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AS FOR THE RIGHTS AND LIBERTIES OF AN INDIVIDUAL AND A CITIZEN IN ENFORCEMENT PROCEEDINGS

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Summary

The codes of the rights and liberties of an individual and a citizen are determined in this article. Definitions such concepts as justice, human liberties of an individual and a citizen are analyzed on the base of science and research library. These specification are investigated for enforcement proceedings, and the Summary is that the rights and liberties of an individual and a citizen aren't potential, they're real non-derogable human rights, are confirmed by Constitution and the Law. Considering the fact that, all these rights and liberties of an individual and a citizen must be realized in close contact with representatives of State Bailiff Department that according the Law are vested rights in individual and a citizen, so their self-confidence depends from implementation level of State Representatives their professional responsibility to full service, for example in case of compulsory execution of administrative enforcement and judicial decision.

Key words: rights and freedoms of human, person and citizen, state officers, executive production.

Аннотация

В статье определено понятие прав и свобод человека и гражданина. Проанализированы существующие в научной литературе определения понятий прав и свобод человека, лица, гражданина. Исследованы данные категории в контексте исполнительного производства, обоснованы выводы о том, что права и свободы гражданина являются не потенциальными, а реальными возможностями человека, которые закреплены в Конституции Украины и действующем законодательстве и являются неотчуждаемыми. Поскольку эти права и свободы должны реализовываться в процессе взаимодействия с государственной исполнительной властью в лице должностных лиц административной юрисдикции (которые, согласно действующему законодательству, наделены определенными обязанностями по отношению к обладателям этих прав и свобод), такая уверенность зависит от уровня реализации государственным исполнителем таких обязанностей по предоставлению полного спектра прав и свобод, в частности, при принудительном исполнении административных и судебных решений.

Ключевые слова: права человека, права и свободы человека, гражданина, государственные исполнители, исполнительное производство.

Formulation of the problem and thematic justification. The guarantee of translation into action the rule that “human is the highest social value” is created possibility for everybody for realizing own rights and freedoms it must be main ground for existence and functioning of the state, which pretends to the democratic status. However not only modern Ukraine, but also the international community, despite the desire of implement ideas to ensure the rights and freedoms of man and citizen faces with obstacles due, such as, underdevelopment of moral and ideological criteria, legal culture and education, economic factors.

State Executive Service as a guarantor of liberty State referred to the

decisions of government agencies and courts and it plays a significant role in providing opportunities every person who (voluntarily or forcibly) becomes a party of Executive production, exercises own rights. But the tendency of legislative contempt appropriate authorities and ones that should ensure strict implementation of the decisions to the Court is growing and progressing in Ukraine now. You can often hear sincere wonder when you talk about State Executive Service activities as an example of enforcement authorities not only from the citizens but from government employees, too. Talking about “state enforcement officer” we often mean a person who defends the interests of the suppliant at any price and ignores rights of the debtor.



Breakdown of the researches and surveys. Although there is a problem in the fields of providing the rights and freedoms of human, person and citizen during the administrative and judicial decisions, its researches are extremely low. On the one hand, some question as for rights of citizens in executive agencies are surveyed in scientific works of P. Rabinovich, E. Dodin, V. Nastuyk, D. Pryimachenko, L. Davydenko, O. Burtseva and others. On the other hand, emphasis on the problem of legal status the participants in enforcement proceedings is given to scientific works R. Ihonin, F. Bortnyak, L. Krupnova, A. Perepelytsja and others.

That's why, there was necessity in the combination of these themes under the one research, with the help of system analysis and synthesis, and generalizations of the results above researches, as this will help to create an effective procedure for ensuring rights during the administrative and judicial decisions, and it would actually turn into enforcement the constitutional provisions and international (in particular – European) human rights standards.

The main goal of this article is a research the backbone of the human rights and liberties in the context of enforcement proceeding.

Summary of the basic material. The rights and freedoms are declared by national and international legislation and they define the limits of person's comfort existence, holding it particular promise for further progress, the fullness completeness its physical, social and cultural needs. But declaring the rights and freedom of the person is not enough for fully utilize social benefits guaranteed them. The main factors that provide a real opportunity for using all these rights are legal guarantees and social setting, all these factors on the base of legal status make up an integral system for guaranteeing the human rights and liberties.

That's why, science of law and law practice have been paying full attention to the protection of human rights and liberties during its history and development, nobody can not build the legal state without the clear formation of irreproachable and inviolability of human rights in public consciousness. The real volume of human rights and liberties is determined its social positions and advantages, is provided its

connection with society. The recognition of a certain rights, freedoms and legally protected interests by State is the main factor of its democratic society. The important attribute of this society is not only domination the will of the majority in it, but also its potential to achieve equal rights of all persons, including minorities. As we see, the legal State is a state where the majority respects for the rights of minorities.

The formation and development of the idea of human rights have a long history that accompanied the battles of doctrines and traditions due to territorial and socio-cultural factors. The bright evolution of these ideas is reached on the base of democracy, freedom, justice, equableness, validation of the value of each person. Fortification of fundamental human rights and freedoms held on such positions in the Constitutions of democratic States.

Human rights are deeply incorporated in relations, they are the regulatory structure of cooperation between individuals, coordinate their actions and activities, adjustment their relationships, prevent conflicts and disagreements. By definition, they are formulated on the legal base the conditions and life manner of the person and are implemented on a normal existence of the person, his/her interactions in society and his/her attitude to the State. The development this idea of human rights in the philosophical and legal context can be seen in through the theory of natural law and the positivist theory [1, p. 26].

Natural-law theories are defined human rights as natural; such that is embodies the human fundamental nature. In this case, the law only registers the existing rights and freedoms [2, p. 11]. Positivist theories believe that the primary source of human rights and liberties is law.

The most important step into the development of ideas of human rights were bourgeois-democratic revolutions in the seventeenth-eighteenth century, the principle of formal equality was formulated then, and it is still the main basis of the universality of human rights and gives them democratic nature. Human rights are based on formal equality has become one of the most important of values of social development as influenced by the principles of the State, were the guards from its absolute power,

contributed to democratic cooperation between public authorities and the person releasing, and created the person who is free from the total State's keeping and restriction person's freedoms and interests from the regulators. The idea of State governed by the rule of law is based on the confirmation in a social consciousness and practice of human rights. However, it is always preceded by a long and painful process of finding channels arrangements of individuals in state-organized society with both authorities and each other [3, p. 9].

The modern list of human rights is enshrined in the international legal documents and is the result of a long historical development of establishments, references and standards of modern society.

Looking through the history and nowadays of Ukraine, it should be noted that the issue of implementation human rights, it is closely connected with the problem of defending the rights of the Ukrainian nation and above all, the struggle of independence, political and territorial sovereignty. Today the Ukrainians are going to build the State governed by the rule of law, the foundation of which is our culture, in which a special place takes the idea of the necessity to guarantee the rights and freedoms of human, person and citizen. So now our country is based on the past national historical experience and our restored community spirit, taking into consideration of international legal criteria in the field of human rights and liberties, directs to the new opportunities and prosperity.

Human rights is a complex conception on the one side and a general conception the other side, because it combines and sometimes identifies with such concepts as "human rights" and "civil rights", "rights" and "liberties" of persons, and "other basic human rights", "private rights" and "public rights". Human rights are grouped by the next sextons: rendering time ("generation of human rights"); the implementation areas – personal (civil), political, economic, social and cultural rights and liberties. Modern science can propose another attitude as for the systematization of human rights and liberties, too.

The researchers don't have a common position on the definition of the conception "human rights". As we see, V. Kuczynski



and I. Farber, determine the rights of the individual as its social opportunities have certain benefits. O. Lukashov is balancing in opposition between the natural law and positivist views on human rights, she says that human rights is defined and structured regulatory properties or characteristics of being a person expressing his/her freedom and is the integral and necessary facilities and conditions of his/her life-style, her/his arrangements with society, government, and other individuals. [4, p. 11]. P. Rabinovich lays emphasis on that fact that basic human rights are some certain personal opportunities that necessary for her/his existence and development in specific historical conditions that are determined objectively achieved level of human development (economic, spiritual, social) and they must be equal for everyone [5, p. 20]. M. Vitruk argues that human rights and liberates are materially due, legally enshrined and guaranteed the opportunity of each person to possess and use specific social benefits [6, p. 19]. But L. Yavych does not determine the distance between "human rights" and "civil rights" and gives a definition only the "civil rights", talking about the rights of everyone provided by law and government concerning the choice of freedom and action, participation in creating dignified living conditions, social benefits and social values [7, p. 64]. We believe that human rights are integral to everyone, have a natural basis, non-national and off-the-territorial, they are exist independently from national laws but they are subject of international law and the protection by it.

Though, the citizens rights are a strong mix of personal rights in national legislation and it consists of natural rights and ones that arise in the development of society and the State. Rights and freedoms of human, person and citizen must be declared and are realized by State through Executive bodies and state officers.

As for the balance such terms as "right" and "liberty", their structure and classification, there is no one opinion in domestic law too, despite on the fact, that these terms are used quite frequently in national and international law, they are given a lot of attention in the Ukrainian Constitution and Legislative Decrees that are regulated by Executive production.

Many authors are made equivalent between the right to freedom, sometimes

the using the last one is considered as inappropriate [8, p. 7]. Some scientific men insist on equal usage of these terms "right or liberties" as long as they are confirmed by the Constitution [9, p. 9]. We agree with D. Prymachenko's and O. Burtseva's opinions, so we consider the difference between the terms "rights" and "liberties" in a meaningful aspect is that "liberties" accept non-interference in their implementation from the State side, but "rights" suggest a direct intervention in the case of urgent necessity [10, p. 29]. The "liberties" is the actual and legal ability of a person to perform any lawful act at his/her own minds but in over the range of legal rules only, without clamping down on civil rights or to society in general. In a State of law a person can do anything if that is not prohibited by law. The restriction of freedom is determined only by law and they should take place for protection the most important rights and freedom.

The rights of the citizen is vested and provided by the State opportunities as for an objective condition of human existence in a civilized society, allowing her/his self-actualization in private life, philosophy, religion, etc. Therefore, on the one hand, the State should minimally restrict the freedom, and on the other, it should ensure the realization of normative acquired rights of citizens as efficiently as possible, avoiding overstatement of its interference in any areas of life, which often occurs in countries where human rights aren't recognized or have a formal character.

So in this case, we can't completely agree with the idea of L. Davydenko, that guarantees of these concepts are identical in nature and its legal system [11, p. 34]. It should be emphasized that the term "freedom" is intended to bring into focus the powerful capabilities of personal choice, without specifically its outcome (e.g., the Constitution of Ukraine), at the same time as the conception of "law" means clearly defining the rights (e.g., the right applies to the court).

In addition, understanding the concept of "freedom" is considered by administrative-law scientists as an independent legal category and as one of the elements of the administrative-approved status of the citizen. The main criterion separating freedom from law there is recognize the available possibility

to behave within certain limits on his/her own reasons [12, p. 69]. Freedom in the Executive production is closely related to the rights and mostly derived from them; they are objectively generalizing administrative and legal status of citizens.

In Summary, they can define the next recapitulations.

Citizen's rights and liberties are not the potential they are soon real possibilities of person are confirmed by the Constitution and by Law, which are integral and personal achievements at birth. The human rights must be keeping clearly among other rights by two criteria:

1) they are essential in signifying the regulation in over the range and belong to every person just because of her/his human nature; everyone can make use of them with equal opportunities;

2) the responsibilities that conform these rights put on the State, through its Executive bodies, and not on the others. Therefore, the main characteristic of human rights is that they are protected under the law and absolutely provided by Executive bodies of the State, which, by the way, the State executive service belongs.

In addition, any cooperation between persons and the State, including the contacts under the administration and enforcement of judgments related to the personal life of the individual from the one side, and with the presence of her/his general integral social rights and freedoms (e.g., the right to human honor). That's why, it is very important artificially with authoritative is intercompatible character: the rights of one entity are responsible, as a rule, the duty of another (in this case the human person has a duty correspond responsibility state enforcement officer and guarantee or ensure them).

So, in order for a person that takes a place in the enforcement proceedings, feel himself of herself free confident she has to have real rights during these proceedings. Given that, these rights and freedoms are realized in the interacting process with state officers, as State administrative jurisdiction which possess, under the law, corresponding liabilities and responsibilities towards the citizens as the support matrices of these rights and freedoms there is directly confidence that depends on the level of State enforcement duties as the total guarantee of rights and freedoms.



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ГРАЖДАНСКОЕ ОБЩЕСТВО В КОНТЕКСТЕ ПРЕДМЕТА КОНСТИТУЦИОННОГО РЕГУЛИРОВАНИЯ

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Summary

In article problems determining constitutional foundations of development of civil society in Ukraine. Analyzed common in Ukrainian science views on the understanding of civil society. Proposes new approaches to understanding the civil society in the context of the subject of Constitutional regulation. Investigated the characteristics and component elements (institutions) of civil society. The most important feature of civil society is its complicated structure, which includes voluntarily formed associations based on different interests and needs. The structure of the civil society as well as appropriate to include mass movements, protests and similar volatile manifestations of civic engagement. A component of civil society institutions are voluntary, and only those that operate within the law.

Key words: civil society, subject of constitutional regulation, constitutional foundations of civil society.

Аннотация

В статье освещаются проблемы определения конституционных основ развития гражданского общества в Украине. Анализируются распространенные в украинской науке взгляды на понимание гражданского общества. Предлагаются новые подходы к пониманию гражданского общества в контексте предмета конституционного регулирования. Исследованы признаки и составляющие элементы (институты) гражданского общества. Сделан вывод, что важнейшим признаком гражданского общества является его сложная структура, включающая в себя добровольно сформированные общественные объединения, основанные на различных интересах и потребностях. В структуру гражданского общества нецелесообразно включать массовые движения, акции протеста и аналогичные нестабильные проявления гражданской активности. Составной частью гражданского общества являются добровольные институты, причем только те, которые действуют в рамках закона.

Ключевые слова: гражданское общество, предмет конституционного регулирования, конституционные основы гражданского общества.

Постановка проблемы. В Конституции Украины прямо не употребляется термин «гражданское общество», однако именно нормы конституционного права закладывают правовой фундамент построения и развития гражданского общества. Конституция Украины определяет Украину как правовое демократическое государство с широким спектром прав и свобод человека, однако не использует термин «гражданское общество». Признавая человека высшей социальной ценностью, субъекты прайворчества и правоприменительной деятельности стоят перед проблемой определения конституционных основ гражданского общества в Украине.

Термин «гражданское общество» относится к наиболее дискуссионным. Отсутствие единого понятия связано отчасти со сложностью самого яв-

ния. В украинской науке гражданское общество становилось предметом исследования чаще не в контексте конституционного права, а в контексте политологии, социологии, философии, истории и права. Это привело к ошибочному представлению о том, что понятие гражданское общество не является предметом исследования в конституционном праве. По мнению М.В. Баглай, саморегуляция гражданского общества и конституционно-правовое регулирование соответствующих отношений – вещи не совместимые [1, с. 6–7]. Н.С. Бондарь считает, что «гражданское общество» – это не юридическая и не государственно-правовая категория. Государство не может, не способно «учредить», «декретировать», «установить» своими законами желательный для него образ гражданского общества. В таком плане граж-