CHAPTER 5. RIGHT TO FREEDOM OF CREATION

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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

[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.

[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;

[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.

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[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.

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[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.

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; the impossibility to use or disseminate the results of an individual's creative activity without his/her permission, except in the cases established by law; the possibility of access to the creativity of others within 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 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.

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 sphere of creativity.

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of the nation, state, world; equal protection of rights to the results of creative activity, 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.

The right to protection in the structure of subjective right to creativity means the possibility to appeal with the assistance of 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.

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].

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[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

[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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