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### INSTITUTION OF THE PROTECTION OF HUMAN RIGHTS: THE DOCTRINAL LEVEL OF RESEARCH

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Protection of rights is a special institution that includes a system of means, ways and methods of inviolability of rights and restoration of the legal status of the subject after violation of his rights under these conditions, it is possible to speak about an institution of protection of rights, which:

- guarantees the inviolability of the rights of subjects;
- gives an opportunity to implement a protection mechanism in a case of violation of the rights of subjects;
- ensures the restoration of the legal status of subjects that existed until the violation of their rights.

It is worth to emphasize that the protection of rights is a universal institution, an institution that characterizes the various possibilities to prevent violations of rights and to guarantee their maximum possible restoration or to implement compensation mechanisms concerning the person whose rights have been violated. Most of the debates that exist in modern science in the field of human rights analysis are related to the fact that scientists follow not only to different political and legal views, but also are based on different methodological approaches to the definition of rights. This presupposes the existence of various even contradictory ideas about human rights [1, p. 14]. The same can be said about the problems of understanding of the protection of human rights, because the study of this issue depends on the nature, nature and value of human rights.

It should be emphasized that in the modern legal literature there is a discussion about the correctness of using of the law and freedom terms and

the mechanisms through which these rights and freedoms are manifested, in particular, it is appropriate to use the terms:

– «realization», «protection», «defense» of rights and freedoms [2, p. 56-58];

– «protection of human rights and freedoms», which is the prevention of their violations and «defense of human rights and freedoms», namely, the restoration of the violated legal status, bringing violators to justice [3];

– «mechanism of defense and ensuring» and «mechanism of realization» of rights and freedoms [4, p. 44];

– «legal means of ensuring human rights», namely substantive and procedural norms and procedures, which are used by jurisdictions at the request of a competent person for the forced restoration of his violated right, as well as those legal relations that arise due to the implementation of their powers by jurisdictions, law enforcement acts that are aimed to the realization of rights by an authorized person [5];

– «ensuring», «implementation», «ensuring the reality of the implementation» of rights and freedoms [6, p. 16–18];

– «Ensuring rights and freedoms», the content of which is the recognition and guarantee, respect and observance of human rights and freedoms [7, p. 150–151].

O.F. Skakun fundamentally notes that it is unreasonable to identify the concepts of «protection» and «defense» of human rights and freedoms. According to the scientist, the protection of every right exists constantly and aims to ensure the validity of the law.

Protection can be carried out by intervention of the state authorities in the implementation of rights and freedoms as a protective response to the objective factor of deviation from the law, reflected in sanctions, responsibility, as well as, for example, in guarantees of personal safety of police officers [8].

A.G. Berezhnov believes that human rights are special social phenomenon, that is understood as a requirement of an individual with the certain level of position in society and in the state.

The scientist affirms that human rights are «a certain minimum of general social (within a separated society), universal and universal democratic requirements to the legal and social status of each person, the implementation of which have to and can be ensured in any society, regardless of reatures of its social legal system» [9, p. 173].

L.I. Glukhariova substantiates a rather peculiar approach to understanding the issues of human rights protection. According to the scientist, the theory of human rights can be divided into three types: classical, non-classical and post-classical, within none of them it is not

analyzed one or another feature of the institution of human rights defense [1, p. 17–18].

In our opinion, the most objective and justified the attempt of T.I. Pashuk to identify and disclose the content of «signs of the state and legal protection of human rights», on the basis of which to formulate a definition of this concept, is.

To our mind, the key features identified by scientists are the following:

- first, this phenomenon is a certain social activity;
- second, this activity is state and legal;
- third, it is a law enforcement activity;
- fourth, it is a security law enforcement activity;
- fifth, it is a jurisdictional activity (that is an activity in which a legal dispute is resolved);
- sixth, it is the activity of enforcing the legal obligation that is necessary for the realization of human rights, to restore this right in a case of its violation;
- seventh, this activity is aimed at ensuring, above all, the private interest;
- eighth, this activity is initiated (but not carried out), usually by the person himself. Where is an essential feature of state and legal defense of human rights, because in the state and legal protection of these rights, such activity is initiated by the state body or a body that higher than him [10, p. 43].

On the basis of the selected features, the scientist generalizes the definition of «state and legal protection of human rights», that is a law enforcement jurisdictional activity of the competent authorities, aimed either at the enforcement of a legal obligation necessary which is need to the realization of human rights, or to restore such a right, or to prevent or stop its violation [11, p. 44].

Thus, the scientists emphasize that international human rights protection has both a legal aspect (enshrining of the mechanism of control and defense of human rights in the law) and an instance aspect (the existence of a system of bodies and organizations whose scope is related to the protection of human rights).

According to V.E .Selezniiov, the nature of the international legal system of human rights defense is reflected both in the adopted Human Rights Standards and in the implementation of guaranteed rights [11, p. 22]. Moreover, in our opinion, such influence is determined by the need to maximally reflect the nature of the human rights defense system in the results of such defense.

The opinion of P.M. Rabinovych is quite similar to the previous position of the scientists, who singles out the concept of «international and legal means designed to provide and defense fundamental human rights». To such means the scientist carries:

a) international and legal acts that contain rules of activity, formulate the rights and obligations of the relevant entities (conventions, pacts, agreements, treaties, etc.), as well as international documents, which usually do not contain norms, rules of conduct, rights and obligations are not directly formulate (in particular, declarations, statements, memoranda);

b) international bodies for monitoring, control over the observance of fundamental human rights (commissions, committees) and for the protection of these rights (courts, tribunals) [12, p. 9]. Thus, the scientist also distinguishes legal and organizational aspects in the system of means of ensuring and defense of fundamental human rights. To our belief, international defense of human rights is a process of functioning of international institutions, norms of international law and relations, as well as a system of measures and methods aimed at controlling, restoring and counteraction to violations of human rights and freedoms.

L. Priymenko puts law enforcement essence of the defense of human rights into understanding of defense human right. According to the scientist, the right to defense is a substantive subjective right of a law enforcement nature, which arose at the time of violation of the regulatory subjective right on the side of the victim [13].

In our opinion, it is necessary to proceed from the fact that legal defense is, first of all, a circle of legal relations, according to that the elements of legal pdefense will be elements of legal relations, however they will be characterized by certain features:

– a subject of legal defense of human rights, that is a circle of individuals, legal entities or the state, represented by authorized bodies endowed with powers to protect human rights, as well as a person whose rights have been violated or are in a state of violation;

– the object of legal defense of human rights, that is the measure of possible behavior of a person who has suffered or is being violated by third parties;

– the content of legal defense of human rights, that is the range of rights and responsibilities of the subjects of legal defense to take legal measures to defense human rights.

The level of pdefense of human rights is a criterion for characterizing the level of development of civil society in the state. Civil society as such is a manifestation of the realization of human rights and a stage at which institutions of legal and illegal levels are combined.

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