhhorod, 2018. 523 s.

by its class nature, social order, form of government, type of state, nature of political regime, political and ideological and cultural relations in the society, political and legal status of the state, historical and national traditions of political structure[105]. The subjects of the political system include the state, political parties, community organizations, mass media, and local self-government bodies. At the same time, it should be noted that the state is not required to take any positive actions to ensure political rights and freedoms, and must refrain from intrusion into the rights and freedoms that are included in this group, i.e. they are regarded as the freedom of people from the state, the right of people not to be intruded upon by the state[106].

Therefore, we should agree with the statement that the political system is a totality of state and non-state political institutions that, interacting with each other and the environment, carry out political leadership of society and the management of public affairs[107].

The highest form of public-political activity is membership inin political parties. Political parties to a great extent determine.

The nature and direction of the political process, its stability and civility, the strategy and tactics of the struggle for power, and their influence on the political and legal education of the citizens. The latter are an important element of the institutional basis of the civic society, because they are voluntary communities of citizens and contribute to competitive elections competitive elections. Representative democracy without parties is impossible.

At the same time it is necessary to take into account that in Ukraine the attitude of the population to the parties is ambiguous. The current stage in the development of the Ukrainian society is characterized by low levels of trust of Ukrainian citizens in government institutions.

Moreover, this is caused by deficiencies in the legal framework, lack of clear instructions and procedures, low legal culture of the election process participants. In a democratic state, the process of struggle of political forces, political parties and the absence of giving primacy to a certain political

[105] Shapoval V.N. Sravnitel'noe konstitucionnoe pravo. Kyiv : Knjaginja Ol'ga, 2007. 416 s.

[106] Kravchenko V.V. Konstytutsiine pravo Ukrainy: navch. posib. Kyiv : Atika, 2000. 320 s.

[107] Polityko-pravova systema Ukrainy: kurs lektsii: navch. posib. / za zah. red. V.M. Kyrychenka. Zaporizhzhia : ZNTU, 2016. 204 s.

force or ideology is natural. «The broad partisanship within the limits of radical ideologies provides the possibility for the citizens to choose a certain vector of development of statehood in the country, the presence of political competition forms a system of «checks and balances» in the ruling institutions. As evidenced by domestic and foreign practice, democratic elections are a form of direct power of the people in a democratic state, so the improvement of national electoral legislation and bringing it into full compliance with international norms and standards is of particular importance[108].

Elections must guarantee the supremacy of people's will, its involvement in the activities of bodies of state power, a high level of responsibility of the state before the civil society. Ensuring free, equal, fair – indeed democratic – political elections is one of the most important tasks of both the state and the society. The process of improving the political and legal framework for the functioning of the electoral system can be regarded as the most important condition for increasing the efficiency of organization and conduct of elections, ensuring and protecting the political rights of citizens.

Elections to legislative and representative bodies of power play an extremely important role in politics. They are not only the main institution, but also a litmus test of the development of democracy and the attitude of the state to human rights in general. The way the electoral process is organized, the degree of its democracy, the activity of the voters, etc., determine the quality of the leading party of the country that we elect and, accordingly, the share of the country. It is assumed that in a democracy the government must act in the interests of the majority, but this is not always the case. It is clear that the interests of political subjects do not always coincide with real national or public needs. This is natural, because the political force that comes to power is most concerned about maintaining its position, and therefore it tends to act in its own interests, which are not necessarily in line with those of society[109].

The process of power formation in Ukraine develops under conditions of increased social pressure, which is typical for all transition political

[108] Pravdiuk A.L. Instytut vyboriv v ukraini yak osnova rozvytku hromadianskoho suspilstva ta rozbudovy demokratychnoi derzhavy. *Jurnalul juridic naţional: teorie şi practică*". 2020. № 3 (43). P. 10–17.

[109] Pravdiuk A.L., Petryshche L.Ia. Vyborcha inzheneriia v konteksti politychnykh transformatsii. *Naukovi innovatsii ta peredovi tekhnolohii*. 2022. № 2 (4). S. 99–110.

systems. The Constitution of Ukraine determines that people are the bearer of sovereignty and the only source of power in Ukraine, accordingly, civic activism is an integral part of political relations and is the source of policy formation[110].

This leads to the idea that the community community is the main guarantor of the fact that the state power cannot be usurped and used not for the benefit of the people. Ideally, cooperation between the institution of power and the civil society should be based on constructive, functional principles[111].

The process of establishment of the electoral system of Ukraine has been long since the beginning of the 90s of the XX century. Proper legislative support and law enforcement practice are important in view of the phenomenological political and legal nature of elections as a form of direct ownership of the people, prescribed by the constitutional and other legislative acts of the majority of modern states. The Constitution of Ukraine, in accordance with generally recognized international legal standards, establishes the right to participate in the management of state affairs, in national and local referendums, to elect and be elected to bodies of state power and bodies of local self-government. The latter are the fundamental, most extensive and effective forms of participation of Ukrainian citizens in the management of state affairs. Elections, together with other democratic legal institutions, allow the people to act as a real source of power, identify their representatives and give them a mandate to exercise their sovereign rights, as well as the civil society to control the state, its organizations and officials[112].

In the constitutional experience it has long been generally accepted that citizenship is one of the most important requirements for acquiring and exercising the subjective electoral right. Among all constitutional and legal statuses it is citizenship that provides the most benefits for an individual, especially when it comes to political rights and participation

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[110] Pravdiuk A.L. Instytut vyboriv v ukraini yak osnova rozvytku hromadianskoho suspilstva ta rozbudovy demokratychnoi derzhavy. *Jurnalul juridic naţional: teorie şi practică"*. 2020. № 3 (43). P. 10–17.

[111] Chumakov D.D. Problema rozvytku hromadianskoho suspilstva v ukraini v konteksti yoho vzaiemodii z instytutom derzhavy. *Hrani*. 2014. No 6. S. 131–135.

[112] Didenko O. Ideolohichni harantii prava obyraty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofski ta metodologichni problemi prava*. 2021. № 1 (21). S. 29–36.

in the management of state affairs. Therefore it is quite logical that the people in the legal sense make up the concept of «the people,» which in the majority of constitutions of states, including Ukraine, is recognized as the bearer of sovereignty and the only source of power in the state[113].

Citizenship is the key condition for exercising a person's electoral right in most countries of the world, including Ukraine. Ukrainian citizenship, according to Article 1 of the Law of Ukraine «On Citizenship of Ukraine,» is «a legal bond between a natural person and Ukraine that takes its shape in their mutual rights and obligations. The citizen of Ukraine is a person who acquired Ukrainian citizenship in accordance with the procedure prescribed by the laws of Ukraine and international treaties of Ukraine»[114].

Under constitutional law, citizenship as a condition for a person to obtain and exercise electoral rights is accepted to be called the «citizenship requirement» (Citizenship requirement, Nationality requirement), which has long been an obsolete legal category. The document of the Venice Commission «European Democratic Heritage» (Europe's Electoral Heritage, CDL (2002) 7 rev.) of 2002 stated that electoral rights are always conditioned by citizenship, and most countries «make political rights dependent on citizenship»[115].

The regulation of relations that ensure implementation of constitutional election rights by Ukrainian citizens during elections and referendums is carried out with the help of the totality of legal norms that make up the election legislation of Ukraine. These are the Constitution of Ukraine, the Electoral Code of Ukraine, the laws of Ukraine On the Election of the President of Ukraine, On the Election of the People's Deputies of Ukraine, On the Election of the Deputies to the Supreme Council of the Autonomous Republic of Crimea, The Code of Administrative Offences and the Code of Administrative Offences of Ukraine, «On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea», «On Elections of

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[113] Konstytutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy.* 1996. № 30. St. 141.

[114] Pro hromadianstvo Ukrainy: Zakon Ukrainy vid 18 sichnia 2001 roku № 2235-III. *Vidomosti Verkhovnoi Rady Ukrainy.* 2001. № 13. St. 65.

[115] Europe's Electoral Heritage (CDL (2002) 7 rev.). Venice Commission. Strasbourg, 2002. 35 p.

Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea», «On Local Councils and Village, Village and Municipal Governors», «On All-Ukrainian Referendum», «On the Central Electoral Commission», «On the State Register of Electors», The Criminal Code of Ukraine, the relevant decrees of the President of Ukraine, decrees and orders of the Cabinet of Ministers of Ukraine, decisions of the Central Election Commission, and binding international treaties, Agreements that enshrine the universally recognized international standards for the protection of human rights, approved by the Supreme Council of Ukraine, other legislative acts.

International legal acts pay a lot of attention to the elections and the internal information exchange in the electoral process. The Declaration of the Rights of Persons and Citizens states in its articles that everyone has the right to freedom of opinion and to free expression of their views. This right includes the freedom to hold opinions without interference, to receive and impart information and ideas by any means necessary, regardless of frontiers (Article 19).

Article 21 of the Declaration stipulates that the will of the people must be the basis of the authority of the government; it must be manifested in periodic and genuine elections, which must be held under a universal and equal suffrage by a secret ballot or through other equivalent forms that ensure the freedom to vote[116].

In the context of the electoral process, the norms of the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which give a clear understanding of the fact, The electioneer must have all the information about the candidates, political parties and their programs, the mass media can and must reflect all stages of the popular will. Only in the presence of such conditions it is possible to make a clear, informed choice of professional, respected leaders of the state. The development of Ukraine as a democratic state requires creating reliable mechanisms for implementing the principle of people's sovereignty by improving the electoral law as a political law based on the nature of the right to vote. By its nature, the right of citizens «to elect and be elected by the bodies of

[116] Zahalna deklaratsiia prav liudyny. Pryiniata i proholoshena rezoliutsiieiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: http://zakon1.rada.gov.ua/laws/ show/995_015.

state power and bodies of local self-government» (part one of Article 38 of the Constitution of Ukraine) and as a constitutional and legal institution, That is, the system of norms that determine the procedure for organizing and conducting elections as a mechanism for exercising the rule of the people[117].

Apart from the constitutional and legal regulation of the guarantees of the right to elect and to be elected to the bodies of public power in Ukraine, it should be noted that they are also included in the low level of normative legal acts of another level. Thus, the Electoral Code of Ukraine, in accordance with the Constitution of Ukraine, determines the guarantees of citizens' rights to participate in elections and regulates the preparation and carrying out of elections of the President of Ukraine, The Constitution of Ukraine establishes the guarantees of the rights of citizens to participate in elections and regulates the preparation and conduct of elections of the President of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, regional, district, village, city, district councils in cities, village, village, and city heads[118].

However, it should be noted that not all citizens of Ukraine can be participants in the electoral process. The Constitution and electoral legislation define the electoral qualifications of citizens. Electoral qualifications are constitutionally established and detailed in the electoral legislation special conditions for obtaining and exercising the right to vote. Electoral qualifications in the science and practice of election law are often referred to as «electoral qualifications». The notion of election qualifications was defined in the Decision of the Constitutional Court of Ukraine dated June 30, 2002 2-rp/2002 in the case of the election campaign, which is described as «conditions for the active and passive suffrage rights that are determined by the Constitution or the law[119].

As a general rule, under the normative-legal establishment of electoral qualifications, the constitution of the state prevails, and then the electoral

[117] Konstytutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy.* 1996. № 30. St. 141.

[118] Didenko O. Ideolohichni harantii prava obyraty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofki ta metodologichni problemi prava*. 2021. № 1 (21) S. 29–36.

[119] Rishennia Konstytutsiinoho Sudu Ukrainy vid 30 sichnia 2002 roku № 2-rp/2002 (sprava pro vyborchu zastavu). *Ofitsiinyi visnyk Ukrainy*. 2002. № 6. St. 245.

laws. This means that electoral qualifications cannot be established by laws, if they are not directly stipulated by the constitution of the state. If an electoral law establishes an electoral qualification that is not directly stipulated by the constitution of the state, it will be declared unconstitutional later on, as a rule. The formula of electoral qualifications is as follows: the more electoral qualifications and the higher the conditions for their attainment, the less the number of persons will be able to attain the subjective electoral right. As a general rule, electoral qualifications are the implementation of active and passive suffrage differ significantly due to different requirements for their attainment. The higher requirements are set for the implementation of passive suffrage[120].

According to Article 70 of the Constitution of Ukraine, all citizens who have reached the age of 18 on the day of voting have the right to vote.

In addition to the Basic Law of our state, the right to free elections[121] is also enshrined in the lower provisions of international legal documents. Article 25 of the International Covenant on Civil and Political Rights (ratified by the Decree of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic of 19 June 1973. No. 2148-VII) reads the following: «Every citizen, without any discrimination and without any unnecessary restrictions, must have the right and the opportunity to take part in the conduct of public affairs, both indirectly and through the mediation of legally elected representatives, as well as to vote and be elected at genuine periodic elections, which are held on the basis of general and equal electoral law with a secret ballot and ensure the free will of the electors»[122].

According to Article 3 of the First Protocol to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Supreme Council of Ukraine in the Law No 475/97-VR of June 17, 1997 («The Right to Free Elections»), The Law enshrines the obligation of the authorities to hold free elections at

[120] Nesterovych V. Vydy vyborchykh tsenziv: zarubizhna ta Ukrainska praktyka. DOI: https://doi.org/10.32689/2617-9660-2021-6(18)-113-165.

[121] Konstytutsiia Ukrainy: pryiniata na piatii sesii Verkhovnoi Rady Ukrainy 28 chervnia 1996 roku. *Vidomosti Verkhovnoi Rady Ukrainy.* 1996. № 30. St. 141.

[122] Mizhnarodnyi pakt pro hromadianski ta politychni prava OON vid 16.12.1966 r., ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady Ukrainskoi RSR No 2148-VIII vid 19 zhovtnia 1973 r. URL: https://zakon.rada.gov.ua/laws/main/995_043.

reasonable intervals by a secret ballot under conditions that ensure a free expression of the people's opinion in the election of the legislative body[123].

The Declaration on the Criteria for Free and Fair Elections was adopted at the 154th session of the Rada of the Inter-Parliamentary Union (of which Ukraine is a member). 6 point 2 of the Declaration states: «Each voter has the right to exercise his right on an equal basis with other voters, and his vote has the same weight as the votes of other voters. Although such a request must be a kind of warrant, however, it is legally impossible at this moment to achieve absolutely equal «weight» of votes of all electors (only due to mathematical fluctuations of circumstances)»[124].

The Constitution of Ukraine declares the principle of equal suffrage in Article 71 and repeats it in Articles 76, 103, 136 and 141. 76, 103, 136 and 141. The current domestic legislation directly applies the principle of equal suffrage of voters (i.e. in terms of the right to vote) and candidates (in terms of passive suffrage), establishing at the same time both the equality of the scope of rights and the equality of legal opportunities to act in the electoral process. The Constitutional Court of Ukraine has interpreted the constitutional principle of equal suffrage in the sense that "the Constitution provides and guarantees equal legal opportunities for realization of their electoral rights to all voters and candidates for deputies of Ukraine" (para. 1 point 10 of the motive part of the decision of 26 February 1998)[125].

As for the modern electoral legislation, it is worth mentioning the adoption of the Electoral Code of Ukraine of 19.12.2019 that replaced and codified a number of normative legal acts of this sphere. Article 6 of the Code states that the electoral rights of citizens of Ukraine are their rights to participate in elections that are taking place in Ukraine as guaranteed by the Constitution of Ukraine and the following elections rights of Ukrainian citizens included:

1) the right to vote in elections (the right to vote at the elections);
2) the right to be elected.

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[123] Protokol Pershyi do Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod. *Ofitsiinyi visnyk Ukrainy*. 2006. No 32. S. 453.

[124] Members of the International organization of Parliaments. URL: http://www.ipu.org/english/membshp.htm.

[125] Rishennia Konstytutsiinoho Sudu Ukrainy vid 26 liutoho 1998 r. No 1-rp/98 (sprava pro vybory narodnykh deputativ Ukrainy). *Ofitsiinyi visnyk Ukrainy*. 1998. No 23. St. 850.

Citizens who have reached the age of 18 on the day of the election are granted the right to vote. The Venice Commission points out that certain age limitations on the right to vote and the right to be elected have a substantive basis and are not discriminatory. It is believed that the denial of voting rights of persons without disabilities is due to the physiological development of such persons and the lack of experience of such persons in society to evaluate the candidates and their programs.

The age qualification is extremely important for the implementation of passive suffrage, because a citizen who has shown a desire to represent and defend the interests of the people needs experience, formed views, principles, own understanding of the possible ways of solving this or that problem. Age is an indicator of qualification, social and political maturity. Acquisition of the passive electoral right depends on the type of elections. According to part. According to part 1 of Article 134 of the Electoral Code, a citizen of Ukraine, who has reached the age of 21 on the day of elections, may become a people's deputy, and part 1 of Article 193 of the Electoral Code stipulates that a citizen of Ukraine who has the right to vote according to Article 70 of the Constitution of Ukraine may become a deputy, a village, town or city mayor[126].

The provision of Article 70(2) of the Constitution relinquishes this right to citizens who have been declared ineligible by a court. This provision is closely intertwined with the civil-law institute of incapacity in civil law. Under Article 39 of the Civil Code, a physical person may be declared invalid by the court if due to a chronic, persistent mental disorder he or she is not able to understand the meaning of his or her actions and (or) control them. An invalid physical person is subject to supervision. A disqualified individual is not entitled to commit any crime (art. 41). The procedure for declaring a citizen ineligible is set forth in the civil procedure law (Chapter 4 of the Civil Procedure Code)[127].

As noted by V. Sereda, the current trends in the development of the Ukrainian society have put the problem of citizenship as a state and as a person in the foreground of community life. At the same time sometimes

[126] Pakhomov A.V. Do pytannia zahalnoho vyborchoho prava. *Iurydychnyi naukovyi elektronnyi zhurnal*. 2021. № 1. S. 97–101.

[127] Dakhova I.I. Konstytutsiinyi pryntsyp zahalnoho vyborchoho prava. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina. Ser. Pravo*. 2013. No 1082, vyp. 16. S. 69–73.

the right to elect and be elected as one of the priority rights of Ukrainian citizens guaranteed by the Constitution, Sometimes most Ukrainians perceive it as declarative, because for years the voters have for most years been inclined to think that nothing depends on their will. Voters, especially young ones, or more precisely, very young ones, are reconsistently declaring that they have no one to choose from and that nothing really depends on them. With the development of democratic processes in Ukraine, young people's enthusiasm for participation in government is becoming more and more noticeable year by year. Therefore the analysis of certain factors that influence the formation of civic consciousness of young voters, in particular civic education and state youth policy, is of current interest today[128].

Of course, as well as the awareness of citizens, the situation in the political and legal environment of Ukraine is changing significantly. It is important to have coordinated and effective actions of the authorized bodies and officials of the state and cooperation with the public aimed at making positive changes in this direction, Raising the legal culture of the population, officials and employees involved in preparing and holding elections, training of members of election commissions and other election process actors; Implementing educational projects and programs, organizing and conducting information campaigns aimed at explaining the electoral rights of the citizens, the provisions of the electoral law and peculiarities of the electoral process; assisting in organizing experiments and pilot projects during the electoral process[129].

We can note that there are still many unsolved tasks, in particular, it is necessary to prevent and counteract negative phenomena in the process of implementation of ideological and other guarantees of the right to elect and be elected to the bodies of state power and local self-government bodies.

This is confirmed by the provision of the National strategy in the sphere of human rights, approved by the Decree of the President of Ukraine from March, 24, 2021. Thus, one of the strategic goals of the strategy is to ensure the right of citizens to freely choose and be elected to the bodies of state power and local self-government bodies with respect to international, including European, standards.

128 Sereda V. Vplyv hromadianskoho vykhovannia na formuvannia pravovoi kultury molodykh vybortsiv. URL: https://www.cvk.gov.ua/wp-content/uploads/2020/06/2007_2_Visnik_Cvk.pdf.

129 Didenko O. Ideolohichni harantii prava obyraty ta buty obranym do orhaniv publichnoi vlady: pytannia teorii ta praktyky. *Filosofski ta metodologichni problemi prava.* 2021. № 1 (21). S. 29–36.

Among the tasks aimed at achieving this goal, the following are highlighted: To ensure smooth participation of persons with disabilities in the electoral process; to create conditions for the implementation of electronic democracy; to improve the mechanisms of interaction between institutions of the civil society and local self-government bodies. Thus, the electoral process must be accessible and inclusive[130].

The state power must be controlled by the people, then it has fewer opportunities to operate in violation of the standards of law. Today the legitimacy of power is necessary for stable democratic states of the civil society. These are the societies that have a transparent electoral system, a proper procedure for the formation of bodies of state power, a highly developed judicial system, a large number of legally aware and law-abiding citizens, and a developed social sphere.

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[130] Natsionalna stratehiia u sferi prav liudyny: Ukaz Prezydenta Ukrainy vid 24 berez. 2021 r. № 119/2021. URL: https://www.president.gov.ua/documents/1192021-37537.

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33. Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini: monohrafiia / kol. avtoriv; za red. N.M. Onishchenko, O.V. Zaichuka. Kyiv : Yuryd. dumka, 2007. 424 s.

34. Protokol Pershyi do Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod. *Ofitsiinyi visnyk Ukrainy*. 2006. No 32. S. 453.

35. Pustovit Zh. M. Aktualni problemy prav i svobod liudyny i hromadianyna v Ukraini: navch. posib. Kyiv : KNT, 2009. 232 s.

36. Rechickij V. Svoboda i gosudarstvo. Har'kovskaja pravozashhitnaja gruppa. Har'kov : Folio, 1998. 144 s.

37. Rishennia Konstytutsiinoho Sudu Ukrainy vid 26 liutoho 1998 r. No 1-rp/98 (sprava pro vybory narodnykh deputativ Ukrainy). *Ofitsiinyi visnyk Ukrainy*. 1998. No 23. St. 850.

38. Rishennia Konstytutsiinoho Sudu Ukrainy vid 30 sichnia 2002 roku № 2-rp/2002 (sprava pro vyborchu zastavu). *Ofitsiinyi visnyk Ukrainy*. 2002. № 6. St. 245.

39. Rybalka V.V. Spryiannia rozvytku osobystosti hromadianyna i diievoho hromadianskoho suspilstva zasobamy praktychnoi psykholohii: metod. rekom. Kyiv : Talkom, 2017. 90 s.

40. Sereda V. Vplyv hromadianskoho vykhovannia na formuvannia pravovoi kultury molodykh vybortsiv. URL: https://www.cvk.gov.ua/wp-content/uploads/2020/06/2007_2_Visnik_Cvk.pdf.

41. Shapoval V. N. Sravnitel'noe konstitucionnoe pravo. Kyiv : Knjaginja Ol'ga, 2007. 416 s.

42. Sovhyria O.V., Shuklina N.H. Konstytutsiine pravo Ukrainy. Povnyi kurs : navch. posib. 2-he vyd., pererob. i dopov. Kyiv : Yurinkom Inter, 2012. 541 s.

43. Ukrainske suspilstvo 1992–2010: Sotsiolohichnyi monitorynh / NAN Ukrainy, In-t. sotsiolohii; za red. V.M. Vorony, M.O. Shulhy. Kyiv : In-t sotsiolohii NANU: TOV «Foliant», 2010. S. 621.

44. Ukrainskyi sotsium / Vlasiuk O.S., Krysachenko V.S., Stepyko M.T. ta in. / Za red. V.S. Krysachenka. Kyi v: Znannia Ukrainy, 2005.

45. V Yaponyy net osobykh problem s narushenyem prav cheloveka. URL: http://www.hse.ru/news/recent/73374267.html.

46. Zahalna deklaratsiia prav liudyny. Pryiniata i proholoshena rezoliutsiieiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: http://zakon1.rada.gov.ua/laws/show/995_015.

47. Zavorotchenko T. Harantii realizatsii konstytytsiinyh politychnyh ppav i svobod liudyny i hromadianyna v Ukraini. *Chasopys Kyivskoho yniversytety prava*. 2013. № 4. S. 95–99.

CHAPTER 3. SOCIAL, ECONOMIC AND CULTURAL RIGHTS AND FREEDOMS OF PEOPLE IN UKRAINE

Andrii Pravdiuk – Candidate of Law Sciences,
Associate Professor of the Department of Law,
Vinnytsia National Agrarian University

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3.1. The notion and types of social rights and freedoms of people and citizen

The priority tasks of the social state are to ensure a decent standard of living for its citizens, guarantee social stability, social security and social assistance, public peace and well-being[131]. In the process of building and functioning of Ukraine as a social state the activity of which is focused on the creation of conditions that ensure the life and free development of people, the analysis of those rights of people and citizens, the implementation of which is not possible without the active participation of the state in their provision – the social rights – is relevant. In this regard, the definition of the notion of this group of rights is particularly important, since it is practically impossible for the state to ensure the social rights of people, if there is no clear understanding of which rights belong to this group and what the relationship between them is[132].

Relevant is the issue of the formation of social rights, associated with the recognition of the social nature of the state. The protection and guaranteeing of such rights is one of the most controversial aspects of the theory and practice of modern constitutionalism. Thus, in the process of historical development of social rights, we can trace their substantive formation.

[131] Pylhun N.V. Sotsialno-pravova derzhava na etapi suchasnoho derzhavotvorennia v Ukraini. Istoryko-teoretychni zasady derzhavotvorennia i pravotvorennia v Ukraini : zbirnyk naukovykh prats. Kyiv, 2014. 146 s.

[132] Babkova T. Poniattia ta vydy sotsialnykh prav i svobod liudyny i hromadianyna. *Naukovo-informatsiinyi visnyk Pravo*. 2013. № 8. S. 137–144.

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At the same time, it is necessary to emphasize that each successive cycle assimilates the values of the previous one, modifies them and adapts them to the requirements of the current state of society. Therefore, under some conditions, the constitution of social rights made it possible to consider them as a self-sufficient value[133].

P. Rosevallon stated that the social rights that existed in pre-modern societies had a completely different meaning than those that emerged on the eve of the 19th-20th centuries is a useful one. The entitlements to death granted to the lower classes of society in the Middle Ages originated not from the concept of citizenship (and, accordingly, equality), but from the notions of a natural, status hierarchy[134].

In the context of this issue it is worthwhile to refer to the opinion of T.P. Marshall, who managed to investigate the expansion of people's rights and ties in connection with capitalist modernization on the example of England. Marshall's subdivision of rights into "civil," "political," and "social" rights is in line with the well-known legal classification, according to which personal rights protect the subjects of private law from encroachments by the state on property and possessions, Political rights of participation enable the active citizen to participate in the democratic process of creation of his or her political opinion and collective will, social rights of participation provide the state's citizens with a minimum of unpaid income and social welfare. Marshall's thesis is that in modern societies the status of the citizen has been progressively expanded and affirmed. Democratic rights complemented the rights of the family, then the social rights, then the classical types of fundamental rights, in such a way that the wider population developed into full membership rights one step at a time[135].

Economic, social and cultural rights and freedoms of people and citizen are organically interconnected with civil and political rights studied above, which, in our view, In their totality are intended to ensure the freedom of people and the citizen in the economic, social and cultural spheres and by that to create such conditions for everyone, for which it

[133] Bapabash Yu.H. Sotsialni prava hromadian ta mozhlyvocti ih zahysty Konstytytsiinym Sydom Ukrainy. *Pyblichne pravo*. 2011. № 4. S. 15–22.

[134] Kapystin B.G. Grazhdanstvo i gpazhdanskoe obshhestvo. Moskva, 2011. 224 s.

[135] Xabermas Yu. Hrpomadianstvo i natsionalna identychnist. Natsionalizm: Antolohiia. Kyiv : Smolockyp, 2006. S. 343–360.

is possible to enter into life «the ideal of a free human person, free from fear and want»[136].

Economic, social and cultural rights – the rights associated with the activity of people in the economic sphere, their social relations with society, state, collectives, other people, activities in the sphere of culture and spiritual life. They touch such important spheres of people as business and other economic activity, property, labor, leisure, health, education, and are intended to provide material, spiritual and other socially important individual needs[137]. Social and economic rights have specific features that make them highly dependent on the state's current economic policy.

The level of protection of these rights depends not only and not so much on the presence of a thorough legal mechanism for their implementation, but primarily on the suitability of this category of rights to the economic potential of society[138].

Under conditions of the economic crisis it is not easy to guarantee the realization of social and economic rights, because the right cannot be higher than the economy. But if people are recognized as the highest social value, then in real life there must exist such economic and legal institutions, where each person first of all possesses not only political rights, but also the necessary minimum of social rights and opportunities. In this case, material guarantees must come primarily from the state in the framework of social and legal policy in the form of ensuring the right to a decent standard of living. Otherwise, the right to decent living will be declarative in nature[139].

It is now universally recognized that civil, political, social, economic, cultural, and other human rights are not a gift of the state (the government) or political party or a group of people, but an inherent power of every individual, which belongs to him or her from birth, regardless of race,skin

[136] Prava liudyny: mizhnarodni dohovory Orhanizatsii Obiednanykh Natsii ta Rady Yevropy / uporiad. V. Pavlyk, V. Teslenko. Kyiv : Fakt, 2001. 152 s.

[137] Todyka Yu.M. Konstytutsiini prava, svobody ta oboviazky liudyny i hromadianyna // Konstytutsiine pravo Ukrainy: Pidruchnyk / Za red. Yu.M. Todyky, V.S. Zhuravskoho. Kyiv : In Yure, 2002. 544 s.

[138] Konstytutsiia Ukrainy: Naukovo-praktychnyi komentar / Red. kol. V.Ia. Tatsii, Yu.P. Bytiak, Yu.M. Hroshevyi ta in. Kharkiv: Pravo; Kyiv: Kontsern « Vydavnychyi Dim «In Yure», 2003. 808 s.

[139] Rodionova O.V. Juridicheskaja sushhnost' «prava na dostojnoe chelovecheskoe sushhestvovanie». *Izvestija VUZov. Pravovedenie.* 2004. № 2. S. 182–188.

color, stature, religion, language, political and other beliefs. That is, human rights are natural rights that are equally enjoyed by all.

Rights of the individual, including fundamental rights, are equally enjoyed by all human beings since birth. Rights and freedoms of the individual form the basis of the society and the state itself,The basic principle of civilization[140], the basis of the civilizational system, is the most important component of the socio-cultural civilizational system which determines the style of social and economic rights are one of the constitutional identifiers of social power[141].

The German professor M. Spiker believes: «The state must be not only legal, but also social, it must care not only about the right and safety, but also about the living and working conditions of people, it must protect people from the risks of loss of income due to illness, The idea of a Christian life, of unemployment, of age and unemployment, of guaranteeing social security, social justice and social integration – all this is a Christian life[142].

We should agree with the position of M. Kopievichikov who notes: «The social state must be characterized by a fundamentally new approach to the system of social rights in comparison with political rights, as social rights are a qualitatively new type of rights and freedoms of people and citizens in terms of their content and conjugation. Thi type of rights and freedoms, in our opinion, characterizes, the new essence of the state, which has set itself much greater tasks in terms of ensuring the rights and freedoms of its citizens»[143].

The modern encyclopedic literature defines social rights as «an aggregate of constitutional rights of people (or only citizens of a particular state) that enable them to claim certain material benefits from the state»[144]. The Great Encyclopedic Law Dictionary defines social rights as people's rights in the social sphere, which consist in the possibility to obtain social benefits, their

[140] Skrypniuk O. Konstytutsiinyi lad v Ukraini : metodolohichni problemy rozvytku y udoskonalennia v konteksti konstytutsiinoi modernizatsii. Shchorichnyk ukrainskoho prava: zb. nauk. pr. / vidp. za vyp. O.V. Petryshyn. Harkiv: Pravo, 2013. No 5. S. 202–212.

[141] Lukasheva E.A. Chelovek, pravo, civilizacii: normativno-cennostnoe izmerenie. Moskva : Norma, 2009. 384 s.

[142] Shpiker M. Hristianstvo i svobodnoe konstitucionnoe gosudarstvo. *Religija i pravo*. 2000. No 1. S. 5–8.

[143] Kopieichykov M. Sotsialna derzhava yak politychna realnist. *Visnyk Akademii pravovykh nauk Ukrainy*. 2001. No 2(205). S. 216–227

[144] Bol'shoj juridicheskij slovar' / pod red. prof. A. Ja. Suhareva. Moskva : Infra-M, 2007. 858 s.

possession, use and management or protection or the performance of certain actions in this sphere[145].

Ukrainian legal science has the following views on the notion of «social rights». Thus, O. Skrypnyuk believes that social rights and freedoms are the rules of purposeful behavior or activity of people set by the Constitution and laws of Ukraine aimed at satisfaction of their own social needs[146]. As S. Verlaniv, social rights of people are the abilities to obtain the means of subsistence, receiving such means from social sources through social retention (alimentation)[147].

P. Rabinovich defines social rights as people's abilities to realize their abilities, acquire the means of subsistence, taking part in the production of material and other goods[148]. Social rights of the individual is also understood as agreed and recognized by the international community as a whole, enshrined in the legislation of most modern states minimal legal norms – standards of people's rights in the social sphere, which provide for such living conditions, which allow everyone to maintain and develop their human essence in a proper way[149].

V. Lemak says that the essential characteristics of social rights and freedoms are that: 1) this block of human rights reflects the understanding of «human rights» not as «the capacity to behave within certain limits» as in other types of human rights), but as «the capacity to benefit»; 2) these rights, unlike other human rights, are not the rights that all subjects have; 3) these rights are related to the redistribution of national income generated in the society, and thus – to the amount of such national income and the level of its redistribution; 4) these rights cannot belong to the so-called fundamental (natural) rights of people, because in principle they do not possess the

[145] Velykyi entsyklopedychnyi yurydychnyi slovnyk / za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv : Yurydychna dumka, 2007. 992 s.

[146] Skrypniuk O. Prava ta svobody liudyny v konstytutsiinii systemi Ukrainy. *Publichne pravo*. 2012. No 1. S. 6–13.

[147] Verlanov S.O. Ekonomichni i sotsialni prava liudyny: yevropeiski standarty ta yikh vprovadzhennia v yurydychnu praktyku Ukrainy (zahalnoteoretychne doslidzhennia). Lviv : Krai, 2009. 196 s.

[148] Rabinovych P.M. Osnovy zahalnoi teorii prava ta derzhavy : navch. posibnyk. Kharkiv: Konsum, 2002. 160 s.

[149] Andriiv V.M. Mistse sotsialnykh prav u systemi sotsialnykh prav liudyny. Zakhyst sotsialno-ekonomichnykh ta sotsialnykh prav liudyny: mizhnarodne zakonodavstvo ta dosvid Ukrainy : Materialy naukovo-prakt. konf. (Kyiv 12 bereznia 2004 r.) Kyiv, 2004. Ch. 2. S. 7–10.

properties attributed to other blocks of human rights: In particular, they are not «non-violable» in the sense that they cannot be abrogated or abrogated by a lawmaker[150].

Thus, economic, social and cultural rights, in our view, can be interpreted in their real meaning as the principles of activity of the state, which acts as an institution of «general service». As for the citizens, they can be interpreted as general public rights – rights in a political perspective, that is, those on the basis of which people can demand from the state, through political and legal institutions, actions in the sphere of «common service» in accordance with the principles of social solidarity: Providing people with a decent standard of living (real subsistence minimum), health care, education or other components of the «right to exist».[151] Analyzing which rights of people and citizen can be attributed to social rights, first of all we should turn to the norms of international law. Thus, examining the provisions of the International Covenant on Social, Economic and Cultural Rights we can distinguish such social rights of people and citizen as: the right to work (art. 6); the right to fair and favorable working conditions (art. 7); right to form and participate in professional associations and strikes (Article 8); right to social security; right to protection of motherhood and childhood (Part 2, 3, Article 10); right to an adequate standard of living (Article 11); right to protection of health (Article 12)[152].

Reference to the European Social Charter (as viewed) allows us to distinguish the following social rights: right to work (article 1); right to fair working conditions (article 2); right to safe and healthy working conditions (article 3); right to fair wages (article 4); right to form organizations (article 5); right to enter into collective agreements (article 6); right to children and children's children (article 7). 4); right to organize (Article 5); right to collective bargaining (Article 6); right of children and adolescents to protection (Article 7); right of working women to maternity protection (Article 8); right to vocational placement (Article 9); right to vocational training (Article 10); right to protection of motherhood (Article 11); right to

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[150] Lemak V. Sotsialno-ekonomichni prava liudyny v konteksti verkhovenstva prava: vitchyznianyi dosvid zakriplennia ta zastosuvannia. *Visnyk Akademii pravovykh nauk Ukrainy*. 2010. No 1. 320 s.

[151] Alekseev S.S. Pravo: azbuka–teorija–filosofija: opyt kompleksnogo issledovanija. Moskva : Statut, 1999. 712 s.

[152] Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava. URL: http://zakon4.rada.gov.ua/laws/show/995_042.

work (Article 12). 10); right to health care (art. 11); right to social security (art. 12); right to social and medical assistance (art. 13); right to social services (art. 14); right of invalids to self-sufficiency, social integration and participation in community life (art. 15); the right of the family to social, legal and economic protection (Article 16); the right of children and adolescents to social, legal and economic protection (Article 17); the right to protection from poverty and social exclusion (Article 30); and the right to housing (Article 31).

In addition, the European Social Charter (revised) provides a wide range of social rights, which are similar to the right to work, including: the right of migrant workers and members of their families for protection and assistance (Art. 19); right to equal opportunities and equal treatment in decisions on employment and profession without discrimination because of their status (art. 20); right of workers to information and consultation (art. 21); right to participate in the establishment and improvement of working conditions and production environment (art. 22); right to protection in case of dismissal (art. 24); right of employees to protection of their rights in case of bankruptcy of their employer (art. 25); right to equal treatment at work (art. 26); right of employees with family obligations to equal opportunities and equal treatment to them (art. 27); the right of employees' representatives to protection in the enterprise and conditions that can be created for them (Article 28); the right to information and consultation during collective dismissal (Article 29)[153].

We can note that the state not only guarantees all the rights it recognizes, but also bears responsibility before its citizens regardless of the fact of respecting and protecting these rights. Thus, resolution No. 32/130 of the UN General Assembly of 16 December 1966 states that all human rights and fundamental freedoms are non-independent and interdependent. Moreover, as stated in paragraph 1(c) of the above Resolution, the full exercise of civil and political rights is impossible without the exercise of economic, social and cultural rights. That is, declaring all rights constitutionally equal requires their equal legal protection, including by means of justice. At the same time, noting the complexity of protection of these rights, M.V. Baglay asserts that the direct effect of these rights is objectively very relative, since

[153] Yevropeiska sotsialna khartiia (perehlianuta) : vid 3 travnia 1996 r. URL: zakon.rada.gov.ua/laws/show/994_062.

no court recognizes a civil claim for the implementation of such a right only on the basis of its constitutional enshrinement. The reason is clear: the absence of a specific recipient, because the right does not create any direct obligations for any persons. It turns out that economic, social and cultural rights are not so much legal norms as standards, to which the state can be direct in its policy[154].

Therefore, it can be asserted that the social rights of citizens are linked to the presence of citizenship and are ensured through costly social services and state aid, which are paid by the state on a permanent basis. The general use of social services is inevitably related to the possession of citizenship. Systems of social protection, which are based on this concept, best guarantee the observance of social rights of citizens and their independence from the market, encouraging full employment[155].

At the same time, it is possible to find such a set of rights according to the important principle classification according to the theory of T. Slinek: negative rights (status negativus), political rights of participation (status activus) and social rights (status positivus)[156].

The expansion of political will determines the development of democracy in other spheres of social life and the increase in the social functions of the state.

H. Boope illustrates this interdependence by means of a step-by-step pyxis to the general law: «When only owners had the right to vote, they naturally demanded only one function from the power – the protection of property. When illiterates won the right to vote, they demanded that the state create free schools. When the right to vote was given to those who had nothing but physical strength, they asked the state to protect them from intimidation and to provide them with social protection in the event of a revolt, to guarantee maternity protection as well as the possibility of affordable housing, etc.». The establishment of a wide range of legal subjects in the political sphere also gave rise to the development of social rights[157].

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[154] Baglaj M.V. Konstitucionnoe pravo Rossijskoj Federacii: uchebnik. Izd. 6-e, izm. i dopol. Moskva : NORMA-INFRA-M, 2007. 784 s.

[155] Kovtun V. Sotsialni prava v aspekti systemy prav liudyny. *Pravo i suspilstvo*. 2016. No 3. S. 17–24.

[156] Maksymov C.I. Sotsialni prava liudyny: do problemy obgpyntyvannia. *Problemy zakonnosti*. 2009. № 100. S. 398–406.

[157] Bol'c N. Pazmyshlenie o nepavenctve. Anti-Pycco. Moskva : Izd. dom Bycshej shkoly jekonomiki, 2014. 272 s.

Thus, we can continue the theme of the legal status of people. At first, a citizen is replaced by a person, then by a person and finally by a person. The citizen is the subject of l6epalism: no one is obliged to punish. This is the way in which the possibility of liberty becomes possible. The Po6iitnik is the ascetic hero of socialism: nobody has the right to own anything. This makes equality possible. The human being is the middle meaning of humanism: no one is allowed to have an opinion[158].

Studying the issue of human rights, one cannot but notice that the legal doctrine of the West as a whole tends to oppose «classical» socio-economic rights. The thesis that for the time of the emergence of the civil society the idea of the general welfare as a state meta 6yel has been abandoned was used to explain this position. It was believed that the social and economic rights that could contribute to achieving this goal (the right to work, fair wages and equal wages for work are of equal value, The right to social security, etc.) are capable of destroying interrelations between the world and the state, which threatens people's rights[159].

«An important rice of social rights in comparison with classical rights – thinks N. Mosol. Mosol, – is that for their realization it is necessary for the state to carry out redistribution of public goods, this means that the property income is freely withdrawn from some members of society for the benefit of others, the socially unprotected, who require social, material and other types of assistance»[160].

In foreign doctrinal journals we can find the following points of view regarding the attribution of certain rights to the category of social rights. For example, the Russian researcher of human and civil rights and freedoms L.D. Voevodin noted that the group of social rights consists of such rights as: the right of everyone to freely dispose of their abilities to work, choose the type of activity and profession, the right to protection from unemployment, the right to vacation, the right to social security, the right

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[158] Yakoviuk I.B. Rozvytok kontseptsii sotsialno-ekonomichnyh prav yak peredymova formyvannia sotsialnoi derzhavy. *Problemy zakonnosti*. 1998. № 35. S. 22–26.

[159] Mozol N. Zabezpechennia sotsialnykh prav liudyny – stratehichne zavdannia ukrainskoi derzhavy. *Naukovyi visnyk Kyivsk. nats. un-tu vnutr. sprav.* 2007. No 4. S. 55–63.

[160] Voevodin L. D. Juridicheskij status lichnosti v Rossii : uchebnoe posobie. Moskva : INFRA–M–NORMA, 1997. 304 s.

to health care and medical assistance, the right to favorable environmental conditions[161].

According to A. Shayo, «the list of social rights is extensive and has an unspecified nature. Some of these rights relate to the satisfaction of basic needs (the right to drinking water and sanitation, food and shelter), others relate to a certain level of insurance in case of difficulties and disadvantages (old age pension, paid leave to take care of the child). Some of the social rights include insurance against emergencies. Social rights also include elements related to a special status, such as protection of motherhood and childhood. Finally, social rights are related to access to general services. One of these rights is the right to education[162].

The system of social rights enshrined in the Constitution of Ukraine is presented in the Basic Law after economic rights and consists of the following rights:

– Right to work (art. 43): «Everyone shall have the right to work, which includes the possibility to earn his living by work which he freely chooses or to which he freely agrees... Everyone shall have the right to appropriate, safe and healthy working conditions, to wages not lower than those specified by law. The use of women's work and the work of those who are not able to participate in work that is not dangerous for their health is prohibited. Citizens are guaranteed protection from unlawful dismissal The right to immediate payment of wages is protected by law;

– Right to strike (Art. 44): «Those who work have the right to strike to protect their economic and social interests... No one can be forced to participate or not to participate in the strike. The defense of the strike is possible only on the basis of the law;

– The right to rest (art. 45): «Everyone who works has the right to rest. This right is ensured by the provision of days of daily rest, as well as paid annual leave...»;

– Right to social protection (art. 46): «Citizens have the right to social protection which includes the right to assistance in case of full, partial or temporary loss of employment, loss of breadwinner or unemployment due

[161] Voevodin L.D. Juridicheskij status lichnosti v Rossii : uchebnoe posobie. Moskva : INFRA–M–NORMA, 1997. 304 s.

[162] Shajo A. Vozmozhnosti konstitucionnogo kontrolja v sfere social'nyh prav. *Sravnitel'noe konstitucionnoe obozrenie*. 2007. № 4 (61). S. 39–40.

to circumstances independent of them, as well as in old age or in other cases prescribed by law...» (Art. 46);

– the right to housing (Art. 47): «Everyone has the right to housing. The state creates the conditions under which every citizen will be able to purchase, own or lease a home... No one may be temporarily deprived of housing except by virtue of the law and pursuant to a court decision;

– the right to an adequate standard of living (art. 48): «Everyone has the right to an adequate standard of living for himself and his family, which includes adequate food, clothing, and housing;

– The right to health care (art. 49): «Everyone has the right to health care, medical aid, and medical insurance. Health care is ensured by state funding of appropriate social and economic, medical and sanitary, and health and prevention programs. The state is creating the conditions for effective and accessible to all citizens medical care ...»;

– Protection of the family, children, maternity and parenthood (part 3 of article 51, part 3 of article 52): «The family, children, maternity and parenthood are protected by the state», «The care and education of orphans and children deprived of parental care is the responsibility of the state»[163].

Therefore, social rights enshrined in Articles 43, 44, 45, 46, 47, 48, 49 of the Constitution of Ukraine are not «second-rate» compared to civil and political rights. 43, 44, 45, 46, 47, 48, 49 of the Constitution of Ukraine are not «secondary» compared to civil and political rights, together with economic rights they form a unique string of all the system of people’s rights. Social rights are the rights that allow people to exist in society, and in this sense they are primary in relation to other human rights.

3.2. The Notion and Types of Economic Rights and Freedoms of Individuals and Citizens

The establishment of a law-based and independent state is realistic only if human rights and freedoms and the citizen’s rights are respected in the public consciousness. Problems of human rights and freedoms have long been investigated by scientists, but they are still relevant at this time due

[163] Konstytutsiia Ukrainy : vid 28 chervnia 1996 r. *Vidomosti Verkhovnoi Rady Ukrainy.* 1996. № 30. St. 141.

to the large number of works that have sometimes opposing points of view. This is explained by both the consequences of ideological influence of the Radyansky period, when the concept of “economic rights” as an independent category in order with other constitutional rights did not exist, and the lack of respect of legal scholars for the protection of economic rights and freedoms of people. Economic rights occupy a leading place in the structure of the constitutional and legal status of the person. It is economic rights and freedoms of people that ensure not conventional but real freedom of the person and act as economic guarantees of other rights of people and citizen in Ukraine[164].

Economy (from the Greek oikonomia – state management), in particular, means the totality of relations between people, which are formed in the process of roduction, distribution, exchange and consumption of material goods and services[165].

Economic rights are the basis for the development of any country, society, because the way these institutions are developed determines the well-being of citizens and the state as a whole[166]. And the main role in this is played by the law, which regulates the relations of ownership and freedom of business activities. According to John Locke, private property is a peaceful human right that first appeared as an economic category and only then was reflected and consolidated in law[167]. So the right of ownership is a legal category, and therefore it cannot be defined by philosophical, psychological or economic notions[168].

Most researchers do not give specific definitions of economic rights and freedoms of people, limiting themselves only to stating the functional recognition of rights and freedoms. In the opinion of the famous Russian scientist-theorist V. Nersesyants, economic rights are the rights of the individual (people and citizen) as an independent subject of economic

[164] Sulzhenko Yu. Poniattia ta systema ekonomichnykh prav ta svobod liudyny i hromadianyna v Ukraini. *Yurydychna nauka*. 2011. No 3. S. 14–21.

[165] Slovar' inostrannyh slov : 11-e izd., stereotip. / Pod red. V.V. Pchjolkina, L.N. Komarova, E.N. Zazarenko i dr. Moskva, 1984. 608 s.

[166] Lokk Dzh. Izbrannye filosofskie proizvedenija: u 2 t. Moskva : Gospolitizdat, 1960. T. 2. 512 s.

[167] Kharchenko H.H. Doktrynalni vidminnosti instytutu prava vlasnosti: porivnialno-pravovyi analiz. *Chasopys Kyivskoho universytetu prava*. 2009. № 1. S. 158–164.

[168] Andreev V.K. Pravo chastnoj sobstvennosti v Rossii. Moskva : Jurist, 1993. 120 s.

(commodity, money, production, market) relations[169]. O. Lukasheva believes that economic rights provide people with free disposition of the main factors of economic activity.[170] The authors of the Encyclopedic Dictionary of Law believe that economic rights and freedoms of people are a set of constitutional rights that determine the legal possibilities of people in the economic sphere, the nature and scope of which determine the economic, social and political order in a particular society in the end[171].

It is worth agreeing with the opinion of the Russian scientist M. Baglay. Baglay, who believes that economic rights are intended to guarantee the possibility for people to satisfy their living needs, to receive from the state protection of their economic freedom and social benefits.

In O. Goncharenko thinks that economic rights of people and citizen in Ukraine are abilities of people as an independent subject of economic relations to possess, use, dispose of possessions and main factors of economic activity and take part in the production of material and other goods[172].

The authors of the textbook «The Rights, Duties and Duties of People and Citizens in Ukraine» define economic rights and duties as abilities of people and citizens in the sphere of production, distribution, exchange and use of material goods. They are of paramount importance in people's life. Because they are to guarantee the economic value of people, their development as a free person, and their livelihood. At the same time, the exercise of these rights allows us to characterize the state as social, the one that provides a sufficiently high standard of living for its citizens[173].

The Constitution of Ukraine includes in the system of economic rights: a) the right of everyone to own, use and dispose of their property, the results of their intellectual, business activity (Article 41); 6) the right to enjoy the rights of others, to have access to their property (Article 41); 7) the right of

[169] Nersesjanc V.S. Obshhaja teorija prava i gosudarstva. Moskva : NORMA-INFRA, 2000. 552 s.

[170] Prava cheloveka / Otv. red. E. A. Lukasheva. Moskva : NORMA-INFRA.M, 1999. 573 s.

[171] Juridicheskij jenciklopedicheskij slovar' / Pod obshh. red. V. E. Krutskih; 3 e izd. i dop. Moskva: INFRA.M, 2003. VI, 450 s. (Biblioteka slovarej «INFRA.M»).

[172] Konstitucionnoe pravo zarubezhnyh stran / Pod obshh. red. M.V. Baglaja, Ju.I. Lejbo i L.M. Jentina. Moskva : NORMA-INFRA.M, 2000. 832 s.

[173] Honcharenko O.M. Poniattia i zmist ekonomichnykh prav. *Derzhava i pravo: Zbirnyk naukovykh prats. Yurydychni i politychni nauky.* Kyiv : In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, 2005. Vyp. 25. S. 181–186.

citizens to have access to their own property (Article 41). 41); 6) the right to entrepreneurial activity (Article 42); c) the right to work (Article 43); d) the right to strike for the protection of economic and social interests (Article 44); r) the right to leisure time (Article 45)[174].

O.V. Nehodchenko stresses that the central type of rights and rights of people and citizens, which the Constitution of Ukraine promulgates and guarantees, are economic rights, that is, the actual rights in the sphere of economic (property) relations. These rights include: a) the right to own, use and dispose of both his property of a property nature and the results of his business activity; 6) the right to entrepreneurial activity not prohibited by law; c) the right to work; d) the right to strike for the protection of their economic and social interests; r) the right to rest for those who work[175].

P.M. Rabinovich and M.I. Khavronyuk define economic rights as people's abilities to realize their livelihood, to use their labor for subsistence, to participate in production, distribution and provision of material or other goods. Among economic rights, they include the right to: a) entrepreneurial activity; 6) work; c) leisure time; d) participation in professional associations; r) strike. The right to private property is considered by the authorities to be a group of physical (living) rights and rights[176].

Let's analyze some types of constitutional economic rights and rights to property.

The Constitution of Ukraine considers the rights of ownership and the right to business activity through the prism of human rights, i.e. it ensures state protection of all subjects of the right of ownership and management, their equality before the law, guarantees the inviolability of the right of private property, the possibility for citizens to use the property of the Ukrainian people, state and communal property, determines the mechanism of implementation of the protection of property rights and other property rights.

In the opinion of Y.M. Frolov, the right of private property is a recognized and guaranteed by the Constitution and laws of Ukraine the possibility of people and citizens to independently own, use, to dispose of their

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[174] Kolodii A.M., Oliinyk A.Iu. Prava, svobody ta oboviazky liudyny i hromadianyna v Ukraini. Kyiv : Vseukrainska acotsiatsiia vydavtsiv «Pravova yednist», 2008. 350 s.

[175] Nehodchenko O.B. Orhanizatsiino-pravovi zasady diialnosti orhaniv vnytrishnih sprav shchodo zabezpechennia prav i svobod liudyny. Dnipro : Byd-vo Dnipropetr. yn-ty, 2003. 448 s.

[176] Rabinovych P.M. Prava liudyny i hromadianyna. Kyiv : Atika, 2004. 464 s.

property and the results of their intellectual and creative activity for any purpose, as well as to obtain and protect them in the order, scope, forms and manner prescribed by the Constitution and laws of Ukraine[177].

The right of private property is a novelty in the Constitution of Ukraine and a fundamental, priority economic right of every person, which is an inalienable natural right of a person, as well as a non-transferable right. In some way designated by society and recognized by the state on the basis of international standards, property and targeted amount of money, which ensures normal existence of people in certain historical and socio-economic conditions[178].

That is why the consolidation of the right of private property in the Constitution of Ukraine is important not only for establishing a new concept of human rights, but also as a legal basis for the transition to the market economy and civil society. P.V. Yengibaryan noted that the constitutional consolidation of the right of private property ownership is aimed for increasing the number of owners among the population of the country, which is a guarantee of stability of the society and the state in democratically developed countries[179].

In part. Article 41 part 1 of the Constitution of Ukraine enshrines the provision that defines the meaning of the right of private property, the structure of which is disclosed through its economic elements, as the right of everyone to own, use and dispose of their property. At the same time, L.A. Perfectionko asserts that in contrast to the possibilities of possession and use, which may belong not only to the owner, but also to other persons, the right to dispose of property in full extent belongs only to the owner, except for the cases prescribed by law (confiscation, requisition, prima facie sale)[180].

The use of property by each person cannot harm the rights, rights and interests of other people, the interests of society, and the ecological situation.

[177] Frolov Yu.M. Pravo pryvatnoi vlasnosti v systemi ekonomichnykh prav liudyny i hromadianyna v Ukraini: konstytutsiino-pravovyi aspekt. *Chasopys Kyivskoho universytetu prava*. 2003. № 2. S. 24–30.

[178] Halunko V.V. Pryvatna vlasnist yak nevidiemne pravo liudyny. *Derzhava i pravo. Yurydychni i politychni nauky*. 2008. Vyp. 42. S. 42–48.

[179] Engibarjan R.V. Sravnitel'noe konstitucionnoe pravo: ucheb. posob. Moskva: Jurist, 2005. 429 s.

[180] Ivershenko L. Zmist konstytutsiinoho prava liudyny ta hromadianyna na pryvatnu vlasnist. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2007. № 7. S. 88–91.

Therefore, the right of ownership in the conditions of the introduction of new technologies is the constitutional norms and the economic capacity of people and citizens to own, which is not alienated or violated by the law, to possess and dispose of property and the results of their work, other material and spiritual assets, which belong to them on legal grounds and demand that the other subjects act within the limits of the Constitution and laws of Ukraine and do not violate the will of the private owner.

The Constitution of Ukraine of 1996. The Constitution of Ukraine of 1996 enshrines the right of anyone to business activities that are not prohibited by law (Article 42 of the Constitution of Ukraine). A citizen is recognized as a business entity when he or she performs entrepreneurial activities on the condition that he or she is legally recognized as a the status of a sole proprietorship and can only carry out business activities as a business and not as a private enterprise, The company is created by them with the help of hired labor, independently or in cooperation with others (Art. 128 of the State Code of Ukraine).

S.I. Ishchuk considers freedom of entrepreneurial activity as one of the constitutional and legal prerequisites for the functioning of the civil society in Ukraine. In his opinion, the limits of personal freedom of an individual in the business sphere are much wider than the extent of subjective rights, which are granted to her by the state, because in this case the legislator considers it unreasonable or impossible to regulate the rights of the individual in the private sphere or impossible to fully regulate the sphere of economic freedom[181].

The freedom of entrepreneurial activity is defined by law as the right of the entrepreneur without restrictions to independently carry out any business activities that are not prohibited by law. Specific features of the implementation of certain types of businesses are established by legislative acts. The list of types of business activities subject to licensing as well as the list of activities in which entrepreneurship is prohibited are established exclusively by law (article 43 of the Civil Code of Ukraine).

In accordance with the Law of Ukraine of June 15, 2003. "About state registration of legal entities, physical persons – businessmen and

[181] Ishchuk S.I. Okremi konstytutsiino-pravovi zasady funktsionuvannia hromadianskoho suspilstva v Ukraini: svoboda pidpryiemnytskoi diialnosti. *Journal «ScienceRise: Juridical Science»*. 2018. No 1 (3). S. 11–17.

public formations" the person becomes an entrepreneur only after the state registration[182]. Constitutional freedom of an individual for entrepreneurial activity within the limits specified by law is the precondition for the realization by an individual of his/her constitutional right to entrepreneurial activity[183].

The constitutional freedom for entrepreneurial activity is of great importance due to the free access of a person to appropriate material and spiritual goods in the sphere of production of products, performance of works, rendering of services and trade. The entrepreneur is free in the process of realization of the obtained material goods, their exchange, distribution, possession, correlation and disorder. The freedom of the entrepreneur is also in the implementation of the obtained profits. Profit is one of the main sources of financial resources of enterprises, the formation of centralized and decentralized funds of cash assets. Profits generate a significant amount of budgetary resources of the state, finance expansion of enterprises, material incentives for employees, the implementation of social and cultural activities, etc. Therefore, successful, profitable activities of state enterprises is the basis of economic development of the state[184].

The enterprise is the actions aimed at obtaining the result negatively, and economic development is the result of the actions. Therefore, the development of the society is seen as a strategic issue in solving the economic crisis and the inequalities of the transition of the country's economy. Moreover, without a significant expansion of various forms of enterprise activities can not develop the economy. At the same time it should be noted that, firstly, the business sector, especially under conditions of economic restraint, is one of the main ways of alleviating the alienation of Ukrainian citizens from the means of production and private property[185].

[182] Pro derzhavnu reiestratsiiu yurydychnykh osib, fizychnykh osib – pidpryiemtsiv ta hromadskykh formuvan : Zakon Ukrainy vid 15 travnia 2003 r. *Vidomosti Verkhovnoi Rady Ukrainy*. 2003. No 31–32. St. 263.

[183] Oliinyk A.Iu. Konstytutsiini svobody liudyny i hromadianyna ta yikh zabezpechennia v Ukraini : monohrafiia. Kyiv : KNUTD; Dnipro : DDUVS, 2018. 371 s.

[184] Ekonomichnyi zmist i rol prybutku v umovakh rozvytku pidpryiemnytstva. URL: https://pidruchniki.com/1420112664471/finansi.

[185] Shulzhenko F.P. Sotsialno-pravova derzhava: sutnist, problemy politychnoi modernizatsii: dys. … d-ra yuryd. nauk. Kyiv, 2009. 412 s.

However, private initiative must not interfere with public interests and morality, infringe on the rights of other people and violate the norms of economic security; In addition, the constitutional right to entrepreneurial activity can never be implemented, and even more so, protected, without the full participation of the state[186].

Under the conditions of implementation of the constitutional right to business activity we should understand the totality of requirements enshrined at the legislative level and imposed by the state to the persons (regardless of their nationality), The state shall give importance to the rights and freedoms of individuals (irrespective of their citizenship), who have the intention to engage in entrepreneurial activities, and the right granted by the Constitution shall be transformed into reality by their observance. The state devotes considerable attention to the regulation of entrepreneurial activity and the conditions for its implementation. It is entirely logical, because the enterprise is a destructive force of the economy, without the development of which the development of the state as a whole is not possible. Today, unfortunately, a lot of issues in this area need to be regulated and improved.

The positive thing is that the state does not stand still and continues its fruitful work in this sphere, because the development of business in Ukraine depends on the creation of real, fully competitive market conditions, which will enable individuals to fully exercise their constitutional right to entrepreneurial activity and create an atmosphere of support for entrepreneurship as a basis for social progress[187].

Thus, the constitutional right to business activity of each person is a type and measure of economic activity of physical persons, which is not specified or not required by the Constitution and laws of Ukraine and is carried out independently, In the process of the Company's activity, it is carried out on its own initiative, systematically, at its own risk in order to achieve economic and social results and to gain profit.

[186] Kyrychenko Yu. Konstytutsiino-pravove rehuliuvannia prav liudyny v Ukraini v konteksti harmonizatsii z zakonodavstvom yevropeiskykh derzhav. dys d.iu.n. Uzhhorod, 2018. 523 s.

[187] Kovach A. Pravo liudyny na pidpryiemnytstvo. *Chasopys Kyivskoho universytetu prava*. 2012. No 2. S. 212–214.

3.3. Understanding and Types of Cultural Rights and Freedoms of People and Citizen

The Ukrainian Constitution guarantees freedom of literary, artistic, scientific and technological creativity, protection of intellectual property rights, their authorship rights, moral and material interests, and preservation of historical monuments and other objects, The cultural value, taking steps to return to Ukraine the cultural values of the people that are outside its borders, is the fundamental basis for the implementation of people's cultural rights, which contributes to the spiritual development of the individual and the formation of a national ideology as a public phenomenon. On the extent to which the possibilities of access of an individual to the spiritual values of his people and the entire society are realistically ensured, the state guarantees the ability of everyone to take part in the cultural life of the society through the use of cultural goods, protection of their cultural heritage, access to the objects of material and spiritual culture, depends on the full development of territorial communities, society and the state as a whole[188].

Today's realities – together with the historical peculiarities of the cultural development of society, are a clear indication of the success of those very countries, which have achieved significant success in economic, political and social reforms and have rapidly risen to the level of highly developed countries through the implementation of a progressive policy in the sphere of culture. On the other hand, a lack of respect for the cultural and artistic development of the own society puts any state on the border between the lamentable existence and distancing from the civilized world[189].

Culture plays a central role in maintaining and stimulating the quality of life and well-being of individuals and communities. Cultural norms, practices and norms are the key forces for the creation, transmission and reinterpretation of values, attitudes and beliefs through which individuals and communities express the value they attach to their lives

[188] Aksiutina A.V. Administratyvno-pravove zabezpechennia naselennia kulturnymy posluhamy : dys. kand. yuryd. nauk. (doktora filosofii). Kyiv, 2020. 221 s.

[189] Domanska O. Rol derzhavy v realizatsii kulturnoi polityky: kontseptualnyi vymir. *Relihiia ta Sotsium*. 2014. No 3-4 (15-16). S. 163–169.

and their own development. These values, attitudes and opinions shape the nature and quality of social interrelations, influencing the nature of integration, tolerance for diversity, trust and cooperation of individuals and communities[190].

In general, cultural rights in their essence are the measure of spirituality, which is guaranteed by the state taking into account the living conditions and activities of citizens, society and state, and in content – spiritual benefits, which are given to the person by the state. That is, they are the interrelations and way of behavior or activity of a person in the cultural sphere. At the same time, it is necessary to pay attention to the fact that liberal civilization actively intrudes into the modern Ukrainian cultural space, widely using global media and general cultural processes. And so «it is important to preserve their identity, without interfering with the processes taking place in the world[191]. The guarantee of this, is the full protection of a full and universal development of people, which is the basis of cultural rights and freedoms and is guaranteed by the Constitution of Ukraine.

In the legal literature, it is stated, that in the XXI century cultural rights gained significant importance for all countries of the world and became an integral part of the constitutional and legal status of people. Thus, Russian legal scholars rightly assert that cultural rights and freedoms of people – the possibility of preservation and development of national identity of the person, access to the spiritual achievements of its people, The right to education, learning of the native language, freedom of scientific, technical and artistic creativity, etc.)[192].

For his part, J. Pustovit notes that in the general sense cultural rights and freedoms of people and citizens in Ukraine are a measure of spirituality, which is guaranteed by the state taking into account the conditions of life and activity of people, society and the state itself. Therefore, in their essence, cultural rights and freedoms are spiritual benefits, which are provided by

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[190] Indykatory vplyvu kultury na rozvytok YuNESKO Korotkyi analitychnyi ohliad shchodo Ukrainy Image source Prohrama finansuietsia Yevropeiskym Soiuzom. URL: https://docplayer.net/amp/68985292-Indikatori-vplivu-kulturi-na-rozvitok.html.

[191] Sokolenko Yu.M. Poniattia kulturnykh prav i svobod liudyny ta hromadianyna. *Pravo Ukrainy*. 2005. № 2. S. 27–32.

[192] Skrypniuk O.V. Kurs suchasnoho konstytutsiinoho prava Ukrainy. Akademichne vydannia. Kharkiv : Pravo, 2009. 468 s.

the state. The latter are the intervals and methods of behavior or activity of a person in the cultural sphere[193].

P.M. Rabinovich believes that cultural (humanitarian) rights are opportunities to preserve and develop their ethnic identity, access to the achievements of spiritual and material culture of the nation, the people, humanity, their assimilation, use and participation in their further enrichment[194].

For their part, S.D. Gusariev and O.L. Sliusarenko argue that cultural rights and freedoms – a type and measure of possible behavior of the subjects of law for the receipt and enjoyment of spiritual benefits, enshrined in the Constitution and laws of Ukraine[195].

S.L. Lisenkov considers cultural rights and freedoms of people as the measures of possible behavior of subjects established by the norms of the constitution, who have to achieve certain social benefits in the sphere of cultural relations and have the possibility to behave in a certain way, to demand a certain behavior from other subjects and to apply for protection of these powers to the competent authorities and their officials[196].

The notion of cultural right emerged as a continuation and deepening of the general concept of human rights and is widely debated and discussed today not only by the global cultural and artistic community, but also by such authoritative international organizations as UNESCO. Thus, cultural rights in a universal sense means the rights enshrined in the «Universal Declaration of the Rights of Man» in Article 27 of the Universal Declaration of Human Rights. 27, namely: everyone has the right to fully participate in the cultural life of their community, to enjoy the benefits of art and scientific achievements; everyone has the right to the protection of their moral and material interests, which derive from their authorship of scientific, literary or artistic works[197].

At the current stage of civilizational development of the Ukrainian society the cultural rights have not the last role, a number of legal acts,

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193 Pustovit Zh.M. Aktualni problemy prav i svobod liudyny ta hromadianyna v Ukraini : Navch. posib. Kyiv : KNT, 2009. 232 s.

194 Rabinovych P.M. Osnovy zahalnoi teorii prava ta derzhavy : navch. posib. 10-te vyd., pererob. i dopov. Lviv : Krai, 2008. 224 s

195 Husariev S.D., Oliinyk A.Yu., Sliusarenko O.L. Teoriia derzhavy i prava : navch. posib. Kyiv : Nauk. dumka, 2008. 270 s.

196 Lysenkov S.L. Teoretychni pytannia konstytutsiinykh kulturnykh prav i svobod v Ukraini. *Visnyk Akademii advokatury Ukrainy.* 2004. Vyp. 1. S. 5–19.

197 Hrytsenko A.O. Kultura i vlada. Teoriia i praktyka kulturnoi polityky v suchasnomu sviti. Kyiv : UTsKD, 2000. S. 32.

which define the cultural rights and freedoms of people, testify about it. The Constitution of Ukraine adopted in 1996 is the document of the highest legal force in the sphere of culture and art, First, in its article 11 it states that the Constitution of Ukraine, adopted in 1996, is the supreme judicial power in the field of culture and art. Firstly, Article 11 states that the state contributes to the consolidation and development of the Ukrainian nation, its historical identity, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine; Secondly, Article 12 states that Ukraine supports the national, cultural, and language needs of Ukrainians living outside of its borders, and that its citizens are guaranteed freedom of literary and artistic expression, artistic, scientific and technological creativity, protection of intellectual property, their copyright, moral and material interests arising in connection with different types of intellectual activity; thirdly, Article 54 stresses the importance of legal protection of cultural property; fourthly, it emphasizes the exclusive role of the State in preserving historic monuments and other objects of cultural value; In the same way, it obliged everyone not to cause damage to nature and cultural heritage and to repay the damage they had caused (art. 66)[198].

It should not be forgotten that cultural rights are not only a legal form of dissemination and deepening of knowledge, but also a way of affirming the integrity, education, enlightenment, formation of a highly cultural personhood.

The modern democratic state must not limit itself only to guaranteeing the freedom of creativity, not interfering in artistic processes, or the traditional protection of monuments and other cultural heritage of the people – it must discuss all the diversity of creative manifestations in society, About preservation and enrichment of all cultural, spiritual potential, about broad access to it not only to separate social groups of the population, but to all social and cultural categories of consumers of cultural services.

Examination of the legal nature of constitutional cultural rights and freedoms of people and citizen gives grounds to assert that this is an independent group of rights and freedoms of individuals, which claims to be enshrined in the group of social and economic rights and freedoms. A clear definition of constitutional cultural rights and freedoms of people

[198] Konstytutsiia Ukrainy : vid 28 chervnia 1996 r. *Vidomosti Verkhovnoi Rady Ukrainy*. 1996. № 30. St. 141.

and citizen will significantly contribute to the improvement of the constitutional and legal status of the person, strengthening the mechanism of guarantees and implementation of rights and freedoms. This is especially important because it is about the necessity of solving a deep systemic spiritual crisis in all spheres of life and the formation of humanistically oriented society. It must be based not only on freedom and social justice, but also on spiritual development and the priority of cultural development, language, science and education.

Therefore, an analysis of the meaning, essence and characteristics of economic, social and cultural rights and freedoms makes it possible to conclude that they are not some accidental, amorphous combination, they are an interrelated and special group of rights and freedoms of people and citizens, the contents of which are stated in the relevant articles of the Constitution of Ukraine and are detailed in the current legislation of Ukraine. These rights are related to the concept of social state (that is, one that ensures a high standard of living for its citizens) and relate to the activities of people in the economic sphere, which forms the basis for the existence and development of society, with its social relations with society, the state, other people, contribute to the spiritual development of people and ensure their participation in the economic, social and cultural progress of society.

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11. Ekonomichnyi zmist i rol prybutku v umovakh rozvytku pidpryiemnytstva. URL: https://pidruchniki.com/1420112664471/finansi/eko№michniy_zmist_rol_pributku_umovah_ rozvitku_pidpriyemnitstva.

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13. Frolov Yu.M. Pravo pryvatnoi vlasnosti v systemi ekonomichnykh prav liudyny i hromadianyna v Ukraini: konstytutsiino-pravovyi aspekt. *Chasopys Kyivskoho universytetu prava.* 2003. № 2. S. 24–30.

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CHAPTER 4. HUMAN RIGHTS AND FREEDOMS IN UKRAINE

Yelyzaveta Tymoshenko – Assistant of Department of Law,
Vinnitsia National Agrarian University

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4.1. Relationship between people's rights to information and right to information

The concept of "information society" entered the scientific community not so long ago. It was coined and actively used by economists and marketers, social scientists and philosophers, programmers and politicians. Nowadays this notion is actively being studied by lawyers, who also form their own understanding of it. This notion is intended to reflect the actual trend of the new stage of civilization evolution associated with the emergence of new information and telecommunication technologies, new needs and a new way of life.

The term "information society" was introduced in the 1920s by the ideologists of post-industrial society D. Bell and J. Masudo, who tried to connect technological aspects with social ones[199].

The term "information society" was introduced in the 1920s by post-industrial ideologists D. Bell and J. Masudo, who tried to link technological aspects with social ones.

In particular, D. Bell presented the idea of rebirth of industrial society into postindustrial (informational) one, namely through informatization. In particular, he defined the informational society as a process of shaping new principles of social and technological organization, focusing on such principles as: the leading role of theoretical knowledge forms the basis for technological innovations; new intellectual technology gives the opportunity to find more effective approaches to solving technical, economic and social problems; the decisive role of "knowledge bearers" belongs to the

[199] Tymoshenko E.A. Legal aspect of information society development. *Colloquium-journal*. 2020. № 35 (87). Czesc. 3. P. 44–45.

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professors who make up the largest social group; strengthening the role and importance of science in the technological re-equipment of society; the formation of an economic theory of information on the basis of the replacement of the labor theory of value by a theory of value based on knowledge. So, in the center of attention is information[200].

Y. Masuda had a different view of this issue and said that innovations in information technology are a tributary force of social transformation, which manifests itself in a progressive increase in the quantity and quality of information, as well as in the growth of the volume of information exchange. He called the information society a society that grows and develops in the amount of information and leads to an overall flourishing state of human intellectual creativity instead of rich material consumption. In his opinion, the information society should be classless and conflict-free[201].

E. Toffler's concept of informational society is considered a classic one. Toffler, who considers information society as an absolutely new stage of social development in comparison with the previous ones; an important role is given to the tendencies of demasifikatsii production, i.e. the production system is gradually moving away from the traditional mass production to a complex mix of mass and non-mass product.

It is possible to see some critical opinions on the prospects for the development of the information society (as, for example, D. Lyon has connected with the development of the information society). Lyon attributed the development of information technology to the widening of the existing divide between social groups and nations, The expansion of the ability of the state and other institutions to direct and control people's lives and the strengthening of the power of the constantly growing economic interests)[202].

Therefore, the main characteristic of the information society is the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, information transmission and consumption) – one of the most important types of social activities, which creates the information and communication

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[200] Bell D. Sotsyalnые ramky ynformatsyonnoho obshchestva. Novaia tekhnokratycheskaia volna na Zapade. Moskva : Prohress, 198b. 514 p.

[201] Masuda Y. The Information Society as Post-Industrial Society. Institute for the Information Society. Washington, D.C.: Pub. WorldFutureSociety, 1981. 171 p.

[202] Laion D. Informatsiine suspilstvo: problemy ta iliuzii. URL: http://www.philsci.univ.kiev.ua/biblio/lajon.html (last access: 20.12.2021).

base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progress.

The role of information technology in social development today is particularly great. In recent years, the computer network has become the main source of social innovation. It is not just about changes in technological conditions that demand production, communication, education and other kinds of human activity, but about a fundamentally new character of the modern world, a serious redefinition of values and a change in the way people live, the formation of a specific ethos of the information society[203]. In the course of large-scale transformations in all spheres of social life, new moral problems emerge and old ones become more acute. As in any other transition period, the opposition between traditional and innovative values intensifies. The problem of indirect communication, computer malice, information security, control over personal life, compliance of an individual's behavior in real and virtual spaces, creation of virtual (pseudo) personalities, etc., is acute.

Modern society is in the process of transition to the informational (postindustrial) period, a changed industrial society. Since the process of value transformation is ambiguous and ambiguous, it is suggested to reveal ethical-philosophical characteristics of global informational society by analyzing values, moral norms and principles developed in the midst of those communities that have further developed through the use of high information technology. Ethnos, formed in the process of Internet communication of such social groups as information workers, IT professionals, representatives of media subcultures, etc., can be regarded as a prototype and the basic model for the formation of the ethnos of information society as a whole.

The formation of the information society generates unique moral problems, including computer malice, informational nervousness and informational safety, the problem of the juxtaposition of copyright and the specifics of functioning of the Internet, the creation of virtual persons, the virtualization of real persons and so on.

Information production and communication are becoming a centralized process. In the end, the main resource of the new postindustrial order is information.

[203] Tymoshenko E.A. Legal aspect of information society development. *Colloquium-journal*. 2020. № 35 (87). Czesc. 3. P. 44–45.

The concepts of "information society" and "knowledge society" are often confused. What is the difference? Which is broader and which includes the other?

Thanks to the rapid development of information technology, which has outpaced knowledge and its comprehension by the masses, a knowledge-based society has emerged. It can be argued that this is the next stage in the development of the information society. Traditional material production, which is not focused on new technologies and scientific knowledge, is not competitive on the body of the knowledge society, thereby depressing it and smoothly replacing it. In such a society, information technology has certain functions: epistemological, cultural and social. As for the cognitive function, its status and relevance in the information society is that the totality of information networks allows to carry out operations that ensure the growth of new knowledge. Cultural – expands knowledge of the traditions and rules of other countries and nations. Social – is manifested plus the mixing of people and the subordination of those who possess and do not possess information. Other subdivisions of society that existed before are being erased. In this way, the knowledge society possesses low signifiers:

1. Availability of modern information technologies.
2. The existence of developed infrastructures.
3. Accelerated automation and robotization of production and management.
4. Radical transformation of social structures, which leads to an increase in the volume of information activities and services.

The process of development of the information society in all countries will be different due to differences in the level of development of the informatization processes between the most developed countries and the countries of the third world with a transitional economy. Moreover, even within a single country one cannot talk about the same level of development and implementation of information technology, readiness of some individuals (or their groups), and state structures to one-step change of traditional processes to more modern ones, which is accompanied by different level of material and technical basis, financing, availability of qualified personnel, etc. Therefore, we can talk about the existence of several types of information society at the same time, where the main thing when determining the type of society will be the level of ensuring equal rights of access to

information for citizens, the ability and desire to obtain new knowledge, information, effectively use them.

Information society should be understood as a modern society with a high level of development of information culture (creation, processing and use of information), which is characterized by:

– the ability to adequately produce all the information necessary for the life of society;

– availability of developed information infrastructure of society;

– high level of accessibility to all members of society of the necessary information;

– a large part of the creative population working in the information sector of the economy.

The information society is characterized by the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, transmission and consumption of information) is one of the most important types of social activities, which creates the information and communication base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progresS. In the information and cultural spheres, in the opinion of H. Schiller, it is manifested in the implementation of the concepts of media-imperialism and cultural imperialism. From this point of view, the information and communication activity, led by the interests of transnational corporations (TNCs), leads to negative systemic phenomena in the information and cultural sphere on a global scale. A different opinion in this regard is held by J. Tomlinson, who denies the unambiguity and predetermination of the ideological effects of media-imperialism[204].

The end of the XX century and the beginning of the XXI century were marked by tumultuous processes of information and communication revolution on a global, worldwide scale. As a consequence, the traditional in the recent past types of mass communication devices (terrestrial television and radio broadcasting, audiovisuals, cinema. The media were technologically new (satellite, cable television, high-definition television, multimedia networks with improved programming).

[204] Bebyk V. Suchasna hlobalistyka: providni kontseptsii i moderna praktyka. Kyiv : Universytet "Ukraina", 2006. 208 p.

The organizational basis of the modern stage of formation of the information society is increasingly becoming a computer multimedia – organizational structures, which combine in themselves the software and technical capabilities of text, sound, graphic, multiplayer and video creation of information. The introduction of multimedia ICT led to the creation of information supermagistries – integral aggregates of global, international, national and local satellite, cable and terrestrial communication networks based on the elements and resources of information infrastructure. The elements of information infrastructures include: computers with multimedia add-ons, databases, including those on flash drives and laser disks, consumer electronics. The resources of information infrastructures include: interactive programming, interactive television, video, games, mobile communication and many other modern technologies of the global information sphere of society. In this connection, the notion of information flows is important, which are considered to be:

– The purposeful flow of information from all segments of the public sphere, which is carried out by all available information and communication channels from the sources to the consumers of information (in the broad sense). This plan includes the following communication channels: mass media, new information technologies, sports, political, economic, cultural, educational exchanges, tourism, migration, personal contacts, etc;

– The direct flow of information, which comes first of all through copper (video-audience and press) and telecommunication (communication, computer systems, etc.) communication channels (high level of understanding). The purposeful impact of information flows contributes to changes in nature and power resources, ideologies and values, perceptions (of individuals, social groups, societies), national and international systems. In particular, information flows influence:

– at the individual level – on the judiciary, culture, education, work, leisure time;

– on the institutional level – on politics, economics, religion;

– on the group level (social, ethnic, professional, age, etc.) – identity, mobilization, participation;

– on the interstate level – on cooperation (conflict), resources, transnational corporations, etc.

The current state of development of information and communication technologies has led to the fact that today it is not necessary to have a computer in order to use the Internet, because it is possible to receive information from the "world wide web" via mobile phone connection or cable or satellite TV system using relatively inexpensive TV set-top boxes. However, in the opinion of anti-globalization scientists, the real consequences of the development of the information society on the basis of new ICT is not so much the creation of a global world as the elitist nature of today's globalization. The point here is that the Internet is not only becoming the technological basis of the new information society, but is being transformed into a certain barrier (linguistic, educational, material, technological) for the countries that are developing to join it[205].

Formation of the global information society, widespread implementation of new information and communication technologies (satellite and cable television and radio, mobile communication, multimedia) have actualized informational power at all levels of global governance. In our opinion, information power is the ability of the owners of information to influence the formation of public knowledge and culture through the acquisition, selection, elaboration, composition, production and dissemination of information, to prompt the subjects of the social sphere (politics, economics, spiritual sphere) to programmed or spontaneous actions in a given direction. Information power can be exercised through specialized means of information transmission, which ensure the uniformity of will, integrity and purposefulness of actions of a large number of people and are called mass media, or CMC. CMCs are specialized institutions for the open, public transmission of beacon information to any individuals through the use of special technical equipment. WBC includes digital, audiovisual, electronic press, mass-media, cinema, video, audio information carriers, satellite, cable, computer networks – everything that can generate and transmit information important for the daily life. Since we are talking about the power potential of mass media, it is impossible to do without such a key concept as freedom of the press. With the appearance of the first newspapers, the problem of press freedom emerged, becoming a subject of controversy, and later becoming more acute in the 18th century during the

[205] Bebyk V. Informatsiino-komunikatsiinyi menedzhment u hlobalnomu suspilstvi: psykholohiia, tekhnolohii, tekhnika pablik rileishnz. Kyiv : MAUP, 2005. 440 p.

French bourgeois revolution. At that time the democratic bourgeois concept of freedom of the press was formulated, which was based on three main theses:

– the separation of news from commentary;

– openness of the state information;

– absence of censorship[206].

The informational society is characterized by the recognition of information as one of the most important resources of society, and the information sector of the economy (production, storage, processing, transmission and disposal of information) is one of the most important types of social activities, which creates the information and communication base for the formation of a global information society and the development of scientific and technological, socio-economic and educational and cultural progress.

The basis of the information society is information and communication technology, which leads to the development of information relations, which, in turn, mediate and ensure the interconnection of other social relations. The rights and freedoms of individuals and citizens, which are realized in the sphere of information relations, are indirectly related to the establishment of a democratic society, Because the guarantees of human rights and freedoms in the information sphere are among the most important conditions for the formation of law-based state, because they are integrated into the working mechanism of governance in a democratic society. Realization of fundamental rights and freedoms of citizens in the field of information occupies a special place in the system of national interests of Ukraine, based on the principles of freedom of information and law – everything that is not forbidden by law is allowed. These principles are enshrined in the basic international legal documents, the Constitution of Ukraine and a number of other laws. Thus, it is important to understand the meaning of such deficiencies as informational rights and freedoms of people and citizen.

Since we have identified the context of this issue, let us define the right to information. In Ukraine, this right is enshrined in the Constitution of Ukraine, the Law of Ukraine “On Information”, “On Public Appeals”, “On Access to Public Information”. And also, in the Decree of the

[206] Burzhuaznye teoryy zhurnalystyky: krytycheskyi analyz; pod red. Zasurskoho Ya.Y. Moskva : Misl, 1980. 25 s.

Ministry of Justice of Ukraine from May 05.05.2012 "The Right of Access to Information as an Element of the Legal Status of the Individual".

The right of access to information is a constitutional right of the people envisaged and guaranteed by Article 34 of the Constitution of Ukraine, namely the right of every person to freedom of thought and speech, to free expression of their views and opinions; the right to freely collect, store, use and disseminate information in writing or by other means of one's choice.

The exercise of these rights may be limited by law in the interests of national security, territorial integrity or public order in order to prevent infiltration or malice, to protect the health of the population, to protect the reputation or rights of others, to prevent the disclosure of information obtained confidentially, or to maintain the authority and integrity of the justice system[207].

Information – any information and / or data that can be stored on tangible media or displayed electronically[208].

Article 5 of the Law of Ukraine "On Information" enshrines the right of everyone to information that provides the possibility of free retrieval, use, dissemination, preservation and protection of information necessary for the realization of their rights, freedoms and legitimate interests. Realization of the right to information must not violate community, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other people, the rights and interests of legal entities. Thus, the right to information is a separate right, which is not included in any of the categories of rightP.

There is another category of human rights and freedoms – informational rights. Information rights of people are the state-guaranteed abilities of people to satisfy their needs in obtaining, using, dissemination, protection and protection of the amount of information necessary for life. At first glance, given the similarity in definitions, these two categories should not be confused.

The core of people's information rights is the right to information, which includes the right to collect, store, use and disseminate information in a timely manner, in writing or in another way – at their own discretion. The basis of the right to information is the right of people to receive infor-

[207] Pravo na dostup do informatsii yak element pravovoho statusu osoby. Miniust Ukrainy; Roziasnennia vid 03.05.2012

[208] «Pro informatsiiu» Zakon Ukrainy vid 02.10.1992 № 2b57-XII.

mation. It should be emphasized that the right to information is not absolute and not limited. Instead, the implementation of the right to information by citizens, legal entities and the state should not violate community, political, economic, social, spiritual, environmental and other rights, freedoms and legitimate interests of other people, the rights and interests of legal entities. There is a principle, according to which it is not allowed to collect information, which is a state secret or confidential information of a legal entity. Thus, it can be said that the right of an individual to information ends where the right of another person begini.

Most scientists consider the right to information solely in the scope of the openness of the activities of public authorities, understanding under this right the possibility of a citizen to receive official information from the public authorities, The right of the citizen to receive official information from the state authorities, which the latter have in connection with the exercise of their powers, while others argue that the right to information is derived from freedom of speech.

M. Muratov believes that the right to information encompasses the right to know about the creation and functioning of all specific information systems related to the personal life of a citizen, the right to consent to the collection of information, the right to request information that is personal in nature, the right to verify the authenticity of such information and deny unauthorized information, the right to truthful information about the state of the environment, and so on[209].

However, B. Gogol states that such a broad approach to defining the meaning of the right to information leads to the rejection of the notion of "right to information" and "information rights of an individual". Also, under the right to information the researcher proposes to understand the normatively secured ability of an individual to independently collect, store, The researcher believes that the right to information includes the right to collect, store, disseminate and process information in any way not prohibited by law[210].

The concept of «information rights and freedoms of people and citizen» is a broader concept because it covers not only the ability to «freely collect,

[209] Muratov M.Ia. Pravo na svobodu slova : ystoryia y sovremennost : dys. na soyskanye uch. stepeny kand. yuryd. nauk : spets. 12.00.01. Moskva, 2002. 177 p.

[210] Hohol B. Zmist prava na informatsiiu. *Yurydychna Ukraina*. 2008. № 5. S. 64–67.

store, use and disseminate information in any way one chooses» or even «the ability to obtain information freely, use, dissemination, preservation and protection of information necessary for the exercise of their rights, freedoms and legitimate interests,» and all the rights and freedoms of individuals and citizen having informational nature. According to Article 34 of the Constitution of Ukraine the people's and citizen's information rights consist of the right: to collect, store, use and distribute information freely, in writing or in any other way – at their discretion. But this structure of information rights differs from the group of internationally accepted information rights, which is quite understandable, because information rights must guarantee the implementation of the entire cycle of people's information freedom.

In 2013, 22 international organizations and academic centers, in consultation with some 500 experts from 70 countries, prepared the Global Information Society, developed the Global Principles on National Security and the Right to Information (the Zwangs Principles), which contain recommendations for balancing the right to information and the interests of protecting national security. They state, among other things: it is not enough to point out only that the dissemination of information may cause harm to national security. The lawmaker must give specific and substantial reasons for such a decision. In simpler terms, to argue their refusal.

The main ideas of the Tsvansky Principles are the following:

– information must be kept confidential only if its disclosure would entail real and identifiable risks to the legitimate interests of national security (Principle 3);

– information about serious violations of international human rights and humanitarian law must be disclosed in any case (Principle 10A);

– the public must have access to information about the monitoring programmes (Principle 10E);

– no public official shall be categorically prevented from making requests for information disclosure (Principle 5);

– public officials acting in the interests of the public by reporting on abuse by the government should be protected from retaliation (Principle 40). Notwithstanding the fact that in this case it is a matter of «freedom of information», in fact the right of an individual to access information is taken into account.

As it is stated in the already mentioned Tzvanskiy Principles: «Although sometimes there is tension between the desire of the Government to preserve information in the interests of national security and the right of the public to information, a review of recent history shows that, that legitimate national security interests are most protected in practice when the public is well informed about the activities of the authorities, including those undertaken to protect national security.

Access to information, ensuring public control over the activities of the government, serves not only as a safeguard against abuse by public servants, but also allows the public to take part in determining state policy, thus forming the most important component of true national security, democratic participation and the development of sound policy.

The Constitution of Ukraine contains more than 20 legal norms that are Directly or indirectly establish information rights and freedoms of individuals and citizen or have a different degree of information character, including but not limited to:

– Freedom from censorship (Article 15 of the Constitution of Ukraine).

– Right to privacy of leaves, telephone communications, telegraphic and other correspondence (Article 31 of the Constitution of Ukraine);

– The right to privacy of personal and family life (Article 32 of the Constitution of Ukraine);

– Right to freedom of thought and speech, to free expression of their views and beliefs (art. 34 of the Constitution of Ukraine);

– Right to freedom of opinion and expression (Article 35 of the Constitution of Ukraine);

– The right to own, use and dispose of their property, and the results of their intellectual and creative activity (art. 41 of the Constitution of Ukraine);

– Right to free development of one's personality (article 23 of the Constitution of Ukraine);

– Right to respect for human dignity (art. 28 of the Constitution of Ukraine);

– The right to freedom of association (article 36 of the Constitution of Ukraine);

– The right to take part in the management of state affairs (article 38 of the Constitution of Ukraine);

– The right to assembly (art. 39 of the Constitution of Ukraine);

– The right to appeal to the bodies of state power and local self-government (article 40 of the Constitution of Ukraine);

– Freedom of literary, artistic, scientific creativity (art. 54 of the Constitution of Ukraine);

– The right to know one's rights and duties (art. 57 of the Constitution of Ukraine) and others.

In view of the above, information rights are directly included in the structure of other rights and freedoms of people[211] and citizen, which regulate information processes and create an integral existential phenomenon, which is recognized through the prism of their systemic properties, which is manifested in the presence of rights and freedoms of informational nature in various spheres of life of society[212]. Accordingly, it is possible to speak about informational rights and freedoms of people and citizen in the environmental sphere, economic sphere, political sphere, managerial sphere, etc., which are "correlatively combined and in their integrative totality form a system of informational rights and freedoms"[213].

4.2. Mechanism of security of information rights and freedoms of people in Ukraine

At the present stage of development of the world community the problems of protecting people's rights go far beyond the borders of individual states. International norms and principles in the field of human rights have been formed and received general recognition as a standard to be achieved by all stateP. These norms and principles are contained in the most important international legal documents on the protection of human rights. The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant

[211] Danylian O.H., Dzoban O.P. Dialektychna yednist informatsiinykh prav ta informatsiinoi svobody. *Visnyk Natsionalnoho universytetu «Iurydychna akademiia Ukrainy imeni Yaroslava Mudroho»*. 2017. № 1 (32). S. 5–15.

[212] Vitiv V. Informatsiini prava yak skladova chetvertoho pokolinnia prav liudyny. *Naukovi zapysky Instytutu zakonodavstva Verkhovnoi Rady Ukrainy: Konstytutsiine ta munitsypalne pravo*. 2016. № 6. S. 22–26.

[213] Diorditsa I. Klasyfikatsiia informatsiinykh prav i svobod liudyny i hromadianyna. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2016. № 7. S. 116–122.

on Social, Economic, and Cultural Rights (1966)), the Optional Protocol to the International Covenant on Civil and Political Rights (1966) and the International Bill of Human RightP. At the regional level, these norms are contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961). Most of these documents are legally binding for the states that ratified them.

Problematics of the study of the legal mechanism of protection of information rights and freedoms nowadays is extremely relevant, because the analysis and study of the issues of the legal mechanism of protection of information rights and freedoms positively affects the organization of legal protection of the rights and freedoms of people and citizen in Ukraine as a whole.

Normative-legal mechanism of protection of information rights of people and citizen is part of the legal mechanism of protection of all constitutional rights and dutieP. One of the most important components of the legal mechanism of protection of information rights of people and citizen in Ukraine is their guarantees. The content of legal guarantees of information rights and freedoms of people and citizen, enshrined in international legal acts and in national law is practically the same. But the grounds for their possible limitation and direct limitation, specified in international documents and domestic law, do not always coincide. Therefore, we suggest unification of the list of grounds for restrictions on information rights and freedoms of people and citizen and creation of the list of cases of their direct limitation with their further consolidation in the legislation[214].

An enlarged system of rights and freedoms of people and citizen, which is enshrined in both international and national legislation, including at the constitutional level, does not always indicate the proper implementation of these rights and freedoms. In general, the mechanism of security of rights and freedoms of people and citizen is often understood as a system of means and mechanisms through which the implementation of rights and freedoms of an individual and their protection by the relevant competent

[214] Nastiuk V.Ia., Bielievtseva V.V. Pravovyi zakhystinformatsiinykh prav i svobod liudyny v Ukraini: problemy i perspektyvy. *Informatsiia i pravo*. 2015. № 2(14). S. 20–25.

competent subjects of power is carried out[215], The system of interoperable legal instruments through which the state exerts legal influence on the legal relations between the subjects of law in order to recognize, implement and enforce the fundamental rights of the individual and the citizen[216]. Mechanisms of protection of human rights and freedoms are divided into international and national. International rights protection mechanisms are a system of international (state) bodies and organizations that act in order to implement international standards of human rights and freedoms or their restoration in case of their violation, and the relevant international legal norms.

The constitutional-legal mechanism of protection, which includes, first of all, the constitutional principles that ensure the free development and proper existence of each individual, occupies a special place in the arrangement of the legal part of the mechanism of protection of the rights and freedoms of people and citizen. These include the principles of humanism, equality of rights and duties, freedom of expression and action, guaranteeing rights and freedoms, the universality of rights and freedoms, etc. Thanks to these principles, firstly, the necessary balance of constitutional values is achieved in case of a minor amendment of the current legislation, and secondly – in law-and-order practice, in case of loopholes and contradictions in the current legislation. Thirdly, the existence of these principles is the result of intensification of generally recognized norms of international law in the national legislation, which allows to ensure and protect the rights of people and citizens in Ukraine at the level of civilized world standards.

The legal framework, which determines the status of entities that protect the rights and freedoms of people and citizens, the status of entities that are subject to protection and defense, as well as the legal relations that arise between them, also form the basis of the mechanism for the protection of rights and freedoms of people and citizens, This should include the actions of the authorized subjects of protection and defense, and the actions of the person whose rights have been violated, in relation to the offender with the

[215] Nikitenko L.O. Zmist mexanizmu zabezpechennia konstytutsiinoho prava na pidpryiemnytsku diialnist. URL: nttp://pravoznavec.com.ua/period/article/2817/%CB (data zvernennia 23.12.2021).

[216] Hasanov K.K. Konstytutsyonnyi mehanyzm zashchyty osnovnyx prav cheloveka. Moskva : Yunyty-dana, zakon i pravo, 2004. 432 s.

aim of preventing and stopping the violation or restoring the violated rights and freedoms[217].

In terms of components, the legal mechanism of protection of information rights and freedoms of people and citizen (as well as the legal mechanism of protection of rights and freedoms of people and citizen as a whole) is divided into normative and legal and organizational-legal. Normative-legal form is expressed in the adoption of normative-legal acts or in the introduction of amendments to legal acts, which can contribute to the protection of information rights and freedoms of people and citizen.

Organizational and legal structure of the protection mechanism is expressed in the activity of internal state bodies involved in the process of protection of information rights and freedoms of people and citizen in Ukraine. The main role in the organizational and legal mechanism of protection of information rights and freedoms of people and citizen is played by the President of Ukraine, bodies of executive power, law enforcement agencies, as well as institutions of civil society. The role of the President of Ukraine in the organizational and legal mechanism of protection of information rights and freedoms of people and citizens in Ukraine is determined by the fact that he is the guarantor of the Constitution. The role of public authorities in the organizational and legal mechanism of protection of information rights and freedoms of people and citizen is to ensure the implementation of the Constitution and laws of Ukraine. A special place also belongs to the courts, prosecutors, internal affairs bodies, other law enforcement agencies, lawyers, notaries, who play an active role in the protection of information rights and freedoms of people and citizens.

An important place in the organizational and legal mechanism of protection of people's rights and freedoms is occupied by the ombudsman. Thus, according to Article 101 of the Constitution of Ukraine, the parliamentary control over the observance of constitutional rights and freedoms of people and citizen is exercised by the Human Rights Institution of the Council of Ukraine. The aim of the parliamentary control over the observance of constitutional rights and freedoms of people and citizen,

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[217] Uvarov A.A. Konstytutsyonno-pravovoi mehanyzm ohrany i zashchyty prav i svobod cheloveka. URL: nttps://cuberleninka.ru/article/n/konstitutsionno-pravovou-menanizm-onranu-i-zascnituprav-i-svobod-cneloveka.

which is carried out by the Unitary Oversight Commission of the Council of Europe for Human Rights[218], is:

– Protecting the rights and freedoms of people and a citizen, declared by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; Respect for human and civil rights on the part of public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations and their officers;

– Preventing violations of the rights and freedoms of people and citizen and encouraging the restoration of violated rights; promoting compliance of the legislation of Ukraine on the rights and freedoms of people and citizen with the Constitution of Ukraine and international standards in this area;

– Improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any forms of discrimination against people for exercising their rights and freedoms;

– Promotion of legal information of the population and protection of confidential information about the person.

The legal structure of the legal mechanism of protection of information rights and freedoms of people and citizen includes the following elements: normative rules that establish the implementation of legal protection of information rights and freedoms of people and citizen;

– legal facts that allow starting the process of legal protection of information rights and freedoms of people and citizen;

The aim of the parliamentary control over the observance of constitutional rights and freedoms of people and citizen, which is carried out by the Supervisory Board of the Council of Europe for Human Rights, is:

– Protecting the rights and freedoms of people and a citizen, declared by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; Respect for human and civil rights on the part of public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations and their officers;

– Preventing violations of the rights and freedoms of people and citizen and encouraging the restoration of violated rights; promoting compliance of the legislation of Ukraine on the rights and freedoms of people and citizen with the Constitution of Ukraine and international standards in this area;

[218] Konstytutsiia Ukrainy vid 28 chervnia 1996 roku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

– Improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any forms of discrimination against people for exercising their rights and freedoms;

– Promotion of legal information of the population and protection of confidential information about the person.

The legal structure of the legal mechanism of protection of information rights and freedoms of people and citizen includes the following elements: normative rules that establish the implementation of legal protection of information rights and freedoms of people and citizen;

– Legal facts that allow initiating the process of legal protection of information rights and freedoms of people and citizen;

– Legal relations for the protection of information rights and freedoms of people and citizen, which entail the existence of rights and obligations corresponding to them;

– The subjects of the legal mechanism for the protection of information rights and freedoms of people and citizen;

– The objects of the legal mechanism of protection of information rights of people and citizen (the objects by which information rights and freedoms of people and citizen arise).

The Constitution notes that everyone has the right to protect their rights and freedoms against violations and unlawful encroachments by any means not prohibited by law[219].

Therefore, the means of protection of rights and freedoms of people and citizen, including information, can be classified as judicial, administrative and state[220]. Thus, the right of citizens to judicial protection is enshrined in Article 10 of the Legal Code of Human Rights and Article 55 of the Constitution. Article 55 of the Constitution of Ukraine[221], according to which everyone is guaranteed the right to challenge in court the decisions, actions or inactivity of bodies of government, local authorities, officials and employees. In case of appeal to the court, a person may refer to the

219 Konctytutsiia Ukpaïny vid 28 chepvnia 1996 poku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

220 Konctytutsiia Ukpaïny vid 28 chepvnia 1996 poku. URL: zakon5.rada.gov.ua/laws/snow/254k/9b-vp.

221 Zahalna deklaratsiia prav liudyny, pryiniata i proholoshena re3oliutsisiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: nttp://zakon0.rada.gov.ua/laws/sno /995_015.

provisions of the Constitution of Ukraine, the norms of which are the norms of law.

Thus, the legal mechanism of protection of rights and freedoms covers all possible actions for protection of information rights and freedoms of people and citizen, which distinguishes the corresponding category from the concept of "the mechanism of exercising the right to protection by people", In its turn, it means one of the components of the legal mechanism of protection of rights and freedoms, the essence of which lies in the purposeful activity of people to restore the status that existed before the violation of a particular right of an individual[222].

4.3. Implementation of Legal Security of Information Rights and Freedoms of People from European Union Legislation into Ukrainian Legislation

An analysis of restrictions on the right to information found in the Constitution of Ukraine enables us to state that the constitutional norms of Ukraine comply with generally recognized international norms, in particular the norms of the International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms[223], etc. However, in the list of restrictions enshrined in the Constitution of Ukraine and international legal acts, the notions that have ambiguous interpretation are used. For example, the concept of limitation of the right to information in connection with the need to protect the interests of national security is also discussed.

Thus, it is also about the concept of limiting the right to information due to the need to protect the interests of national security. We recognize that the conceptual domestic legal act that regulates social relations in the field of ensuring national security of Ukraine and determines the basic principles of state policy, The Law of Ukraine "On the Fundamentals of National Secu-

[222] Uvarov A.A. Konstytutsyonno-pravovoi mehanyzm ohrany i zashchyty prav i svobod cheloveka. URL: nttps://cuberleninka.ru/article/n/konstitutsionno-pravovou-menanizm-onranu-i-zascnituprav-i-svobod-cneloveka.

[223] Sobkiv Ya.M. Informatsyonnye prava i svobodu cheloveka i hrazhdanyna: osobennosty ukraynskoho normatyvno-pravovoho rehulyrovanyia. URL: goal-int.org/informacionnye-prava-i-svobody-cheloveka-i-grazhdanina-osobennosti-ukrainskogo-normativno-pravovogo-regul irovaniya.

rity of Ukraine" defines the principles of state policy aimed at protecting national interests and guaranteeing safety of individuals, society and the state in Ukraine from external and internal threats in all spheres of life. Such notion as "national security interests" is not enshrined and is not accepted, but now the notion of "national interests"[224] is accepted. At the same time, the content of the concept of national security, as well as the list of the main directions of state policy on national security issues indicate that the concept, and thus the concept of "national security interests" can be interpreted broadly. V. Lipkan and Yu. Maksimenko in this regard are heard to say: "If we analyze the definition of national interests, national security, as well as the list of priorities of national interests, threats to national interests and national security of Ukraine, we can conclude that the exceptions from the rule enshrined in paragraph. 2 of Article 32 of the Constitution of Ukraine prevail over the rule itself"[225].

The level of guaranteeing people's rights and the means that are used for this purpose are not the same in different countries. The most effective procedures for the protection of human rights are developed within the European legal space. Ukraine wants to become a full member of the European Union, so its legislation in the field of human rights and the practice of its implementation must comply with European legal standards. Comparative legal analysis of legal guarantees of people's rights provided by European and national law sources will contribute to improvement of the existing mechanism of protection of rights and freedoms of people and citizen in Ukraine[226].

European law includes norms that regulate social relations formed in the course of integration processes within the framework of the European Community and the European Union (EU) based on it. The foundations of the common European standards of human rights were laid by the Con-

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[224] Pro osnovy natsionalnoi bezpeky Ukrainy: Zakon Ukrainy vid 19.06.03 r. URL: http://zakon2.rada.gov.ua/laws/show/964-15.

[225] Lipkan V.A., Maksymenko Yu.Ie. Prava i svobody liudyny ta hromadianyna v informatsiinii sferi v umovakh provedennia konstytutsiinoi reformy v Ukraini : materialy «kruhloho stolu», prysviachenoho 15-y richnytsi pryiniattia Konstytutsii Ukrainy [«Konstytutsiia Ukrainy : zminy chy nova redaktsiia»], spets. vyp., 24 cherv. 2011 r.; redkol. V.V. Kovalenko (holov. red.) ta in. Kyiv : Yurinkom Inter, 2011. 196 s.

[226] Bohachova L.L. Yurydychni harantii prav i svobod liudyny i hromadianyna v yevropeiskomu ta natsionalnomu pravi. *Derzhavne budivnytstvo ta mistseve samovriaduvannia*. 2011. № 22. S. 56–70.

vention on the Protection of Human Rights and Fundamental Freedoms of 1950 (adopted by the Council of Europe), which became a true "European bill of rights", a "constitutional document of the European public order. EU law in the past did not have a list of enshrined human rights in writing, and the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms (henceforth European Convention) was not recognized as its direct source. The first step towards solving this situation was the adoption of the EU Charter of Fundamental Rights by the European Parliament, the EU Council, and the European Commission in 2000 (henceforth referred to as the EU Charter). The adoption of the Charter was justified by the need to: protection of people's rights and freedoms from possible violations by the EU supervisory bodies; filling the EU citizenship institute with a more concrete meaning; reconciliation of legal regimes of social, economic, civil, and political rights; division of competence between the European Court of Justice and the European Court of Human Rights Recognizing the need for interpretation of human rights and freedoms guaranteed on the territory of the EU, in accordance with the principles of interpretation of the European Court of Human Rights rights enshrined in the European Convention ensuring equal application of human rights enshrined in the norms of the directives of the relevant EU bodies on the territory of all member states; shaping a "lawful" worldview of citizens under the jurisdiction of the EU[227].

International mechanisms for the protection of human rights are international legal acts on human rights, as well as specialized international instruments, organizations, institutions, which are directly focused on the protection of human rights and implementation of these actP.

It is necessary to recognize the fact that since the adoption of the Universal Declaration of Human Rights, a certain international regime for the protection of human rights, including informational ones, has developed and continues to develop. This is about the regime of protection of information rights of people, that is a totality of certain mechanisms and procedures, institutions, tools and forms of activity aimed at protecting information rights of people, as the international law does not have those qualities that

227 Pravo Yevropeiskoho Soiuzu: navch. posib. za red. R.A. Petrova. Kyiv : Istyna, 2011. S. 66–68; Khartyia Evropeiskoho Soiuza ob osnovnykh pravakh: kommentaryi. pod red. S.Yu. Kashkyna. Moskva : Yurysprudentsyia, 2001. 208 s.; Lediakh Y.A. Khartyia osnovnykh prav Evropeiskoho Soiuza. *Hosudarstvo i pravo*. 2002. № 1. S. 51–58.

are characteristic of national law[228]. The international mechanism for the implementation of international human rights standards includes the activity of non-universal and regional international organizations. The universal level is the UN, its organizations, as well as organizations that act under its aegis through various kinds of international programs and projectP. The mechanism of implementation and protection of rights, freedoms and responsibilities at the international and regional levels includes the following structural elements: a) international and regional standards in the sphere of rights, freedoms and duties; b) implementation (incorporation) of the analyzed international and regional standards into national law; c) International and regional forums of human rights and freedoms; d) Ensuring by these forums of international and regional standards of rights, freedoms and responsibilities of people[229].

The system, which ensures the protection of human rights, also includes international courts, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court. These organizations, worth emphasizing, do not accept individual applications, unlike the European Court of Human Rights. But the fact that their activity is directly related to the protection of people from the most terrible violations of their rights and freedoms does not cause any doubtP. In parallel with the international universal mechanisms in the sphere of protection of human rights and freedoms there are also regional conventions on human rights. The regional systems of human rights protection often include the European (European Council), the Inter-American and African systems of human rights protection[230]. It is generally recognized that the most developed and legally effective system of protection of human rights, not only on a regional level, but also on a non-domestic level, is the system of the Council of Europe, at the center of which is the European Convention for the Protection of Human Rights and Fundamental Freedoms and its "monitoring body" – the European Court of Human Rights. Despite the fact that the latter has repeatedly stated that the

[228] Mizhnarodne pravo: ekzamenatsiinyi dovidnyk. O.V. Troianovskyi, Yu.V. Chaikovskyi, N.O. Yakubovska. Odesa : Feniks. 2010. 246 s.

[229] Kolodii A.M., Oliinyk A.Iu. Prava, svobody ta oboviazky liudyny i hromadianyna v Ukraini: Pidruchnyk. Kyiv : Vseukrainska asotsiatsiia vydavtsiv «Pravova yednist», 2008. 350 s.

[230] Kartashkyn V.A. Prava cheloveka v mezhdunarodnom y vnutryhosudarstvennom prave. Moskva, 1995.

Court is not either an appeal court or a "fourth" court, the real role of the decisions of this body is very high. Moreover, in the history of the European Court of Justice there were practically no cases of non-compliance with its decisions, which also testifies to the authority and effectiveness of this mechanism for the protection of human rights. The right of an individual and a citizen to make an individual complaint to the European Court of Human Rights is enshrined in Article 55 of the Constitution of Ukraine. The European Convention for the Protection of Human Rights and Fundamental Freedoms became a consolidated document reflecting the common European values in the sphere of human rights, including information rights. The status of this document, its significance and impact on the national legal systems of the member states of the European Council and the European Union, as well as on the development of international law in general, is difficult to overestimate[231].

The European Court of Human Rights and the European Commission of Human Rights have established a significant number of precedents on the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The Court has repeatedly emphasized that freedom of expression is one of the foundations[232] of a democratic society and one of the basic conditions for the progress and development of every person.

The impact of the decisions of the European Court of Human Rights on the development of international law is significant[233]. Some scholars call its judgments and decisions of international courts precedents, or those that come close to them, emphasizing the importance and extraordinary authority of these courts. As T.M. Anakin rightly points out. The Court of Appeal of the United States of America, in the case of the International Court of Justice (ICJ) and the International Court of Justice of the United States of America (ICJJ), has been the subject of the present study, which has been

[231] Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

[232] Nhuen Kuok Dyn, Patryk Daie, Alen Pele. Mezhdunarodnoe publychnoe pravo: V 2-kh tomakh. T. 1: Kn. 1: Formyrovanye mezhdunarodnoho prava; Kn. 2: Mezhdunarodnoe soobshchestvo. Per. s fr. Kyiv : Sfera, 2000. 440 s.

[233] Yevintov V.I. Zdiisnennia rishen Yevropeiskoho Sudu z prav liudyny u vnutrishnomu pravoporiadku derzhav. Derzhavotvorennia i pravo tvorennia v Ukraini: dosvid, problemy, perspektyvy. Monohrafiia. Za red. Yu.S. Shemshuchenka. Kyiv : IDP NAN Ukrainy, 2001. S. 612–626.

developed in science with reference to the Statute of the United Nations International Court of Justice[234]. Decisions of international courts confirm their existence and give concrete expression to the general principles of law and customs[235].

Also important is the interpreting activity of international courts. The decision of an international court is not mandatory for the parties concerned, but they respect it. Moreover, the decision of an international court may serve as a model, an algorithm both for itself and for other courts, taking into account the specific circumstances of the case. Courts may use the conclusions, arguments, and arguments submitted earlier in order to improve their judicial proceedings[236].

It should be noted that the European Court of Justice has developed its own concept of "universally recognized principles of EU law". According to this concept, the general principles of EU law are derived from different sources, in particular, from EU treaties and legal systems of EU member states. The court believes that it is enough for the principle to be recognized in the legal systems of the majority of the EU member states, or in line with the general trend in the member states, so that it can be recognized as a general principle of EU law. The general principles of EU law are a self-contained source of law, one of which is the principle of respect for fundamental human rights, which include information rightsP. The European Court of Justice said that not only provisions of national law, but also provisions of EU law that contradict the general principle of EU law about fundamental human rights do not have the right to exist and must be abolished. The European Court of Justice has repeatedly recognized that the basis of fundamental human rights, which are defined by the general principle of EU law, are the rights enshrined in the European Convention on the Protection of Human Rights and Fundamental Freedoms[237]. As M.L. Entin rightly

[234] Anakina T.M. Znachennia rishen mizhnarodnykh sudiv dlia rozvytku mizhnarodnoho prava. *Problemy zakonnosti*. 2007. № 89. S. 200–206.

[235] Shchokin Yu. Formuvannia mizhnarodno-pravovykh zvychaiv: rozmezhuvannia poniat «praktyka» i opinion juris. *Visnyk Akademii pravovykh nauk Ukrainy*. 2005. № 4 (43). S. 132–143.

[236] Hartley T.C. The Foundations of European Community Law. Fourth Edition. Oxford University Press. 1999. P. 130–131.

237 Rutili, Case 36/75, [1975], ECH 1219; Johnson v. Chief Constable of the RUC, Case 222/84, [1986], ECH 1651; SPUC v Grogan, Case C- 159/90, [1991] ECH I-4685 (Art. 10 (1)); X. v. Commission, Case C-404/92 P, [1994] ECH I- 4737.

points out, the judicial rulemaking transformed into one of the distinctive features of the legal order that emerged on the basis of the treaties on the establishment of the European Commonwealth of Independent States and, later, the European Union. The legal concepts developed by the European Court of Justice became a part of the law of these unions. This very law in its most important characteristics and manifestations was formed to a great extent under the influence of its practice[238].

Therefore, at both the national and international levels there are several parallel systems of protection of human rights. On the one hand, formal mechanisms established on the basis of national law and international treaties (such as the constitutions of relevant states and the European Convention on Human Rights), on the other hand, fundamental principles that do not allow for exceptions or cautions. The progressive recognition of the principles of law as a source of law both in a formal and ideological sense contributes to a wider application of their order with other fundamental sources of law, especially in the sphere of protection of human rights. Therefore, the development of international law, in particular due to the activities of the European Court of Human Rights, is developing in terms of granting the rules of law governing human rights, including information law, the status of a binding international law rule (jus cogens) [239].

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[238] Entyn M.L. Sud Evropeiskykh soobshchestv: pravovye formy obespechenyia zapadnoevropeiskoi yntehratsyy. Moskva : Mezhdunarodnye otnoshenyia. 1987. 176 s.

[239] Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

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31. Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

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39. Klymov O. Pravo prav liudyny yak jus cogens suchasnoho mizhnarodnoho prava. *Pravo Ukrainy*. 2008. № 1. S. 30–34.

CHAPTER 5. RIGHT TO FREEDOM OF CREATION

Natalia Opolska – Doctor of Law, Associate Professor,
Head of the Department of Law,
Vinnytsia National Agrarian University

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5.1. Subjective right to creative freedom

The history of development of the theory of subjective law spans several centuries, but even today this issue remains debatable. One of the first investigators of subjective law – F. Savigny defined it as the power, which belongs to an individual: area (borders), in which his will is carried out [240]. The initiators of such an approach were B. Windscheid, G. Yellinek, R. Girke, who believed that the subjective right is the legally established permission of the will, the power.

P. The court of the first instance, the court of the first instance, has not yet issued a ruling on the issue of the right of action[241]. Thus, determining the theory of subjective law, the researcher in the first place put the interest as the main part of it. This approach was supported by F. Regelsberger, M. Korkunov, G. Shershenevich and others.

In the process of development of research views of scientists were divided, as a result of which two main concepts of subjective law were formed: volitional concept and the concept based on the concept of "interest".

During the Soviet times most of the scientists relied on the idea formulated by P. Bratuss, who defined subjective law as an established and state-guaranteed measure of the possible behavior of the managerial person [242].

Modern definitions of this category differ in meaning. Summarizing them, we can say that it is a type, measure (measure) of possible or permitted

[240] Savyny F.K. Obiazatelstvennoe pravo. Perevod s nem. Mandro N.M., Typ. A.V. Kudriavtsevoi, 1876. S. 5.

[241] Yerynh R. Ynteres y pravo. Yaroslavl: Typohrafyia hub. zem. upravy, 1880. S. 83.

[242] Bratus S.N. Subekty hrazhdanskoho prava. Moskva, Hosiuryzdat, 1950. S. 5–13.

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behavior of the subject of law, which is established by legal norms for the satisfaction of his interests and is ensured by the state.

O. Melnychuk noted that the differences in scientific approaches to the category of subjective law mainly lead to the competence of such concepts as «measure» and «type», The main approach to the categorization of subjective law is based on the principle of the validity of such concepts as «measure» and «kind» and «permissible» or «permitted» behavior as well as the existence of subjective law in the legal relations independently of them and the quantitative structure of powers of subjective law in its structure.

The analysis of the existing points of view allowed the author to reasonably agree with this position, adding that a lot of debates also arise in connection with the juxtaposition of interest and subjective law[243].

The vast majority of plural vocabularies of Ukrainian language define the concept of «measure» as a quantitative characteristic, size, dimension. The notion «species» is interpreted as a species in a number of objects, phenomena, types, often used in biology as a classification unit in the system of living organisms.

Using these notions in the theory of law it is worthwhile to agree with the scientists, who note, The notion of «measure» contributes to the understanding of subjective law as a possibility of certain behavior and sufficiently characterizes its quantitative-qualitative characteristics, that is why the notion of «kind»[244] is useful, or in other words, subjective law is a measure of freedom.

The notion of subjective law is not often defined, scholars use the term «boundary», which is interpreted in the dictionaries as a line under some territory, border. In the context of its use in the definition of subjective law, it is appropriate to refer to the well-known expression of W. Huro «general law – the freedom, which ends where the freedom of another begins».

Describing the possibility of reducing subjective law to an element of legal relations, we should take into account O. Melnychuk, who noted that the reason for the differences in the views of scholars on the defined problem is explained by whether they recognize the existence of absolute legal relations or not. That is, when scholars believe that subjective law is

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[243] Melnychuk O. Subiektyvne pravo na osvitu: poniattia, struktura, zmist. *Yurydychna Ukraina*. 2011. № 6. S. 4–6.

[244] Melnychuk O. Subiektyvne pravo na osvitu: poniattia, struktura, zmist. *Yurydychna Ukraina*. 2011. № 6. S. 5.

realized by legal relations, they do not take into account or do not take into account the existence of absolute legal relations in principle[245].

The pluralism of scientific views is observed in relation to the correlation between the content of subjective law and interest. A number of scholars remain supporters of the approach initiated by R. Ireland[246]. In particular, F. Bogatyryov does not recognize the division between subjective law and interest and considers interest to be a mandatory element of the content of subjective law. This position is supported by H. Misnik and A. Misnik[247].

A similar opinion was expressed by E. Motovilovicker, who pointed out that the legal interest arises and exists not by itself, but in the form of subjective law, completely filling the content of the law[248]. B. Dzgoeva believes that if an interest is protected by a direct instruction in the law, it automatically obtains the status of subjective law[249]. M. Mikulina partially supports this approach, indicating that subjective rights and legal interests are taken into account by the legislator, as a rule, in the same context[250].

Another group of scholars criticizes this position. P. Bratus argues that the subjective law is granted to protect the interest, and thus the interest is the method, but not the essence of subjective law. Developing this approach, T. Deryugin argues that the interest is a precondition for the emergence of legal relations, the method of existence of the subjective law[251]. Substantive law is an implementation of interest in regulatory legal relations and a means of protection of interest in protective legal relations[252].

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[245] Melnychuk O. Subiektyvne pravo na osvitu: poniattia, struktura, zmist. *Yurydychna Ukraina*. 2011. № 6. S. 6.

[246] Bohatyrev F.O. Ynteres v hrazhdanskom prave. *Zhurnal rossyiskoho prava*. 2002. № 2. S. 33–43.

[247] Mysnyk H.A. Publychnye y chastnye interesy v ekolohycheskom prave. *Hosudarstvo i pravo*. 2006. № 2. S. 30–36.

[248] Motovylovker E.Ia. Zakonnыi ynteres y subъektyvnoe hrazhdanskoe pravo. Pravovedenye. S.-Pb., Yzd-vo S.-Peterburh. un-ta, 2005, № 2. S. 210–217.

[249] Dzghoeva B.O. K voprosu sootnoshenyi poniatyi pravo y zakonnыi ynteres. *Pravo y hosudarstvo: teoryia y praktyka*. 2008. № 7. S. 54–57.

[250] Mikulina M. Zakonni interesy ta subiektyvni prava: potentsial mozhlyvostei. *Pidpryiemnytstvo, hospodarstvo i pravo*. 2010. № 3. S. 25–26.

[251] Bratus P.N. O sootnoshenyy hrazhdanskoi pravosposobnosty y subektyvnыkh hrazhdanskykh prav. *Sovetskoe hosudarstvo i pravo*. 1949. № 8. S. 34–39.

[252] Deriuhyna T.V. Interes kak predposylka y predel subektyvnoho hrazhdanskoho prava. *Pravo i polytyka*. 2009. № 1. S. 157–165.

The grounds for the emergence, change or termination of legal relations are legal facts that are enshrined in the normative legal acts. They are divided into actions and events. Interests can be called the intermediary of the actions (legal, illegal). Event – a legal fact that does not depend on the will of the person, comes independently of their interest. Subjective right is an element of legal relations, including when they arise as a result of the event, which also indicates the appropriateness of the separation of interest and subjective right.

A. Malko also notes that subjective rights and legitimate interests are different legal permissibilities. The former is a special entitlement secured by the specific legal need of others. If the legal entitlement does not have or does not require legally necessary behavior of other persons as a means of its maintenance, then it is not reduced by the legislator to the rank of subjective right. The legal interest is opposed only by a general legal duty – to respect it, not to violate it, because it itself is a legal possibility of a general nature[253].

The above-mentioned notions are interpreted by I. Briukov, who argues that they are not included in the content of one and the impact of interest on the exercise and protection of subjective law is expressed objectively, as well as the subjective law has an indefinite right to the satisfaction of a certain interest, the interest is a satellite of subjective law[254].

The subjective right and interest are intimately interrelated. Interest affects the implementation of the subjective right, and the implementation of the subjective right is the means of satisfying a certain interest, it is a companion of the subjective right. There are a number of instances where the interest belongs to one person and the subjective right to another. For example, parents have the right to enter into agreements in the field of intellectual property on behalf of their children and in their interestP. In this case, the fathers may not have their own interest, but they have a subjective right, the implementation of which is aimed at satisfying the interests of the child, that is, the subjective right belongs to the fathers, and the interest belongs to the child.

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[253] Malko A. V. Subektyvnoe pravo i zakonnyi interes. *Izvestyia VUZov. Ser. Pravovedenye.* 1998. № 4. S. 58–70.

[254] Biriukov I. Interes i subiektyvne tsyvilne pravo. *Pravo Ukrainy: Yurydychnyi zhurnal.* 2004. № 8. S. 18–21.

The concept of separation of subjective right and interest was developed by V. Tarkhov, who stated that the reference to the interest of the authorized person in the concept of subjective right is neither correct nor useful. It complicates theoretical research and can be detrimental to the protection of subjective rights[255].

This is a critical analysis of the mentioned problem by V. Gribanov: «neither the nature of interest, nor the essence of subjective law, nor the interrelationship between them give grounds to state that interest is a component of subjective law»[256].

Developing the field, it is advisable to add that according to the official interpretation of the Constitutional Court of Ukraine «legally protected interest» is a desire to use a specific material or non-material good, which is determined by the general meaning of objective and is not directly mediated in the subjective law, a simple permissive permission, This is a self-contained object of judicial protection and other means of legal protection for the purpose of meeting the individual and collective needs, which do not violate the Constitution of Ukraine and the laws of Ukraine, public interests, justice, fairness, good faith, reasonableness and other general legal principles[257].

In the definition above it is stated that interest is an easy permission to use the good, which is not explicitly conditional in the subjective law, that is, there is a clear distinction between the studied understandings[258].

Having analyzed different scientific approaches, the author reached the conclusion that it is unacceptable to fully and partially separate subjective right and legal interest. Legal interest is similar to the concept of legal interest, which is determined by the general content of the subjective law the possibility of use of a specific material and non-material good, which is a separate object of judicial protection. Legitimate interest is a precondition for legal actions, which may be the grounds for the emergence of legal relationP. Subjective law is an element of legal relations (including absolute

[255] Tarkhov V.O. Hrazhdanskoe pravo. Obshchaia chast: kurs lektsyi. Cheboksary, Chuv. yzd-vo, 1997. S. 129.

[256] Hrybanov V.P. Osushchestvlenye i zashchyta hrazhlanskykh prav. Moskva : Statut, 2000. S. 167.

[257] Rishennia Konstytutsiinoho Sudu Ukrainny vid 01.12.2004 № 18-rp/2004. URL: http://rada.gou.ua (last access 11.03.2022).

[258] Rishennia Konstytutsiinoho Sudu Ukrainny vid 01.12.2004 № 18-rp/2004. URL: http://rada.gou.ua (last access 11.03.2022).

ones), a means of implementation and protection of interest. Interest, in turn, serves as a method of implementation of subjective law.

Current legal literature offers different points of view regarding the structure of subjective law. N. Alexandrov is the originator of three-member structure of subjective law, which is considered traditional. He believed that subjective law is a totality of three possibilities: 1) the type and measure of possible behavior of the person to whom the subjective right is assigned; 2) the possibility to demand from other persons the behavior that ensures the implementation of the first possibility; 3) the ability to ask for help from the public and the state apparatus to ensure the implementation of the second option[259].

Although in the scientific literature there is no debate on the definition of the concept, structure and content of subjective law, the above approach became the basis of modern research. This approach is supported by P. Rabinovich, P. Alexeyev, L. Yavich, O. Skakun, A. Kolodi and other scientists.

Another position was expressed by M. Matuzov. Matuzov, who pointed out that the structure of subjective right includes four elements: 1) the possibility of certain behavior of the authorized person; 2) the possibility to demand appropriate behavior from the obliged person; 3) the possibility to apply for protection to the state; 4) the possibility to enjoy a certain social benefit [260].

H. Vitriuk In his comments on the fourth element, Witruk argued that the use of the good is a meta and thus a substantive aspect of subjective law in general, so this definition makes all the other features that make up the content of subjective law irrelevant due to their social quality [261].

Such discrepancies in the studies of scientists, in our view, are caused, first of all, by different views on the relationship between subjective law and legal interest. Researchers, who argue that the structure of subjective law includes three elements, are mainly the adherents of the theory initiated

[259] Aleksandrov N.H. Zakonnost y pravootnoshenyia v sovetskom obshchestve. Moskva : Hosiuryzdat, 1955. S. 108–109.

[260] Teoryia hosudarstva y prava. Kurs lektsyi: pod red. N.Y. Matuzova. Moskva : Yuryst, 1999. S. 490–491.

[261] Vytruk N.V. Osnovy teoryy pravovoho polozhenyia lychnosty v sotsyalystycheskom prava obshchestve. Moskva : Nauka, 1979. S. 131.

by R. Iering. The theory founded by R. Iering considers interest (the fourth component of the structure of subjective law – the possibility of use of a specific material or non-material good) to be the essential element of the content of subjective law.

Underlining the opinion of the supporters of the concept of separation of legal interest and subjective law, it should be noted that it is inappropriate in the structure of subjective law to distinguish the above-mentioned structure, because the possibility of using a specific material or non-material good is a legitimate interest, which is the purpose of subjective law, but not a constituent part of its structure.

Therefore, subjective law can be defined as a measure (limit) of possible (permitted) behavior of a law subject, which is ensured by the state for the purpose of satisfying a legal interest of an individual, determined by the general content of the subjective law.

Structurally, the subjective right is composed of the following powers: the possibility of certain behavior of the authorized person; the ability to demand appropriate behavior from the obligated person; the ability to apply for protection of their right.

Using the conclusions obtained as a result of the study of subjective law, we will consider the main theoretical problems of the legal nature of the right to creativity.

Many scientists consider the right to freedom of creativity in accordance with the types of creativity, which are enshrined in Article 54 of the Constitution of Ukraine. 54 of the Constitution of Ukraine, namely as a cultural opportunity for people and a citizen to engage in literary, artistic, scientific, technological creativity, to own, organize and use the results of their creative activity in the form of literary and artistic and industrial property.

The development of the society causes the emergence of new types of creativity. T. Milova noted that the list of types of creativity enshrined in Article 54 of the Constitution of Ukraine is «closed», as it does not take into account other possible types of creative activity [262].

Russian researcher D. Shaporova considers the right to creative freedom as a complex subjective right, which is composed of a number of rights,

[262] Milova T.M. Konstytutsiine pravo liudyny i hromadianyna na svobodu naukovoi tvorchosti v Ukraini: dys... kand. yuryd. nauk: 12.00.02. Kyiv, 2008. S. 20.

for a citizen or a group of citizens to perform creative work, The right of a foreigner or a person without citizenship to perform creative activities with the aim of creating literary, artistic, scientific and other works, engaging in criticism, teaching, stage work, etc[263].

It is noteworthy that the scientist uses the words «and other creators», «etc.», i.e. does not limit the types of creativity. It is possible to define the subjective right to creativity as a possibility to perform creative activities for the purpose of creating literary, artistic and other works.

As already noted, the method of implementation of subjective right is the interest of the individual. However, in the case of realization of the right to creativity the interest of the person, in our view, in the creation of a particular material or non-material good (creation, etc.) is secondary. The meaningful result is desirable, possible, but not obligatory. The subjective right to creativity, first of all, is creative activity, which contributes to the self-fulfillment of the person. Creation of literary, artistic and other works, to use the results of their creative activity is the result of the creative abilities of the individual.

It is noteworthy the opinion of T. Kucher who notes that creativity is not always true and authentic, it can be fragile and illusory, but despite everything it helps a person to enter a special world with aesthetic vision and creativity[264].

That is, regardless of what is the result of creative activity or a significant result in general, creativity contributes to self-fulfillment of an individual and is an inalienable right.

In our opinion, the purpose of subjective right to creative freedom is individual interest, which is a possibility to use concrete material and non-material wealth and consists in the highest level of creative abilities of an individual, possession, use and disposal of the results of his/her creative activity.

Therefore, the subjective right to creativity can be defined as a measure (limit) of possible (permitted) behavior of an individual in the sphere of

[263] Shaporeva D.S. Konstytutsyonnoe pravo cheloveka y hrazhdanyna na svobodu tvorchestva v sovremennoi Rossyy: avtoref. dys. ... kand. yuryd. nauk: 12.00. 02. Saratov, 2007. S. 9.

[264] Kucher T.A. Tvorcha diialnist yak osnova samorealizatsii osobystosti. Mizhnarodna naukovo-praktychna konferentsiia «Prostir humanitarnoi komunikatsii». Instytut filosofskoi osvity i nauky Natsionalnoho pedahohichnoho universytetu imeni M.P. Drahomanova. URL: http://iifpo.pp.net.ua. (last access 11.03.2022).

literary, artistic, scientific, technical and other types of creativity, which is determined by the general content of common law, With the aim of the highest level of creative abilities of the individual, possession, use and disposal of the results of creative activity, which is ensured by measures of instructive and primusovaya, state and non-statutory influence.

According to the traditional trinity structure of subjective right the subjective right to creative freedom includes: right to own actions (right-behavior), right to actions of others (right-violation), right to protection (right-claim).

The content of subjective right to creativity is of crucial importance for realization of creative potential of an individual, contributes to his transition from the sphere of possibilities to the sphere of achievements, determines the strategy of social and economic progresP. V. Avdjeva, P. Lisenkov T. Milova, D. Shaporova and other scientists devoted their works to the study of particular aspects of the subjective right to creativity.

The essence of subjective law is revealed through the structure of its powers. The vast majority of scholars, including P. Alexeev, N. Aleksandrov, A. Kolodiy, P. Rabinovich, O. Skakun, R. Stefanchuk, L. Yavich and others are supporters of the tridimensional structure of subjective law, which is considered traditional.

The essence of subjective law includes the possibility of certain behavior of the authorized person, the possibility to demand appropriate behavior from the obligated person and the possibility to ask for help from the public and the state apparatus for protection of their right.

C. Lisenkov said that the freedom of literary, artistic, scientific and technical creativity is aimed at creating conditions for the best manifestation of their creative abilities and is intended to provide Ukrainians:

– the possibility to conduct voluntarily, that is uncontrolled by the state or other structures, scientific and technical research, literary, artistic and any other creative activities;

– the possibility to use the support of the state in the implementation of creative activities;

– the non-transaction of copyright, that is, the impossibility to use or disseminate the results of creative activity of a citizen without his consent, except in the cases established by law [265].

[265] Lysenkov S.L. Kulturni prava. Kyiv : Lybid, 2001. S. 431.

Besides the structure, the scientist has directly outlined the goal of the subjective right to creativity, namely: creation of conditions for the best possible display of one's creative abilitieP. The discourse is given the opportunity to conduct voluntarily, that is, uncontrolled by the state or other structures, scientific and technological research.

This is the first power in the structure of subjective law, which in essence is the right-behavior and can be limited by the state in the interests of society.

This aspect was taken into account by D. Korchagin, who pointed out that structurally the subjective right includes the following elements:

– the right to self-fulfillment of the person in the creative process without any restrictions other than those established by law for the protection of public interests;

– the right to create conditions for creative activity and realization of intellectual property on a legal basis;

– the right to protection of the results of creativity in the form of intellectual property[266].

The last entitlement, i.e. the right to protect the results of creativity in the form of intellectual property, requires further research. In our opinion, the possibility of protection of subjective right to creativity includes not only the right to protect the results of creativity in the form of intellectual property, but also to protect creative activity, that is the creative process.

It is possible to appeal to the public and the state apparatus for protection of the right to self-realization of the person in the creative process and for protection of the results of creativity in the form of intellectual property. In more detail we will focus on this subject when analyzing the power of protection in the structure of subjective right to creativity.

B. Avdiyeva defined the investigated concept as a totality of legally enshrined and legally guaranteed powers:

– the ability of each person to engage in all kinds of creative activity in accordance with their interests and capabilities both on a professional and non-professional basis;

– equal protection of rights to the results of creative activity;

– equal protection of the objects created in the process of creative activity in accordance with the law;

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[266] Korchahyna D.E. Konstytutsyonnoe pravo na svobodu tvorchestva y okhranu yntellektualnoi sobstvennosty v Rossyy y SShA: avtoref. dyssertats. ... kand. iuryd. nauk: 12.00.02. Moskva, 2010. S. 13.

– freedom to dispose of the rights to the results of creative activity;

– the right to support and protection on the part of the state of the authors, other owners of the rights to the results of creative activity[267].

D. Shaporeva has investigated the structure of subjective right and showed that the right to creative freedom is composed of powers that are the structural elements of its content, i.e:

– the ability of every person and citizen to engage in all types of creative activity in accordance with his or her interests and needs;

– the ability of every person to engage in creative activity both on a professional and non-professional (amateur) basis;

– capacity of the requirement, which is manifested in the obligation of the required person to create the necessary conditions for the implementation of the right to artistic freedom;

– the right of complaint, which means that an individual has the right to contest in an established manner the actions of individuals, state and other authorities that violate their rights and legitimate interests, as well as to appeal to court to protect their violated right;

– the possibility of using the social benefit, which means that an individual has the right to freely dispose of the results of his activity, to receive payment for his work, as well as the right to freedom of choice of subjects, plot, genre and form of presentation of the created by him understandings or artistic images[268].

D. Shaporeva considers the possibility of using a particular social good as a separate structural element of the right to creativity. This indicates that the researcher supports the theory, reportedly developed by M. Matuzov and other scientists, about the consolidation of the fourth element in the structure of subjective law.

The category of subjective law is basic in doctrine of any branch of jurisprudence, but in the studies of subjective law on the creativity there is inadequacy of certain legal capabilities to the theoretical structure of subjective law.

[267] Avdeeva V.P. Problemy konstytutsyonno-pravovoho obespechenyia svobody tvorchestva y okhrany yntellektualnoi sobstvennosty v RF: avtoref. dyssertats. ... k. yu. n.: 12.00.02. Tiumen, 2009. S. 12.

[268] Shaporeva D.S. Konstytutsyonnoe pravo cheloveka y hrazhdanyna na svobodu tvorchestva v sovremennoi Rossyy : avtoref. dyssertats. ... kand. yuryd. Nauk. Saratov, 2007. S. 8.

D. Shaporeva sees the possibility of using a particular social good as a separate structural element of the right to creativity. This indicates that the researcher supports the theory, reportedly developed by M. Matuzov and other scientists, about the consolidation of the fourth element in the structure of subjective law.

The category of subjective law is basic in doctrine of any branch of jurisprudence, but in the studies of subjective law for creativity there is inconsistency of some legal possibilities with theoretical structure of subjective law.

Despite the fact that in the radical legal literature the question of strengthening the fourth element of subjective law (the ability to use the social good) was raised, today the three-element structure of subjective law rarely causes interdiction. In accordance with the definitions of the leading theorists of law, the first in the structure of subjective right to creativity is the power of ownership actions (right-behavior).

Power of ownership means that a person within the limits of the given subjective right may:

– engage in all kinds of creative activities in accordance with their interests and capabilities, both professionally and non-professionally, without any restrictions other than those established by law to protect public interests;

– to freely choose legal means for self-fulfillment in the creative process;

– as far as allowed by the amount of civil property, enjoy the rights to the results of creative activity, etc.

Possibility of own actions in the structure of subjective right to creativity has certain peculiaritieP. Firstly, the active powers of the subjective right to creativity include the possibility for the subject to refrain from performing factual and legally significant actions, i.e. the possibility of passive behavior. For example, when the creator of the object of intellectual property does not want to commit acts of personal use or transfer this object to other personP. Secondly, the peculiarity of active powers of a person in the structure of subjective right to creativity is the ability to choose his own behavior, but within the interests of other personP. Therefore, it is not reasonable to assert that the subjective right belongs only to a certain subject and is exercised only at the desire of the given person.

In some cases, the subjective right to creativity may be exercised regardless of the will and desire of the person who is entitled to the right. For example, Article 30 of the Law of Ukraine «On the Protection of Rights to Treasures and Creative Works» of 15.12.1993 № 3687-XII (as amended and supplemented) provides for cases of prima facie alienation of rights to workP.

If the trade mark (utility model) has not been used or has been used insufficiently in Ukraine for three years from the date of publication of the notice of patent grant or from the date on which the use of the trade mark (utility model) was terminated, any person, who has a right to dispose of the trade mark (utility model), shall be entitled to the benefit of the patent, any person who is willing and ready to use the trade mark (code model), if the owner of the rights refuses to enter into a license agreement may apply to the court for permission to use the trade mark (code model).

In this case, a person's subjective right is a duty in relation to the public interest, so it must be exercised regardless of the will of the person to whom the right belongs (the patent owner).

The list of active powers of an individual in the structure of the subjective right to creativity is non-exhaustive, tends to expand. On their basis, an individual may have a number of other subjective rights in the field of creativity.

The next competence in the structure of subjective right to creativity is the right to other people's actionP. This entitlement is the power to demand fulfillment of the duties imposed on the obliged subject.

Taking into account the possibility of realization of subjective right to creativity in absolute legal relations, where the managed person is opposed to an unidentified number of obliged subjects, the content of the right to another's actions includes the following powers:

– the right to create conditions for creative activity;

– the right to create conditions for the realization of the results of creative activity on a legal basis;

– the ability to use the support of the state in the implementation of creative activity and the realization of its results;

– the right to independent, free, uncontrolled by the state and other structures to perform creative activities, except for the cases established by law to protect public interests;

– the possibility of access to the creativity of others in the cultural reserves of the nation, state, world;

– equal protection of rights to the results of creative activity, etc.

Peculiarities of the right on another's actions in the structure of subjective right to creativity are revealed in the following: firstly, for its realization active actions of a managing person are not obligatory.

The right to creativity is an absolute right, which is expressed by putting on all other persons the duty not to interfere in the creative activity of the person, in free disposition of the results of creative activity.

At the same time, the power to do other people's actions in the structure of subjective right to creativity can be manifested in the requirement of appropriate behavior from the law-abiding person, for example, to demand support from the state in the implementation of creative activity, etc.

Secondly, the peculiarity of the right for other people's actions in the structure of subjective right to creativity is the fact that it is not terminated with the death of the person. In this case the matter concerns the protection of individual non-main rights to the results of creative activity, the implementation of creative ideas of the person after his death, etc. For example, on the basis of Rudyard Kipling's creative work another book «Maugli» was created after his death. The right to protection (right-claim) in the structure of subjective right to creativity also has a number of features and requires a systematic analysis of its componentP. In the above mentioned researches of scientists this competence is described as a possibility to protect the results of creativity in the form of intellectual property[269].

However, the subjective right to creativity includes both main and personal non-main rightP. Article 54 of the Constitution of Ukraine of 28.06. 1996 № 254k/96-VR requires that citizens are guaranteed freedom of literary, artistic, scientific and technological creativity, protection of intellectual property, their copyright, moral and material interests that arise in connection with different types of intellectual activity.

Therefore, the right to protection in the structure of subjective right to creativity provides the possibility to protect moral and material interests,

[269] Korchahyna D.E. Konstytutsyonnoe pravo na svobodu tvorchestva y okhranu yntellektual-noi sobstvennosty v Rossyy y SShA: avtoref. dyssertats. ... kand.iuryd.nauk: 12.00.02. Moskva, 2010. S. 13.

which is the purpose of subjective law, and not only to protect the results of creativity in the form of intellectual property. Moreover, one should not ignore the cases when the result of creative activity is not an object of intellectual property. Not every result of creative activity is regarded as an object of intellectual property rights, but only those that are the subject of protection in accordance with the Civil Code of Ukraine and other laws of Ukraine on intellectual property[279]. The results of creative activity that for some other reasons did not become the object of intellectual property rights protection may be regarded as objects of civil law but not of intellectual property rightP. Leading scholars associate the interpretation of the term "protection" with the violation of law, i.e. the infringement takes precedence over protection[270].

The power of protection is usually exercised by a holder of substantive right to creativity in case of violation of the right, cancellation of the right, non-recognition of the right, obvious threat of its violation, which powers the protection of any subjective right.

Responsibility for protection is expressed in the suspension of infringement, renewal of the legal status, bringing the offenders to legal responsibility, compensation for moral, material damage, etc.

Often scientists define the role of the right to protection in the structure of subjective right to creativity as the possibility to apply for protection to the state, the primitive security of their right to the results of creative activity [271].

The essence of the state criminal prosecution is expressed in the fact that the competent authorities carry out law-enforcement jurisdictional activities aimed at the termination of offenses, renewal of the legal status, bringing the perpetrators to legal responsibility, compensation for moral, material damage, the forced implementation of the legal obligation, necessary for the implementation of the human right to creativity, etc.

However, there is a number of cases when an individual, in order to protect his subjective right to creativity, namely to stop the violation of this right, turns to mass media, public organizations, etc.

[270] Naukovo-praktychnyi komentar Tsyvilnoho kodeksu Ukrainy. Vyd. 2, zminene i dop. Za red. V.M. Kossaka. Kyiv : Istyna, 2008. S. 349.

[271] Avdeeva V.P. Problemy konstytutsyonno-pravovoho obespechenyia svobody tvorchestva i okhrany intellektualnoi sobstvennosty v RF: avtoref. dyssertats. ... k. yu. n. : 12.00.02. Tiumen, 2009. S. 12.

For example, throughout 2011 the team of authors and the legal community repeatedly published in the Ukrainian edition «Golos Ukrainy», «Yurydychny Visnyk Ukrainy», «Yurydychna Praktyka» and on Ukrainian sites, including, The fact of plagiarism of scientific and educational literature, admitted by one of the Kyiv publishing houses by authorship and authorship of Tel'ipok V.E. was investigated by the Independent Bureau of Investigative Journalism, Scientific and Investigative Institute of Intellectual Property. E. This method of protection of subjective right to creativity can be accepted in those cases, when the person, the subjective right to the creativity of which has been violated, wants exclusively to stop the offense and not to be afraid to give in to procedural actions.

In all other cases for the purpose of suspension of the offense, restoration of the legal status, bringing the perpetrators to legal responsibility, compensation for moral, material damage, The individual may challenge in the prescribed manner the actions of individuals, state and other bodies that interfere with the implementation of the subjective right to creativity, as well as to appeal to the court for the protection of his right.

The right to protection in the structure of the subjective right to creativity includes the possibility to appeal to the state apparatus, and in some cases to the community for:

– Stop the violation of law;
– Restoration of the legal status;
– Imposition of a legal duty;
– Bringing the perpetrators to legal responsibility;
– Compensation for moral, material damage, etc.

So, the structure of subjective right to creativity includes the following main duties: right to own actions (right-behavior), right to another's actions (right-violation), right to protection (right-claim).

Possibility of own actions in the structure of the subjective right to creativity means that an individual within the limits of this subjective right can: engage in all types of creative activities in accordance with their interests and abilities both professionally and non-professionally, without any restrictions other than those established by law to protect public interests; freely choose legal means for self-fulfillment in the creative process; freely, as far as allowed by the volume of civil property, to dispose of the rights to the results of creative activity, etc.

The content of the right to other people's actions in the structure of the subjective right to creativity includes the following responsibilities: the right to create conditions for creative activity; the right to create conditions for the realization of the results of creative activity on a legal basis; the ability to use the support of the state in the implementation of creative activity and the realization of its results; the right to independent, free, uncontrolled by the state and other structures to carry out creative activities, except in cases established by law to protect public interests; inaccessibility of use or dissemination of the results of creative activity of an individual without his/her permission, except for the cases established by law; possibility of access to the creativity of others in the composition of the cultural reserves of the nation, state, world; equal protection of rights to the results of creative activity, etc.

The right to protection in the structure of the subjective right to creativity means the possibility to appeal to the state apparatus for assistance, and in some cases to the community for: to stop the infringement; to renew the legal status; to enforce the legal obligation; to bring the infringers to legal responsibility; to compensate for moral, material damage, etc.

The above powers in an organically interconnected manner constitute the subjective right to creativity. On their basis, depending on the type of legal relations, an individual may have other independent subjective rights in the field of creativity.

Therefore, the subjective right to creativity can be defined as a measure (limit) of possible (permitted) behavior of an individual in the sphere of literary, artistic, scientific, technical and other types of creativity, which is determined by the general content of collective law, With the aim of the highest level of creative abilities of an individual, possession, use and disposal of the results of creative activity, which is ensured by measures of instructive and primusive, state and non-statutory influence.

The structure of subjective right to creativity includes the following main duties: right to property actions (right-behavior), right to another's actions (right-violation), right to protection (right-claim).

Possibility of own actions in the structure of subjective right to creativity means that an individual within the limits of this subjective right can: engage in all types of creative activities in accordance with their interests and abilities both professionally and non-professionally, without any

restrictions other than those established by law to protect public interests; freely choose legal means for self-fulfillment in the creative process; freely, as far as allowed by the volume of civil property, to dispose of the rights to the results of creative activity, etc.

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The right to protection in the structure of the subjective right to creativity involves the possibility to appeal with the assistance of the state apparatus, and in some cases to the community for: to stop the infringement; to restore the legal status; to enforce the legal obligation; to bring the infringers to legal responsibility; to compensate for moral, material damage, etc.

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activities, except in cases established by law to protect public interests; the inability to use or disseminate the results of creative activity of an individual without his/her permission, except in cases established by law; the possibility of access to the creativity of others in the cultural reserves of the nation, state, world; equal protection of rights to the results of creative activity, etc.

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The powers in an organically interconnected manner constitute the subjective right to creativity. On their basis, depending on the type of legal relations, an individual may have other independent subjective rights in the sphere of creativity.

5.2. The right to freedom of creativity in the system of people's fundamental rights

The study of the right to freedom of creativity would be incomplete without revealing its place in the system of people's rights and freedoms, without examining the interaction of this right with other rights and freedoms, which are quite varied in their content and purpose.

The development of Ukraine as a legal and democratic state is impossible without the concentration of forces for the effective implementation of the right to freedom of creativity in the system of human rights and freedoms. The system of cultural rights and freedoms influences all spheres of social life, characterizes the spiritual potential of society. The relevance of research into the classification and identification of the right to freedom of creativity in the system of cultural rights and freedoms is determined by the need for strong creative self-expression of people, access to cultural resources and development of their creative potential.

The classification of rights and freedoms of the individual was repeatedly discussed in the works of domestic and foreign scientists, including V. Abramov, P. Alexeyev, V. Bonyak, N. Borisov, D. Dzvinciuk, V. Kopiychikov, P. Kotaleychuk, V. Kulapov, P. Lisenkov, M. Orzikh, P. Rabinovich, O. Skakun and other scientist.

The vast majority of researchers divide the rights and freedoms of people by the sphere of their implementation in public life, distinguishing at the same time personal, political, social, economic, cultural.

In determining the inalienability of the right to freedom of creativity, we turn first of all to the fact that one of the possibilities for people to enjoy spiritual, cultural benefits and achievements, to take part in their creation in accordance with their skills and abilitieP. The right to freedom of creativity is connected with the activity of people in the sphere of culture and spiritual life, that is, beyond the sphere of implementation belongs to the cultural rights and freedoms of people.

The vast majority of scholars consider cultural rights as a group of constitutional rights and freedoms of people and citizen, aimed at ensuring cultural and spiritual needs of the individual. These rights mainly include the right to education, the right to freedom of literary, artistic, scientific and technological creativity, the right to the results of their intellectual and creative activity[272].

The same concept is followed by P. Gusariev, who argues that cultural rights and freedoms are the type and measure of possible behavior of the subjects of law to obtain and enjoy the spiritual benefits enshrined in the Constitution and laws of Ukraine. They include the following abilities: firstly, education; secondly, the freedom to use domestic and foreign objects of culture; thirdly, the freedom of artistic, technical, literary and scientific creativity; fourthly, sharing the results of their intellectual work[273].

The position of P. Rabinovich does not contradict these definitionP. The rights of a person are the possibilities of preserving and developing his or her ethnic identity, access to the benefits of spiritual and material culture of the nation, the people, and society, their assimilation, use and participation in their further enrichment (in particular, the right to education and training; use of cultural and artistic institutions; scientific, technical and artistic creativity)[274].

[272] Yurydychna entsyklopediia: V 6 t. Redkol.: Yu.S. Shemshuchenko Kyiv : «Ukr. entsykl.», 2001. T. 3: K - M. S. 431.

[273] Teoriia derzhavy ta prava : navch. posib. za zah. red. S.D. Husarieva, O.D. Tykhomyrova. Kyiv : NAVS, Osvita Ukrainy, 2017. S. 153.

[274] Rabinovych P.M. Osnovy zahalnoi teorii prava ta derzhavy : navch. posib. 10-te vyd., dopov. Lviv, 2008. S. 24.

In scientific literature there is another approach to the concept and content of cultural rights of people. In particular, O. Zaychuk, N. Onishchenko add to the cultural rights the right to freedom of thought and speech; the right to information; the right to freedom of vision and belief, noting that it is possible to preserve and develop national identity of people, their spiritual enrichment[275].

This approach is justified, taking into account the fact that the boundary between the groups of rights in the system of human rights and freedoms is conditional, and the list of cultural rights and freedoms cannot be considered exhaustive.

The pluralism of scientific approaches to the list of cultural rights is explained by the close links between the rights and the conditionality of the criteria for their distribution. Not infrequently, the same right can be attributed to different groupP. For example, the right to work is put in the context of social and economic rights and freedoms, the right to information is put in the context of individual and cultural rights or political rights, the right to freedom of opinion and expression is seen in the context of individual and cultural rights, and so on.

Moreover, in our view, the right to the results of their intellectual and creative activity (part 2 of Article 54 of the Constitution of Ukraine) is considered controversial in the group of cultural rightP. We would like to emphasize that all the results of creative activity are considered as goods by the current legislation and can be the object of any civil lawsuitP.

In accordance with the criterion of legal protection all the results of creative activity can be divided into two groupP. The first – the objects of intellectual property, which are protected by copyright, industrial property rightP. The other is the results of creative activity, which do not meet the criteria of conservation of intellectual property rights, but are the object of civil turnover and create a market of spiritual and technical products.

In our opinion, the right to the results of intellectual, creative activity is aimed not only at provision of cultural and spiritual needs of an individual, but also at obtaining means to existence, distribution of objects of material

[275] Teoriia derzhavy i prava. Akademichnyi kurs: pidruch. za red. O.V. Zaichuka, N.M. Onishchenko. 2-e vyd., pererob. i dopov. Kyiv, 2008. S. 98.

nature, which integrate economic rights and freedoms. It is considered as necessary to include the right to the results of intellectual and creative activity to the cultural rights and freedoms of people.

Proceeding from the above, cultural rights are the state-guaranteed possibilities of intellectual development, creative realization and self-expression of the person, access to the cultural achievements of the nation, the people, humanity, their assimilation, use, participation in their further enrichment.

Cultural rights include:

1) the right to education (Article 53 of the Constitution of Ukraine);

2) The right to freedom of literary, artistic, scientific and technological creativity (part 1 of article 54 of the Constitution of Ukraine);

3) access to cultural achievements of the nation, the people, and the people (parts 4 and 5 of article 54 of the Constitution of Ukraine).

Taking into account the fact that creativity and education are intrinsically connected with the development of science and form the basis of social progress, the right of freedom of creativity has close links with the right to education.

Ensuring the right to education requires the creation of conditions for the full development of the individual, the development of his talents, mental and physical abilities, enrichment on this basis of the intellectual, creative and cultural potential of society. The attainment of education is intrinsically linked to the creative self-realization of the person.

The educational process involves participation in research and development, research and development and other types of scientific activities, conferences, Olympiads, exhibitions, competitions, etc. So, when a person enters an educational institution, she or he pursues the goal of gaining education, but, fulfilling the tasks of the educational program, she or he can at the same time realize herself or himself as a worker, singer, scientist, etc. This requires the creation of an environment that guarantees the freedom of creative activity. However, in order to write an artwork or perform another creative work, a person needs to acquire new knowledge, form certain skills, abilities, personal qualitieP[276].

A close link between the right to education and the right to freedom of creativity is found in the integration of education and science. The educational process combines research and scholarly work, and the teaching

[276] Melnychuk O. Pravo liudyny na osvitu: monohr. Vinnytsia : TOV“Merkiuri-Podillia”, 2013. S. 145.

process is based on scientific research performed by the teachers together with the students.

The right to education is closely linked to the freedom of education. This is the principle of academic freedom, which is an element of the right to freedom of creativity and applies mainly to high school. This notion means the freedom of members of the academic community (people who teach, study, engage in research work and work at an institution of higher education), Individually or collectively, in classes, development and expansion of knowledge through scientific and research work, study, negotiation, documentation, production, creation, teaching, lecturing, writing[277].

This freedom is expressed in part in paragraph 2 of part 1 of article 50 of the Law of Ukraine «On Higher Education. 1 part 1 of Article 50 of the Law of Ukraine «On Higher Education,» which provides for free choice of methods and means of learning by teaching and research personnel, but has a number of restrictions imposed by education and professional HES programs.

Therefore, the right to education is one of the means of ensuring the right to freedom of literary, artistic, scientific and technical creativity and one of the ways of its realization. Acquisition of new knowledge, the development of skills and natural talent people in the process of obtaining education. That is, the right to education is a means of ensuring creative activity. In the process of education a person can engage in creative activities in the form of scientific research work, teaching, artistic or other creativity, i.e. to exercise the right to freedom of creativity. In this case, the right to education is one of the ways of realizing the right to freedom of literary, artistic, scientific and technological creativity.

The right to freedom of creativity is intertwined with the right of access to the cultural achievements of the nation, the people, the people (parts 4, 5 Article 54 of the Constitution of Ukraine). M. Berdyaev noted that human creativity requires three elements – «freedom, talent and already created world». The element of creativity is not defined by the scientist as objectively existing reality, but the «created world»[278].

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[277] Pro akademichnu svobodu i avtonomiiu vyshchykh navchalnykh zakladiv: Deklaratsiia Heneralnoi asamblei Vsesvitnoi universytetskoi sluzhby vid 6–10 veresnia 1988 r. m. Lima. Sait Akademichnoi Spilnoty. URL: http://www.rpl.org.ua (last access 10.03.2022).

[278] Berdiaev N.A. Fylosofyia svobody. Smysl tvorchestva. Moskva : Pravda, 1989. S. 127.

These are the objects of material and spiritual culture, which have artistic, historical, ethnographic and scientific value.

Realization of the right to freedom of creativity is impossible without access to the cultural achievements of the nation, people, and society. Often the content of creativity is subjects related to historical events, the development of society and state, history, science and culture. Sometimes the creative process requires the need to study ancient books and other publications of historical, artistic, scientific and literary value, or to refer to the original works of painting, drawing and sculpture, traditional folk art. Without providing access to the achievements of the culture of the nation, the people, humanity, the realization of the right to freedom of creativity is impossible.

The dialectical link between the right to freedom of creativity and the right of access to cultural achievements of the nation, the people, and humanity is manifested in reproductivity. Social progress, the dynamics of culture, spiritual values is the result of creative activity. Failure to ensure the right to freedom of creative activity leads to decadence, cultural regression.

Therefore, between the right to freedom of creativity and the right to access to the cultural achievements of the nation, the people, and humanity there is a dialectical link. The right to freedom of creativity determines the need for the right of access to the cultural achievements of the nation, the people, and humanity. The creative process requires access to cultural values: examination of old books, original works of art, folk art, etc. On the other hand, the result of the lack of creative activity is a cultural regression. And on the other hand, the implementation of the right to freedom of creative activity leads to the further enrichment of cultural achievements of the nation, the people, humanity.

The right to education, the right to freedom of literary, artistic, scientific and technological creativity and the right of access to the cultural achievements of the nation, the people, and humanity are dialectically related, reproductively conditioned.

Studying the group of cultural rights and freedoms of people, it should be noted that a number of scientists do not distinguish cultural rights in a separate group, considering them in the same group with social and

economic rights V. Butilin[279], Yu.Todika and other[280]. V. Kudryavtsev[281] names cultural rights as socio-spiritual, and M. Orzikh[282] as socio-cultural.

In our opinion, the separation of cultural and social rights and freedoms is justified. The overall objective of cultural rights is to promote spiritual development and creative self-fulfillment of a person, to create conditions for cultural enrichment and enlightenment of society. Social rights are aimed at ensuring a sufficient standard of living for development, favorable living conditions, guaranteeing the ability of the individual to be a full subject of social relationP. The right to freedom of creativity is aimed at ensuring the spiritual needs of people. The division of cultural and social rights and freedoms allows us to describe the specificity and purpose of cultural rights, the place of the right to creative freedom in the system of cultural rights, and its interaction with social rights.

As a result of the complex analysis of interrelations between the right to freedom of creativity and outlining its place in the system of human rights and freedoms, the author of the research reached the conclusion that for the sphere of implementation in everyday life, as a criterion for the classification of rights and freedoms of the individual, the right to freedom of creativity belongs to cultural rights and freedoms of people, because it is closely connected with the activity of people in the sphere of culture and spiritual life.

Cultural rights – the state guarantees the possibility of intellectual development, creative realization and self-expression of the person, access to the cultural achievements of the nation, the people, society, their assimilation, use, participation in their further enrichment. These include: the right to education (art. 53 of the Constitution of Ukraine); the right to freedom of literary, artistic, scientific and technological creativity (part 1 of article 54 of the Constitution of Ukraine); the right of access to the cultural

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[279] Butylyn V.N. Mylytsyia v hosudarstvenno-pravovom mekhanyzme okhrany konstytutsyonnykh prav y svobod hrazhdan: monohrafyia. Tiumen : Tiumenskyi yurydycheskyi ynstytut MVD Rossyy, 2001. S. 125.

[280] Todyka Yu.N. Osnovy konstytutsyonnoho stroia Ukrayny: monohrafyia. Kharkiv : Fakt, 1999. S. 116.

281 Kudriavtsev V.N. Svoboda nauchnoho tvorchestvaaa. *Hosudarstvo i pravo*. 2005. № 5. S. 23.

[282] Orzikh M.P. Pravove stanovyshche hromadian u sotsialno-kulturnii sferi rozvynutoho sotsializmu. Kyiv : Tov-vo Znannia URSR, 1985. S. 13–23.

achievements of the nation, the people, the people (parts 4, 5 of article 54 of the Constitution of Ukraine).

In our opinion, the right to the results of their intellectual and creative activity (part 2 of article 54 of the Constitution of Ukraine) is discretionary. 54 of the Constitution of Ukraine) to the group of cultural rights, because it is aimed not only at the provision of cultural and spiritual needs of the individual, but also at obtaining the means to existence, distribution of objects of material nature, which combine economic rights and freedoms. It is considered necessary to consider the relevance of the right to the results of intellectual and creative activity to the cultural rights and freedoms of people.

The study of the relationship between the right to freedom of creativity and other cultural rights revealed a dialectic link between them.

Creativity and education are intrinsically linked to the development of science and are at the core of social progress, and the right to freedom of creativity is closely intertwined with the right to education. It is one of the means of ensuring the right to freedom of literary, artistic, scientific, and technological creativity, and one of the methods of its realization. Acquisition of new knowledge, development of skills and natural talent of people in the process of acquiring education. Thus, the right to education is a means of ensuring creative activity. In the process of education a person can be engaged in creative activities in the form of scientific research work, teaching, artistic or other creative work, i.e. to realize the right to freedom of creativity. In this case, the right to education is one of the ways of realizing the right to freedom of literary, artistic, scientific and technological creativity.

The dialectical link integrates the right to freedom of creativity with the right of access to the cultural achievements of the nation, the people, and humanity. The right to freedom of creativity determines the need for the right of access to the benefits of culture of the nation, people, and society. The creative process involves access to cultural values: examining old books, original works of art, folk art, etc. On the other hand, the result of the lack of creative activity is decadence, cultural regression. And on the other hand, the implementation of the right to freedom of creative activity leads to the further enrichment of cultural achievements of the nation, the people, humanity.

Cultural rights and freedoms, namely: the right to education, the right to freedom of literary, artistic, scientific and technological creativity and the right of access to the cultural achievements of the nation, the people, and humanity are dialectically related, reproductively conditioned to each other, have a common goal and purpose.

The study of the right to freedom of creativity will be incomplete without examining the interaction of this right with other rights and freedoms of people, which are very diverse in terms of content, purpose, possibility of implementation, etc.

The group of social rights and freedoms of people includes: the right to work, to strike, to rest, social protection, to housing, adequate living standards, health care, medical care and medical insurance, the right to a safe environment.

The right to creative freedom is closely connected with the right to work and the right to rest, because creative activity can be both a form of work and rest.

"With these words, Pope John Paul II takes us to the act of creation, to the first "Gospel of Work[283].

Part 1 of Article 43 of the Constitution stipulates that everyone has the right to work, which includes the ability to earn a living by work, which he or she voluntarily chooses, or to which he or she voluntarily accepts.

The link between the right to work and the right to freedom of creativity is manifested in the case when the creation of an intellectual product is part of the indivisible duties of the employee. The right to freedom of literary, artistic, scientific, technical creativity, freedom of education in cooperation with the right to work can be transformed into a work obligation. This interaction should not be regarded as a limitation of the right to freedom of creativity, because the peculiarities of labor relations include the rules of internal labor order, work regime. When people are not at work, they can exercise their constitutional right to creative freedom to the fullest extent.

The employees' right to leisure time is guaranteed. The leisure time is the opportunity provided by the labor legislation for employees to renew

[283] Entsyklika Laborem Exercens («Pratsiuiuchy») Yoana Pavla II vid 14 veresnia 1981 roku prysviachena sotsialnomu vchenniu Tserkvy z pytan naimanoi pratsi ta kapitalu. URL: http://honoratki.org.ua.html (last access 10.03.2022).

their physical and spiritual strength during their free time, used at their own discretion[284].

So, during the vacation period, which includes the right to a weekly break, the right to days off, the right to vacation, the employee has the right to be fully engaged in creative activitieP.

A close link between the right to creative freedom and the right to take time off to complete a thesis or dissertation to obtain an academic degree, as well as to write a textbook, monograph, textbook, or other scholarly work.

C. Gutsu and M. Nechiporuk point out that one cannot say that the sabbatical is a vacation, as it is given to fulfill a special creative task. Vacation is associated with rest, but there is no rest during the creative vacation. Therefore, an employee is temporarily disconnected from the main work, but is obliged to use the leave for its intended purpose[285].

In our opinion, the notion «the right to take a creative leave» does not contradict the meaning, because it is given by the will of an individual to engage in a certain type of creativity. Moreover, creativity is an activity that can be both work and leisure. Creativity as a form of recreation satisfies people's needs for self-expression, self-confidence, which contributes to the renewal of both physical and spiritual forceP.

The right to a creative leave is a guarantee of creative freedom, because one can hardly hope for creative results if the basic steps of Maslow's pyramid are not taken care of. In other words, when an employee is temporarily released from his or her main job with pay to engage in creative activities, the person's primary needs (physiological, security needs, and support) are ensured.

Therefore, the right to freedom of creativity is connected with social rights, in particular, with the right to work and leisure time. If the creation of an intellectual product is included in the labor function of the employee, the right to creative activity is transformed into a labor obligation. However, this does not interfere with the right to creative freedom. The right to leisure time provides the employee with the opportunity to engage in creative activities on a full-time basis. The right to sabbatical leave is an additional

[284] Kodeks zakoniv pro pratsiu Ukrainy vid 10.12.1971 № 322-VIII. URL: zakon.rada.gov.ua (last access 10.03.2022).

[285] Hutsu S. Pravova pryroda y osoblyvosti pravovoho rehuliuvannia tvorchykh vidpustok dlia naukovtsiv. *Humanitarnyi chasopys*. 2005. № 1. S. 125–128.

guarantee of freedom of creativity, as the employee is temporarily released from the main work with pay to complete a thesis to achieve a scientific degree, write a textbook, a monograph, a guidebook or other scientific work.

Often, the right to work and leisure time are also considered part of the economic rights and freedoms of people, or consider it in the group of socio-economic rights of individuals. Despite the fact that the criteria for such differentiation are relative, it is reasonable to distinguish between social and economic rights and freedoms within the scope of this study.

Economic rights are the abilities to dispose of the objects of material nature and to obtain the means for existence and development. These are the right of private property, the right to business activity, the right to use objects of property rights of the Ukrainian people, state and communal property[286].

As it has already been mentioned, the right to the results of intellectual and creative activity belongs to economic rights and freedoms, as it is aimed at obtaining means to existence, distribution of objects of material nature, which unites economic rights and freedoms.

The right to freedom of creativity is connected causally and consequently with the right to the results of creative activity. That is, the right for creative freedom is a phenomenon that can result in the right for creative results. The peculiarity of such connection is sequence of these rights in time: the right for creative freedom always precedes the right for results of intellectual activity. Even if the right to the results of intellectual activity becomes possessed by secondary subjects, the act of creation of the object of intellectual property remains primary in time.

The relationship between the right to the results of creative activity and the right to freedom of creativity is also seen in the fact that the first is intended to contribute to the development of initiative in the implementation of creative abilities of people through the ability to obtain the means to exist.

Thus, among the economic rights and freedoms of people, the investigated right is closely connected with the right to the results of creative activity, the right of intellectual property, which, in our opinion, belongs to the group of rights. As a consequence of the right to freedom of creativity the

[286] Teoriia derzhavy i prava. Akademichnyi kurs: Pidruchnyk Za red. O.V. Zaichuka, N.M. Onishchenko. Kyiv : Yurinkom Inter, 2006. S. 263.

right to the results of creativity, the right of intellectual property can arise. The right to freedom of creativity is always superior to the right to the results of intellectual activity. On the other hand, the right to the results of creative activity and intellectual property is designed to promote initiative in the development and implementation of creative abilities of people through the ability to obtain the means to exist.

Political rights – the citizen's ability to participate in the process of adopting and implementing political decisions, the activities of the elements of the political system, the formation of representative bodies of power. This group of rights includes the right to freedom of association in political parties and community organizations, to participation in the management of state affairs; to meetings, rallies, marches, demonstrations; to appeal to bodies of state power and self-government; the right of every person to freedom of thought and speech (Articles 34-40 of the Constitution of Ukraine).

The right to freedom of creativity is linked to political rights and freedoms by the right – stated in Article 34 of the Constitution of Ukraine – to freedom of thought and speech, to free expression of their views and opinions, to information.

The essence of freedom of thought and speech lies in the fact that no one can forbid a person to abide by his or her thoughts, to express in a certain way objective reality in his or her opinions and to express these materialized in the language, In particular, views and opinions in any sphere of foreign policy, state power, economic processes, education and culture, development of legislation, etc. The right to freedom of thought and speech does not concern any thought, but only the one that is expressed externally. Since, apart from views and beliefs, there are also other forms of thought, this freedom concerns the expression of its other «products»: rationalized feelings, attitudes, orientations, concepts, theories, etc. Moreover, the right to freedom of thought and speech secures the possibility of using any means of expression of thought – both traditional (oral, written, educational, etc.) and modern technical means[287].

Freedom of creativity is the most important prerequisite for freedom of speech, and, consequently, without freedom of speech, freedom of creativity would be impossible. One of the spheres of expression of thoughts, attitudes,

[287] Rabinovych P.M. Prava liudyny i hromadiany na: navch. posibnyk. Kyiv : Atika, 2004. S. 158–159.

beliefs, rationalized feelings, attitudes, orientations, concepts, theories, etc. is creative activity.

Freedom of speech, self-expression, creativity is the source of democracy. The democratic government does not interfere with creativity and freedom of speech. This is confirmed by the words of the leader of the dictatorial regime, V. Lenin: «The literary right cannot be an individual enterprise, independent of the general proletarian right. Down with the non-partisan literati! Down with the literary right! Literary right must become a collective and a spinning wheel of a single great social-democratic mechanism. Absolute freedom is a bourgeois or anarchic phrase. It is not possible to live in society and be free from society. The freedom of the bourgeois writer, artist, and actor is only a disguised dependence on the money. We socialists are uncovering hypocrisy, we are removing false guises in order to oppose a literature that is hypocritical-valile, but really connected to the bourgeoisie, to a literature that is truly, openly connected to the proletariat[288].

The unity of the right to freedom of creativity and freedom of speech is manifested in the fact that their limitation is a sign of an anti-democratic regime. Political censorship, lack of publicity, control of the content of creativity is one of the most effective means of shadow control of public processes.

Therefore, the correlation between the right to freedom of creativity and the right to freedom of thought and speech lies in the fact that freedom of creativity is one of the spheres of implementation of freedom of thought and speech, Because the creative process involves the expression of thoughts, attitudes, beliefs, rationalized feelings, attitudes, orientations, concepts, theories, etc. Freedom of creativity is impossible without freedom of thought and speech. On the other hand, the right to creative freedom is the most important prerequisite, one of the manifestations of freedom of speech. The unity of these rights lies in the fact that their limitation is a sign of an anti-democratic regime.

The right to freedom of creativity is closely linked to individual (civil) rightP. Individual rights are people's abilities given to ensure their physical and moral-psychological individuality. They serve as a guarantee

[288] Lenyn V.Y. Partyinaia orhanyzatsyia y partyinaia lyteratura. Polnoe sobranye sochynenyi. Moskva : Yzdatelstvo polytycheskoi lyteratury, 1968. S. 100–105.

of individual autonomy and freedom, a means of protection of subjects from the oppression of the state and other people. Among them – the right to life; respect for the human dignity of everyone; freedom and personal privacy; privacy of residence; confidentiality of telephone calls; Freedom of movement and free choice of place of residence (Articles 29-31, 35, 51-55 of the Constitution of Ukraine), their purpose is to guarantee the possibilities of physical existence and spiritual development of people.

As M.I. Matuzov, «the right to life – the first fundamental natural right of people, without which all other rights lose their meaning».

The purpose of human life is to satisfy biological and spiritual needs. Creativity is a spiritual need of each person, it is an attribute of human life, allows a person to self-certify as a person and feel the fullness of life and freedom.

The correlation between the right to life and the right to freedom of creativity is seen on the one hand in the fact that the right to life is primary over all other rights, including the right to freedom of creativity. On the other hand, the right to creative freedom is a means of satisfying people's spiritual needs in life.

The right to respect for human dignity and the right to freedom of creation are interrelated. The right to respect for human dignity is enshrined in both international and national legal acts. P.M. Rabinovich, discussing the necessity of updating the Constitution of Ukraine, argues for the necessity of more fully expressing the importance of human dignity as the basis, the foundation of the whole system of their fundamental rights and freedoms by including this provision in part 1 Article 21 of the CG[289].

O.V. Gryshchuk stated that human worth and human worth are two different categories. Human worth is the self-esteem and social significance of people as a biosocial and spiritual entity, which is determined by the current social relations, does not depend on people and must be equal for all people. And the goodness of people is the inner estimation by them of their own value, which is based on the moral self-consciousness of the home part of society and the readiness to protect them under

[289] Rabinovych P. Konstytutsiini harantii prav liudyny i hromadianyna: mozhlyvosti udoskonalennia. *Yurydychnyi Visnyk Ukrainy*. 2008. 26 cherv. 4 lyp. S. 8.

any conditions, as well as the expectation of respect on the part of others in this regard[290].

In examining the juxtaposition of this category with the right to freedom of creativity, this approach is particularly relevant. Human health and human dignity require legislative integration with freedom of creativity. On the one hand, respect for human dignity necessarily requires restrictions on artistic freedom. Human opprobrium is the boundary where freedom in creativity ends. Creativity, the essence of which is a lack of respect for human dignity, belittling the value and social significance of people as a biospiritual entity, The Laws of Ukraine «On Fundamentals of Legislation on Culture», «On Cinematography», «On Theatres and Theater Business», «On Television and Radio Broadcasting», «On the Protection of Public Morals» and so on are prohibited.

However, when it comes to human integrity as an internal evaluation of one's own worth, which is based on the moral self-awareness and the willingness of the home part of society to protect it under any conditions, the freedom of creativity requires additional guarantees and protection. Creativity helps people to realize their abilities, talent, and self-assertion. That is, ensuring freedom in creativity is a guarantee of human integrity, because it makes it possible both to increase one's own self-esteem and to receive an assessment of one's creativity from other people.

The necessity of guaranteeing freedom of creativity to ensure the integrity of people is evidenced by the historically known facts when genius ideas, ideas, scientific discoveries were not properly evaluated by the public through the low cultural level of the era. The works of M. Copernicus, J. Bruno, Leonardo da Vinci and M. Faraday can serve as examples of people's lack of understanding and re-examination.

On the one hand, the right to human integrity entails certain limitations on freedom of creativity. Creativity, the essence of which is the denigration of the value and social significance of human beings as a biospiritual person, is forbidden by law. However, on the other hand, creativity helps a person to realize his abilities, talent, self-confidence. When it comes to the category of «human creativity», ensuring freedom in creativity gives the possibility

[290] Hryshchuk O.V. Liudska hidnist u pravi: filosofskyi aspekt: avtoref. dys. ... d-ra yuryd. nauk: 12.00.01. Kharkiv, 2008. S. 14.

to both increase one's own self-esteem and to receive an assessment of one's creativity from other people.

For the purpose of comprehensive understanding of the relationship between the right to freedom of creativity and outlining its place in the system of human rights and freedoms it is reasonable to classify them by the sphere of implementation in public life into personal, political, social, economic, cultural. According to the above criteria of classification, the right to freedom of creativity belongs to the cultural rights and freedoms of people. Despite the fact that creativity and education are intrinsically linked to the development of science and form the basis of social progress, the right to freedom of creativity is closely interconnected with the right to education. It is one of the means of ensuring the right to freedom of literary, artistic, scientific, and technological creativity, and one of the methods of its realization. Acquiring new knowledge, the development of skills and natural talent of people in the process of obtaining education. That is, the right to education is a means of ensuring creative activity. In the process of education a person can be engaged in creative activities in the form of scientific research work, teaching, artistic or other creativity, i.e. to realize the right to freedom of creativity. In this case, the right to education is one of the ways of realizing the right to freedom of literary, artistic, scientific and technological creativity.

A dialectical link integrates the right to freedom of creativity with the right of access to the cultural achievements of the nation, the people, and humanity. The right to freedom of creativity determines the need for the right of access to the benefits of culture of the nation, people, and society. The creative process involves access to cultural values: examining old books, original works of art, folk art, etc. On the other hand, the result of the lack of creative activity is decadence, cultural regression. And on the other hand, the implementation of the right to freedom of creative activity leads to the further enrichment of cultural achievements of the nation, the people, humanity.

Cultural rights and freedoms, which include: the right to education, the right to freedom of literary, artistic, scientific and technological creativity right and the right of access to the cultural achievements of the nation, the people, humanity are dialectically related, reproductively conditioned to each other, have a common goal and purpose.

The relationship between the right to freedom of creativity and social rights is manifested through the right to work and rest. If the creation of an intellectual product is included in the labor function of the employee, the right to creative activity is transformed into a labor obligation. The right to leisure time enables an employee to engage in creative or any other activity on a full-time basis. The right to sabbatical leave is an additional guarantee of creative freedom, as the employee is temporarily released from the main work with pay to complete a dissertation to achieve a scientific degree, write a textbook, a monograph, an anthology or other scientific work. Among the economic rights and freedoms of people, the investigated right is closely connected with the right to the results of creative activity, the right of intellectual property, which, in our opinion, belongs to the economic rights and freedoms. As a consequence of the right to freedom of creativity the right to the results of creativity, the right of intellectual property can arise. The right to freedom of creativity is always superior to the right to the results of intellectual activity. On the other hand, the right to the results of creative activity and intellectual property is designed to promote initiative in the development and implementation of creative abilities of people through the ability to obtain the means to exist.

The relationship between the right to freedom of creativity and political rights is manifested through the right to freedom of thought and speech. Freedom of creativity is one of the spheres of implementation of freedom of thought and speech, because the creative process involves the expression of thoughts, attitudes, beliefs, rationalized feelings, attitudes, orientations, concepts, theories, etc. Freedom of creativity is impossible without freedom of thought and speech. On the other hand, the right to creative freedom is the most important prerequisite, one of the manifestations of freedom of speech. The unity of these rights lies in the fact that their limitation is a sign of an anti-democratic regime.

Of particular importance is the link between the right to freedom of creativity and individual (civil rights). It is manifested through the juxtaposition of the right to life and the right to respect for human dignity.

The right to life is primary over all other rights, including the right to freedom of creativity. On the other hand, the right to freedom of creativity is a means of satisfying the spiritual needs of human life.

The peculiarity of the juxtaposition of the right to respect for human integrity and the right to freedom of creation lies in the separation of the categories of "human integrity" and "human dignity. The right to human integrity entails certain limitations on freedom of creativity. Creativity, the essence of which is the denigration of the value and social significance of human beings as a biosocial and spiritual person, is forbidden by law.

When we talk about "human creativity" creativity helps a person to realize his abilities, talent, self-confidence. The right to "human integrity" requires ensuring freedom in creativity, as it is a way to increase one's own self-esteem and to receive an assessment of one's creativity from other people.

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41. Teoriia derzhavy i prava. Akademichnyi kurs: Pidruchnyk Za red. O.V. Zaichuka, N.M. Onishchenko. Kyiv : Yurinkom Inter, 2006. 263 s.
42. Teoriia derzhavy ta prava : navch. posib. za zah. red. P.D. Husarieva, O.D. Tykhomyrova. Kyiv : NAVS, Osvita Ukrainy, 2017. 246 s.
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CHAPTER 6. MECHANISM FOR ENSURING CHILDREN'S RIGHTS AND FREEDOMS IN UKRAINE

Natalia Opolska – Doctor of Law, Associate Professor,
Head of the Department of Law,
Vinnytsia National Agrarian University

Natalia Chernyschuk – Candidate of Historical Sciences,
Senior Lecturer,
Vinnytsia National Agrarian University

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6.1. Structure of the Mechanism for Ensuring the Rights and Freedoms of the Child in Ukraine

The effective protection, actual implementation and organized protection of children's rights and freedoms are possible if the mechanism for ensuring children's rights and freedoms operates effectively. This concept has been investigated by many Ukrainian and foreign scientists.

O. Skakun defines the mechanism of security of human rights and freedoms as a system of means and factors that ensure the necessary conditions of respect for all fundamental human rights and freedoms, which are dependent on their human nature[291]. Such a definition is made by I. Slovska[292].

It is exhaustive in its application to the rights and freedoms of people, but the absence of a definition of the concept of human nature of the child in the legislation prevents the application of this definition to the mechanism of security for the rights and freedoms of the child.

N. Onishchenko defines the mechanism of security of rights and freedoms of an individual as a complex of interrelated, mutually interoperable legal conditions, normative tools and general social conditions that create

[291] Skakun O.F. Teoriia derzhavy i prava : pidruchnyk. Kharkiv : Konsum, 2008. S. 190.

[292] Clovska I. Mekhanizm zakhystu prav liudyny – osnovopolozhnyi pryntsyp suchasnoho ukrainskoho konstytutsionalizmu. *Pravo Ukrainy.* 2001. № 9. S. 15–17.

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the proper legal and factual possibilities for full implementation of rights and freedoms by people[293].

Examining the mechanism of security for the rights and freedoms of the child, it should be noted that in the main it meets the definition given by N. Onishchenko. However, this mechanism has its own specificity, which is manifested in its object. Because of her physical and mental immaturity, the child requires special protection, treatment, including adequate legal protection both before and after birth.

Moreover, children, due to the specific features of their age, are not always able to exercise their rights on their own, and therefore they need special attention from the state and society.

Therefore, the mechanism of security for the rights and freedoms of the child can be viewed as a system of general social and legal factors, means and procedures that, interacting with each other, create the necessary legal and factual conditions for the realization, protection and defense of the rights and freedoms of the child. The aim of this mechanism is to create conditions for the full development of the child, the protection, defense and restoration of violated or revoked rights and freedoms, as well as the formation of a legal culture and legal awareness of each child and the society as a whole.

Scientists identify the main subsystems of the mechanism for ensuring human rights and freedoms: the mechanism of implementation, the mechanism of protection, the mechanism of protection[294].

Mechanism of protection is a system of legal actions, regulations and legal relations aimed at prevention of violations of children's rights, ensuring lawful behavior of entities in the sphere of the legal status of the child.

O. Zaychuk, A. Zayets and others define that the implementation of rights is the insertion of the legal norm in the activities of entitieP. And the mechanism of law implementation is the activity of the subject of law, the obliged party, the legislative body, the law enforcement body and the existing legal norms, which regulate their activity. Three basic forms of implementation of the law are distinguished: use, implementation and compliance[295].

[293] Onishchenko N. Mekhanizm zabezpechennia prav i svobod osoby. Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkhody, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya.Yu., Tatsii V.Ya., Shemshuchenko Yu.P. Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 487.

[294] Skakun O. F. Teoriia derzhavy i prava. Kharkiv : Konsum, 2008. S. 199.

[295] Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk. za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskyi. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 451.

According to this definition, the mechanism of implementation of the rights of the child is the activity of entities (legislative body, law enforcement body, parents, other persons or the child himself/herself), is designed to enforce and implement the rights and freedoms of the child, and to create measures and factors that can create the conditions for the implementation of the child's rights.

S. Nesinova considers the mechanism of protection of children's rights as a unified system of government agencies and community organizations that, based on current legislation to protect the rights of children without parental care, control, coordinate and directly participate in the prevention, detection and termination of violations of the rights of the disabled by eliminating the causes and conditions of these violations and bringing the guilty persons to legal responsibility[296].

In our view, the mechanism of protection of children's rights is a dynamic legal phenomenon, which can involve not only state bodies and public organizations, but also other institutions. Moreover, bringing to legal responsibility those guilty of violating the rights and freedoms of the child, in our opinion, is the result of activities aimed at preventing, detecting and stopping violations, so this definition is debatable.

More acceptable, in our view, is the definition of the mechanism of legal protection by O. Nalivaiko, defining it as a dynamic system of legal forms, tools and measures, whose actions and interactions are aimed at preventing violations of people's rights or their restoration in case of violation[297]. The same definition is upheld by O. Negodchenko[298].

Therefore, the mechanism for the protection of children's rights and freedoms is the interaction of a dynamic system of legal forms, tools and actions that are revealed in the activities of the state authorities and institutions of civil society in the sphere of prevention of violations of children's rights and freedoms, their detection and restoration of the legal statuP.

[296] Nesynova P.V. Derzhavno-pravovyi mekhanizm zakhystu prav nepovnolitnikh v Ukrainskii RSR (60-i – poch. 80-kh rr. XX st.) : dys. ... kand. yuryd. nauk. Kyiv, 2005. S. 188.

[297] Nalyvaiko O.I. Funktsionalne pryznachennia prava u protsesi zakhystu prav liudyny. *Naukovyi visnyk Yurydychnoi akademii Ministerstva vnutrishnikh sprav*. 2002. № 1. S. 57.

[298] Nehodchenko O. Mekhanizm pravovoho zakhystu. Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkhody, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya.Yu., Tatsii V.Ya., Shemshuchenko Yu.P. Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 491.

S. Nesinova, examining the components of the mechanism of protection of the rights of minors, noted that they include subjects, objects, normative-legal base, forms, methods, guarantees, and goals[299].

In our opinion, the structure of the mechanism for ensuring the rights and freedoms of the child, in addition to the above elements, also includes legal education and legal socialization of the child, which have a significant impact on the security of his or her rightP. This issue is discussed in the following subsection.

The subjects, that is, participants in social relations in the sphere of the legal status of the child, due to the richness of the nature of these relations are very diverse. In accordance with the legal rights and duties granted to them perform certain actions, due to which appear necessary legal and factual possibilities for the implementation, protection and defense of the rights and freedoms of the child. This list includes the state authorities and local self-government bodies, their officials, public organizations, law enforcement agencies, educational and health care institutionP. This list is not exhaustive, it can be expanded, differentiate, etc.

The object of social relations in the sphere of the legal status of the child is material and non-material benefits that are necessary for the physical, intellectual, moral, cultural, spiritual and social development of the child.

Regulatory and legal framework includes regulatory assets of a material and processual nature, which stipulate and consolidate the rights of the child, the procedure for their implementation, protection and legal responsibility for their violation. The forms and methods of the mechanism for ensuring the rights and freedoms of the child include the tasks, competence of the relevant authorities, measures and means of legal, preventive, organizational impact. The purpose of the mechanism is to create the conditions for the full development of the child, the protection, implementation and protection of their rights and freedoms, the formation of legal culture and legal awareness of the younger generation.

Describing the main problems that are commonly found in the process of ensuring the rights and freedoms of children in Ukraine, we can assert the overwhelming majority of them are due not so much to the lack of a nec-

[299] Nesynova P.V. Derzhavno-pravovyi mekhanizm zakhystu prav nepovnolitnikh v Ukrainskii RSR (60-i – poch. 80-kh rr. XX st.) : dys. ... kand. yuryd. nauk. Kyiv, 2005. S. 188.

essary system of State authorities as to the need to implement reformatory changes in the process of their functioning. In this sense, it should be noted that the guarantees of protection of children's rights and freedoms have a legal, economic, political and organizational value.

The mechanism for ensuring the rights and freedoms of the child is a system of interacting general social conditions, legal frameworks, regulations that create the necessary legal and factual conditions for the implementation, protection and defense of the rights and freedoms of the child.

6.2. The Place of Guarantees in the Mechanism for Ensuring the Rights and Freedoms of the Child

The most important factor in the real maintenance of the rights and freedoms of the child, on the order of their recognition, observance and respect, is the guarantee. It is the guarantees of the fundamental rights and freedoms of the child that give all elements of the mechanism of security for the rights and freedoms of the child a real sense, for the possibility of their seamless implementation of protection and defense. The mechanism of security for the rights and freedoms of the child is a prerequisite for the functioning and effective implementation of their guarantee. Therefore, these concepts are interconnected and mutually interdependent.

Conducting a scientific analysis of the guarantees of children's rights and freedoms as a separate social and legal phenomenon, it should be noted that they are a fragile, dynamic element of the mechanism for ensuring the rights and freedoms of the child, which requires improvement.

Problems of human rights guarantees is the subject of constant attention of specialists in the fields of both science and practice. The main reason for this is that human rights and freedoms become a real public value only under the condition that they find a full and uninterrupted implementation in real social relations[300].

Most scientists, including O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voyevodin and others, suggest the definition of guar-

[300] Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini : monohrafiia. Za red. N.M. Onishchenko, O.V. Zaichuk. Kyiv : Yuryd. dumka, 2007. S. 70.

antees as a system of coordinated factors (conditions, means) that ensure the actual implementation and universal protection of human rights and freedoms[301], [302].

S. Lisenkov is of the same opinion, stating that guarantees of human and civil rights and freedoms are the conditions, methods, which ensure full implementation and universal protection of rights and freedoms[303].

V. Abramov, understands under the guarantees assumed by the state the obligation to create the necessary conditions, appropriate means to ensure the actual implementation and universal protection of the rights and freedoms[304].

So, these scientific approaches are reduced to the fact that the guarantees – conditions, ways and means, which ensure the actual implementation and universal protection of human rights and freedoms[305].

In the legal literature there is another approach to this definition.

K. Volinka notes that the guarantees of rights and freedoms of an individual should be understood as a totality of specific regulatory and legal means of a binding nature, due to which the most complete and universal ensuring of effective implementation, protection and defense of rights and freedoms of an individual is possible.

Therefore, the researcher includes in this concept the means that ensure not only the actual implementation and universal protection of human rights and freedoms, but also their protection. However, the understanding of guarantees, as a set of specific legal and regulatory means of a general binding nature, because, in our view, in part, sounds different in the understanding of the system of guarantees.

More appropriate in this aspect is the definition given by O.V. Negodchenok, who states that the guarantees – the totality of individual and subjective factors aimed at the implementation of human rights and

[301] Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. A.P. Zaiets, V.P. Zhuravskyi. Kyiv : Yurinkom Inter, 2008. S. 106.

[302] Voevodyn L.D. Yurydycheskyi status lychnosty v Rossyy : ucheb. posobye. Moskva : Yzd-vo Mosk. un-ta, 1997. S. 221.

[303] Lisenkov P.L. Harantyy prav y svobod lychnosty v Sovetskom obshchestve : dys. … kand. yuryd. nauk. Kyiv, 1976. S. 9.

[304] Abramov V.Y. Prava rebenka y ykh zashchyta v Rossyy: obshcheteoret. analyz : avtoref. dys. ... d-ra yuryd. nauk. Saratov, 2007. S. 23.

[305] Voevodyn L.D. Yurydycheskyi status lychnosty v Rossyy : ucheb. posobye. Moskva : Yzd-vo Mosk. un-ta, 1997. S. 8.

freedoms, to eliminate the possible causes and complications of their failure or improper implementation[306].

The above scientific approaches differ from the definition given by the first group of scientists (O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voevodin, S. Lisenkov, V. Abramov) by taking into account the need to guarantee the protection of human rights and freedoms, not just their protection and implementation.

The shortcoming in all the above-mentioned scientific approaches, in our view, is the lack of recognition of the need to ensure the improvement of existing rights and freedoms, as a result of which guarantees may have a declarative nature. In our opinion, the definition of guarantees as accepted by the state duties to create the necessary conditions and means for the actual implementation, protection and defense of rights and freedoms, sounds the system of guaranteeing the rights and freedoms of people. Since the Convention on the Rights of the Child, the low Convention of the Council of Europe and the Hague Conference on International Private Law in the field of protection and implementation of children's rights impose on the member states the obligation to develop and expand the national legal framework in accordance with international principles.

P. Rabinovich notes that the expansion of the scope and scope of those rights and freedoms that are already enshrined in the Basic Law is a relatively independent aspect of improvement of guarantees[307].

A similar approach is expressed by P. Gluschenko, noting that the guarantees of the rights and interests of citizens are economic, political, ideological, and legal tools, which ensure the constant improvement of these rights and interests, their real implementation, and in some cases, effective protection from possible violations[318].

So, in the legal literature we can distinguish three main approaches to the definition of guarantees of rights and freedoms. The first one, which is supported by the majority of scientists, including O. Zaychuk, A. Zayets, N. Onishchenko, S. Bobrovnik, L. Voevodin, S. Lisenkov, V. Abramov, is to define guarantees as conditions, ways and means that ensure actual

306 Nehodchenko O.V. Zabezpechennia prav i svobod liudyny orhanamy vnutrishnikh sprav : orhanizats.-pravovi zasady : avtoref. dys. ... d-ra yuryd. nauk. Kharkiv, 2004. S. 19.

307 Rabinovych P. Konstytutsiini harantii prav liudyny i hromadianyna: mozhlyvosti udoskonalennia. *Yurydychnyi Visnyk Ukrainy*. 2008. 26 cherv. 4 lyp. S. 8.

implementation and universal protection of human rights and freedoms.

Proponents of the second approach, including K. Volinka, O. Negodchenko reduce the definition of guarantees to the totality of individual and sub-individual factors aimed at the full and universal ensuring of effective implementation, protection and defense of human rights and freedoms.

The proponents of the third approach were P. Rabinovich, P. Glushchenko and others, who believe that guarantees ensure not only the protection, realization and protection of human rights and freedoms, but also their constant improvement.

We share the opinion of P. Rabinovich and P. Glushchenko and believe that the development and improvement of legislation in the field of guaranteeing children's rights is a part of their guarantee. Therefore, the guarantees not only ensure the implementation of the rights and freedoms of the child, but also contribute to their development and improvement.

Analyzing the different approaches of scientists, we believe that the guarantees of children's rights and freedoms should be regarded as a system of integrated socio-economic, political, cultural (spiritual), legal environment, conditions, tools and techniques that ensure the continuous improvement of children's rights and freedoms, protection, actual implementation, and protection in case of violation (cancellation).

The specificity of guarantees of the fundamental rights and freedoms of the child is that they function through a system of bodies that are focused on protecting the interests of the child, other various factors that are combined in the category of the mechanism for ensuring the rights of the child. The efficiency of functioning of the mechanism reflects the level of guaranteeing the rights and freedoms of the child. The functional purpose of the guarantees is to ensure the conditions for the implementation, protection and defense of the rights of the child.

The actual environment for guaranteeing the rights and freedoms of the child is the political, economic, social, and legal spheres of society, that is, guarantees of the rights and freedoms of the child have a material meaning, since they function in the real everyday life of the child.

Sometimes in the literature, the concept of «guarantee» is equated with the category of «security», which is incorrect. Since guarantees are only the conditions, conditions, means and ways of ensuring the rights and freedoms of the child. But «maintenance» is the creation of conditions

for the realization of rights and freedoms, their protection and protection, which includes the restoration of the violated (accused) right.

In this respect we should take into account the opinion of V. Abramov. Abramov, who argues that guarantees, together with protection and defense, are one of the ways to ensure subjective rightP. The legal protection of the rights and freedoms of the child is indissolubly linked to the guarantee (a general concept, which means a set of guarantees)[308].

Scientists use various criteria to classify guarantees. For example, V. Pogorilko distinguishes two categories of guarantees: general and special. General guarantees – guarantees that cover the entire set of objective and subjective factors aimed at the practical implementation of the rights and freedoms of citizens, the elimination of possible causes and obstacles to their non-performance or improper performance, the protection of rights against violationP. Special (legal guarantees – legal tools and means by means of which the rights and freedoms of citizens are realized, protected and defended, violations of rights and freedoms are eliminated, the violated rights are renewed[309]. The same classification is suggested by O. Zaychuk, A. Zayets, N. Onischenko, and others[310]. S. Bobrovnik also points out that guarantees are divided into general and special[311].

In our view, the main criterion for the classification of guarantees of children's rights and freedoms is the features of that area of social relations, which is the basis for the functioning of the guarantees. Widely used is the classification of guarantees depending on the spheres of activity of society. They include social and economic guarantees, political, spiritual and legal guarantees.

Basic in ensuring the rights and freedoms of the child are social and economic guarantees.

O. Skakun indicates that social and economic guarantees are the uniformity of social and economic space, free movement of goods, services, financial assets, freedom of economic activity, Recognition and equal protection of all

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[308] Abramov V.Y. Prava rebenka y ykh zashchyta v Rossyy: obshcheteoret. analyz : avtoref. dys. ... d-ra yuryd. nauk. Saratov, 2007. S. 23.

[309] Konstytutsiine pravo Ukrainy / red. Pohorilko V.F. Kyiv : Nauk. dumka, 1999. S. 221.

[310] Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskyi ta in. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 95–110.

[311] Bobrovnyk P.V. Rol suchasnoi derzhavy u zabezpechenni prav ta svobod liudyny. Problemy realizatsii prav i svobod liudyny ta hromadianyna v Ukraini / red. N.M. Onishchenko, O.V. Zaichuk. Kyiv, 2007. S. 65.

forms of ownership, social partnership between the people and the state, the employee and the employer, protection of competition in business activitie[324].

Some authors divide this type of guarantees into social and economic guarantees. V. Pogorilko notes that economic guarantees of constitutional rights and freedoms of citizens – the method of production, economic order of society, which must ensure the continued growth of productive on the basis of recognition and protection of various forms of ownership of the means of production; socially-oriented market economy; economic freedom of people and their associations in choosing the forms and performance of business activities[325].

I. Magnovsky points out that social guarantees are those basic measures of social nature, which are aimed at increasing the effectiveness of the mechanism of implementation of the rights and freedoms of citizens of Ukraine, as well as of those persons who stay in the state on legal grounds[312].

The monitoring of children's rights and freedoms reveals significant violations of children's rights, which were committed both by the parents and by the members of the governing bodies and state guardianP. It is not the intentional failure to fulfill the duties of the parents, but the service negligence of the officers, who do not ensure proper protection of the rights of children in public institutions.

Often the causes of violations of children's rights and freedoms are inadequate implementation by state authorities in places of law designed to protect the rights and freedoms of minors, The lack of operational control on the part of the ministries is also a reason for the inadequate enforcement by state bodies of the requirements of the legislation aimed at protecting the rights and freedoms of minors.

A significant obstacle in guaranteeing a child's right to be raised in a family is the lack of a complete registration of orphans and children deprived of parental care. According to O. Medvedko, in one third of the regions there are no child welfare offices at the district and city children's services, which are required to conduct the registration[313].

Children abandoned by their parents are kept for a long time in hospitals, orphanages or children's institution. And the services do not take mea-

[312] Novykova N. Prokuratura – na zakhysti prav nepovnolitnikh. *Visnyk prokuratury*. 2008. № 4. S. 44.

[313] Medvedko O. Z liuboviu ta turbotoiu do ditei. *Visnyk prokuratury*. 2018. № 5. S. 4.

sures to identify children, register them and transfer them for reinstatement. At the same time, Ukrainian parents search for a child for reinforcement for years and cannot find her because she is not registered.

A problem in today's society is that not always the family, which is supposed to contribute to the physical, spiritual, intellectual, cultural and social development of the child, can become a hostile environment for the child, where they do not oppose but contribute to the commission of offences, crimes and other crimes by their minor children[314].

Criminologists note that recently a significant number of crimes have been committed by fathers together with their children[315].

Failures of family education, in the literal sense of its absence, indicate a violation of a child's right to family education, which is guaranteed to every child[316].

Guaranteeing the rights of children in the social and economic sphere is directly proportional to budgetary funding. Each child has the right to property, to an adequate standard of living for her physical, intellectual, cultural, moral and social development. To guarantee the implementation of these rights today increased social payments for the care of children, including children of orphans and children, The system of payments to adoptive parents and custodial fathers has been expanded, as well as the system of paying for the services of adoptive fathers and custodial fathers.

However, practice shows that in some cases social and economic guarantees are declarative in nature. It is striking that the rights of the child are often violated by the officials who are obliged to ensure the implementation of the rights of the child.

Children's residential and property rights are violated. The number of claims to declare invalid the agreements on the sale and purchase of children's housing is growing rapidly. It is not only the money and property of the children that is the subject of infringement. Their land plots are sold or otherwise illegally used. For example, in Vinnitsa region, the head of the

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[314] Myronenko V. Pravovi zasady zakhystu prav dytyny, yaka perebuvaie u konflikti z zakonom. *Visnyk prokuratury.* 2008. № 5. S. 32.

[315] Pleshakov V.A. Krymynolohycheskaia bezopasnost y ee obespechenye v sfere vzaymovlyianyia orhanytsyonnoi prestupnosty nesovershennoletnykh : dys. ... d-ra yuryd. nauk. Moskva, 1993. S. 71–72.

[316] Myronenko V. Pravovi zasady zakhystu prav dytyny, yaka perebuvaie u konflikti z zakonom. *Visnyk prokuratury*. 2008. № 5. S. 3.

village council leased 2.6 hectares of land to businessmen, which was left to a boarding school pupil after the death of his parents[317].

In addition, local authorities do not ensure the rights of boarding school graduates to housing. Most of them do not have it, but they are not registered in the housing register.

In the process of ensuring the rights and freedoms of the child, the level of protection of the child's health is important. The state guarantees free qualified medical assistance in state and communal health care institutions, contributes to the creation of safe living conditions and healthy development of the child, rational nutrition, formation of skills for a healthy way of life[318].

Despite the measures taken in recent years, there is an increase in the number of chronic, socially significant diseases, decreased indicators of physical development, Increase in mental abnormalities, borderline conditions, reproductive system disorders, an increasing number of children belonging to the groups of high medical and social risk. The number of chronically ill children increases by 2.5 times during their school years[319].

The health deterioration is based on a whole complex of social and economic causes, among which the inadequacy of the current system of medical care for children and adolescents, the deterioration of the quality of food, technological disruptions are not the least important, The lack of effective educational programs for developing a culture of health in children and children from socially disadvantaged families is one of the reasons for the decline in the volume and quality of preventive programs in the outpatient and hospital health care system, the increase in stressful situations, the inadequate system of psychological and pedagogical support for children from socially disadvantaged families and the lack of effective educational programs for the formation of a culture of health in children.

One of the factors contributing to the deterioration of children's health is an impaired health of children.

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[317] Medvedko O. Z liuboviu ta turbotoiu do ditei. *Visnyk prokuratury*. 2018. № 5. S. 5.

[318] Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. S. 6.

[319] Zabezpechennia prav ditei v Ukraini. Okhorona materynstva i dytynstva : parlam. slukhannia 7 cherv. 2005 r. Informatsiine upravlinnia VRU.

At the level of risk to people the first place is occupied by air pollution. In cities with a high level of air pollution the incidence of diseases of the cardiovascular system, respiratory system, nervous system, malignant diseases, tuberculosis and other diseases exceeds the level of incidence in cities with low pollution by 20-40%. Particularly affected are children, whose body is more sensitive to the adverse effects of environmental factors. Immunodeficiencies increase, which is one of the causes of increased level of infectious impairment. Decreased health level is typical for all ages of the child's life.

The above-mentioned examples testify to a certain declarative nature of guaranteeing the rights of the child to the protection of health. The state is obliged to create the necessary conditions for the realization of the right to a safe home.

Among the substantive tensions of the possibility of improving the guarantees of human rights and freedoms of a citizen, developed by a group of Ukrainian scientists, is the expansion of the scope of these rights and freedoms, In this regard, it is assumed that the state must take all measures to ensure the rights and freedoms of people[320].

In our opinion, in order to strengthen and effectively implement the guarantee of children's right to health protection and a safe environment it is advisable to adopt the Law «On the requirement to use air purification systems in children's institutions». After all, a lot of time children spend in children's institutions, air purification in which has little positive impact on the overall health of children. Today there are many systems of ionization of the air, which significantly reduce the level of air pollution in the premises.

While investigating the problems of social and economic guarantee of children's rights, it is necessary to pay attention to children living in rural areas. After all, the law does not provide that a child who lives in a rural area has a comparatively lower opportunity to use modern science and technology, and is often dragged by their parents to excessive labor.

Rural schools do not have enough teachers because young professionals do not want to work there due to the low socio-economic level of life in rural areas. Many Ukrainian villages do not have health care facilities, which is a real violation of children's rights.

[320] Rabinovych P. Konstytutsiini harantii prav liudyny i hromadianyna: mozhlyvosti udoskonalennia. *Yurydychnyi Visnyk Ukrainy*. 2008. 26 cherv. 4 lyp. S. 8–9.

As a consequence of these shortcomings in the mechanics of securing children's rights, the rights of children living in rural areas are comparatively better secured than those of children living in the city. In spite of all kinds of incentives, young professionals do not want to go to work in the countryside. To solve this problem it is necessary to develop more effective state welfare programs, raise the level of wages for people working in the countryside, provide decent housing, provide benefits to pay for services, transportation, etc.

The difficult economic situation in the country hampers the implementation of many social and economic programs aimed at guaranteeing the rights of children. Lack of funding for educational institutions and health care institutions hampers their effective functioning. Various restrictions on the granting of long-term soft loans for housing, objects of long-term use do not allow fathers to provide conditions for a harmonious, all-round development of their children. Any positive changes in the sphere of social and economic guarantees of children's rights and freedoms are possible only under conditions of stabilization of the economic situation in Ukraine.

Political guarantees are important for the implementation of children's rights.

O. Zaychuk, A. Zayets and other the political guarantees include the activity of the state, representation of political interests by the institutions of the political system, the presence of actually functioning institutions of indirect and representative democracy, the ability of the population to appeal to special state bodies for protection of their rights, etc.

We believe that political guarantees of children's rights are aimed at ensuring the proper standard of living for the child, at creating conditions for the implementation of the rights and freedoms of the child[321].

The current Ukrainian society is experiencing major changes in the system of political guarantee of the rights of the child.

The National Action Plan for the Implementation of the UN Convention on the Rights of the Child is of great importance, The aim of the National Plan for the Implementation of the United Nations Convention on the Rights of the Child is to ensure the optimal functioning of a comprehensive system for the protection of children's rights in Ukraine and the National

[321] Teoriia derzhavy i prava. Akademichnyi kurs : pidruchnyk / za red. O.V. Zaichuk, A.P. Zaiets, V.P. Zhuravskyi. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2008. S. 106.

Programme for the Development of National Promotion of Children in Ukraine (2006-2016), Every Child Needs a Homeland of his or her Own.

The President of Ukraine is the guarantor of the children's rights and freedoms. With the aim of providing appropriate conditions for the realization of the civil, economic, social and cultural rights of children in Ukraine, the year 2006 was declared the Year of Protection of Children's Rights; the year 2008 was declared the Year of Protection of Children's Rights. The Year of Support for National Reinforcement and Other Forms of Family Education.

In 2011, the institution of the President in charge of children's rights was introduced, which ensures that the President of Ukraine exercises constitutional powers to ensure observance of the constitutional rights of children and that Ukraine fulfills its international obligations in this area.

As of 2019 we can state the positive tendency of national strengthening, which is formed due to the planned state policy and successful reform of the system of care and treatment, which was carried out in our state and was supported by every government, starting from 2006.

The activity of community organizations aimed at the protection of children is of great importance in the sphere of political guarantees.

Community organizations are not only a tool of self-organization of different branches of society, aimed at protection and realization of rights and freedoms of citizens, but, first of all, a channel for representation of the whole spectrum of public interests in interrelations between citizens and power [322].

In Ukraine there is a nationwide public organization Children's Protective Service, which was the initiator of the information campaign «The Child is Watching You. Keep them out of Syria's debt»[323].

A community-based organization, the Foundation for the Protection of Children's Rights (FPCCR), is actively involved in the protection of children's rightP. This organization together with the International Children's Rights Protection Organization (Netherlands) since 2006 implements the project «Creation of the Framework for Implementation of the Juvenile Justice System in Ukraine: Model Courts and Pedagogical Aspect»[324].

[322] Levchuk K.I. Hromadski orhanizatsii Ukrainy: stvorennia ta diialnist (1985-1996 rr.): Monohrafiia. Vinnytsia : PP "Edelveis i K", 2009. P. 4.

[323] Vseukrainska hromadska orhanizatsiia "Sluzhba zakhystu ditei". URL: http://zakon1.rada.gov.ua.

[324] Vseukrainska Fundatsiia "Zakhyst Prav Ditei" (VFZPD). URL: http://www.children-ukraine.org.

The activity of the All-Ukrainian community organization «Magnolia» is of great importance for solving the problem of neglect and homelessness among children, which is aimed at searching for missing children and the parents of those children whose identity is being established (homeless children, abandoned children, children staying in hospitals)[325].

The Community Organization «Committee for the Protection of Children's Rights» directs its activities toward solving problems related to social and psychological, spiritual, medical and legal aspects of children's liveP. The organization includes physicians, psychologists, educators and lawyers who work directly with children and their parents[326].

The Kyiv-based charitable foundation, The League for Foster Families, helps protect children's rights to live with their familieP. The League for Foster Families holds the annual round table, joint activities of state and public organizations for the implementation of the right of the child to live in a family, Provides assistance in the conduct of Christmas «Summer School» – a form of improving the educational potential of foster parents and rehabilitation of children in foster families and others.

There are many other community organizations in the field of child protection in Ukraine. It is not uncommon for community organizations to unite children in order to protect their rights[327].

There are many other community organizations in Ukraine that protect children. It is not uncommon for community organizations to unite children in order to protect their rights.

Among them, as already noted, an important place is occupied by the All-Ukrainian Children's Parliament, which was created through a questionnaire survey of schoolchildren in the capital and several other cities of Ukraine. Today the Association of Children's Parliaments of Ukraine was founded, which includes many organizations that were created on the model of the Children's Parliament, the Chernivtsi Children's Council, The Kirovograd Oblast Children's Parliament, the Zaporizhia Oblast Children's Parliament, the Maybutniye Slavutich Youth Rada, the Union of Children's Organizations of Sevastopol, the Gymnastics Association

[325] Vseukrainska hromadska orhanizatsiia "Mahnoliia. URL: http://www.ukrprison.org.ua.

[326] Hromadska orhanizatsiia "Komitet spryiannia zakhystu prav dytyny". URL: http://magnolia.org.ua.

[327] Hromadska orhanizatsiia Kyivskyi blahodiinyi fond "Liha pryiomnykh simei". URL: http://www.adic.org.ua/coalition/.

of Ukraine and the Association of Children's Organizations of Ukraine. Sevastopol, the Zhytomyr Children's Parliament, the Children's Parliament of Vyshgorod, the Lviv Children's Parliament and otherP. Ideally, this organization should cover all settlements and involve children from villages and cities of Ukraine in decision-making processes[328].

In our opinion, these community organizations are important for ensuring children's rightP. Children's community organizations enable children to take an active part in public life, exercise their political rights and collectively uphold their interests. Community organizations in the field of protection of children's rights actively reflect on existing problems, evaluate the actions of the authorities, speak out on the gaps in legislation, highlight the main shortcomings in the implementation of children's rights in pra tical life.

The activity of public organizations in the field of protection of children's rights has not been respected by scholars. The legal literature mainly investigates the activities of public authorities in the field of protection of children's rights and freedoms. In our opinion, the active functioning of public organizations acts as a controller of public authorities, a certain crushing force that stimulates the improvement of the work of public authorities, aimed at ensuring the rights and freedoms of the child.

The next type of guarantees for ensuring the rights and freedoms of the child are spiritual guarantees, the basis of which are the spiritual values of society, its legal, cultural, social awareness.

Spiritual guarantees of children's rights and freedoms are a system of spiritual values of society, the basis of which is the recognition of the child as an active subject of the rights and freedoms due to her, The main goal of the school is to promote children's cultural and intellectual development and to form a system of spiritual values and ideological orientations based on respect for Motherland and for human rights and freedoms.

Spiritual guarantees include availability of ideological plurality, prohibition of religious and racial hostility, general accessibility and free education, access to information, freedom of literary, artistic, scientific and other types of creativity.

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[328] Prava dytyny: vid vytokiv do sohodennia : zb. tekstiv, metod. ta inform. materialiv / avt.-uporiad.: H.M. Laktionova. Kyiv : Lybid, 2002. S. 39.

The recognition of the child as an active subject of due rights and freedoms, a member of civil society, is enshrined in Art. Article 9 of the Law of Ukraine «On Protection of Childhood», which states that every child has the right to freely express his or her personal opinion, form his or her own views, develop his or her own social activities, receive information that corresponds to his or her age ...[329].

Sociological research shows that children most often complain about the violation of the right to express their opinion, to have their own views and opinions, and the right to leisure time, to quality medical care, protection from intrusion into personal life, education, development of talents, protection from cruelty, oppression, brutal behavior, etc. [330].

Moreover, in recent years social pathology has increased in Ukraine: the number of young people suffering from alcoholism, substance abuse and drug addiction is increasing[346].

Scientists say that the problem of child alcoholism and drug addiction is the result of the excessive advertising of alcohol in the media, especially on television. This is a systemic nationwide problem that could lead to the degeneration of the nation in just a few decades. Children's and youth educational and spiritual organizations require substantial state support to encourage young people to live a healthy lifestyle[331].

According to doctors, the practice of drinking beer and other drinks containing alcohol (rum-coli, long drinks, etc.) by children is widespread and their sale to children is not prohibited. Lawyers and practitioners have voiced the need for a legislative decision to prohibit the sale of alcoholic beverages to children[332].

Instability in the state, inappropriate functioning of the family as a social institution, have caused the problem of child neglect to worsen. All of this indicates a crisis in the education of the younger generation[333].

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[329] Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

[330] Zabezpechennia prav ditei v Ukraini. Okhorona materynstva i dytynstva : parlam. slukhannia 7 cherv. 2005 r. Informatsiine upravlinnia VRU. URL: http://portal.rada.gov.ua.

[331] Dytiachyi alkoholizm – ne stilky medychna, skilky zahalnoderzhavna problema. *Sivershchyna*. 2007. 12 lyp. S. 8–9.

[332] Alkhimova D. Orhany prokuratury – na zakhysti prav ditei. *Visnyk prokuratury*. 2008. № 5. S. 22.

[333] Holub Yu. Problemy zakhystu prav ditei u rehioni. *Visnyk prokuratury*. 2008. № 4. S. 25.

Investigators say that it is necessary to return children to their families and children's institutionP. Children do not have the right to play because the system of children's clubs has been destroyed – all of them have been sold out, and private garages, parks or high-rise buildings have grown up in the place of many sports grounds[334].

Children are not protected from the negative influence of television, cinema and video products that promote violence and an immoral way of life.

There is no rigid position of state control authorities in the sphere of television, radio and press, which do not take measures to limit the wide distribution of such products.

That is why an effective, purposeful state policy in the sphere of education of the young generation is necessary. It is necessary that the entire society became aware of the urgency of the problem of educating children, their formation as a person and the serious consequences of the inadequacies of this process.

An important role in the system of guarantees is taken by legal guarantees.

P. Rabinovich points out that legal guarantees – the limits of their implementation enshrined by legal norms, ways of specification; legal facts associated with their security, procedural forms of exercising the rights and freedoms, measures of interest and incentives to stimulate their legal implementation[335].

We believe that legal guarantees of children's rights and freedoms are ensuring the competence of state bodies and officials in the field of protection of children's rights, It is the establishment of liability for violations of the rights and freedoms of the child and the legally established procedure for protecting the violated or cancelled rights and freedoms of the child, and the right to receive qualified legal aid.

Most scholars subdivide legal guarantees depending on the presence of the fact of the violation of rights and freedoms to the guarantee of protection, guarantee of protection. Protection and realization of the rights and freedoms (the state before the occurrence of violation of the right) are ensured by the guarantee of protection. And after the occurrence of violation or cancellation of rights or freedoms, guarantees of protection

[334] Prysiazhniuk V. Chy zatyshno ditiam pid krylom zakonu. *Visnyk prokuratury*. 2009. № 1. S. 44.

[335] Rabinovych P.M. Prava liudyny i hromadianyna u Konstytutsii Ukrainy: (do interpretatsii vykhidnykh konstytuts. polozhen) Kharkiv : Porohy, 1997. S. 189.

ensure the restoration of the legal status and prosecution of the guilty persons,[336],[337],[338].

The system of legal guarantees for the protection of children's rights and freedoms includes the Unit for Human Rights of the Verkhovna Rada of Ukraine, which exercises parliamentary control over the observance of human and civil rights and freedoms and the protection of the rights of every person on the territory of Ukraine and within its jurisdiction. The existence of this legal institution has a positive impact on improving the mechanism of ensuring the rights and freedoms of the child.

The scientific community is discussing the feasibility of introducing the position of a Commissioner for Children's Rights in Ukraine: over the past decade, such institutions have appeared in many countries, including the Russian Federation. The proponents of the introduction of this position argue for the shortcomings of the mechanism for ensuring the rights and freedoms of children and the underdevelopment of the system of institutions for the social protection of children[339]. Opponents argue that the legislation significantly expands the powers of bodies that protect the rights and interests of children. In addition, Ukraine has adopted a number of legislative acts that define the legal basis for the activities of government agencies and institutions to protect the rights and freedoms of children and prevent their violations.

Analyzing the mentality of the modern Ukrainian society, as well as taking into account the fact that many professionals who work with children, as a result of the, old" system of self-education, do not recognize the current expansion of children's rights, do not consider the child as an active subject of rights, equal rights member of society. It should be noted that the introduction of the position of the Commissioner for Children's Rights could have a significant impact on the level of imple-

[336] Skakun O.F. Teoriia derzhavy i prava : pidruchnyk. Kharkiv : Konsum, 2008. 656 s.

[337] Prava, po kotorym sudytsia malorossyiskyi narod ... / yzd. pod red. y s prylozh. yssled. o sem Svode y o zakonakh, deistvovavshykh v Malorossyy prof. A.F. Kystiakovskoho. Kyiv : Unyv. typ. (Y.Y. Zavadzskoho), 1879. 1065 s.

[338] Volynka K.H. Mekhanizm zabezpechennia prav i svobod osoby: pytannia teorii i praktyky : avtoref. dys. ... kand. yuryd. nauk. Kyiv, 2000. S. 12.

[339] Volynets L.P. Prava dytyny v Ukraini: problemy ta perspekyvy. Kyiv : Lohos, 2000. S. 48–72.

mentation of children's rights and freedoms. The number of violations of children's rights indicates the need to introduce such an institution, which would deal exclusively with issues related to the protection of children's rights and the special training of personnel in the field of ensuring children's rights.

An important element of the system of legal safeguards is juvenile justice, which provides for the protection of children who are in conflict with the law. The development of a special system of justice for minors is envisaged by the Concept of Reform of Criminal Justice of Ukraine. It is aimed at using special procedures of juvenile justice, which allow to take into account the rights and interests of children. Criminal cases in which the defendants are insane shall be heard by a court collegially, with the participation of people's assessors or juries[340].

In our opinion, the penal system for minors must be improved. The establishment of juvenile justice will contribute to the prevention of juvenile delinquency, the emergence of effective ways of responding to children's delinquency and protection of children who are in conflict with the law. As long as the main means of influence on immature offenders is punishment, the situation with regard to child abuse will not change for the better.

The study enables us to conclude that guarantees of children's rights and freedoms should be regarded as a system of coordinated socio-economic, political, cultural (spiritual), legal conditions, means and methods that ensure the constant improvement of children's rights and freedoms, protection, actual implementation and protection when they are violated (rescinded).

The system for guaranteeing children's rights and freedoms in Ukraine requires improvement. The development of the law, strengthening the implementation and expansion of children's rights is part of their guarantee. So, the guarantee is not only to ensure the implementation of the rights and freedoms of the child, but also to contribute to their development, improvement. Therefore, it is necessary to constantly expand the scope, scope and possibilities of implementation of the enshrined rights and freedoms of the child, as well as to increase the effectiveness of their guarantee[341].

[340] Konstytutsiine pravo Ukrainy / red. Pohorilko V.F. Kyiv : Nauk. dumka, 1999. 733 s.

[341] Nalyvaiko O.I. Teoretyko-pravovi problemy zakhystu prav liudyny : avtoref. dys. ... kand. yuryd. nauk. Kyiv, 2002. S. 7.

Legal protection of the rights of the child is a legal phenomenon, for which the rights and freedoms of the child lose their meaning and significance. The peculiarity of the protection of the rights of the child is its social and legal nature. It lies in the uniqueness of the child as a human person. During childhood, people's minds form the main values and attitudeP. This period is also characterized by particular dependence, inertia, the possibility of abuse or exploitation by otherP. That is why the child requires effective legal protection of her rights and freedoms, especially when she finds herself in unfavorable circumstances, when her rights or freedoms are violated.

Studying the forms of protection of children's rights, it is advisable to examine the relationship between the disputed concepts, particularly important is the concept of "protection" and "protection". O. Nalivaiko notes that "protection" is the consequence of "protection", without protection there would be no protection, because the latter exists due to the process of protection itself, initiates it and is a residual method. On the other hand, protection occurs where and when the problem of protection arises, which in practice leads to problems in the separation of these categories. P. Rabinovich argues that the protection of human rights is the end result of proper regulation, implementation, protection and defense of legally enshrined abilities of people to own, use and dispose of certain benefits necessary for their existence and development[342].

A whole range of non-legal factors (economic, political, social, demographic, intra-psychological) influences the legal protection of people's rights, which determine the nature, intensity, orientation and ultimate effectiveness of protection of people's rights.

By summarizing these scientific positions, we can recognize that the protection of the child is a broader concept than her protection, because it includes not only measures aimed at eliminating violations of the rights and freedoms of the child, but also their protection, implementation and regulation.

The relationship between the notion of "protection" and "protection" remains very relevant. Many scientists in their research turned to their definition and interpretation.

[342] Rabinovych P.M. Prava liudyny (iurydychna zakhyshchenist). Mizhnarodna politseiska entsyklopediia : poniatiinyi apparat, kontseptual. pidkhody, teoriia ta praktyka : u 10 t. / Rymarenko Yu.I., Kondratev Ya.Yu., Tatsii V.Ya., Shemshuchenko Yu.P. Kyiv, 2005. T. 2 : Prava liudyny u konteksti politseiskoi diialnosti. S. 281.

Some authors, including Z. Makarova and N. Bolotina, believe that the term "protection" is broader than the term "protection", noting that the concept of protection of rights includes their protection. Others, investigating the protection of rights and freedoms, conflate it with protection. This situation has arisen because these concepts are close in their meaning, but they must be distinguished[343, 344].

Most of the authors, including V. Abramov, V. Vedyakhin, M. Matuzov and others, believe that "protection" protects only the actions provided for in the law, when the right of the individual is violated[345].

We share the views of P. Rabinovich, who points out that the protection of human rights and freedoms is the restoration of the violated legal status, bringing the offenders to legal responsibility. And the protection of human rights and freedoms is carried out by taking steps to prevent the violation of rights and freedoms. The scientist notes that the term "maintenance of human rights and freedoms" includes three elements: promotion of implementation (through positive influence on the formation of their general social guarantees), protection of rights and freedoms, and protection of human rights and freedoms[346].

Article 1 of the Law of Ukraine "On Child Welfare" enshrines the general definition of child welfare – a system of state and public actions aimed at ensuring a full life, universal education and development of children and protection of their rights. Therefore, the legislation also provides that "protection" is a broader concept than "protection"[347]. One of the shortcomings is the lack of legislative definition of the protection of children's rights and freedoms.

Summarizing the existing scientific positions, it can be noted that the protection of children's rights is a totality of measures aimed at preventing violationP. Implementation is a positive impact on the

[343] Makarova Z.V. Zashchyta v rossyiskom uholovnom protsese: poniatye, vydy, predmet y predely. *Pravovedenye*. 2000. № 3. S. 21.

[344] Bolotina N.B. Pravo sotsialnoho zakhystu: stanovlennia i rozvytok v Ukraini. Kyiv : Znannia, 2005. S. 38.

[345] Matuzov N.Y. Pravovaia systema y lychnost. Saratov : Yzd-vo Sarat. un-ta, 1987. 293 s.

[346] Rabinovych P.M. Prava liudyny i hromadianyna u Konstytutsii Ukrainy : (do interpretatsii vykhidnykh konstytuts. polozhen). Kharkiv : Porohy, 1997. S. 9.

[347] Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

formation of safeguards, creating conditions for the implementation of the rights and freedoms of the child. Protection of children's rights and freedoms is a response to violation of children's rights: liquidation of the violation, restoration of the legal status, bringing the perpetrators to legal responsibility.

The source in the system of protection of children's rights and freedoms is the rule of law. They occupy a special place in the system of protection, because they regulate the procedure of actions of the state bodies, officials, physical and legal persons in the sphere of protection of the rights of the child, consolidate the possibility of using state coercion.

The Ukrainian legislation in the field of legal protection of children is based on the CG [348], the UN Convention[349] on the Rights of the Child[350], the CCU[351], the Law on the Protection of Children.

These laws and regulations are aimed at improving the social protection of children, including orphans and children deprived of parental care, and improving the state system of care. The positive impact of legislation in the sphere of social and legal protection of children is evidenced by indicators of national reinforcement: The number of children placed in foster families and family-type children's homes increased sixfold and the number of orphans and children without parental care in residential institutions decreased by 40%[352].

Moreover, a number of amendments were made to the Law of Ukraine «On State Assistance to Families with Children», which stipulates the provision of state financial assistance in connection with pregnancy and pregnancy, with the birth of a child, in case of adoption of a child, assistance in taking care of the child until he or she reaches three years of age, for children over whom guardianship or custody has been established, as well as assistance for children of single mothers.

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[348] Konstytutsiia Ukrainy .Verkhovna Rada Ukrainy. OfitP. vyd. Kyiv : Parlamentske vydavnytstvo, 2007. 64 s.

[349] Konventsiia OON pro prava dytyny : ratyfikovana Postanovoiu Verkhovnoi Rady Ukrainy vid 27 liut. 1991 № 789-XII. Kyiv : Stolytsia, 1997. 31 s.

[350] Naukovo-praktychnyi komentar do Simeinoho kodeksu Ukrainy / za red. Ye.O. Kharytonova. Vyd. 2-he., dopovn. Kharkiv : Odissei, 2008. 558 s.

351 Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30. St. 142.

[352] Kotliar A. Zapiznile do yuvileiu. *Dzerkalo tyzhnia*. 2009. 28 lystop. 4 hrud. S. 14.

Therefore, analyzing the Ukrainian legislation in the field of protection of children's rights and freedoms, it is worth noting the presence of positive changes[353] that are of social and legal nature. In our view, a number of problematic issues remain, which indicate the need to improve the legislative provision for the protection of children's rights. There are provisions in legislation that «do not work» or do not fully comply with the Convention on the Rights of the Child.

In recent years, measures are being taken to strengthen the guarantee of the right of the child to contact. Article 16 of the Law of Ukraine «On Amending Certain Legislative Acts of Ukraine to Ensure the Protection of Children's Rights» stipulates that parents, other family members and parents, including those who live in different countries, must not interfere with one another in exercising a child's right to contact them[354].

Problems can arise when a child, exercising her right to contact, stays abroad and one of the parents or parents prevents her return.

Another novelty of the legislation is the establishment of the difference in the age between the parent and the child of not more than 45 years, prescribed by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine regarding reinstatement»[355].

In N. Karpachova's opinion, the provision is unconstitutional and violates the principle of equality of citizens. The Constitutional Court recognized that the difference in the age between a parent and a child, established by the CCU, is mandatory for all persons who want to strengthen a child, and in fact concerns the possibility of strengthening a child of a certain age, and therefore it does not violate the constitutional principle of equality of citizens before the law. Moreover, the reinforcement grants the reinforcing parents the rights and obligations in relation to the adopted child to the extent that the parents have in relation to the child, and the reinforced children – the rights

[353] Pro derzhavnu dopomohu simiam z ditmy : Zakon Ukrainy vid 21 hrud. 1992 № 2811-XII (zi zminamy i dopovnenniamy). *Holos Ukrainy*. 1992. 16 hrud.

[354] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo zabezpechennia zakhystu prav ditei : Zakon Ukrainy vid vid 21 trav. 2009 № 1397-VI. *Uriadovyi kurier*. 2009. 12 cherv.

[355] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo usynovlennia : Zakon Ukrainy vid 10 kvit. 2008 № 257-VI. *Uriadovyi kurier*. 2008. 24 kvit.

and obligations in the very extent that the children have in relation to their fathers[356].

The scientific community is not interested in discussions aimed at solving this problem. They also state that the increase in the age difference (more than 45 years) necessary for strengthening will not be in accordance with the interests of the child. People close to this interval can have a whole range of problems typical of young children who do not contribute to the proper care and supervision, all-round development of an orphaned child or a child deprived of parental care. An analysis of foreign experience shows that the maximum allowable difference in age between the person being strengthened and the person being strengthened is no more than 45 years, but the difference of 30-35 years is established in the majority of countries. That is why it is inadvisable to increase the maximum difference in age between the parent and the child he or she wants to strengthen[357].

In our opinion, considering the important social and economic situation in Ukraine and the number of children deprived of parental care, it is unreasonable to focus on the developed countries where the conditions of care and material support for such children are much better. The age restrictions for child care providers affect the number of people who have the right to care for a child. This, in turn, increases the number of children who can exercise their right to be educated in a family[374].

Therefore, in our opinion, the establishment of age limits for parents (amendments to the Code of Criminal Procedure for enhancing the protection of children's rights during child enhancement, namely Article 210, Article 211, Article 220) is a certain limitation of their abilitieP. It is unacceptable to limit the number of persons who want to adopt a child by strict age boundaries and the number of children who can exercise the right to be educated in a family. Also, Article 211 of the CCU needs to widen the difference in the age between the child and the child's parentP.

Another legislative shortcoming in the sphere of social and legal protection of children, in our view, is the problem of legal regulation of

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[356] Litni liudy ne zmozhut vsynovyty nemovlia. Informatsiine ahentstvo UNIAN. Prava liudyny. URL: http://human-rights.unian.net/ukr.

[357] Proekt Zakonu pro vnesennia zmin do Simeinoho kodeksu Ukrainy (shchodo posylennia zakhystu prav ditei pry usynovlenni) : vysnovok holov. nauk.-ekspert. upr. vid 31.03.09. URL: http://gska2.rada.gov.ua.

preventive detention of children. Representatives of the United Nations Children's Fund (UNICEF) in Ukraine repeatedly addressed this problem.

Fatal accidents or significant health impairment of children after vaccination became common. There is no unequivocal expert opinion on what caused the health deterioration. However, a certain number of parents refuse to have their children's chemotherapy. In addition, there are a large number of children in Ukraine who do not want to be brushed with brushes due to their health condition. In particular, these are children who suffer from allergic diseases and others.

Problems arise when parents receive a refusal to admit children to kindergartens, and sometimes to school. Article 15 of the Law of Ukraine «On Protection of Population against Infectious Diseases» stipulates that children who have not received prophylactic vaccinations in accordance with the vaccination calendar are not allowed to visit children's institutions.

For example, the Kharkiv kindergarten refused to accept the child without all the required delays. The mother of a three-year-old girl appealed to the court. She refused to provide her child with any kind of treatment and now she has a problem: they refuse to accept her daughter into the children's institution. The head of the school says that they do not have the right to take children without cheeks to school[358].

In addition, cases of significant health damage and death of children after vaccination were common. In many cases, the exact cause of the diseases was not found. It was found that the vaccine that caused the death of a schoolboy from Kramatorsk A. Tymoshenko. It was found that the vaccine that killed the school boy from Kramatorsk A. Tishchenko was not certified.

A comprehensive forensic medical examination involving 12 leading physicians of the Academy of Medical Sciences of Ukraine confirmed that Tishchenko's death was caused by his vaccination against measles and rubella. There is a direct causal link»[359].

As a result of such incidents, many parents began to refuse to have their children brushed.

[358] Klochko L. Tryrichna divchynka sudytsia z dytiachym sadochkom cherez shcheplennia. URL: http://www.newsru.ua.

[359] Henprokuror: ekspertyza pidtverdyla, shcho shkoliar Tyshchenko pomer vid shcheplennia. Informatsiine ahentstvo UNIAN vid 19.09.08. URL: http://www.interfax.com.ua.

Often parents in children's institutions are asked to apply for prophylactic brushes and in case of complications they are responsible for it. In our opinion, this way of solving the problem is unacceptable. Parents are not responsible for the consequences of vaccinations. Moreover, due to the combination of negative factors, many children's health deteriorated after vaccination.

The CG (Article 24, Article 53)[360] stipulates that all citizens have equal constitutional rights and freedoms, everyone has the right to education. The Law of Ukraine «On Childhood Protection» (Article 3)[361] also establishes the equality of children, regardless of the ... health status. Article 19 of the law stipulates that every child has the right to education. The state guarantees accessibility and free of charge pre-school, full general secondary and other education.

Article 19 of the law[362] stipulates that every child has the right to education. The state guarantees accessibility and free of charge pre-school, full general secondary and other education. The relevant provisions enshrined in the Law of Ukraine , «On pre-school education»[363]. The Law on Secondary Education and the Law on General Secondary Education.

Since the state guarantees the right of every child to health care, as well as the equality of all children, any form of discrimination related to the state of health is unacceptable.

At the same time, we should note the threat of epidemics due to mass rejection of vaccinations, which is also a violation of the right to health protection. Parents have the right to choose forms and methods of treatment, prevention of diseases in children and be well aware of the risks of withdrawal from vaccinations.

To avoid mass rejection of parents in prophylactic treatment of children it is necessary to exercise more stringent control over the quality of

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[360] Konstytutsiia Ukrainy / Verkhovna Rada Ukrainy. OfitP. vyd. Kyiv : Parlamentske vydavnyt-stvo, 2007. 64 s.

[361] Pro okhoronu dytynstva : Zakon Ukrainy vid 26 kvit. 2001 r. № 2402-III. *Vidomosti Verkhovnoi Rady Ukrainy*. 2001. № 30 St. 142.

[362] Pro doshkilnu osvitu : Zakon Ukrainy vid 11 lyp. 2001 № 2628-III. *Uriadovyi kurier*. 2001. 8 serp.

[363] Pro zahalnu seredniu osvitu : Zakon Ukrainy vid 13 trav. 1999 r. № 651-XIV : (iz zminamy, vnesenymy zghidno iz Zakonom Ukrainy vid 4 cherv. 2008 r. № 309-VI. *Vidomosti Verkhovnoi Rady Ukrainy*. 2008. № 27/28. St. 253.

vaccines, to conduct treatment exclusively in children's hospitals after a comprehensive examination by qualified specialists of the child's health status and in the presence of one of the parents.

When diseases or other reasons are found that may not be preventive treatment, it is inappropriate to exclude such a child from visits to children's institutions.

To solve this problem, in our opinion, it is necessary to create specialized children's institutions, which will be able to visit children who have not received preventive treatment due to their health condition or the parents' opinion. Specialized pre-school, general education institutions must comply with all legal requirements and special attention must be paid to children's health and the elimination of possible epidemic diseaseы. For this purpose it is necessary to provide them with appropriate specialists and medical staff.

Under the conditions of the creation of specialized pre-school, general education institutions, children who have not been deprived of education will be able to exercise the state's guaranteed right to access to pre-school, complete general secondary education. And the state will be able to guarantee the right to health protection, including the threat of epidemics, by exercising appropriate control in specialized institutions.

So, in our opinion, one of the ways to solve this problem could be to amend Article 15 of the Law of Ukraine, on protection of the population from infectious disease. We propose to put the second paragraph of Article 15 as follows: Children who have not received prophylactic vaccinations according to the vaccination calendar can visit specialized child care centers created for children who do not receive prophylactic vaccinationP. If prophylactic treatment of children is carried out in violation of the established terms, due to medical contraindications, if the epidemic situation is favorable at the decision of the consilium of appropriate doctors, they can be admitted to the appropriate children's institution and visit it.

At the same time, this problem requires much more in-depth development and can be the subject of further research in the field.

In our opinion, improving the legislation is not enough to ensure the rights of the child. Without the implementation of legal norms in the practical life of the child, parents, other persons, government agencies, community organizations, etc. Legislation is in the plane of declarative.

In our view, the main forms of protection of the child are the state-legal protection of the rights and freedoms of the child and protection of the rights of the child on the part of the civil society.

On one hand, the state must create effective guarantees of protection of the rights of the child, perform social functions, especially in the sphere of health care and social security.

But on the other hand, the child is born, grows and develops in the social environment. The implementation of the rights and freedoms of the child is inevitably transformed through the civil society. The child's capacity for self-protection is very low. That is why a child's share depends on the community in which she is born and grows up. This is not only the parents (persons who replace them), teachers, educators, physicians, and the whole society, part of which is the child. Therefore, the protection of children's rights on the part of the community is also important.

Therefore, depending on the specifics of the subject of legal protection, protection of the rights of the child is divided into legal protection of the state and protection of the rights of the child on the side of the civil society.

These forms are interdependent and interconnected. In the context of building a democratic, law-based state and civil society, this approach is particularly relevant.

T. Pashuk notes that the state-legal protection is carried out in the process of jurisdictional activity (i.e., in the order of solving a legal dispute), the result of which is the application of any kind of state action, including renewal actions, actions of legal responsibility, actions of attribution (termination), actions of interdiction[364].

The essence of the state legal protection of the rights and freedoms of the child is that the child, the rights and freedoms of which have been violated, the parents, guardians, etc. can apply for protection of the rights of the child to the state or other competent authority, which is authorized to take the necessary steps to restore the violated right, stop the offense, impose compensation for the offense and punish the perpetrator.

It is manifested in the activities of government agencies, officials, parents, or the child himself/herself in the application of economic, legal and other means of protecting the rights of the child, in order to restore

[364] Pashuk T.I. Pravo liudyny na efektyvnyi derzhavnyi zakhyst yii prav ta svobod : avtoref. dys. ... kand. yuryd. nauk. Lviv, 2006. S. 13.

the violated (incurred) right, put an end to the offense, offset the incurred school. The result of the state legal protection of the rights of the child may be the application of any kind of state coercion.

In our opinion, we can distinguish the following general features of the state legal protection of children's rights: exists until the child reaches adulthood, occurs after the violation (cancellation) of the rights of the child, determines the means of protection, enshrined in the rules of law, has intergalactic nature, has a regulatory, caring and renewal character, and makes the rights of the child from the declarative to the real.

O. Nalivaiko notes that the means of protection of rights are substantive and procedural rules and procedures that are used by jurisdictional authorities at the request of an authorized person for prima facie restoration of their violated (accused) right. The entire arsenal of means of protection is divided into protective actions and responsible actionP. Means of protection – these are means of legal action, which are used by the competent authorities in relation to the obliged persons or offenders for the purpose of restoration of the violated (accused) human right and liquidation of the existing offense[365].

In order to protect their rights (in case of violation), a person may use the law-permitted coercive actions or appeal to the competent authorities or organizations (state or international) with a request to restore the violated right.

The CCU legislatively enshrines the right of a child to appeal to court on his or her own. In spite of the current trend of transforming a child from a protector and protector from the family, society and government into an active participant in the life of the civil society, It is necessary to take into account the age peculiarities of the child, because up to a certain age the child can not actively participate in the protection of their rights, requires special legal protection[366]. Therefore, not only the parents, persons in their place, the government and the authorities, but also the whole society must participate in the protection of her rights.

The state must create effective guarantees of protection of children's rights, perform social functions, especially in the sphere of health care and social security.

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[365] Nalyvaiko O.I. Funktsionalne pryznachennia prava u protsesi zakhystu prav liudyny. *Naukovyi visnyk Yurydychnoi akademii Ministerstva vnutrishnikh sprav.* 2002. № 1. S. 58–60.

[366] Naukovo-praktychnyi komentar do Simeinoho kodeksu Ukrainy / za red. Ye.O. Kharytonova. Vyd. 2-he., dopovn. Kharkiv : Odissei, 2008. S. 146.

Protection of children's rights on the part of the civil society is no less important than state legal protection. Scientists note that the problem of the child in civil society has two main aspects: the participation of institutions of civil society in the development and implementation of juvenile policy, the implementation of its legal foundations; the participation of the child in the life of civil society. In the context of international juvenile law, one of the principles of which is to ensure the participation of the child in social processes, children are treated as a significant member of the civil society, the nature of socialization, education and training of which directly determines the future of any society and its state[367].

A community is a form of society's self-organization, which reflects the sphere of non-powerful (private) relations determined by the interplay of individual and collective needs and interests, which are determined by the realization of individual freedoms and decisively influence the formation of social relations and social values.

The peculiarity of the formation and implementation of policy in the field of protection of children's rights lies in the fact that it has historically always been initiated from below – from the institutions of the civil society, and also from non-governmental organizations and local self-government bodies[368].

The church is an important institution of civil society that has played an important role in the recognition and consolidation of children's rights and freedoms throughout history[369].

In many countries around the world, including the U.S., France and the Federated States of America, child protection societies have been a driving force behind the adoption of the first laws protecting children from abuse.

Non-religious organizations are the leaders of the most progressive political and legal means of protecting children's rightP[388].

Today in Ukraine, there are a lot of public organizations, the main purpose of which is to protect the rights and freedoms of children. These are

[367] Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

[368] Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

[369] Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

the Children's Protection Service, the Committee for the Protection of Children's Rights, and the International Non-Governmental Organization for Every Child in Ukraine, Youth Community Organization, Youth AlteraTiva, Youth Community Organization, Club, Children's and Youth Organizations, Nova Xvile and otherP. They have a significant impact on the level of implementation and protection of children's rights. The role of community organizations in the mechanism of ensuring children's rights will be discussed in the next section.

The family is an important institution of civil society. In recent years the number of biological and social siblings and neglected children has increased in the country. Loss of moral values of a certain part of the population, low standard of living, abuse of alcohol and drugs and a number of other negative factors contribute to the increase of cases of deprivation of parental rights.

An equally important problem is violence against children in families. Physical punishment of children is an issue for our society and has historical reasons. No one pays special attention when fathers educate their child, giving up on the "usual groping". The situation when fathers systematically beat their children is particularly dangerous. In Poland, the national debate over the prohibition of the "male child" emerged in 2008 following the death of 3.5-year-old Bartk, who had been mauled to death by his mother's friend. Polish scientists recognized that this was not just the tragedy of one child – it was a plague on society[370].

Child abuse is not uncommon in Ukrainian familie. A common case was when the father, who had been on the psychiatric register since childhood and had a criminal record for drug trafficking, put his 14-year-old daughter Natalia on a lantern and tried to drive her around the village. In this way he wanted to get her to work on the plot[371].

The main causes of violent actions against children and adolescents include mental illness of parents, disrespect for the child's personality, low level of legal culture and legal awareness of the society. The results of a survey of children on domestic violence conducted by the Kharkiv Center for Women's Studies show that children who witness violence not only

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[370] Krestovska N.M. Yuvenalne pravo Ukrainy : ist.-teoret. doslidzh. : monohrafiia. Odessa : Feniks, 2008. S. 317.

[371] Karpiuk H. "Lantsiuhove" vykhovannia. Dzerkalo tyzhnia. 2008. 26 veresnia.

want to protect the victim or leave the house, but some of them are ready to commit suicide and some of them are ready to kill the perpetrator. This is not surprising, since more than 80 percent of the insecure perpetrators come from dysfunctional families[372].

In order to eliminate such a negative phenomenon as child abuse, which is historic, it is necessary for the whole society to become aware of the severity of the problem.

In effort to solve the problem of domestic violence, in March 2017 the Verkhovna Rada ratified the Law "On Combating Domestic Violence", which proposed a new approach (using European standards) to combat this negative phenomenon in society. The new law was enacted on September 7, 2018. Domestic violence, according to the law, means any physical, sexual, psychological or economic violence, as well as threats to commit such actions.

People are recognized as victims irrespective of whether they live together with their criminals or not (fiancés, girlfriends, former girlfriends, mother, father, children, their fathers, brothers, sisters, unhappy parents, guardians, parents-in-law, their children, stepchildren, children-in-law, other parents up to a binary relationship, persons who have lived together or are living together as a family but are not in a relationship, their children and grandparents) and persons who live together (any other parents, people who are linked by a joint household, have joint rights and duties). The injured child is not only the one who has been the victim of domestic violence, but also the witness of such violence.

If any kind of domestic violence is committed, the victims have the right to file a corresponding complaint (notification) both to the police authorities in the place of their residence (stay), as well as to the legislative committees of rural and rural councils, bodies of care and treatment, educational institutions (if the victims are children), health care institutionP. In order to receive protection, it is enough to apply to any of these bodies.

An indispensable element of modern Ukrainian society is mass media. They play an important role in the protection of children's rights because they direct public attention to violations of children's rights, informing

[372] Liudyn D. Potribno vnesty zminy do zakonodavstva, yaki spryiatymut nedopushchenniu propahandy nasylstva. *Yurydychnyi Visnyk Ukrainy*. 2009. 17–23 zhovt. S. 3.

the public about the enshrined rights of the child, the possibilities of their implementation.

Summarizing the peculiarities of the protection of children's rights and freedoms on the part of the civil society, we can conclude that it is characterized by the following features: It exists in conjunction with the state legal protection of the rights and freedoms of the child, requires that the rights and freedoms of the child be upheld in public conscience, can be exercised in a procedural form and expressed in the form of public condemnation, provides for the protection of both recognized rights of the child and formally not enshrined (moral) rights, is an important incentive to improve the security of children's rights and freedoms by state legal institutions. In our opinion, the interaction between the state and society is very important for the protection of children's rights and freedoms.

Formation of spiritual values in public conscience on the protection of children's rights is possible only on the condition of cooperation of all institutions of civil society and effective state-legal influence. Thus, the functioning of public associations for the protection of children's rights encourages legislators to develop new draft laws, the development of safeguards in the field of protection of children's rights.

The state can protect only recognized rights enshrined in legal acts. Not all interests of the child have legal protection, which is necessary for the implementation of legal protection. It is difficult to establish and secure at the state-legal level such important interests of a child as the need for a father's love, or a happy family. Only the society can have an influence on the provision of such needs of the child. Judgment, as a reaction to certain actions of parents, guardians and other persons, is also an important aspect of protecting the rights of the child.

It should be noted that lawmakers also recognize the importance of influencing the protection of children's rights on the part of the civil society. For example, paragraph 3 of Article 151 of the CCU stipulates that parents have the right to choose the forms and methods of education, except for those that contradict the law and the moral principles of society[373].

Persons are recognized as victims irrespective of whether they live together with their criminals or not (fiancés, girlfriends, former girl-

[373] O. Komysyiakh dlia nesovershennoletnykh : Dekret Sovnarkoma RSFSR ot 14 yanv. 1918 h. *Sbornyk uzakonenyi RSSFR*. 1918. № 16. St. 227.

friends, mother, father, children, their fathers, brothers, sisters, unhappy parents, guardians, parents-in-law, their children, stepchildren, children-in-law, other parents up to a binary relationship, persons who have lived together or are living together as a family but are not in a relationship, their children and grandparents) and persons who live together (any other parents, people who are linked by a joint household, have joint rights and duties). The injured child is not only the one who has been the victim of domestic violence, but also the witness of such violence.

If any kind of domestic violence is committed, the victims have the right to file a corresponding complaint (notification) both to the police authorities in the place of their residence (stay), as well as to the legislative committees of rural and rural councils, bodies of care and treatment, educational institutions (if the victims are children), health care institutionP. In order to receive protection, it is enough to apply to any of these bodies.

An indispensable element of modern Ukrainian society is mass media. They play an important role in the protection of children's rights because they direct public attention to violations of children's rights, informing the public about the enshrined rights of the child, the possibilities of their implementation.

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Depending on the specifics of the subject of legal protection, protection of children's rights is divided into: legal protection by the state and protection of children's rights on the part of the civil society. These forms of protection of children's rights and freedoms are interdependent and mutually reinforcing.

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CHAPTER 7. PROTECTING THE BEST INTERESTS OF THE CHILD

Taisa Tomliak – Senior Lecturer of the Department of Law,
Vinnytsia National Agrarian University

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7.1. Evolution of the Principle of the Best Interests of the Child in International Law

The principle of the best interests of the child is a priority and fundamental principle in relations involving children. It is the basis of an effective mechanism of ensuring the rights and freedoms of the child. The "principle of the best interests of the child" category makes it possible to ensure the realization of the interests of the child that are not protected by law. In particular, the priority right of the child to family education, enshrined in the law, does not guarantee the child's right to a happy family. Despite this, the study of the essence and genesis of this principle in international and national law is very relevant.

Among the scientists the principles of legal protection of children's rights were investigated by such scientists as B. Andrusishin[374], [375], N. Onishchenko[376], N. Opolska, [377], [378], [379] J. Shemshuchenko[380]. Accordingly, the best

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[374] Andrusyshyn B., Shymon C. Naukovo-praktychna pidhotovka pravoznavtsiv u sferi prav dytyny v NPU imeni M.P. Drahomanova. *Yurydychnyi zhurnal*. 2013. № 2. S. 37–42.

[375] Sotsialno-pravovyi zakhyst ditei v Ukraini: monohrafiia/za red. Andrusyshyna B.I. Kyiv : Vydavnytstvo NPU imeni M. P. Drahomanova, 2017. 264 s.

[376] Onishchenko N., Lvova O., Suniehin S. Prava i svobody dytyny: vctup do problemy Lavryk H.V. Liudynomirnist polityky spryiannia rozvytku kooperatsii. *Chasopys Kyivskoho universytetu prava*. 2013. № 2. S. 13–17.

[377] Opolska N. Pryntsypy pravovoho zakhystu dytyny. *Derzhava i pravo*. 2011. № 51. S. 40–45.

[378] Opolska N. Prava dytyny v Ukraini: monohrafiia, 2-he vydannia, pereroblene ta dopovnene. Vinnytsia: VNAU. 2019. S. 289.

[379] Opolska N. Teoretyko-pravovi zasady zabezpechennia prav i svobod dytyny: monohrafiia. Vinnytsia: PP «Edelveis i K», 2011. S. 226.

[380] Aktualni problemy yurydychnoi osvity ta nauky v Ukraini: monohrafiia / za red. Shemshuchenka Yu.S. Kyiv. Vyd-vo NPU imeni M.P. Drahomanova, 2016. S. 322–344.

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interests of the child were considered by such scientists as M. Menjul[381], J. Petrochko[382], J. Tudoltseva [383] and others.

Nowadays, the principle of ensuring the best interests of the child is the basic principle in any relationship involving children. However, in practice, the protection of children's rights and freedoms is not always based on this principle.

The main factor in the regulation of relations for the protection of children's rights, freedoms and interests is international legal acts in the field of protection of children's rights. These include international treaties, resolutions of international organizations, which include: United Nations Organization, International Labor Organization, United Nations Children's Fund-UNICEF; World Health Organization; UN Committee on Education, Science and Culture. The adoption of international treaties on the protection of children's rights was not a matter of principle, but a result of the rapid development of legal protection of children's rights and freedoms.

However, the need for protection of children's rights was due to the fact that with the development of society, children began to take part in legal relations on the same level as adults. First and foremost among these relations was labor, which involved the physical work of young children in factories in Europe and America in the 19th century.

At the same time, the insecurity of children was used by both employers and children's fathers because it was easier to control and coerce children who had not reached physical and psychological maturity and to give them lower wages for the work they performed.

Of course, such work had a negative impact on the health, physical, mental and social development of disabled children.

In order to protect the rights and interests of children, the General Conference of the International Labor Organization on June 29, 1919 adopted the Convention on the Minimum Age for Admission of Children to Work in Industry № 5, The Convention stipulated that children under the age of four

[381] Mendzhul M. Zmist pryntsypu naikrashchykh interesiv dytyny ta yoho praktychne zastosuvannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo*. 2019. Vypusk 56. Tom 1. S. 87–91.

[382] Petrochko Zh. Naikrashchi interesy dytyny: sutnist i shliakhy zabezpechennia. *Naukovi zapysky NDU im. M. Hoholia*. 2014. S. 70–74.

[383] Tuboltseva Ya. Zabezpechennia naikrashchykh interesiv dytyny pry rozghliadi sudom sprav pro usynovlennia. *Teoriia i praktyka pravoznavstva*. 2018. № 2 (14). S. 1–14.

or twenty-five would not be admitted to work or perform work at any state or private industrial enterprises[384].

The adoption of the Minimum Age Convention significantly strengthened the protection of children's rights, because in practice children's work was used without taking into account the needs of the child.

Another reason for the need to resolve the problem of protecting children's rights and freedoms was the First and Second World Wars. As a result of the First World War, a large number of children were left without parental care, shelter, food and other vital necessities of life.

The first step at the international level by which children's rights entered the international legal system was the adoption by the 1924 League of Nations of the Geneva Declaration on the Rights of the Child, which consists of only nine points. In these paragraphs we see the first attempt to consolidate the best interests of the child:

1. The child must receive all the necessities necessary for her normal material and spiritual development.

2. A hungry child shall be cared for; a sick child shall be looked after; a disabled child shall be helped; an orphan or a homeless child shall be sheltered and looked after.

3. In times of trouble, the child is the first to receive help.

4. The child must have the means of subsistence and protection from all forms of exploitation.

5. The child shall be educated with the knowledge that her good qualities are to serve other people[385].

As stated in the preamble to the 1959 Declaration of the Rights of the Child, it was the 1924 Geneva Declaration of the Rights of the Child that laid the foundation for the protection of children's rights [386].

In 1946, after the end of the Second World War, the International Children's Emergency Fund was established under the United Nations to protect children's rights. The main purpose of the fund was to help children whose lives were in danger and to protect their rights.

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[384] Konventsiia pro minimalnyi vik pryimannia ditei na robotu v promyslovosti № 5 vid 29.10.1919 roku. URL: https://zakon.rada.gov.ua/laws/show/993_109#Text.

[385] Zhenevska deklaratsiia prav dytyny 1924 r. URL: http://www.un-documents.net/gdrc1924.htm.

[386] Deklaratsiia prav dytyny, pryiniata rezoliutsiieiu 1386 (KhIV) Heneralnoi Asamblei OON vid 20 lystopada 1959 roku. URL: https://zakon.rada.gov.ua/laws/show/995_384#Text.

Two years later, in 1948, the General Assembly adopted the Universal Declaration of Human Rights. Its provisions, namely Article 25, indicated that motherhood and childhood are entitled to special care and assistance. All children born in wedlock or after wedlock are entitled to the same social protection[387].

The Declaration of the Rights of the Child, adopted by the General Assembly of the United Nations in 1959, further developed the best interests of the child, which formulated ten principles to guide the actions of all those responsible for implementing the full range of children's rights, and sought to ensure a «happy childhood.

The current principle of the best interests of the child is based on the Convention on the Rights of the Child.

The Convention on the Rights of the Child was drafted taking into account the guidelines set forth in the 1924 Geneva Declaration of the Rights of the Child[12] and the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959[13],the Universal Declaration of Human Rights and the Charter of the Rights of the Child, The International Covenant on Civil and Political Rights (Articles 23 and 24 in particular) [13], the International Covenant on Economic, Social and Cultural Rights (Articles 10 in particular)[14] and the International Covenant on Civil and Political Rights (Articles 12 and 13 in particular) Article 10)[388], as well as in the statutes and relevant documents of specialized agencies and international organizations concerned with the welfare of children[389].

Thus, the interests of the child were first enshrined in the 1924 Geneva Declaration of the Rights of the Child. The "principle of legal safeguarding of the best interests of the child" was first enshrined in the 1989 Convention on the Rights of the Child[390]. Ukraine ratified the Convention on the Rights of the Child on 27 February 1991 in accordance with the Decree

[387] Zahalna deklaratsiia prav liudyny, pryiniata i proholoshena rezoliutsiieiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. URL: https://zakon.rada.gov.ua/laws/show/995_015#-Text.

[388] Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16.12.1966 roku. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text.

[389] Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava vid 16.12.1966 roku. URL: https://zakon.rada.gov.ua/laws/show/995_042#Text.

[390] Konventsiia pro prava dytyny, pryiniata Heneralnoiu Asambleieiu OON 20 lystopada 1989 roku. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text.

№ 789-XII[391] of the Supreme Council of the Ukrainian Soviet Socialist Republic.

The Convention on the Rights of the Child was the first internationally accepted principle to fully safeguard the interests of the child in all actions concerning children, However, for more than twenty years, the concept of "the principle of legal safeguarding of the best interests of the child" has not been defined in international and national law.

Thus, the Convention on the Rights of the Child is the legal basis for the existence and functioning of the Committee on the Rights of the Child, which monitors the fulfillment by the member states of their obligations under this international treaty and its optional protocols.

The Convention on the Rights of the Child adopted three Optional Protocols thereto:

1. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 25 December 2000[392].
2. Optional Protocol to the Convention on the Rights of the Child on the Rights of the Child in Armed Conflicts of 25 June 2000[393].
3. Optional Protocol to the Convention on the Rights of the Child on a Notification Procedure of 19 December 2011[394].

Part 3 of Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 June 2000 states that the signatory States shall ensure that That the criminal justice system, when dealing with children who are victims of the abuses set forth in this Protocol, shall give primary consideration to respect for the best interests of the child.

The Protocol also requires participating States to criminalize at the national level unlawful acts against children, to provide for criminal respon-

[391] Pro ratyfikatsiiu Konventsii pro prava dytyny: Postanova Verkhovnoi rady Ukrainskoi RSR vid 27 liutoho 1991 roku № 789-XII. URL: https://zakon.rada.gov.ua/laws/show/789-12#Text.

[392] Fakultatyvnyi protokol do Konventsii pro prava dytyny shchodo torhivli ditmy, dytiachoi prostytutsii i dytiachoi pornohrafii vid 25 travnia 2000 roku. URL: https://zakon.rada.gov.ua/laws/show/995_b09#Text.

[393] Fakultatyvnyi protokol do Konventsii pro prava dytyny shchodo uchasti ditei u zbroinykh konfliktakh vid 25 travnia 2000 roku. URL: https://zakon.rada.gov.ua/laws/show/995_795#Text.

[394] Fakultatyvnyi protokol do Konventsii pro prava dytyny shchodo protsedury povidomlen vid 19 hrudnia 2011 roku. URL: https://zakon.rada.gov.ua/laws/show/995_l60#Text.

sibility for their commission and to take measures at the national level to protect the rights and interests of children.

In particular, in accordance with Part 3 of Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography of 25 June 2000, the States Parties shall take appropriate steps to protect the rights and interests of child victims of the practices prohibited by the Protocol at all stages of the criminal justice process, including by (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses; (b) Informing child victims of their rights, the role of custody, the terms and conduct of the proceedings and the disposition of their cases; (c) Ensuring that the views, needs, and concerns of child victims are presented and considered in proceedings in accordance with the procedural rules of domestic law in cases where their personal interests are affected (d) Providing child victims with services to provide appropriate support at all stages of the proceedings (e) In appropriate cases, protecting the privacy and identity of child victims and taking steps, in accordance with national law, to prevent the unwarranted dissemination of information that could lead to the identification of child victims (f) In appropriate cases, ensuring the protection of child victims, as well as their families and witnesses acting on their behalf, from intimidation and reprisals; (g) Avoiding excessive delays in adjudicating cases and executing orders and decrees on compensation for child victims[19].

This Protocol, in order to respect the best interests of the child, requires the member states to provide in national legislation and to put into practice the conduct of investigative actions within the scope of criminal proceedings and judicial review of cases involving trafficking in children, child prostitution and child pornography, adapting all procedures to the specificities of children, ensuring confidenciality and speed of conducting both investigative and judicial proceedings in this category of cases. The implementation of these actions must ensure that the best interests of the child are respected.

However, as practice shows, the national authorities when dealing with cases involving children within the scope of the criminal aspect often go to excessive formalism, child specialization of both investigators and judicial authorities generally does not provide for special training, Criminal justice

agencies are not adapted to working with children, there are not enough psychologists and social educators who are trained to work with children in contact with the law, which leads to the violation of the best interests of children.

The provisions of the Optional Protocol to the Convention on the Rights of the Child on Children's Participation in Armed Conflicts of 25 January 2000 are particularly relevant for our country during the war with the Russian Federation. In particular, this protocol declares that the Participating States are convinced that an optional protocol to the Convention, which increases the duration of the possible conscription of individuals into the armed forces and their participation in hostilities, will contribute effectively to the principle that in all actions concerning children the utmost consideration must be given to the best interests of the child[20].

Article 3 of the same Optional Protocol stipulates that the participating States shall raise the minimum age for voluntary recruitment of members of their national armed forces in proportion to the age specified in paragraph 3, The Convention on the Rights of the Child, Article 38, paragraph 3, taking into account the principles contained in this article, and recognizing that, in accordance with the Convention, persons under 18 years of age are entitled to special protection.

We believe that this special protection includes not only the existence of national legislation that would protect the rights and freedoms of minors during military conflicts, but also the practical implementation of safeguarding the rights and freedoms of children during military operations.

The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure of 19 December 2011 extended the responsibilities of the Committee on the Rights of the Child through communications procedures and investigations.

Accordingly, Article 2 of the Optional Protocol to the Convention on the Rights of the Child on a communication procedure of 19 December 2011 provides that the Committee shall be guided by the principle of the best interests of the child when performing the functions conferred on it by the Protocol. It also takes into account the rights and views of the child, giving due weight to the views of the child in accordance with the age and maturity of the child.

At the time of ratification of the Optional Protocol to the Convention on the Rights of the Child on the procedure of notification, our state declared the temporary total impossibility of fulfilling its obligations under this protocol in the temporarily occupied territory of Ukraine, as well as in certain areas of Donetsk and Luhansk regions of Ukraine.

The Committee on the Rights of the Child performs a monitoring function. As stated in Article 43 of the Convention on the Rights of the Child, the purpose of this body is to review progress made by the States Parties in fulfilling their obligations under this international treaty. The Committee is composed of 18 experts, who serve in their individual capacity and are elected for three-year terms with the possibility of reconsideration[17].

Accordingly, article 44 of the Convention on the Rights of the Child stipulates that the States Parties shall report to the Committee, through the Secretary-General of the United Nations Organization, on the measures they have taken to give effect to the rights recognized in the Convention and on the progress made in the realization of those rights (a) For two years after the entry into force of this Convention for the State concerned; (b) Thereafter for every nine years. The reports submitted pursuant to this article shall indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under this Convention. The reports also contain sufficient information to ensure that the Committee has a full understanding of the Convention in this country. A State Party which has submitted comprehensive initial information to the Committee does not need to repeat in subsequent submissions under paragraph 1(b) of this article the basic information previously provided. The Committee may ask the States Parties for further information relating to the implementation of this Convention.

Participating States shall give wide publicity to their reports in their own countries[17].

The Committee on the Rights of the Child, after examining the communications, may make recommendations and suggestions of a general nature, which shall be forwarded to any interested Member State and communicated to the General Assembly of the United Nations on the basis of the observations of the participating States, if any. Such observations of the Committee on the Rights of the Child may be used by national courts of Ukraine through the prism of paragraph 11 of the Resolution of the Plenum of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases

of 19 January 2014 № 13 “On the application of international treaties by courts of Ukraine in the administration of justice, It stipulates that in case of difficulties with the application of international treaties of Ukraine the courts may use the assets and decisions of international organizations in the administration of justice, The courts of Ukraine, in the course of justice, may use the assets and decisions of international organizations and specialized bodies that have the authority to adjudicate international treaties or adjudicate disputes in relation to the establishment of treaties[395].

The Convention on the Rights of the Child and its Optional Protocols are international treaties within the meaning of Article 2(a)(1). “Article 2(1)(a) The Vienna Convention on the Law of Treaties, according to which “treaty” means an international agreement concluded between states in written form and governed by international law, Regardless of whether such an agreement is contained in a single document or in two or more interrelated documents, or regardless of its particular designation [396].

Apart from the Convention on the Rights of the Child and its Optional Protocols, the best interests of the child are taken into account in the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950[397], the Convention on the Civil Aspects of International Child Abduction of 1980[398]; The 1993 Convention on the Protection of Children and Cooperation in International Reinforcement[399]; the 1996[400] Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of the Protection of Children and Child Welfare; and others. At the same time, none of the above international documents does not

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[395] Postanova Plenumu Vyshchoho spetsializovanoho sudu Ukrainy z rozghliadu tsyvilnykh i kryminalnykh sprav vid 19 hrudnia 2014 roku №13 «Pro zastosuvannia sudamy mizhnarodnykh dohovoriv Ukrainy pry zdiisnenni pravosuddia». URL: https://zakon.rada.gov.ua/laws/show/v0013740-14#Text.

[396] Videnska konventsiia pro pravo mizhnarodnykh dohovoriv vid 23.05.1969 roku. URL: https://zakon.rada.gov.ua/laws/show/995_118#Text.

[397] Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 04.11.1950 roku. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

[398] Konventsiia pro tsyvilno-pravovi aspekty mizhnarodnoho vykradennia ditei vid 25 zhovtnia 1980 roku. URL: https://zakon.rada.gov.ua/laws/show/995_188#Text.

[399] Konventsiia pro zakhyst ditei ta spivrobitnytstvo v haluzi mizhnarodnoho usynovlennia vid 29 travnia 1993 roku. URL: https://zakon.rada.gov.ua/laws/show/995_365#Text.

[400] Konventsiia pro yurysdyktsiiu, zastosovne pravo, vyznannia, vykonannia ta spivrobitnytstvo stosovno batkivskoi vidpovidalnosti ta zakhodiv zakhystu ditei 19 zhovtnia 1996 roku. URL: https://zakon.rada.gov.ua/laws/show/973_002#Text.

define the concept and content of the principle of legal protection of the best interests of the child.

Article 6 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that court decisions shall be pronounced publicly, but the press and the public can be excluded from the courtroom during the whole proceedings or any part thereof in the interests of morals, public order or national security in a democratic society, if the interests of the minority so require[24].

Thus, the 1980 Convention on the Legal and Civil Aspects of International Child Abduction stipulates that the States that signed the Convention firmly believe that the interests of children are the most important thing in the matter of child welfare[25].

Article 4 of the 1993 Convention on the Protection of the Rights of Children and Cooperation in International Reinforcement stipulates that reinforcement under this Convention can only take place if the competent authorities have the authority to do so, If the competent authorities of the State of residence have determined, after due consideration of the child's eligibility for placement in the State of residence, that the interstate enhancement is in the best interests of the child[26].

In accordance with the Convention on Jurisdiction, Applicable Law, Recognition, Recognition and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996, The signatories to the Convention reaffirm that the best interests of the child must be a primary consideration. Thus, Article 28 of the aforementioned Convention stipulates that measures taken by one Contracting State are deemed to be executed or registered for the purpose of execution in another Contracting State shall be executed in the latter State as if they had been used by the authorities of that State. The execution shall be carried out in accordance with the law of the Power in which the request was made, insofar as that law so permits, taking into consideration the best interests of the child[27].

We believe that the principle of ensuring the best interests of the child is a fundamental principle reflected in international treaties and enshrined in national law, aimed at harmonious development, ensuring its needs and interests, as a broader concept than the rights of the child, taking into account the particularities and peculiarities of each child.

Thus, the best interests of the child are a broader concept of the rights and freedoms of the child enshrined in the law. Therefore, we suggest amending the Children's Protection Law of Ukraine and introducing the concept of "the legal principle of preserving the best interests of the child", i.e., supplementing Article 1 of the Children's Protection Law of Ukraine with paragraph 22 of the following wording "The principle of safeguarding the best interests of the child is a fundamental principle enshrined in international treaties and enshrined in the national legislation, aimed at harmonious development, ensuring its needs and interests, as a broader concept than the rights of the child, taking into account the peculiarities and characteristics of each child.

The author considers it necessary to continue studying international and national legislation, as well as to analyze the practice of the European Court of Human Rights and national courts in order to determine the aspects that can be taken into account when considering a case involving a child for taking into account the best interests of the child.

In summarizing the above, it should be noted that for the first time the principle of the best interests of the child was enshrined in the 1989 Convention on the Rights of the Child. However, for more than twenty years, the international and national legislation lacks a definition and notion of the nature of the principle of legal protection of the best interests of the child. Such a gap in the law leads to legal uncertainty in the consideration of cases involving children by the state and judicial authorities.

The author proposes to fix at the legislative level the definition of the principle of legal protection of the best interests of the child and the aspects which can be taken into account when hearing a case involving a child to take into account the child's best interests.

7.2. Protecting the Best Interests of the Child in Civil Proceedings of Ukraine

The principle of the best interests of the child is the top priority of the legal state. However, in practice, a correct assessment of the child's best interests by the state and judicial authorities is complicated by a wide range of circumstances, factors and elements that are inexhaustible and different in any particular case involving a child. In this context, the study of the case

law of national courts in the sphere of the best interests of the child is of particular relevance.

Important issues of protection of children's rights were investigated by such scholars as B. Andrusishin[401], N. Onishchenko[402], N. Opolska[403],[404], Y. Shemshuchenko[405], S. Bobrovnik[406], N. Parkhomenko[407], S. Stetsenko[408]. Consideration by national courts of the best interests of the child during court disputes was investigated by M. Kornienko[409], M. Menjul[410].

National laws and regulations reinforce the obligation of state and judicial authorities to apply the principle of the best interests of the child in all cases involving children. However, the concept of this principle is not defined in the national legislation.

B.I. Andrusyshyn fully substantiates the fact that the national legislation on the protection of children's rights has stopped developing after 2011[28]. We believe that the improvement of national legislation on the protection of children's rights should also concern the consolidation at the legislative level of the concept of the principle of protection of the best interests of the child.

We agree with Opolskoy N.M. about the fact that the rights of children, depending on their age characteristics can be divided into the rights

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[401] Sotsialno-pravovyi zakhyst ditei v Ukraini: monohrafiia / za red. Andrusyshyna B.I. Kyiv : Vydavnytstvo NPU imeni M. P. Drahomanova, 2017. 264 s.

[402] Onishchenko N., Lvova O., Suniehin S. Prava i svobody dytyny: vctup do problemy Lavryk H.V. Liudynomirnist polityky spryiannia rozvytku kooperatsii. *Chasopys Kyivskoho universytetu prava*. 2013. № 2. S. 13–17.

[403] Opolska N. Pryntsypy pravovoho zakhystu dytyny. *Derzhava i pravo*. 2011. № 51. S. 40–45.

[404] Opolska N. Prava dytyny v Ukraini: monohrafiia, 2-he vydannia, pereroblene ta dopovnene. Vinnytsia : VNAU. 2019. S. 289.

[405] Shemshuchenko Yu. Aktualni problemy yurydychnoi osvity ta nauky v Ukraini: monohrafiia / za red. Yu.S. Shemshuchenka. Kyiv. Vyd-vo NPU imeni M.P. Drahomanova. 2016 r. S. 322–344.

[406] Bobrovnyk S. Rol prava v dosiahnenni kompromisu ta vyrishenni pravovykh konfliktiv. Diia prava: intehratyvnyi aspekt: monohrafiia. Kyiv, 2010.

[407] Parkhomenko N. Rozvytok zakonodavstva Ukrainy v konteksti konstytutsionalizatsii, yevrointehratsii ta zabezpechennia prav liudyny: monohrafiia. Kyiv: In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, 2016. 254 s.

[408] Stetsenko S. Suchasne ukrainske medychne pravo: monohrafiia / Za zah.red. S.H. Stetsenka. Kyiv: Atika, 2010. 496 s.

[409] Korniienko M. Pryntsyp dotrymannia naikrashchykh interesiv dytyny ta yoho zastosuvannia u tsyvilnomu sudochynstvi Ukrainy. *Yurydychnyi visnyk*. 2020. № 1. S. 398–404.

[410] Mendzhul M. Zmist pryntsypu naikrashchykh interesiv dytyny ta yoho praktychne zastosuvannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo*. 2019. Vypusk 56. Tom 1. S. 87–91.

of young children (under 14 years), the rights of adolescents (from 14 to 16 years) and the rights of persons of a young age (from 16 to 18 years). Along with this, we believe that the implementation of the principle of the best interests of the child also depends on the age specifics of their personality.

According to Article 3 of the Family Code of Ukraine (hereinafter – the Family Code of Ukraine) the family is the primary and basic community, the child belongs to the family of his or her parents even when he or she does not live together with them[411].

Article 163 of the Family Code of Ukraine stipulates that fathers have the primary right to have their minor child live with them. Fathers have the right to demand the removal of their minor child from their custody by any person who does not take her in custody on the basis of the law or a court order. The court may refuse to remove a minor child and hand her over to her parents or one of them, if it is found to be contrary to her interests.

According to Articles 11 and 12 of the Law of Ukraine "On Protection of Childhood," the family is a natural environment for the physical, spiritual, intellectual, cultural and social development of the child and her material provision, and is responsible for creating the proper conditions for this. Each child has the right to live in the family together with her parents or in the family of one of them and to be cared for by her parents. Parents and mothers have equal rights and obligations towards their children. The subject of the main activity and the main duty of the fathers is to safeguard the interests of their child[412].

Family education is a legitimate interest of the child. However, the principle of the best interests presupposes ensuring the education and development of the child in a happy family, which makes it incumbent on the authorities and the courts to study the conditions of living in a family, as well as the compliance of these conditions with the above principle.

Therefore, educating the child in a happy family is an essential part of ensuring the principle of the best interests of the child. In order to uphold this principle, the authorities support the parents and the persons who

[411] Simeinyi kodeks Ukrainy: Zakon Ukrainy vid 10.02.2002 roku № 2947-III (v redaktsii vid 01.01.2021). URL: https://zakon.rada.gov.ua/laws/show/2947-14#Text.

[412] Pro okhoronu dytynstva: Zakon Ukrainy vid 26.04.2001 roku № № 2402-III (v redaktsii vid 17.03.2021). URL: https://zakon.rada.gov.ua/laws/show/2402-14#Text.

replace them in their proper performance of their duties in the education of the children.

In the opinion of M. Menjul, the principle of the best interests of the child means the priority consideration of the interests of the child by the parents, legal representatives of the child, the authorities, the court and other persons when taking actions or making decisions, The child's interests are not affected by the law, but by the authorities, the court and other special interests of the child when acting or taking decisions by them[37].

We agree with the opinion of B.I. We agree with the opinion of B.I. Andrusishin, who notes that in today's Ukraine the child must be ensured the possibility of exercising their rights prescribed by the Constitution of Ukraine, the Convention on the Rights of the Child, the Civil Code of Ukraine and other legal acts recognized in Ukraine[28].

According to part one of Article 14 of the Law of Ukraine "On Protection of Childhood" children shall not be separated contrary to their will, except in cases where such separation is necessary in the interests of the child and this is required by a court decision, which has gained legal force[39].

The preamble to the UN Convention on the Rights of the Child of 20 December 1989, ratified by Decree of the Supreme Council of Ukraine No. 789- XII of 27 February 1991 (hereafter – the Convention on the Rights of the Child), states that a child needs to grow up in a family environment for full and harmonious development. In accordance with paragraph one of Article 18 and paragraph one of Article 27 of the Convention on the Rights of the Child, the States Parties shall make all possible efforts to ensure that the principle of universal but equal responsibility for the education and development of the child is recognized. Parents or, in appropriate cases, legal guardians are primarily responsible for the education and development of the child. The best interests of the child are the subject of their primary care. The member states recognize the right of every child to a standard of living necessary for the physical, mental, spiritual, moral and social development of the child[413].

The first part of Article 9 of the Convention on the Rights of the Child stipulates that the member states shall ensure that the child shall not be separated from his or her parents against their will, except in cases where

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[413] Konventsiia pro prava dytyny, pryiniata Heneralnoiu Asambleieiu OON 20 lystopada 1989 roku. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text.

When the competent authorities, following a court decision, determine in accordance with the applicable law and procedures that such separation is necessary in the best interests of the child. Such a determination may be necessary in one or another case, for example, when the fathers mistreat the child or do not declare her, or when the fathers live separately and it is necessary to make a decision about the child's place of residence[17].

The European Court of Human Rights (hereinafter referred to as the European Court) holds that there must be a fair balance between the interests of the child and the interests of the parents and, while pursuing this balance, special attention must be paid to the most important interests of the child, which by their nature and importance must take precedence over the interests of their parents (decision in the case "Hunt v. Ukraine" of March 07, 2006)[414].

Two conditions must be taken into account when determining the child's main interests in each case: First, it is in the child's best interest to maintain his or her ties with the family, except when the family is particularly unhappy or clearly dysfunctional; Otherwise, it will be in the child's best interest to ensure that she grows up in a safe, secure and stable environment that is not dysfunctional (decision in the case "Mamchur v. Ukraine" of June 16, 2015)[415].

By the judgment of 11 June 2017 in the case "M. S. v. Ukraine, the European Court of Justice stated that in determining the best interests of the child in each particular case two aspects must be taken into account: First, the interests of the child are best served by maintaining her ties with her family, except when the family is particularly unhappy or dysfunctional; Second, it is in the child's best interest to ensure that she grows up in a safe, secure and stable environment that is not unsupervised[416].

In the judgment of the European Court of Justice of 02 February 2016 in the case "N.TS. and Others against Georgia" it is noted that the obliga-

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[414] Rishennia YeSPL u spravi «Khant proty Ukrainy» vid 07 hrudnia 2006 roku. URL: https://zakon.rada.gov.ua/laws/show/974_126#Text.

[415] Rishennia YeSPL u spravi «Mamchur proty Ukrainy» vid 16 lypnia 2015 roku. URL: https://zakon.rada.gov.ua/laws/ show/974_a93#Text.

[416] Rishennia YeSPL u spravi «M. S. proty Ukrainy» vid 11 lypnia 2017 roku. URL: https://bh.cn.court.gov.ua/sud2501/pres-centr/news/%20405888.

tion of national authorities to take steps to facilitate the separation, but it is not absolute. A parent's relationship with a child who has been living with others for some time may not be realized immediately and may require some preparatory steps to be taken. The nature of such training depends on the circumstances of each case, but the understanding and cooperation of all parties involved will always be an important component. Although the national authorities must do everything possible to facilitate such cooperation, any obligation to use the primus in this sphere must be limited, because the interests as well as the rights and freedoms of all concerned must be taken into account, especially the best interests of the child and her rights. If contacts with the parents may interfere with these interests or infringe on these rights, the national authorities must respect a fair balance between them (see Hokkanen, p. 58).

The best interests of the child must be paramount and, depending on their nature and seriousness, may override the rights of their parents (see, among others, Olsson (no. 2), § 90, Ignaccolo-Zenide, § 94, Plaza v. Poland, no. 18830/07, n. 71, 25 September 2011, I Manic, § 102)[417].

We believe that the severance of a child's family relationship with his or her biological parents means that the child is deprived of his or her roots; therefore, such measures may be taken by the state authorities and national courts only in exceptional circumstances in order to protect the best interests of the child.

Analyzing the norms of the given national legislation and the case law of the European Court of Justice, we can conclude that the education of the child in the family, natural environment for the child's development corresponds to the child's best interests, and the child's ties with the family may be severed only when the family is particularly unlovable or unreliable.

According to the first part of Article 152 of the Family Code, a child's right to appropriate parental education is ensured by the system of state control established by law[38].

According to Article 8 of the Law of Ukraine "On Protection of Childhood," every child has the right to a standard of living sufficient for her physical, intellectual, moral, cultural, spiritual and social development.

[417] Rishennia YeSPL u spravi «N.TS. ta inshi proty Hruzii» vid 02 liutoho 2016 roku. URL: http://www.aimjf.org/storage/www.aimjf.org/Jurisprudence_EN/European_Court_of_Human_Rights/CASE_OF_N.TS._AND_OTHERS_v._GEORGIA.pdf.

Parents or persons replacing them are responsible for creating the conditions necessary for the full development of the child, in accordance with the laws of Ukraine[39].

According to national court practice, the child is the most vulnerable party in a family conflict, since she suffers the most and loses the most. The examination of a family dispute involving children is extremely difficult, since the results of the examination of such a court dispute decide the child's share, and, therefore, the court decision must protect, first and foremost, the best interests of the child.

According to national court practice, the child is the most disadvantageous party in a family conflict, since she suffers the most. Consideration of the family dispute involving children is extremely difficult, since the results of the consideration of such a court dispute decides the share of the child, and therefore the court's decision should protect the best interests of the child in the first place.

One of the most common categories of cases involving children is court disputes over the determination of the child's place of residence. Until recently, national authorities have applied in such cases the presumption of "a child living with his or her mother" by referring to the Declaration of the Rights of the Child of 20 November 1959.

However, the ruling of the Grand Chamber of the Supreme Court of 17 June 2018 in case № 402/428/16-z (case № 14-327цс18) made a conclusion, The Declaration of the Rights of the Child is not an international treaty within the meaning of the Vienna Convention on the Law of Treaties of 23 June 1969 and Law No. 1906-IV, and also does not contain provisions for its ratification. Therefore, the Declaration of the Rights of the Child does not require a certificate of validity from the Supreme Council of Ukraine and is not part of the national legislation of Ukraine. Meanwhile, the provisions of the Convention on the Rights of the Child of 20 December 1989, ratified by the Supreme Council of Ukraine on 27 February 1991, stipulate that in all actions concerning children, regardless of whether they are carried out by public or private institutions dealing with issues of social welfare, the courts, the administrative and administrative authorities, and the law courts, The interests of the child must be protected as a matter of priority (art. 3) and must comply with the norms of the Constitution of Ukraine and the laws of Ukraine, and these norms must be

taken into account by all courts of Ukraine when they hear cases related to children's rights[418].

Part three of Article 51 of the Constitution of Ukraine states that the family, children, maternity and parenthood are protected by the state[419].

According to Article 161 of the Family Code of Ukraine, if the mother and the father, who live separately, have not agreed on which of them will live with the minor child, the dispute between them can be resolved by the child welfare authorities or the court. When resolving a dispute over the place of residence of a minor child, the parents' commitment to fulfilling their responsibilities as parents, the individual involvement of the child in each of them, the age of the child, the health of the child and other circumstances that are of particular importance are taken into consideration[38].

The decision of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Court of Civil Procedure of 14 February 2019 in case No. 377/128/18 (proceeding No. 61-44680sv18) states that "the interpretation of the first part of Article 161 of the Family Code of Ukraine indicates that when resolving a dispute regarding the place of residence of a minor child, the attitude of the parents to the child is taken into account, When resolving a dispute over the place of residence of a minor child, the parents' commitment to fulfilling their responsibilities as parents, the personal involvement of the child in each of them, the age of the child, the health of the child and other circumstances that are of particular importance are taken into account. Other circumstances that are of significant importance include, among others: personal qualities of the fathers; relations that exist between each of the fathers and the child (how the fathers fulfill their fatherly duties in relation to the child, how they take into account her interests, whether there is an understanding between each of the fathers and the child); the possibility of creating conditions for the child's education and development[420].

[418] Postanova Velykoi Palaty Verkhovnoho Sudu vid 17 zhovtnia 2018 roku u spravi № 402/428/16-ts. URL: https://reyestr.court.gov.ua/Review/77361954.

[419] Konstytutsiia Ukrainy: Zakon Ukrainy vid vid 28.06.1996 roku № 254k/96-VR (v redaktsii vid 01.01.2020). URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

[420] Postanova Verkhovnoho Sudu v skladi kolehii suddiv Druhoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 14 liutoho 2019 roku v spravi №377/128/18. URL: https://reyestr.court.gov.ua/Review/79846507.

Thus, in family disputes over the determination of the place of residence of the child, the national courts believe, and the author supports this position, that to ensure the principle of the best interests of the child it is not mandatory for the child to live together with the mother, and the implementation of this principle is to ensure the right of communication between the child and the father, parental intercourse and the due protection of the rights and interests of the child by the father and the mother.

A similar is the decision of the Supreme Court Resolution № 654/4307/19 of September 04, 2021 on the petition of the father of a minor child for the removal of her from her grandmother and her transfer to her father. The Supreme Court, in refusing to uphold the request of the father to permanently remove the child, drew the attention of the competent authorities to the obligation to ensure a system of follow-up checks in the context of the relationship of the father with the child in order to prevent a negative impact on the child, stating: "Taking the principle of the best interests of the child as the basis for resolving this dispute, the Supreme Court focuses on the fact that negligent removal of a child who is infirm at birth will not be conducive to ensuring a peaceful and stable environment for the child, will be emotional stress, will not be taken into account and her views, which together comprise the components of the principle. Living with a young child together with his or her mother and grandfather makes for a wonderful family environment at birth. Taking into account the proportionality of intrusion into the right of the person to respect for his family life, guaranteed by Article 8 of the Convention, and the norms of the third part of Article 163 of the Family Code, the father's refusal to relinquish his child is allowed, which is necessary in this situation[421].

Thus, when considering the fathers' requests for the transfer of their child to them by other persons from whom they have the right to request her return, national courts, in order to protect the best interests of the child, must take into account: 1) the child's relationship to the parents and the persons in whom the child is staying; 2) the relationship between the parents and the child; and 3) the possibility that the parents and other persons may create appropriate conditions for the child's education. Accordingly, in a

[421] Postanova Verkhovnoho Sudu u skladi kolehii suddiv Druhoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 04 serpnia 2021 roku u spravi №654/4307/19. URL: https://reyestr.court.gov.ua/Review/98911478.

situation where the child is not adapted to live with her parents, the court cannot make a decision on their behalf until the authorities take steps to renew the relationship between the child and the parents and prepare the child to live together with the parents.

According to part 7 of Article 7 of the Family Code of Ukraine, a child must be provided with the opportunity to exercise her rights established by the Constitution, the Convention on the Rights of the Child, and other international treaties of Ukraine, including communication with her father, grandmother and grandfather[38].

Article 141 of the Family Code of Ukraine stipulates equal rights and obligations of both fathers towards the child, regardless of whether they were in love with each other. Breaking the relationship between the fathers or living separately from the child does not affect the scope of their rights or relieve them of their obligations in respect of the child[38].

Article 150, parts 1 and 2 of the Family Code of Ukraine stipulates that parents are obliged to educate their child to respect the rights and freedoms of other people, to love their family and home, their people, and their Motherland. Fathers are obliged to take care of their children's health and their physical, spiritual and moral development[38].

According to Article 151 of the Family Code of Ukraine, fathers have the primary right to have their children raised privately before other persons. The rights of fathers regarding the upbringing of the child are considered as a way for them to fulfill their duties towards the child[38].

According to Article 153 of the Family Code of Ukraine, mother, father and child have the right to communicate with each other without interference, except in cases where such right is limited by law[38].

Article 157 of the Family Code of Ukraine stipulates that the child's upbringing is decided by the parents together. The father, who lives separately from the child, is obliged to participate in her upbringing and has the right to talk to her privately. The parent with whom the child lives does not have the right to interfere with the father who lives alone to communicate with the child, as long as such communication does not interfere with the normal development of the child[363].

According to part 1 of Article 159 of the Family Code, if the father with whom the child lives obstructs the father who lives alone from communicating with the child and her education, In particular, if he or she refuses

to obey the decision of the child welfare authority, the other parent has the right to appeal to the court for the removal of the disadvantage[38].

According to Article 15 of the Law of Ukraine "On Protection of Childhood", a child who lives separately from her parents or one of them has the right to maintain regular personal contacts and direct contact with them. Parents who live separately from the child are required to participate in her education and have the right to communicate with her, if the court finds that such communication does not interfere with the normal education of the child[38].

The national legislation stipulates that when the court establishes the method of communication between the child and a parent who does not live together with the child, there must be a reasonable balance of participation by each of the fathers in the education of the child, which will not interfere with her normal development and will ensure her best interests.

Thus, the Supreme Court composed of the panel of judges of the First Trial Chamber of the Court of Civil Procedure in its ruling of 09/10/1920 (case number 753/9433/17), satisfying the claim of the child's father for the removal of disadvantages in the communication with the child and determining the way of participation in her education, noted: "The emotional state of the child is not conditioned by the presence of the father in her life, but by the intense conflictual relations between the fathers, who use the child for the image of one another, denying the right of the son to a peaceful and happy childhood and harmonious development of the personality. Conflicts between fathers must not interfere with the interests of the child[422].

In the judgment of 01 June 2020 (case № 138/96/17) the Supreme Court composed by the panel of judges of the First Trial Chamber of the Court of Civil Procedure stated, That the minor son did not express his opinion about his father's participation in the communication with him and in his upbringing, the court did not establish, based on relevant and admissible evidence, that the psychological and mental state of the child is indicative of that communication with her father at his request did not meet the best interests of the child, and the findings of the trial court, which were accepted by the court of appeals, the possibility and feasibility of establishing the father's

[422] Postanova Verkhovnoho Sudu u skladi kolehii suddiv Pershoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 01 lypnia 2020 roku u spravi №138/96/17. URL: https://reyestr.court.gov.ua/Review/90411045.

method of participation in communication with the child and in the child's education solely at the child's request г are based on assumptions not supported by relevant and admissible evidence[423].

Thus, in cases where the fathers request that the way of participation in the child's upbringing be determined in order to ensure the child's best interests, the courts must take into account the emotional state of the child, Their wishes and thoughts, as long as the child's age permits, and respect a reasonable balance of each parent's participation in the child's upbringing that will not interfere with her normal development.

According to parts two and four of Article 155 of the Family Code of Ukraine, parental rights cannot be exercised contrary to the interests of the child. Parents' evasion from fulfilling their parental duties is a basis for imposing on them the liability established by law[38].

According to part one of Article 164 of the Family Code of Ukraine, the mother or father may be deprived of parental rights by the court if he or she Have not removed their child from the shelter or other health care facility without an important reason, and have not demonstrated parental custody of her for six months; evade their duties to educate the child; Abusive treatment of the child; chronic alcohol or drug addiction; giving in to any kind of exploitation of the child, coercion to molestation or vagrancy; convicted for committing a homicidal criminal offense against the child[38].

Examining the practice of national courts in cases of deprivation of parental rights, in the context of adherence to the principle of preserving the best interests of the child, we can see that that national courts are on the side of the fathers and give them time and power to change the attitude towards the education of children by placing the child welfare authorities in charge of monitoring their performance of parental duties.

One of such decisions is the decision of the Supreme Court in the collegium of judges of the Second Judicial Chamber of the Court of Civil Procedure in the case № 300/908/17 of 24 June 2019, in which the court, in denying the guardianship and foster care authority of the district state administration in satisfaction of the appeal to the children's mother for deprivation of parental rights, stated the following: "The rights of the

[423] Postanova Verkhovnoho Sudu u skladi kolehii suddiv Pershoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 01 lypnia 2020 roku u spravi №138/96/17. URL: https://reyestr.court.gov.ua/Review/90411045.

fathers concerning the child are akin to the rights and interests of the child for harmonious development and proper education, and, first of all, the interests of the child must be identified and taken into account, proceeding from the objective circumstances of the dispute, and only then the rights of the fathers. The Supreme Court believes that the avoidance of parents from fulfilling their duties occurs when they do not pray for the physical and spiritual development of the child, her education, preparation for independent living, including: Do not provide necessary nutrition, medical supervision, medical treatment of the child, which negatively affects its physical development as part of education; do not communicate with the child to the extent necessary for its normal self-awareness; Do not give the child access to cultural and other spiritual values; do not encourage him or her to acquire general moral standards; do not show interest in his or her inner world; do not create conditions for him or her to receive an education. These factors, both individually and in the aggregate, can be considered as a deviation from the education of the child only on condition of the guilty behavior of the parents, clear neglect of their duties. Considering that deprivation of parental rights is an extreme measure, the court may, in exceptional cases, if the guilty behavior of one of the parents or both of them is proved, taking into account the nature of the case, the personality of the father and mother, as well as other specific circumstances of the case, dismiss the petition for deprivation of these rights by advising the respondent of the need to change his or her attitude toward the upbringing of the child (children) and by placing the child welfare authorities in charge of monitoring the child's fulfillment of his or her parental responsibilities. Having taken such a decision, the court has the right to decide on the removal of the child from the care and custody authority (if this is required by her interests), but does not have to identify a specific institution[424].

Similar is the decision of the Supreme Court composed of the collegium of judges of the First Judicial Chamber of the Court of Civil Procedure of 06 June 2020 in case № 641/2867/17-z about the deprivation of parental rights of the child's father. While upholding the ruling of the courts of the first and appellate instances without changes on the denial of satisfaction

[424] Postanova Verkhovnoho Sudu u skladi kolehii suddiv Druhoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 24 kvitnia 2019 roku u spravi №300/908/17. URL: https://reyestr.court.gov.ua/Review/81394213.

of the petition for revocation of paternity rights, the Supreme Court stated That termination of paternity rights is a last resort, and the court may, in exceptional cases, if the guilty conduct of either parent is proven, taking into account the nature of the case, the person of the father and mother, as well as other specific circumstances of the case, to refuse to approve the petition for relinquishment of these rights, After informing the respondent about the need to change his/her attitude towards the upbringing of the child (children) and leaving it up to the child welfare authorities to monitor his/her fulfilment of parental responsibilities[425].

In Case № 712/10623/17 the Grand Chamber of the Supreme Court departed from the previous court practice regarding the priority of the principle of equal rights of the parents for the child in cases concerning the granting of permission for a minor child to travel abroad without the consent of the father. In this case the Grand Chamber of the Supreme Court concluded that the provisions on the equality of rights and duties of the parents in the upbringing of the child cannot affect the interests of the child, and that an hourly visit of the child abroad (specifying the specific period) with the assistance of the parent, with whom her place of residence has been designated and who ensures that the child enjoys the standard of living necessary for her full development, cannot indefinitely mean that the other father of the child is prohibited by law from taking part in her education and communication. In this category of cases, a generalized and formal approach is unacceptable because the very fact that one of the parents has the right to refuse to grant permission for the child to travel abroad for an hour with the other parent is a significant instrument of influence, especially in relations with former friends, which may not be used in the best interests of the child. Each case requires a detailed study of the situation, taking into account the various factors that can influence the interests of the child, including her opinion, if she is able to form her own views according to her age [426].

The precedent of the above decision lies in the Supreme Court's critical assessment of the generalized and formal approach of the courts of the first

[425] Postanova Verkhovnoho Sudu u skladi kolehii suddiv Pershoi sudovoi palaty Kasatsiinoho tsyvilnoho sudu vid 06 travnia 2020 roku u spravi №641/2867/17. URL: https://reyestr.court.gov.ua/Review/89131002.

[426] Postanova Velykoi Palaty Verkhovnoho Sudu vid 04 lypnia 2018 roku u spravi №712/10623/17. URL: https://reyestr.court.gov.ua/Review/75266002.

and appellate instances to the consideration of cases involving children, which can be interpreted as a violation of the best interests of the child. Since the right of one of the fathers to refuse to give permission for the child to travel abroad for an hour by another parent in most cases is not in the best interests of the child.

As a result of the conducted research, we can conclude that the approach of national courts to the consideration of cases involving children has changed and has become focused on the principle of protecting the best interests of the child.

The Supreme Court relates the protection of the best interests of the child to the observance by the judiciary of a reasonable balance of participation of each parent in the education of the child during the consideration of cases involving children, which will not interfere with her normal development and taking into account the emotional state of the child, her desires and thoughts, as long as she is able to form her own views according to her age.

An analysis of decisions of national courts in the context of upholding the principle of the best interests of the child makes it possible to summarize the case law of the Supreme Court in the protection of children and to identify the basic approaches used by national courts to uphold the best interests of the child:

1. Destroying a child's family ties with his or her biological parents means stripping the child of her roots, which is why such measures may be taken by the state authorities and by the national courts only in exceptional circumstances in order to protect the best interests of the child.

2. In family disputes over the determination of the place of residence of the child, in order to ensure the principle of the best interests of the child, it is not mandatory that the child and the mother reside together, but the implementation of this principle consists in ensuring the right to communicate with the child's parents and to have cuddles on the mother's side.

3. In cases where the fathers request that the child be handed over to them by other persons from whom they have the right to request the return of the child, the following shall be taken into account: The child's relationship to the parents and other persons with whom she is staying; the relationship between the parents and the child; the possibility of creation by the parents and other persons of appropriate conditions for the education of the child.

4. In cases concerning the establishment of the order of communication between the child and the father who does not live with the child, a reasonable balance must be maintained between each of the fathers' participation in the child's upbringing, which will not interfere with the child's normal development and will safeguard the child's best interests.

7.3. The Best Interests of the Child in the Practice of the European Court of Human Rights

The principle of the best interests of the child is enshrined in low international treaties, which are part of the national legislation of Ukraine. However, practice shows that the interpretation of this principle by national judicial and state authorities is not always correct.

In cases involving children, respect for the principle of the best interests of the child is ensured by the European Court of Human Rights (henceforth referred to as the European Court of Justice), whose decisions have precedent character for the member states.

The jurisdiction of the European Court of Justice in all matters concerning the best interests of the child is mandatory. The European Court judgments reveal approaches to the principle of the best interests of the child, which are essential in a democratic society. In this context, the study of the practice of the European Court of Justice in the sphere of the best interests of the child gains particular relevance. Among scientists, the principles of legal protection of children's rights were investigated by scientists such as B. Andrusishin[427], [428], N. Onishchenko[429], N. Opolska[430,431,432],

[427] Andrusyshyn B., Shymon S. Naukovo-praktychna pidhotovka pravoznavtsiv u sferi prav dytyny v NPU imeni M.P. Drahomanova. *Yurydychnyi zhurnal*. 2013. № 2. S. 37–42.

[428] Sotsialno-pravovyi zakhyst ditei v Ukraini: monohrafiia/za red. Andrusyshyna B.I. Kyiv : Vydavnytstvo NPU imeni M. P. Drahomanova, 2017. 264 s.

[429] Onishchenko N., Lvova O., Suniehin S. Prava i svobody dytyny: vctup do problemy Lavryk H.V. Liudynomirnist polityky spryiannia rozvytku kooperatsii. *Chasopys Kyivskoho universytetu prava*. 2013. № 2. S. 13–17.

[430] Opolska N. Pryntsypy pravovoho zakhystu dytyny. *Derzhava i pravo*. 2011. № 51. S. 40–45.

[431] Opolska N. Prava dytyny v Ukraini: monohrafiia, 2-he vydannia, pereroblene ta dopovnene. Vinnytsia: VNAU. 2019. S. 289.

[432] Opolska N. Teoretyko-pravovi zasady zabezpechennia prav i svobod dytyny: monohrafiia. Vinnytsia: PP «Edelveis i K», 2011. S. 226.

Y. Shemshuchenko[433], S. Bobrovnik[434], N. Parkhomenko[435], S. Stetsenko[436]. Approaches of the European Court of Justice to the principle of ensuring the best interests of the child in the context of Article 8 of the Convention on the Protection of Rights and Fundamental Freedoms were examined by M. Kornienko[437], M. Menjul[438].

Pursuant to article 3, paragraphs 1 and 2, of the Convention on the Rights of the Child, in all actions concerning children, whether carried out by public or private institutions, Social welfare agencies, courts of law, administrative or legislative bodies, the utmost attention is given to ensuring that the interests of the child are protected as much as possible. In particular, such protection and care as is necessary for her well-being (while taking into account the rights and responsibilities of her parents, The child's guardian or other persons legally responsible for her), and for this purpose use all appropriate legislative and administrative measures[439].

Moreover, other articles of the Convention on the Rights of the Child stipulate that the best interests of the child are protected, namely:

(1) Article 9 establishes that the member states shall ensure that the child is not separated from the parents against their will, except in cases where the competent authorities, in accordance with a court decision, determine, in accordance with the applicable law and procedures, that such separation is necessary in the best interests of the child[1].

2) Article 18 stipulates that parents or, in appropriate cases, legal guardians are primarily responsible for the upbringing and develop-

[433] Aktualni problemy yurydychnoi osvity ta nauky v Ukraini: monohrafiia / za red. Shemshuchenka Yu.S. Kyiv. Vyd-vo NPU imeni M.P. Drahomanova. 2016. S. 322–344.

[434] Bobrovnyk S. Rol prava v dosiahnenni kompromisu ta vyrishenni pravovykh konfliktiv. Diia prava: intehratyvnyi aspekt: monohrafiia. Kyiv, 2010.

[435] Parkhomenko N. M. Rozvytok zakonodavstva Ukrainy v konteksti konstytutsionalizatsii, yevrointehratsii ta zabezpechennia prav liudyny: monohrafiia. Kyiv: In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy, 2016. 254 s.

[436] Stetsenko C. Suchasne ukrainske medychne pravo: monohrafiia / Za zah. red. Stetsenka S.H. Kyiv : Atika, 2010. 496 s.

[437] Korniienko M. Pryntsyp dotrymannia naikrashchykh interesiv dytyny ta yoho zastosuvannia u tsyvilnomu sudochynstvi Ukrainy. *Yurydychnyi visnyk*. 2020. № 1. S. 398–404.

[438] Mendzhul M. Zmist pryntsypu naikrashchykh interesiv dytyny ta yoho praktychne zastosuvannia. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo*. 2019. Vypusk 56. Tom 1. S. 87–91.

[439] Konventsiia pro prava dytyny, pryiniata Heneralnoiu Asambleieiu OON 20 lystopada 1989 roku. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text.

ment of the child. The best interests of the child are the subject of their primary care [17];

(3) Article 20 stipulates that a child who is temporarily or permanently deprived of a family home or who in her own best interests cannot remain in such a home shall be entitled to special protection and assistance provided by the state [17];

(4) According to Article 21, the reinforcement system must ensure that the best interests of the child are taken into account as a matter of priority [17];

(5) Article 37(c) declares a humane attitude toward each child's loss of will and respect for the humanity of her person, taking into account the needs of her age. In particular, any child who has been deprived of his or her liberty shall be separated from the parents, unless it is considered in the best interests of the child that this should not be done, and shall have the right to maintain contact with his or her family through visits and correspondence, except in special circumstances[391].

(6) Article 40, paragraph 2 (b), entitles any child believed to have infringed the criminal law or to be guilty or found guilty of infringement to have the decision of the competent authority not impartially determined, An independent and impartial authority or judicial body in a fair hearing in accordance with the law in the presence of a lawyer or other appropriate person and, if it is not deemed to be so, contrary to the best interests of the child, taking into account her age or the status of her parents or legal guardians;

The 1980 Convention on the Legal and Civil Aspects of International Child Abduction enshrines that the States that signed the Convention firmly believe that the interests of children are of the utmost importance in child welfare [440].

Paragraph 2 of Article 1 of the European Convention on the Exercise of Children's Rights of 1996, It is in the best interests of children to support their rights, to provide children with procedural rights and to facilitate their exercise of those rights by ensuring that children are informed and allowed to participate in judicial proceedings concerning them, either individually or through other persons or organizations[441].

[440] Konventsiia pro tsyvilno-pravovi aspekty mizhnarodnoho vykradennia ditei 1980 roku. URL: https://zakon.rada.gov.ua/laws/show/995_188#Text.

[441] Yevropeiska konventsiia pro zdiisnennia prav ditei 1996 roku. URL: https://zakon.rada.gov.ua/laws/show/994_135#Text.

Thus, international normative legal documents stipulate the obligation to respect the best interests or the best interests of the child, but no international document enshrines the notion of the principle of legal protection of the best interests of the child.

According to the European practice in cases of recognition of paternity, deprivation of paternity rights, determination of the child's place of residence, removal of disadvantages in communication with the child, granting access to communication with the child, as well as in cases concerning the application of the provisions of the Convention on the Legal Aspects of International Child Abduction, the European Court of Justice has stated that the best interests of the child must be protected as a matter of priority.

The European Court found a violation of Article 8 of the Convention, in view of the failure of the authorities to take any substantive steps to ensure that the applicant has access to his child and the opportunity to participate in her education[442].

Thus, in this case the Ukrainian courts decided to refuse to return the applicant – the child's father – to the custody of his daughter, who lived with her grandmother after her mother's death, having disregarded the applicant's arguments that the child's living with her father would be in her best interests, noting that there was no evidence that the child's living with the guardian would interfere with her interests.

However, in the opinion of the European Court of Justice, the courts' opinions concerning the fact that the guardian fulfilled his duties and the applicant did not demonstrate that it is in the best interests of the child to have her living with him, are considered to be more or less supportive environment for the child's upbringing, which is not sufficient by itself to justify taking such extreme measures as separating the child from one of the parents (see, e.g., the decision to remove the child from the father's care is not enough to justify the removal of the child from the father's care). For example, the judgment in the case of J.S. v. the United Kingdom, cited above, para. 134)[69].

Also in the case Mamchur v. Ukraine (judgment of 16 June 2015, application № 10383/09), the European Court stated that two conditions must be taken into account when determining the main interests of the child in

[442] Rishennia YeSPL u spravi «Mamchur proty Ukrainy» vid 16 lypnia 2015 roku. URL: https://zakon.rada.gov.ua/laws/ show/974_a93#Text.

each specific case: First, it is in the child's best interest to maintain his or her ties with the family, except when the family is particularly unhappy or clearly dysfunctional; Second, it is in the child's best interest to ensure that she grows up in a safe, secure and stable environment that is not dysfunctional[69].

Therefore, the European Court of Justice considers that the principle of preserving the best interests of the child in proceedings concerning the determination of her place of residence is based on preserving the ties between the child and her family, as long as these ties ensure a safe and secure environment for her.

The European Court of Justice in its ruling of 11 June 2017 in the case "M. S. v. Ukraine" demonstrated a consistent approach in the protection of family life, the definition of "the interests of the child" and their place in the relationship between the parents, Having found a violation of Article 8 of the Convention in determining the applicant's child's place of residence and the lack of effective investigation into the verified separation of the applicant's child[443].

This case concerned the applicant, the child's father, who, after the deterioration of relations with his spouse and separation, was denied a place of residence for the child by the Ukrainian courts, without having taken into account or duly considered the applicant's claim that the child was at risk of physical and sexual abuse next to her mother, who lives with another man.

However, the European Court, relying on the fact that the applicant's claim about the risk of physical abuse was serious and deserved more in-depth examination to determine whether there were increased risks of protection and safety of the child while living with his mother, stated that the principle set forth in the UN Declaration of Non-Detriminability of Mother and Child Separation may not be considered problematic as such, provided that it does not interfere with the decision-making process in determining the best interests of the child. However, this is what happened in this case. Due to the presumption in favor of the mother, the national courts made the scope of their assessment, limited themselves to determining the absence of "inconclusive circumstances" and did not consider further "non-inconclusive" circumstances, which could be decisive in ensuring the best interests of the child[70].

[443] Rishennia YeSPL u spravi «M. S. proty Ukrainy» vid 11 lypnia 2017 roku. Zaiava № 2091/13. URL: https://bh.cn.court.gov.ua/sud2501/pres-centr/news/%20405888.

In examining the case, the European Court of Justice also looked at Article 14 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which stipulates that if the parents or persons child has a history of sexual exploitation or sexual abuse in relation to the child, the intervention procedures set forth in Article 11, paragraph 1, of this Convention shall be followed: The possibility of removing an alleged perpetrator; the possibility of removing the victim from his or her family unit. The conditions and duration of such removal are determined according to the best interests of the child[444].

In addition, the European Court of Justice in its ruling of 11 June 2017 in the case "M.S. v. Ukraine" stated that today there is a broad consensus, including in international law, in support of the idea that all rulings that concern children should be safeguarded. In international law, in support of the idea that in all decisions concerning children, safeguarding their best interests must be paramount. The best interests of the child depending on their nature and seriousness can exceed the interests of their parents. In deciding matters concerning her life, a child who is able to form her own views shall be assured the right to express those views freely in all matters that concern her, the views of the child being given due weight according to her age and maturity[70].

In both cases involving Ukraine, the European Court found a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms through the failure of the judicial authorities to take into account the principle of the best interests of the child. The rulings in these cases have completely changed the approach of national courts to the consideration of cases, the subject of which is the determination of the child's place of residence.

The case "O. C. I. AND OTHERS v. ROMANIA concerned the return of the applicant's children on the basis of the decisions of the Romanian judicial authorities to their father, who resided in Italy, without taking into account the applicant's arguments and evidence about the domestic violence of the father over the children. Moreover, the rulings of the national courts indicated that there was no danger of recognition of the father's violence,

[444] Konventsiia Rady Yevropy pro zakhyst ditei vid seksualnoi ekspluatatsii 25.10.2007 roku. URL: https://zakon.rada.gov.ua/laws/show/994_927#Text.

but the national courts of Romania believed that the Italian authorities could protect the children from violations of their rights.

However, the European Court of Justice, drawing the attention of the participating states that the existence of mutual trust between the child protection authorities does not mean that the state to which the children were mistakenly returned is obliged to return them back to their families, where there is a serious risk of domestic violence due to the fact that the authorities in the state where the child was habitually resident are able to solve cases of violence against children in the home[445].

Accordingly, the European Court of Justice stated that the best interests of children, which irrevocably include respect for their rights and dignity, are the cornerstone of children's protection from corporal punishment. Children cannot be subjected to corporal punishment and the State must explicitly and universally prohibit it in law and practice (see the judgment in D.M.D. v. Romania, §§ 50-51). In this context, the risk of domestic violence against children cannot be regarded as a mere disadvantage linked to the experience of return (see Decision X against Latvia, § 116)[72].

Analysing the judgment of the European Court of Justice in the case "O. C. I. AND OTHERS v. ROMANIA", it should be noted that family contact between parents and children is a central part of family life, and the measures that interfere with the satisfaction of these needs must necessarily meet a general social need, which is being followed, and not to upset the fair balance that must be achieved between the respective competing interests, with priority given to the best interests of the child.

From the position of prioritizing the best interests of the child in the case "AJic vs. Croatia", the European Court defended the applicant. In this case, Croatian national courts refused to allow the U.S. citizen applicant to return the child to the United States after the child's mother, a Croatian citizen, took the child to Croatia. Thus, the national courts made a decision without holding any court hearing, having received an expert's opinion on whether the child would be psychologically harmed if she was returned to the States without the applicant's participation.

In this case, the European Court found that the applicant was not sufficiently involved in the decision-making process in this case, to ensure the

[445] Rishennia YeSPL u spravi «O. C. I. AND OTHERS v. ROMANIA» vid 21 travnia 2019 roku. https://www.familylaw.co.uk/docs/pdf-files/oci-and-others-v-romania-(application-no49450_17).pdf?sfvrsn=d12506e a_2.

necessary protection of his interests The Court considers that his involvement was particularly important in view of the fact that these courts temporarily refused to return his son. Moreover, there is nothing to say that the applicant's participation in the expert evaluation would be against the best interests of the child. On the other hand, it could have helped to establish what is in the interests of the child. Thus, the procedural requirements of Article 8 of the Convention were not fulfilled[446].

The precedence of this decision lies in the critical assessment of the actions of national courts, which did not ensure a confidential examination of the case, which is a violation of Article 6, paragraph 1 of the Convention, which provides for the right to "public examination", and caused the failure to comply with the principle of the best interests of the child. Since the national courts must ensure a sufficient level of capacity to ensure the rights of the parties to the proceedings in cases involving the return of the child to the state of permanent residence for the protection of the child's best interests, including the examination of the presence of risks of a psychological school for the child by such return.

A similar is the decision of the European Court of Justice in the case "VLADIMIR USHAKOV v. RUSSIA" on the application of the provisions of the Hague Convention due to the fact that the applicant's former spouse took their twin child to another country without any intention of her further return[447].

This case concerned an applicant, a citizen of the Russian Federation, who lived in Finland under a permanent residence permit and was united with a female citizen of the Russian Federation, who had a child together. However, in the future, after the separation and deterioration of their health, a woman with the child arrived in Russia without the applicant's consent. The national courts of Russia inhibited the applicant from returning the child to Finland by formally stating that the child was integrated into the Russian society, and that the child's illnesses could cause physical harm to her if she was returned to Finland.

The European Court, finding a violation of Article 8 of the Convention, noted that in the context of an application for return, filed in accordance

[446] Rishennia YeSPL u spravi «ADZhYCh PROTY KhORVATII» vid 02 travnia 2019 roku. URL: https://www.echr.com.ua/wp-content/uploads/2019/05/rishennia-espl-adjich-proti-horvatii-tekst.pdf.

[447] Rishennia YeSPL u spravi «VLADIMIR USHAKOV v. RUSSIA» vid 18 chervnia 2019 roku. URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193878%22]}.

with the Hague Convention, which, accordingly, differs from the child welfare procedure, the concept of the best interests of the child is to be assessed in the light of the notions The Convention on the Rights of the Child (art. 12), the conditions of application of the Convention (art. 13 (a)) and the existence of "grave risk" (art. 13 (b)), as well as respect for the guarantees of article 8 of the Convention[74].

In examining this case, the European Court also referred to the Explanatory Note to the Hague Convention prepared by Elisa Perez-Vera and published by the Hague Conference on International Private Law (HCCH) in 1982 ("Explanatory Note"), which stipulates the following: 1. The notion of the "best interests of the child. At first glance, the legal standard of the "best interests of the child" is so unambiguous that it seems to look more like a sociological paradigm than a specific legal standard[74].

Analyzing this decision, we can conclude that to ensure the concept of "the best interests of the child," it is necessary to adhere to the principle of fair balance, which must exist between competing interests: The interests of the child, the two parents and the public order, with priority given to the best interests of the child. The above decision indicates that the assessment of the best interests of the child on the basis of beliefs and gender expectations is not in accordance with her interests.

Therefore, the European Court of Justice, when examining cases on the grounds and procedure for the application of the Convention on the Legal Aspects of the International Extradition of Children, determines the effectiveness of the work of the authorities in charge, The Convention for the Protection of Human Rights and Fundamental Freedoms is mandated to implement the provisions of the Convention, with priority given to the best interests of the child.

The case "M.T. v. Ukraine" concerned the applicant's claim for recognition of his paternity, which was rejected by the national courts on the grounds of having missed the statute of limitations, without taking into account the importance of the reasons for missing the statute. However, the European Court noted that, according to the national legislation, the courts had the right to renew the time limit for the presence of valid reasons for this. When petitioning for the renewal of the time limit, the applicant argued that he had missed it for important reasons, including that he did not want to disrupt the family life of the child, who was the legal parent, until he was

prevented from having regular contact with the child. Notwithstanding the complicated factual situation of the child, which required the presence of an imaginary biological father, the legal father and the stepfather, The child's actual relationship with these three men remained completely unanalyzed and no consideration was given to whether it was in the best interest of the child to renew the statute of limitations for the applicant's claim and to examine it on its merits[448].

According to the European Court of Justice, in disputes about parenthood initiated by alleged biological fathers, regardless of the freedom of judgment granted to national authorities in this area, The biological parent must not be completely excluded from his or her child's life, unless adequate reasons for protecting the best interests of the child so require.

At the same time, it should be noted that the European Court of Justice adheres to the position that, in cases concerning parenthood, the freedom of judgment of national judicial bodies must not violate the principle of preserving the best interests of the child. The European Court of Justice gives special attention to such cases as to whether the national authorities have considered the best interests of the child in order with the interests of the biological parent and other interested parties.

Examining the practice of the European Court of Justice in the context of upholding the principle of the best interests of the child, it can be seen that the latter has repeatedly upheld the right of the biological mother to see the child and the right to contact her to protect the best interests of the child.

One of these is the judgment of the European Court in STRAND LOBBEN AND OTHERS v. NORWAY, in which the court found a violation of Article 8 of the Convention, when national authorities decided to deprive the applicant of her custodial rights and to allow the adoptive fathers to reinforce her son. [449]

For example, the European Court of Justice stated that the replacement of a foster family with more far-reaching measures, such as the removal of parental duties and a permit for reinstatement, which are the result of a residual severance of ties between fathers and the child shall be used only under exceptional circumstances and may be justified only in the event that

[448] Rishennia YeSPL u spravi «M.T. proty Ukrainy» vid 19 bereznia 2019 roku. URL: https://zakon.rada.gov.ua/laws/show/974_d46#Text.

[449] Rishennia YeSPL u spravi «STRAND LOBBEN AND OTHERS v. NORWAY» vid 10 veresnia 2019 roku. URL: https://lovdata.no/static/EMDN/emd-2013-037283-2.pdf.

they were motivated by the main goal, which is the best interests of the child. The reinforcement is only possible if there is no realistic prospect of rehabilitation or family reunification, because it is in the interest of the child to be permanently placed with a new family (see R. and H. v. the United Kingdom, Application no. 35348/06, § 88, 31 February 2011)[76].

A similar decision of the European Court of Justice in the case of Monika ANTKOV'YAK and Patrik ANTKOV'YAK v. Poland of 22 June 2018, in which the applicants, the child's guardians, rescinded the decision of the national court to release the child to her biological fathers, which, in their opinion, violated their right to family life under Article 8 of the Convention.

In this case, the European Court of Justice, dismissing the complaint of the applicants due to its obvious unreasonableness, took the side of the biological parents of the child, stating, that in this case the authorities took steps aimed at encouraging family reunification so that the child would develop a bond with her biological parents. Although the Court acknowledges the emotional difficulties that a judgment of a national court may have little effect on applicants, their rights cannot take precedence over the best interests of the child (see, among others, Görgülü v. Germany, no. 74969/01, § 43, 26 February 2004) p)[450].

Accordingly, the European Court of Justice in its decision referred to the General Comment No. 14 (2013) of the Committee on the Rights of the Child, which contains, among others, the following recommendations:

"36. The best interests of the child must be of paramount importance after all steps to be taken have been taken. The words "shall be" impose a strong legal obligation on the authorities and mean that the authorities cannot determine at their own discretion whether the children's best interests should be assessed and whether they should be given due weight as a primary consideration for any action.

37. The phrase "primary consideration" means that the child's best interests cannot be considered on the same level as other considerations. Such a strong position is justified by the special status of the child: dependence, maturity, legal status and most often the absence of a voice. Children have less opportunity than adults to argue their interests, and those involved in making decisions that affect them must be clear about their interests. If chil-

[450] Rishennia YeSPL u spravi «Monika ANTKOVIaK ta Patrik ANTKOVIaK proty Polshchi» vid 22 travnia 2018 roku. URL: https://laweuro.com/?p=7695.

dren's interests are not emphasized, they are often not taken into account [77]. As a result of this research we can conclude that in the European legal tradition the principle of the best interests of the child is widely used in cases involving children. Accordingly, national courts are the bodies that most frequently determine the observance of the best interests of the children and make decisions that are decisive for children and their parents.

The European Court of Justice links the best interests of the child to the observance by national judicial bodies of a fair balance, which must be achieved between the respective competing interests: the interests of the child, the two parents and public order, with priority given to the best interests of the child.

An analysis of the decisions of the European Court of Human Rights on the violation of Article 8 of the Convention makes it possible to summarize the case law of the European Court in the field of child protection and to identify its main approaches, which are used by the European Court of Justice to implement the principle of ensuring the best interests of the child:

1. In proceedings where the child's place of residence is determined, respect for the principle of the best interests of the child consists in preserving the child's ties with his or her family as long as such ties ensure a safe and secure environment for the child.
2. Family contact between fathers and children is a central component of a happy family life and of ensuring the child's best interests, and the measures that interfere with meeting these needs must necessarily meet a general social need.
3. In custody and parental care proceedings, the right of the biological mother to see the child and have contact with the child is a guaranteed part of protecting the best interests of the child.
4. In cases concerning parenthood, the principle of the best interests of the child shall not be violated by the freedom of judgment of the national judicial authorities.
5. In cases of deprivation of parental rights, the interests of guardians and parents cannot take precedence over the best interests of the child.

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AFTERSPEACH

The monograph provides a historical and legal and theoretical generalization and new solution to the scientific problem, which consists in conceptualizing the phenomenon of human rights and freedoms under conditions of democratic development by analyzing and theoretically conceptualizing their essence and content. Recognized the general principles and practical problems of genesis and legal security of human rights and freedoms. Produced recommendations for improving the efficiency of protection of children's rights and freedoms and improvement of legislation.

The idea of human rights has been formed over thousands of years and depended on the cultural, religious, socio-economic, political and other conditions of the development of society.

People's rights have known a long historical path: from the time of their mythological awareness – to the theoretical and scientific understanding. Rights of the first, second and third generations are differentiated according to their origin time. The first generation rights include civil and political rights. The rights of the second generation are socio-economic and cultural. Moreover, scientists argue for the existence of a group of «third generation» rights, the rights of «solidarity» – for peace, a clean environment, equal enjoyment of shared human assets, etc. The consolidation of three generations of human rights is by no means certain, but at the same time it demonstrates the successive evolution in the development of this institution, the historical link between the epochs, and the general progress in this sphere.

In Ukraine, human rights are based on the Russian Pravda, international treaties and other legal acts of the Kievan Rus'. The notion of human rights and freedoms developed significantly in the era of the kozatstvo. The Covenants and Constitutions of the Laws and Freedoms of the Zaporizhian Army of 1710 by clearly man Philip Orlik, the newly elected Hetman of the Zaporizhian Army, and between the senior officers, colonels and also called the Zaporizhian Army of 1710, include articles about the protection of the law and freedoms; The right of ownership not only of the Hetman but also of the cenchmen, priests, destitute ouds, elected and ordinary Cossacks, servants of the court and private individuals; About the

right to elect Cossack and common squad officers, and especially colonels by free will and voting; On the right of the survivors of the Cossacks, their friends and sire children, and wives, whose husbands are at war or on military service, to be exempt from the general duties and payment of taxes.

The next important step in the proclamation of people's rights in Ukraine was the addition of the Ukrainian People's Republic and the Western Ukrainian People's Republic. The third unit of the Ukrainian Central Council voted for «freedom of speech, friendship, faith, assembly, unions, strikes, non-transcendence of persons and residence, the right and possibility of co-existence of local languages in relations with all institutions».

The period when Ukraine was a part of the USSR was not marked by great progress in the development of people's rights and freedoms. The constitutions of the URSR of 1937 and 1978 included some chapters on fundamental rights and duties of citizens, but their placement after the chapters on the principles of the state order and politics showed the priority of the state, the society over the person, the citizen. Economic and cultural rights were also pronounced.

A significant step in the development of the Ukrainian terminology of human rights was the adoption of the Constitution of Ukraine on June 28, 1996, which included Chapter 2 «Rights, Freedoms and Duties of the Individual and the Citizen,» which is fully consistent with international treaties on human rights. The 42 articles of this section directly define the rights and freedoms of people and citizen, and, as stated in Article 22, they are not exhaustive.

Examining the types of human rights and freedoms, it should be noted that most often they are divided by the sphere of their implementation in everyday life.

Human (individual) rights often include the abilities of people necessary to ensure their physical and moral-psychological (spiritual) individuality. Accordingly, individual rights are divided into physical and spiritual rights. Physical rights and freedoms: to life, personal autonomy and autonomy of private life, freedom of movement, choice of place of residence, safe natural environment, housing, etc. Spiritual rights and freedoms: the name, honor and truth, freedom of thought (worldview), freedom of speech.

Political rights and freedoms are abilities (freedoms) of a citizen to take an active part in the management of the state and in public life, to

influence the activities of various state bodies and public organizations of political orientation. These are the right to elect and be elected to the representative bodies of state power and local self-government, the right to establish community associations and participate in their activities, the right to appeal to state bodies, freedom of demonstrations and meetings, the right to information, freedom of the press, radio and television broadcasting, etc.

Economic rights and freedoms are the abilities (freedoms) of people and a citizen to own, use and dispose of the objects of consumption and the main economic activities: property (the right to property) and its labor force (the right to choose the type of employment), to use these independently or under a labor contract (the right to work), to exercise entrepreneurship and initiative in realizing their abilities and acquiring means of subsistence by taking part in the production of material and other goods (freedom of enterprise).

Social rights and freedoms – abilities (freedoms) of people and citizen to be socially protected by the state: the right to receive adequate wages (stipends); the right to social security in case of illness, disability, loss of a year old; the right to health care and medical aid; the right to protection of motherhood and childhood; the right to social insurance; the right to vacation, the right to an adequate standard of living; the right to strike, etc.

Cultural (humanitarian) rights and freedoms – opportunities (freedoms) to preserve and develop people's national identity, access to the spiritual achievements of mankind, their appropriation, use and participation in the further development. These include the rights to: education; free choice of language of communication, education, learning and creativity; access to cultural values; use of cultural institutions; use of domestic and world achievements of culture and art; free scientific, technological and artistic creativity; protection of intellectual property; information about cultural life.

Under the conditions of the development of civil society, the right to freedom of creativity is of particular importance.

The subjective right to creative freedom is the measure (measure) of possible (permitted) behavior of an individual in the sphere of literary, artistic, scientific, technical and other types of creativity, with the aim of the best possible expression of the creative abilities of the individual, ownership, use and disposal of the results of creative activity, which

is ensured by the measures of instructive state and non-state influence. The structure of subjective right to creativity includes the following main powers: right to property actions (right-behavior), right to another's actions (right-violation), right to protection (right-claim).

Possibility of own actions in the structure of subjective right to creativity means that an individual within the limits of the submitted subjective right can: engage in all kinds of creative activities in accordance with their interests and abilities both on a professional and non-professional basis, without any restrictions other than those established by law for the protection of public interests; simultaneously choose one or more kinds of creative activities; independently choose ideas of creative activity; independently choose means for self-fulfillment in the creative process; independently choose means for external expression of creative result; learn achievements of other creators in any field of creative activity; Join creative unions with other artists; choose the legal form of organization and form of creativity; determine their legal status in the process of creative activity; choose an image, a pseudonym, or anonymity at their own discretion; make a choice between publishing, making public the results of the creative activity or its withdrawal; give permission for the continuation of the creative idea, or its change; according to the amount of civil activity, distribute the rights to the results of the creative activity, etc.

The content of the right to other people's actions in the structure of subjective right to creativity includes the following powers: the right to create conditions for creative activity; the right to create conditions for the realization of the results of creative activity on a legal basis; the ability to use the support of the state in the implementation of creative activity and the realization of its results; the ability to receive art education; the right to independent, free, uncontrolled by the state and other structures to carry out creative activities, except in cases established by law to protect public interests; inaccessibility of use or dissemination of the results of creative activity of an individual without his/her permission, except for the cases established by law; possibility of access to the creativity of others in the composition of the cultural reserves of the nation, state, world; equal protection of rights to the results of creative activity, etc.

The right to protection in the structure of subjective right to creativity means the possibility to appeal with the help of state apparatus, and in

some cases to the community for: to stop the infringement; to renew the legal status; to enforce the legal obligation; to bring the infringers to legal responsibility; to compensate for moral, material damage, etc.

The right to freedom of creativity is closely connected with three generations of human rights. Its connection with the first generation of human rights is manifested in the juxtaposition of the right to freedom of creativity with political rights. The right to freedom of creativity is connected with the right to unite in community organizations, the right to participate in the process of making and implementing political decisions. Mittsi, scientists can form community-based scientific organizations, creative collaborations, influence on political decision-making, protect their rights, establish contacts with other community-based organizations of other countries, join international associations, etc. Of particular importance is the link between the right to freedom of creativity and individual rights. It is manifested through the juxtaposition of the right to life and the right to respect for human dignity, the right to freedom of expression.

The right to freedom of creativity belongs to the other generation of human rights. The relationship to other second-generation rights is manifested in the fact that creativity and education are intrinsically linked to the development of science and form the basis for social progress, the right to freedom of creativity has close links with the right to education. It is one of the means of ensuring the right to freedom of literary, artistic, scientific, technological creativity and one of the ways of its realization. Acquisition of new knowledge, the development of skills and natural talent people in the process of obtaining education. Thus, the right to education is a means of ensuring creative activity, development of creative skills. In the process of education a person can be engaged in creative activity in the form of scientific research work, teaching, artistic or other creativity, that is, to realize the right to freedom of creativity. In this case, the right to education is one of the ways to realize the right to freedom of literary, artistic, scientific and technological creativity.

The relationship between the right to creative freedom and social rights is manifested through the right to work and leisure time. As the creation of an intellectual product is included in the labor function of the employee, the right to creative activity is transformed into a labor duty. The right to leisure

time enables an employee to engage in creative or any other activity on a full-time basis. The right to a sabbatical leave is an additional guarantee of creative freedom, as the employee is temporarily released from his or her main job to complete his or her dissertation to achieve a scientific degree, write a textbook, a monograph, an anthology or other scientific work while saving his or her wages.

Among the economic rights and freedoms of people, the investigated right is closely connected with the right to the results of creative activity, the right of intellectual property, which belongs to the economic rights and freedoms. As a consequence of the right to freedom of creativity, the right to the results of creativity, the right of intellectual property can arise. The right to freedom of creativity is always superior to the right to the results of intellectual activity. On the other hand, the right to the results of creative activity and intellectual property is designed to promote initiative in the development and implementation of creative abilities of people through the ability to obtain the means to exist.

The relationship between the right to freedom of creativity and the third generation of human rights is manifested in the relationship between the right to freedom of creativity and the right to enjoy the cultural potential of humanity. As a result of providing access to the cultural resources of humanity, joint efforts of scientists create new results of creativity, objects of intellectual property, scientific and technological progress. The right to freedom of creativity is closely connected with the right of the community to cultural self-identification. Of primary importance in this process is traditional knowledge as part of the culture of the community, nation, people. The right to freedom of scientific creativity is the basis of all rights, which are consolidated by scientists as the rights of the fourth generation, indicating their interconnectedness.

In examining the system of human rights and freedoms, special attention was paid to the study of children's rights and freedoms. The monograph defines the mechanism of security for children's rights and freedoms as a system of general social and legal factors, means and steps that, interacting with each other, create the proper conditions for the realization, protection and defense of children's rights and freedoms. Its structure includes the subjects, objects, legal framework, forms, methods, guarantees, goals, legal education and legal socialization of the child.

AFTERSPEACH

The most important factor in the real security of children's rights and freedoms in order for them to be recognized, respected and respected is the guarantee. Guarantees of the rights and freedoms of the child give all elements of the mechanism of security for the rights and freedoms of the child a real value for the possibility of their smooth implementation, protection from unlawful encroachments and protection from unlawful infringements. Mechanism for ensuring the rights and freedoms of the child is a prerequisite for the implementation of their guarantees, because the guarantees function through a system of bodies that are focused on protecting the interests of the child. The efficiency of functioning of the mechanism reflects the level of guaranteeing the rights and freedoms of the child. These notions are interconnected and mutually interdependent.

Guarantees of the rights and freedoms of the child is a system of well-established social, economic, political, cultural (spiritual) and legal conditions, means and methods that ensure the constant improvement of children's rights and freedoms, their protection, actual implementation and protection in case of violation (cancellation).

In the system of protection of the rights and freedoms of the child, the principle of the best interests of the child is of great importance. For the first time, the principle of the best interests of the child was enshrined in the 1989 Convention on the Rights of the Child. However, for more than twenty years international and national legislation has lacked a definition of the meaning of the principle of legal protection of the best interests of the child. Such a gap in the legislation leads to legal uncertainty in the consideration of cases involving children by state and judicial authorities.

Therefore, in Ukraine's court practice the Supreme Court relates ensuring the best interests of the child to the judicial authorities' observance of a reasonable balance between each parent's participation in the child's upbringing during the hearing of cases involving children, which will not interfere with her normal development and taking into account the emotional state of the child, her desires and thoughts, as long as she is able to form their own views according to age.

TEAM OF AUTHORS

Natalia Opolska – Doctor of Law, Associate Professor, Head of the Law Department, Vinnytsia National Agrarian University.

Natalia Chernyschuk – Candidate of Historical Sciences, Senior Lecturer, Vinnytsia National Agrarian University.

Andrii Pravdiuk – PhD in Law, Assistant Professor, Chair of Law, Vinnytsia National Agrarian University.

Tetyana Pikovska – Candidate of Historical Sciences, Assistant Professor at the Department of Law, Vinnytsia National Agrarian University.

Yelyzaveta Tymoshenko – Assistant Professor, Department of Law, Vinnytsia National Agrarian University.

Taisa Tomliak – Senior Lecturer, Department of Law, Vinnytsia National Agrarian University.

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E-mail: office@baltijapublishing.lv

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