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LEGAL BASIS OF UNDERSTANDING HUMAN RIGHTS IN THE FIELD OF NATIONAL SECURITY OF UKRAINE

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Abstract. The article analyzes the legal basis for understanding human rights in the field of national security.

It is analyzed that in general the establishment of human rights and freedoms is their recognition by the state, which can be done by various means in the framework of implementation, through the actions of both the state and the authorities and officials. Examples include participation in the preparation and adoption of international human rights instruments by acceding to relevant international treaties, ratifying them, proclaiming them in declarations, enshrining human rights in the Constitution or other legislative acts.

It is substantiated that in order to better understand the essence of human rights in the field of national security, it is necessary to understand the essence of the very concept of "national security". To this end, two main conceptual approaches to understanding the essence of national security have been identified. According to the first approach, the essence of national security is primarily related to human security. In essence, it is based on the provisions of Art. 3 of the Constitution of Ukraine, which proclaims the priority of human rights and freedoms as the highest value, the implementation of which should be the efforts of the state. In turn, the second approach is based on the priority of state and national security.

The author argues that it is expedient at the legislative level to determine the essence and relationship of human rights in the field of national security, by adopting a special legislative act as a logical continuation of the Law of Ukraine "On National Security of Ukraine", which would regulate public relations in the field of human security and its fundamental rights.

Key words: national security, human rights, legal principles, understanding, security sphere.

Problem Statement. Human rights are recognized as the universal form of the relationship between the individual, the state, and society. In essence, human rights define the limits of a person's social opportunities and establish the institutional and socio-legal mechanism for their realization.

Human rights are one of the universal and yet controversial categories of humanities and legal sciences, especially in modern period characterized by the universalization and globalization of human rights.

The consolidation of human rights in the Constitution of Ukraine, constitutional acts, codified legislative acts, their guarantee, protection and implementation constitute the whole mechanism of establishing rights, and at the same time is integral part of legal system of any democratic and constitutional state, and our state is not an exception. The key to minimizing threats to the national security of Ukraine is institution of an active mechanism for the protection of human rights, which is especially important in today's reality.

Securing occupying main place in legal system of Ukraine. It serves as a criterion for restricting fundamental human and civil rights and freedoms, that is, it determines the essence and content of activities state bodies and local authorities of Ukraine.

In modern conditions of our state, the topic of human rights, their protection is one of the most critical, since a reasonable balance between rights and obligations between the interests of the individual, society, and the state is required.

Also, human rights by their social purpose are primarily means of protection of the individual, through which human society tries and guarantees the security of the individual, the state, and the international community. That is why the research of legal basis for the understanding human rights in fields of national security is becoming increasingly relevant in the legal literature and subjected to the thorough research.

Analysis of scientific literature and previously unresolved issues. A large number of scientific works of many scientists is devoted to the issues of human and civil rights and freedoms, as well as issues of national security of Ukraine.

The scientific-theoretical basis for writing this article was formed by the works of domestic and foreign scientists as: K.A. Babenko, A.A. Dutko, V. Kovalchuk, A.A. Lukasheva, V.A. Nomokonov, O. Ovcharenko, T. Podorozhnaya, A.V. Prieshkina, O.V. Pushkar, O.A. Sreda, I.V. Chikeneva, A. Scherbaniuk et al.

The purpose of the article is to study the legal basis for understanding human rights in the sphere of national security. The achievements of this article will be the issue of developing a special legislative act, which had the purpose to regulate the main tasks of human rights protection in the field of national security of Ukraine.

Presentation of the basic material of the study. Social and legal conditions of society functioning are changeable that leads to transformation of human right and freedoms, changes in the condition of their realization, addition to the concept, the appearance of legal opportunities, that did not exist before. New economic, geopolitical, ethical, political,

social condition determined the modern concept of human rights and freedoms, which significantly differs from original contest, while maintaining basis values of the humanism, democratism, giving the individual a central role in the functioning of the state legal system.

The scientific literature notes that the human rights can be understood as a universal human value, that this term is a complex and multifaceted, which is not easy to give clear definition and unambiguous interpretation. Most of international treaties and conventions, adopted on human rights are aimed at establishing and guaranteeing human rights and freedoms (Tkach, 2002: 147).

Human rights can also be understood as a socio-historical phenomenon. Considering modern interpretation and content of ideas of human rights, it is necessary to take into account the moment of historical continuity of these rights. The history of the formation and evolution of the ideas of human rights is inseparably connected with the emergence and development of theoretical knowledge of law, state, legislation and policies (Shaio, 1995: 8).

Human rights as natural moral rights can be reflected in positive norms of international and constitutional law. The meaning of human rights for human beings is that they maintain human dignity, provide a person with external recognition and respect. The moral force of the human rights in their naturalness (Prava cheloveka: Uchebnyk dlia vuzov. Pod red. E. A. Lukashevoi, 1999: 175).

B. Kovalchuk notes in his work that in legal theory today the most acceptable approach is the integrative approach, according to which the rights and freedoms must necessarily be enshrined in the text of the Constitution or in the text of an international treaty to guarantee and legally protect them (Kovalchuk, 2017: 333).

In this turn, J. Chistokolanyi in his work draws attention not to the fact that in theory there are two main directions in understanding human rights. The first one is inherent to socialist jurisprudence, but not only to it; the second one – Western, which formed within Euro-Atlantic civilization. According to the first approach, human rights are understood as the legal opportunity established by the state to satisfy its legitimate interests, which, in their turn, are subordinated to the state interests and its ideological goals. Thus, we can understand it as “a gift” from the state. Western approach is to recognize human rights as natural and inalienable, belonging to him by the fact of being as a human being (Chystokolanyi, 2016: 44).

It should be noted that the adoption of the Constitution was a significant step in the legislative regulation of fundamental rights and freedoms of the citizens. The constitutional legislation of Ukraine at the present level, on the rights and freedoms of citizens complies with international legal standards of human rights, as well as the Universal Declaration of Human Rights of December 10, 1948. (Zahalna deklaratsiia prav liudyny vid 10 hrudnia 1948 roku: https://zakon.rada.gov.ua/laws/show/995_015), The International Covenant on Economic, Cultural and Social Rights of December 16, 1966. (Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava : mizhnarodnyi dokument vid 16 hrudnia 1966: https://zakon.rada.gov.ua/laws/show/995_042), The International Covenant on Civil and Political Rights of December 16, 1966. (Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16 hrudnia 1966: http://zakon4.rada.gov.ua/laws/show/995_043).

Thus, according to article 3 of the Constitution of Ukraine the human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. (Konstytutsiia Ukrainy, 1996: 30).

That is, at the highest constitutional level, as A. Prieshkina notes in her work, a qualitatively new approach to the understanding of the relationship between the individual and the state is proclaimed and consolidated, which modifies the new relationship between these subjects, in which the individual rather than the state is put in first place. (Priieshkina, 2017: 109).

A. Sereda notes that the Constitution of Ukraine as the basic law of the state, which enshrines the basic principle of state policy, which in the future should be reflected in other legislative acts, includes a list of so-called personal rights and freedoms of man and citizen. The presence of these rights confirms the compliance of state policy with democratic values is a guarantee of compliance with postulate of the high social value of man. (Sereda, 2008: 284-288).

K. Babenko notes in this regard that the institute of human rights in the Constitution of Ukraine occupies an important place, is the most stable and most relevant, because it is devoted an entire section (Babenko, 2012: 51).

According to A. Pushkar, at this stage of statehood Ukraine's entry into the world community and corresponding democratic transformation within the state require a fundamentally new attitude to the institution of human rights and freedoms. In addition, the attitude of the state itself to the universally recognized provisions of international law in relation to human rights is changing. And yet, after gaining membership in the Council of Europe in 1995, the national legal system is actively influenced by the norms of European law and it receives a qualitatively new level, in the Ukrainian society is formed, although somewhat slowly, a democratic legal consciousness and system of legal relations based on the recognition and protection of fundamental rights and freedoms, the ideas of human dignity, the priority of human values (Pushkar, 2010: <http://www.dbuapa.dp.ua/zbirnik/2010-01/10povnuu.pdf>).

In general, the establishment of human rights and freedoms is their recognition by the state, which can be carried out by various means within the framework of implementation, through the action of both the state and government bodies and officials. As an example, participation in the preparation and adoption of international documents on human rights through accession to relevant international treaties, their ratification, proclamation in statements, declarations, enshrining human rights in the Constitution or other legislative acts. This means, ensuring human rights and freedoms can be defined as the formation of appropriate conditions for the realization of human rights and freedoms, which includes the following three fundamental directions of state activity, namely: 1) promotion of the realization of human rights and freedoms; 2) protection of human rights and freedoms; 3) protection of human rights and freedoms.

Considering the above, we can conclude that this kind of activity of Ukraine, such as the establishment and maintenance of human rights and freedoms, is a fundamental function of our state.

A. Shcherbaniuk notes that human rights and freedoms are organically woven into social relations, because they are a normative form of interaction between people, ordering their relations, coordination of actions and activities, prevention of conflicts; their normatively formulate those conditions and ways of life of people, which are objectively necessary for the normal functioning of man, society and the state. This reveals the relationship between human rights and national security. (Shcherbaniuk, 2019: 372-373).

For better understanding the essence of human rights in the fields of national security, it is necessary to understand the meaning of the concept of "National security".

It is possible to distinguish two main conceptual approaches to understanding the meaning of national security. According to the first approach, the essence of national security is associated primarily with ensuring human security. In fact, it is based in on the provision of article 3 of Constitution of Ukraine, which proclaims the priority of human rights and freedoms as a high social value the implementation of which should be directed to the efforts of the state. In turn, the second approach is based on the priority of state and national security.

According to researchers, the ratio of the presented approaches is determined by a set of objective and subjective factors, which include features of the historical development of society, its economic parameters, the nature of the political regime, place and role in the world community and others. (Chykenëva, 2013: 237).

The problem of the correlation of these approaches must be solved in a dialectical way. Because the human person is the original element of society and the state, because his security is an inseparable component of state and national security. At the same time, the individual is interested in ensuring state security as a whole, because only in this case his own security will be guaranteed. This approach removes the contradiction and opposition of these components of national security.

According to the Law of Ukraine "On National Security in Ukraine" (Pro natsionalnu bezpeku Ukrainy, Zakon Ukrainy vid 21 chervnia 2018 roku № 2469-VIII, Vidomosti Verkhovnoi Rady Ukrainy №31, 2018: 241) human rights that is inalienable human rights and freedoms, which form the basis of the legal status of the individual, occupy a significant place among the main objectives of national policy of the state in fields of national security.

Thus, national security should be considered as a comprehensive state and legal institution, which includes a set of legal mechanisms aimed at ensuring proper protection of human rights, society and the state in various fields.

According to some researchers, in a country with a strong national security regime, there is always a desire on the part of state authorities to ensure human rights, equality of all before the law, the inevitability of responsibility for violations of legal norms (Podorozhna, Ovcharenko, 2019: 235).

Therefore, as N. Onishchenko rightly notes, one of the important tasks of modern democratic development is the realization of human interests, which is possible through the creation of a certain interaction between individuals, society and the state, embodied in the rights and freedoms of man and citizen (Onishchenko, 2014: 55).

In any situation of an internal or external nature in the context of Ukraine's national security, human and civil rights are inviolable and a priority.

The need to respect human rights as an integral and essential part of state policy, their provision as the main one of the important functions of the state in the sphere of national security is confirmed by the adoption of the National Security Strategy of Ukraine, which notes that one of the priorities of national interests of Ukraine and ensuring national security is the protection of rights, freedoms and legitimate interests of citizens of Ukraine (Stratehiia natsionalnoi bezpeky Ukrainy: ukaz Prezydenta Ukrainy vid 14 veresnia 2020 roku № 392/2020).

In addition, the proclamation at the legislative level of the person, his rights and freedoms and security as the highest value in Ukraine is certainly a significant step towards democracy, the creation of civil society and the rule of law.

However, despite all this, it is also a clear fact that a person is legally unprotected before the state, because those human rights guaranteed by the Basic Law of the state and by law do not protect him fully from administrative pressure or injustice.

In the modern world, the peculiarity of human rights and freedoms is that they develop in the context of different problems and contradictions, manifested from previous stages of development, as well as newly emerging ones. This creates significant obstacles to the assertion of human rights, making it difficult to implement them in different regions of the world.

After all, as V. Nomokonov notes, the violation of this balance inexorably leads to abuse of rights and freedoms, negative social consequences, weakening of state principles, violations of the rule of law, etc. (Nomokonov, 2008: 5).

It is obvious today that the subject of national security must be the basic goods, that is, the interests of man and citizen. The activity of the subjects of this mechanism to maintain the state of their protection must be built with respect for the balance of the vital and necessary interests of the individual, society and the state (Podorozhna, 2016: 512).

Consequently, the effect of this in the modern legal reality should be the development of such a system of national security, which would create conditions for the unimpeded realization of their interests. The general characteristics of the individual elements of this system should be reflected both in legal science and in the practice of law enforcement. We believe that the basic priority should be given to the principles of human security and his constitutional rights and freedoms.

Conclusions. Thus, we believe that it is the set of balanced interests of the individual, society and the state in various spheres of life should be the basis for determining the interests of the state in the integration process. In turn, the violation of these interests can be considered as a threat to Ukraine's national security.

National security is a complex system of values on which the development of the state is based. In turn, human rights are included in the sphere of national security, but at the same time they are an independent object of state management. That is, national security is a necessary state of development of the state, in which human rights will be respected to the maximum extent, which minimizes the risks to national security.

Human and civil rights are the highest priority for the development of a democratic state, but they may be limited in the interests of national security. This can be explained by the fact that without the restriction of these rights, achieving the desired state of national security can and will almost never take place because of the constant relevant social risks and social protests, which substitute for completeness in the understanding of "human rights".

To this end, we consider it appropriate to define at the legislative level the essence and relationship of human rights in the field of national security.

However, if we talk about legislative activity in Ukraine, we can note the low quality, instability of many normative legal acts, there is a sharp increase in their number, the development of the legislative system occurs at the expense of their number. In addition, in some cases, bills are prepared without sufficient scientific justification and qualitative processing, there is no scientific prediction of the consequences of their implementation, there is no proper system of public opinion. Also, there may be a certain inconsistency and disputativeness of the current legislation, certain errors in the application of legal technique. Indeed, as A. Dutko notes in this regard, that in the modern practice of law-making in Ukraine there is inconsistency, contradiction, incompleteness and inaccuracy of many existing laws. To some extent, this is a consequence of the improper use of tools, techniques and rules of lawmaking techniques, in particular legal structures. (Dutko, 2014: 75-76).

A significant step, in our opinion, to improve the situation in which the person finds himself in Ukraine could be the adoption of a special legislative act as a logical continuation of the Law of Ukraine "On National Security of Ukraine", which would regulate public relations in the sphere of human security and his fundamental rights.

This special legislative act should have regulated such basic issues as:

- The concept of human rights in the field of national security;
- Thorough content of constitutional rights and freedoms of man and citizen;
- Procedure for realization of these rights and freedoms;
- Types of state organizations authorized to be responsible for their implementation;
- The competence of these state organizations;
- The general procedure and authorities for the protection of these rights and freedoms;
- Procedure for restoration of rights and freedoms and competence of state organizations;
- Grounds, types and procedure of restrictions on human rights in the field of national security;
- State organizations that can implement these restrictions and their competence;
- Guarantees of the legality of the implementation of human rights restrictions;
- The legal mechanism for implementing the duties necessary for the realization of human rights.

In our opinion, the presented proposals will contribute to the improvement of human rights in the field of national security of Ukraine.

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АКТУАЛЬНІ ПИТАННЯ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я В УКРАЇНІ

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Анотація. У роботі проаналізовано актуальні теоретичні та практичні проблемні питання державного управління та публічного адміністрування у сфері охорони здоров'я, розкрито специфічні особливості стану забезпечення прав людини й громадянина на життя та здоров'я, показано сутність виникнення цих питань та розгорнуто висвітлено їх причини. Все це розглянуто через призму адміністративно-правового регулювання, яке діє в Україні у нинішній час. Дане дослідження проводилося на основі ґрунтовних наукових праць вчених-адміністративістів враховуючи сучасні явища та стан нормативно-правового забезпечення сьогодення. Доказано, що питання адміністративно-правового регулювання у сфері охорони здоров'я та медичної діяльності потребують нових глобальних наукових здобутків та покращення діяльності державних органів, які функціонують в цій сфері, шляхом удосконалення національної нормативно-правової бази та запровадження в Україні міжнародних стандартів у сфері охорони здоров'я.

Ключові слова: адміністративно-правове регулювання, державне управління, сфера охорони здоров'я, правове регулювання, адміністративно-правове регулювання в сфері охорони здоров'я, право на життя та здоров'я, державне управління в сфері охорони здоров'я.

CURRENT ISSUES OF ADMINISTRATIVE AND LEGAL REGULATION IN THE FIELD OF HEALTH CARE IN UKRAINE

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Abstract. The work analyzes current theoretical and practical problems of state management and public administration in the field of health care, reveals the specific features of the state of ensuring human and citizen rights to life and health, shows the essence of these issues, and elaborates on their causes. All this was considered through the prism of administrative and legal