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The doctrine of human rights in the field of private law relations: legal theoretical aspects

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World globalization and transboundary orientation to the best and most efficient provision of human rights today is the driving force behind ensuring the implementation of the human rights doctrine in the civil law of Ukraine. Despite the diversity of approaches to this topic, its complex research has not been conducted that, in turn, has generated the interest of the article's authors. With consideration of new legal approaches and practice of law enforcement, the authors made the following conclusions: 1) review of doctrinal approaches to determination institute of human rights in the context of today's realities demonstrated that the one and unified concept of introduction human rights in the civil legislation at both national and international levels is absent; in addition, an efficient mechanism of unification has not been found; 2) analysis of legal foundations of the establishment of human rights institution in the field of legislation revealed their close connection, interdependence, provided an author's conditional list of approaches to consolidate the human rights doctrine in the national civil law, to outline existing gaps and inaccuracies in legal regulation; 3) studying concepts of human rights protection in the civil legislation gave an opportunity to state that legal civil protection of legalised in national law of Ukraine human rights is currently in a transformational state under the influence of European integration aspirations of Ukraine and internationally updated standards, however, despite this tendency, competent state institutions are able to provide adequate protection for civil-detailed human rights, in particular by implementing the practice of the European Court of Human Rights in legal proceedings. Conducted research provides grounds to argue that the modern national civil law of Ukraine is a stable basis, and it consolidates various conceptual approaches to the doctrine of human rights, moreover, this branch is ready for qualitative and effective transformations and improvements on the way to ensuring the substantive unity of doctrine and the law at the national level.

Keywords: civil law of Ukraine, doctrine, human rights, European Court of Human Rights, globalisation.

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INTRODUCTION

Objective increasing importance of the axiological dimension of international relations, as well as the complications of challenges that are faced by protection of human rights in a globalising world, which, according to the UN Millennium Declaration, may be "only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity" (United Nations Millennium Declaration… 2000). In turn, the described approach produces an imperative to distinguish common basic characteristic determinants, which, for objective reasons, cannot be clearly formulated and consolidated, however, among them human rights take a prominent place. In the conditions of reforming the political and legal systems, in the process of rethinking civil values in the context of economic innovation transformations – the protection of human and civil rights and freedoms remains a priority task of any state and its citizens (Equality, human rights and access… 2015). Moreover, scholars emphasise the latest trends in the globalisation of human rights both at the national and international levels (Bassiouni 2015).

The spike of public interest in the legislation in Ukraine, the essence and content of human rights, their guarantees and protection is historically justified. After many years of authoritarianism, when the law was mostly used to achieve political goals, the proclamation of human rights as the main priority of the state, without any doubt, is a progressive integration step of the state on the way to the international community. Today, the need to find a compromise between human rights, society and the state is of particular urgency. Not only patterns and standards of behaviour are recorded in the rights and obligations, but also the key principles of state-person relationships that require clear legal regulation and ordering are revealed (Antonovich 2007). This is substantiated by the special importance of this kind of relationships to maintain the existing system, the proper functioning of national institutions and requires the implementation of the doctrine of human rights in all fields of national law and legislation.

In particular, the historical and legal analysis of the civil legislation of Ukraine and the practice of its application testifies that its content and essential nature has always been in dynamic development, subject, in turn, to qualitative and quantitative changes. At the beginning of its birth, the tendency towards the perception of civil law only as a legal matter, the basis of which is ownership, was evident (Rabinovich & Sivy 2008). In this regard, norms of civil law were directed solely at the regulation and protection of property relations in the field of improving the triangle of owner rights. The consequence of such a metaphysical approach was the perception of all other relationships that were subject to regulation of civil law, through the prism of the property component. Gradually, the civil doctrine began to review the place and role of a person in public life, since the social experience of mankind has shown that the institution of private property alone cannot ensure the proper protection of all human interests; therefore, civil legislation requires the development of a clear innovation legal regulation and a mechanism for its effective implementation from in order to meet the interests of society and the state as a whole. In this context, the adoption of the new Civil Code of Ukraine has become a decisive event in the public and political life of society. Moreover, in the future, this codified act was substantiatedly recognised as the "Constitution of the Civil Society of Ukraine" (Yaroshenko 1990, Sivy 2006). At the same time, its main purpose was to facilitate the development of the highest form of organisation of human community – civil society, in which a person will be the central figure, and his/her rights – the main priority of society.

Therefore, the subject matter of this article is particularly relevant in the light of the fact that both the Institute of Human Rights and civil legislation have a rather long history, are partially interconnected and interdependent, both are modifying themselves under the pressure of world transformations and national legal reforms, provide an impetus for the development of substantiated, up-to-date national doctrinal approaches to guarantee human rights and ensure their effective protection.

Taking into account the foregoing, the purpose of this article is to analyse the implementation of the human rights doctrine in the civil law of Ukraine. Considering the stated purpose, the following tasks of the article were outlined: 1) to consider doctrinal approaches to the

definition of the institution of human rights in the context of the present realities; 2) to analyse the legal basis of the relationship and interdependence of the Institute of Human Rights and civil law of Ukraine; 3) to reveal the content and problems of civil legal protection of human rights; 4) to outline the prospects for further development and intensification of the implementation of the human rights doctrine into the field of civil legislation of Ukraine.

LITERATURE REVIEW

Among foreign scholars who devoted their work to the study of certain aspects of the human rights doctrine, it is worth mentioning such scholars as R. Dvorkin (2001), K. Dzehtsiarou and S. O'Mahony, (2013), D. Harris (2014) and others. In the domestic legal science, the problems of the interpretation of human rights, including in connection with civil legislation and practice of national courts and the European Court of Human Rights, were investigated by, S. Dobryansky (2006), M. Kozyubra (2010), V. Lemak (2011), P. Rabinovich (2015) and others. However, the current state of study of the problems outlined in the article suggests that it has become the subject of research both in branches of legal sciences and in the general theory of law. At the moment, optimal ways of developing the national legislation of Ukraine in the field of protection of human rights and freedoms is being actively searched, especially, in the context of the European integration aspirations of Ukraine and the reform of the national legislation in general and civil law in particular.

In recent years a considerable amount of material of political, sociological, sectoral legal nature, critical articles of the human rights protection issue have been published, however, in most cases, the proposals put forward by their authors are rather of private-practical character than the general theoretical. In the field of general theoretical legal science, the issues of the institution of human rights protection are considered mostly fragmentarily, moreover, at present, comprehensive researches of the implementation of the human rights doctrine in the civil legislation of Ukraine in the context of reforming the system of national legislation of Ukraine are absent.

MATERIALS AND METHODS

Methodological and theoretical basis of the study were traditional methods of cognition used in general theoretical jurisprudence and tested in practice, in particular general scientific (dialectical, systemic) and private (historical, formal legal, analysis and synthesis, and others). Thus, the dialectical method has allowed substantiating the logical character of the formation of an evolutionary approach to the interpretation of human rights, identifying legal traditions under the influence of which the development of this institute and the gradual introduction into the norms of domestic civil law took place. The historical method was used to identify trends that characterise the development of modern theory of legal interpretation and the impact of legal thinking on it, as well as to reveal the chronology of the formation of the doctrine of human rights. The formal legal method has been used in the study of international documents, as well as national legislation of Ukraine, decisions of the European Court of Human Rights and national courts. Methods of analysis and synthesis have been used to establish the essence and content of the human rights doctrine actually introduced into civil law at this stage of development of Ukraine.

The use of these methods has revealed the peculiarities of the formation of the human rights institution in the historical and theoretical aspects, the problems of the proclamation, observance and protection of human rights and freedoms in modern Ukraine and the peculiarities of the implementation of the human rights doctrine in domestic civil legislation.

RESULTS

The idea of human rights has been walking for centuries on the path to recognition by the world community, and, moreover, continues its improvement today. Human rights were the civilisation foundation, the superstructure of which is modern, democratic and independent states. Gradually, the genesis of the Institute of Human Rights received a new, transboundary dimension, defining the degree of security and human rights implementation as the main criterion for

calculating the level of democracy of a particular state in a globalised context (Dvorkin 2001). The mentioned tendencies are conditioned by various factors, for example, by the formation of the world democratic institutions, political and legal whims of leaders of states, which are produced by the tendency to create a unified world order, the necessity to create legal regulation that responds to the challenges of the present, and so on. Such an attitude of the world community to this problem is mostly objective and is marked by active support of political forces, which is impossible, without any doubt, to recognise the positive factor of the evolution of the institute. The dialectics of relations in the system "man – society – the state" generates a fundamental political and civil problem of human rights. Under the influence of specific historical conditions, it evolves towards awareness by authorities and public of new institutional opportunities, the search for perfect forms and ways to implement human rights and freedoms, various social groups.

After adoption the Constitution of Ukraine, political discourse was aimed at search for an optimal model of interaction between the state and civil society, based on the fundamental principles of the implementation of rights and freedoms of an individual. Meanwhile, political reality once again attracts attention to everyday human rights problems, putting them at the forefront of the modern political process (Pylhun & Vinychuk 2018). Today, this problem was actualised in the context of the reform and democratisation of the Ukrainian state and society that indicates the latest stage of ascent to higher levels of socio-political development. One of the essential features of the modern political process is uniting efforts of the authorities and society in order to improve the mechanisms to implement human rights. The above tendencies are dictated by aggravation of internal and foreign political factors, to which it is necessary to include the presence of a paramilitary conflict in the country, the imperfection of the current legislation, incompleteness of domestic reforms, systemic failures in the functioning of political institutions, etc. The negative impact of a number of external determinants that create new political threats is obvious, based on ambiguous interpretation of human rights, which means transforming such a life-affirming democratic beginning as human rights into the object of manipulation and global confrontation.

The analysis of theoretical sources demonstrates that the Institute for the Institute of Human Rights has been thoroughly investigated by representatives of the national legal doctrine for several decades. Moreover, in recent years, doctrinal work has begun to be complemented by substantiated political science content for full-fledged perception of the idea of a democratic legal state. The widespread view that politics should not interfere with the implementation of human rights today seems illusory given that it is possible to implement own rights only through the political system of society, the nucleus of which is known to be the institution of the state. That is why the common task of representatives of the doctrine and practice in the field of law, political science, sociology, culturology and pedagogy is: firstly, a comprehensive and detailed study of this socio-legal phenomenon and the formulation of its scientifically grounded characteristics; secondly, the formation of an adequate understanding of each person's rights and freedoms, as well as to train a person on methods and means of their affirmation, protection against any violations and attacks, first of all by the state, individual members of society and their groups; thirdly, the creation of such political, economic, legal and cultural conditions for the life of society and the state in which these rights and freedoms could be fully implemented.

Solution of the first task, first of all, is based on the definition of the general characteristic of rights and freedoms of a person and citizen. Thus, any system of law is, on the one hand, derived from the system of rights and freedoms of every person and their associations, and, on the other, the rights and freedoms of an individual, including a citizen, caused by the existing system of law in the state. If to add political, economic, psychological and other social factors that significantly affect the formation and implementation of human rights and freedoms, it should be noted that this category is a socio-political and legal phenomenon that can be studied and researched only with using a systematic and integrated approach. The solution of the above-mentioned task inevitably conditioned the need to solve the second, that is, the establishment of a system of scientific and educational activities in all strata of the population. Unfortunately, it should be noted that today, despite the fact that educational curricula for the training of legal scholars contain special

educational disciplines on human rights, in the system of both general and special, including legal education, there is no sustainable, scientifically based approach in Ukraine to studying and researching rights and freedoms of people in general and a mechanism of their protection (guarantee) in particular.

It should be noted that in the theory of law, political life and jurisprudence, there are two views on the nature of rights and freedoms of a human and citizen, which to some extent has been reflected in the title of international legal acts on the protection of human rights. Supporters of one view argue that there are so-called basic human rights and freedoms that are natural, that is, those that are inherent in a human from birth, while others are acquired (delegated) to every person by society and the state. The second point of view is that all rights are given (delegated) to every person by society and the state (Kozyubra 2010). Another problem in solving this "scientific dispute" is the absence of a complete and exhaustive list of such rights, which, on the one hand, supports the position regarding the rapid transformation of human rights in the era of globalisation and innovation, and on the other, complicates the process of implementation by a person and a citizen their rights, and impedes to some extent for society and the state the creation of effective mechanisms for their protection. In this, it should be noted that the position of division, differentiation of human rights into "basic" and "non-basic" is unlikely to be correct. All human rights and freedoms are fundamental (fundamental). In this case, it is better to divide the rights into "constitutional", that are envisaged by the Basic Law of the state, and "non-constitutional", which are not foreseen and cannot be envisaged by the constitution, are implemented in the sphere of moral, ethical, religious, interpersonal or narrowly corporate relations. At the same time, there are all reasons to assert that human rights to life, safe living conditions, equal access to common social goods and needs, and self-realisation of own knowledge, skills and abilities, unlike other (for example, political or professional), such as belonging to a human from birth, given by God and therefore they should be considered "natural". Given the binding nature of state guarantees for human rights, recognition of the sovereignty of the state and the rethinking of the nature of civil society is necessary. The boundary between the state and civil society as the sphere of implementation of human rights is of mobile, situational, and sometimes pragmatic character. In this sense, human rights are interpreted as a positive entity. The theoretical approaches to the definition of human rights in modern literature are presented in the following ways.

1. Human rights as totality of subjective rights of a person. Scientists who defend the outlined point of view believe that the natural legal tradition of understanding human rights is not the only one. There is also a positivist concept of human rights: "in accordance with this approach, human rights, their scope and content are determined by the state, which "gives" them to a human exercising paternalistic functions in relation to it" (Lukasheva 2001). Scientists emphasise that these two approaches to human rights are not antagonistic, and that is why human rights cannot be opposed to positive law. As constitutional norms, "fundamental rights are subjective rights" (Golding 1978). A.V. Polyakov in his writing points out that the context of the natural legal doctrine defines the understanding of human rights. The authors noted that the concept of human rights became meaningful, when an individual "was given the opportunity to exercise power on his behalf in relation to the state" (Polyakov 2004). From the perspective of the scientist, it is erroneous to oppose the natural-legal tradition of understanding human rights with the positivist ("static") idea of subjective rights of an individual. The authors emphasises that human rights are "real subjective rights", which have a formal certainty and construct a connection between an empowered and legally obligated person: "the justification of these aspirations is substantiated by legal norms objectified in various primary and secondary legal texts, legitimated within the framework of the world of society" (Polyakov 2004). L.I. Glukhareva also recognises priority of the natural legal doctrine. From her point of view, "the allocation of human rights is based on the presumption of ownership by each representative of the human race of the set of rights outside of the political community that he or she is endowed by the fact of his/her being. In this sense, the universal and supranational rights are related to each other. This is human rights. Human rights exist regardless of their state recognition and legislative consolidation" (Glukhareva 2003). This, however, does not

deny their existence in the form of subjective rights. The authors wrote, "human rights are considered as subjective rights ... in the sense of the category, which denotes powers of a person guaranteed by the state and enshrined in the legal norms" (Glukhareva 2003).

The desire to link human rights with the concept of "innate rights" creates significant theoretical difficulties. In this way, both the justification of their protection and the right of protection are generally impossible: these rights preclude the change of their volume and, consequently, the provision by state coercion. In order to avoid a radical interpretation of the above thesis, the concept of "innate rights" receives a very limited interpretation and application. The subject of innate rights is the subject of general legal capacity, which is beyond essential legal bond with the state of residence. In this case, the scope of the concept of "human rights" is reduced to denoting the powers of stateless persons and foreign citizens.

2. Human rights as "legitimate interests" of persons. In the light of the idea of state sovereignty, any type of social relations cannot be fundamentally excluded from state regulation: there is no such state or action that would not be subject to legal regulation by its "nature". Civil society is actually constituted as a space of dispositive and generally permissive legal regulation. Judicial protection of legitimate interests is implemented on the basis of analogy of the right or the analogy of law. Legally, civil society can be represented as a sphere of implementation of "legitimate interests" of persons. According to the Constitution of Ukraine, this category does not coincide with another constitutional category – subjective rights. Legitimate interests in its essence, are an unconditional permission without the establishment of a legally obligated person. Legitimate interests, in the case of their legal regulation, cease to be "human rights", become subjective rights and are withdrawn from the sphere of civil society.

3. Human rights as constitutional freedoms. The idea of human rights is associated with a certain anthropological assumption – the understanding of man as "self-mademan", which also forms the basis of positive law as the material sign of a person. Without the idea of a human as a wealthy and self-realised entity, such constructs of positive law as freedom of contract, its inviolability, etc., are impossible (Kolodiy 2008). However, in this case, a person needs from the state the following provision of his/her existence, in particular: the inaction of the state itself with the simultaneous protection right, i.e. protection of a person from illegal actions of other persons. In this way, human rights are transformed into a special kind of positive public subjective rights – constitutional freedoms. The indicated "human rights" are compatible with the recognition of the sovereignty of the state and cannot be interpreted as limitation of the space of positive law by the supra-positive, "natural and innate right". Human rights are the result of self-restraint of the sovereign, which itself has set limits to its regulatory influence. It is freedom that obtains the most significant legal protection –judicial that gives a legal nature to human rights, as freedoms. Considering the convergence of human rights with constitutional freedoms, the authors propose to abandon the conceptual abstraction of "human rights" and adopt as the initial category the term "legal minimum of human dignity"; at the same time, the formalised and ensured by state guarantees and measures of legal liability, the list of personal rights and freedoms, restrictions and withdrawals of which are inadmissible under any circumstances (Romashov 2004).

In addition to the above, it is possible to state that the modern doctrine of human rights has, of course, a Eurocentric character. It is worth mentioning that the emergence of human rights is associated with the representatives of various scientific currents directly related to the genocide of the Jewish people during the Second World War. Scientists note that the Universal Declaration of Human Rights appeared as a response to crimes committed by Nazism (Mutua 2001). The Europeanisation of human rights concepts is also justified by the limited scope of application and essence of international legal acts, which has become a reflection of the liberal, democratic ideology common in Europe and the United States (Cobbah 1987). The disclosure of the essence and the place of transboundary legal regulation in the field of human rights has not been and will not be the only one throughout the world due to the variability of cultural values, historical heritage and ideological beliefs (Harris 2014). Consequently, more and more representatives of the human rights doctrine hold the view that internationally proclaimed human rights are gradually losing ground of

their universality. V. Lemak (2011) emphasises that, within the framework of Central European legal understanding, currently, the content of the law, in addition to norms, also includes elements that, in fact, cannot be recognized as "effective". However, the above thesis cannot be undeniably supported, given the fact that almost all the countries of the world participated in the formation of a holistic international human rights doctrine, so they can be tested in the territory of not only European states.

The case law of the European Court of Human Rights today plays an important role in the understanding of the institution of human rights. Scientists consider the legal understanding of the Court – with a certain notion – "European", since this body consists of lawyers of the highest rank almost from all the states of Europe, sometimes not just lawyers, but philosophers of law. In the process of interpretation and application of the "right-human" provisions of the European Convention, formulated mostly in general, abstract expressions and slogans, these judges are "doomed" to resort to the arguments of philosophical and legal style (Rabinovich 2008-2009). According to the European legal understanding, the law is objectively determined by biological and social factors, specific and real possibilities for meeting the needs (interests) of subjects of society, fairly balanced with the possibilities of meeting the needs (interests) of other subjects and of society as a whole (Dzehtsiarou & O'Mahony 2013). P. Rabinovich (2015) notes that although deployed, the exhaustive definition of the concept of human rights in the decisions of the Court does not occur (and is unlikely to ever meet), but a number of essential features, signs, indispensable components of this phenomenon are covered in the acts referred to or embodied, laid down in them, so to speak, in implicit, latent way. These components primarily include those social factors that define, shape and characterise the content and scope (boundaries) of human rights: the interests (needs) of a person are fairly balanced with the interests (needs) of other subjects and society as a whole; the morality that prevails in the society at a certain time; the purpose of a certain human right and the conformity (proportionality) of its right-realization, law-enforcement and law-limiting activity of the state.

Gradually, varied doctrinal approaches, international legal acts and case law of the European Court of Human Rights have been implemented in the national legislation of many countries of the world. In particular, the system of legally enshrined human and civil rights in Ukraine covers the theoretically as comprehensive as possible range of rights and freedoms in choosing the ways and means of life of every person living or staying in Ukraine. And this, of course, is a positive achievement of Ukrainian society. However, the practical implementation and protection of these rights are encountered almost every time on significant obstacles and barriers that are both of objective and subjective character and are the basis for unresolved problems in this area. Recent trends have led to the emergence of the following negative phenomena which slow down or make impossible the proper implementation and protection of human rights declared in civil legislation in the territory of Ukraine, in particular:

– A stunningly low level of legal culture and consciousness of the population of the state, connected with the constant leveling of the very essence and content of human rights;

– The population's loss of self-esteem, feelings of self-esteem and dignity, lack of attraction for self-development;

– Lack of motivation to increase responsibility for the results of own activity or inactivity, low level of public law enforcement;

– Declarative equality of branches of power, lack of effective implementation of the competence of local self-government bodies;

– Leveling the implementation of civil control at all levels of social life and state-building;

– Inability and unwillingness to overcome the corrupt components of the modern state apparatus;

– Gradual destruction of unstable connections between a human, citizen, state and society, and others.

The analysis of the above-mentioned problems shows that each of them has its own subjective and objective reasons for its origin and existence, the modernisation of the domestic legislation namely aimed at overcoming them. The current stage of right-making and state building in Ukraine can be characterised as transformational, connected, on the one hand, with the desire to carry out necessary reforms, the formation of civil society, the construction of a law-governed state, and on the other – with the need to maximally protect rights and freedoms of a human in conditions of overcoming crisis phenomena and aspirations to accelerate European integration. It is clear that among the many factors that influence these processes, the legal phenomenon, such as the role of law and its effectiveness in the present, is not the last (Ricœur 2002).

The quality of a legal act that formulates human rights is the Achilles heel of Ukrainian legislation. One of the most fundamental shortcomings in this area is the rather frequent ignoring of the pattern that only individual relations in the field of human rights should be regulated by the prohibition, a slightly higher percentage should fall on the norm of commitment, and the rest should be the norm of permission. Civil society is generally interpreted as the sphere of customary law, the customs of business, which, if faces a positive right, then it is exclusively private. It would be a mistake to assume that "innate rights" are implemented in the sphere of private circulation and equalise the content of state law to the extent that "human rights" are implemented under conditions of an authoritarian regime (provided that an individual does not interfere in politics). The view that "human rights" are facing, first of all, public powers in positive law, is more justified. According to V.S. Nersesyanets (1999), the private legal capacity of a person as a subject of civil society depends on the public legal capacity.

At this historical period of existence of Ukraine, the interconnection and interdependence of the doctrine of human rights with the national legislation of Ukraine as a whole, and with the civilian in particular, becomes of particular importance. The norms of domestic legal regulation are permeated with concepts of the protection and defence of human rights. Thus, the norms of civil legislation regulate the content of the legal status of a person in the structure of which human rights are considered as formally determined, legally guaranteed opportunities to use social benefits, an official measure of possible human behaviour in a state-organised society. The set of properties that characterise a person as a social being, a participant in social relations, is covered by the notions of personality. Personality is not born, but one can become, and not everyone can act in this capacity. Thus, for example, in accordance with the norms of the Civil Code of Ukraine, a child and mentally ill person cannot be parties to the legal relations (Civil Code of Ukraine 2003), in order to ensure the implementation of their rights, the procedure of guardianship and representation of the interests of such persons is regulated by law. Thus, the concept of "human" and "personality", reflecting different aspects of one whole – an individual, are in close interconnection. As a product of nature, a particular person acts as the material, biological basis of an individual. The latter, being a product of society, is characterised by the unity of its individual social and biological features and, in particular, includes:

– signs characterising social relations and human relations (economic, political, national, class, legal, moral, etc.);

– obtaining personal experience of knowledge, skills, habits, cultural level;

– biologically predetermined features: instincts, temperament, feelings, basic needs, state of health;

– features of the individual psyche and thinking, the ability to recognise the world, create works of literature, science and art (Rehman 2003).

The Constitution of Ukraine distinguish the fundamental rights and freedoms and the rights and freedoms of a human and citizen (The Constitution of Ukraine 1996). The latter covers the field of relations between an individual and the state, from which he or she expects not only protection of rights from unlawful interference, but also active contribution to their implementation by the state. The status of a citizen stems from an individual legal relationship with the state – the institution of citizenship. When it is about human rights, the wording "everyone has the right", "everyone is guaranteed" (The Constitution of Ukraine 1996), etc. are used, which emphasises the recognition of

rights and freedoms by any person on the territory of Ukraine, regardless of whether he or she is a citizen of Ukraine, a foreigner or a stateless person. In the legal doctrine, as already noted, depending on manifestations of social relations, human rights are usually divided into personal, political, socio-economic, environmental and cultural. In turn, civil legislation details personal competencies and human rights, specifying their content, establishing a mechanism for implementation and protection. It can be asserted with certainty that the norms of the civil law of Ukraine contain personalised references to human rights in the context of a particular personal interest of an individual.

The basis of civil law is property rights, so it is natural that the focus of civil right doctrine and civil legislation is paid to them. At the same time, personal non-property rights, which are included in the subject of civil law, become more and more important in today's conditions. Personal non-property rights are inextricably linked with such concepts as equality, freedom, inviolability of a person. Personal non-property rights in the objective sense are a complex legal institution, which includes norms of various branches of law, including civil law. It is worth noting that discussions on the inclusion of this list of non-property rights in the subject of national civil law continue to this day. Scientists emphasise that, despite the presence in the codified act of the Second Book of the "Personal non-property rights of an individual" (Civil Code of Ukraine 2003), such rights, due to their lack of economic content and the properties of turnover, poorly fit into the subject of civil law.

The scientist O.S. Ioffe (1962) created even greater dissonance in this situation; he argued that personal non-property relations, not related to property, cannot be regulated by civil law, they are only protected and defended by it. This false thesis was denied by Soviet legal science (Krasavchikova 1983; Egorov 1986), and subsequently by the legislator of independent Ukraine, who in part 1 of Article 1 of the Civil Code of Ukraine (Civil Code of Ukraine 2003) established that under the regulation of domestic civil law, both personal non-property and property relations fall within the scope of legalising the choice of the doctrinal approach to institute of human rights in civil law. However, despite the positive introduction of the human rights institution to civil legislation, legal science and lawmakers still have difficulty with the entry of personal non-property rights and property rights to the subject of civil-law regulation. As already noted, in the modern doctrine of human rights different approaches to their understanding have been formed, their most generalised ordering, on the basis of detailed analysis and comparative research of scientific works and norms of the national civil law of Ukraine, provides an opportunity to propose the following list of approaches to consolidating the doctrine of human rights in the national civil law:

1) The consolidation of human rights as its specific capabilities. It is considered by scientists as the most approximate view of human rights, by which they act as "kinds of possible behaviour and possible state of a person". Protection of the rights and opportunities of a person, among other things, is enshrined in Article 27 of the Civil Code of Ukraine (Civil Code of Ukraine 2003).

2) The consolidation of the approach to the essence of human rights as a requirement for a subject to provide him/her with certain benefits addressed to society, the state, legislation – non-property benefits enshrined in Article 201 of the Civil Code of Ukraine (Civil Code of Ukraine 2003), and requirements for property permeate the entire codified act and detailed in the sectoral law;

3) The consolidation of the notion of human rights as its natural, inalienable acquisition is regulated in details by the legislator in Chapter 21 "Personal non-property rights that ensure the natural existence of an individual" of the Civil Code of Ukraine (Civil Code of Ukraine 2003);

4) The concept according to which human rights is a specific form of existence (manifestation) of morality has received its legislative consolidation in many articles, in particular, the legislator drew attention to such categories as "the morality of the population" (Article 442), "moral principles of society" (Article 13 , 19, 26, 203, 228, 319 and others) (Civil Code of Ukraine 2003) – which during the implementation of a person's rights must be taken into account; the consolidation of the moral dimension of human rights in civil law can be considered a specific type of social justice in relation to an individual in a specific historical context;

5) The consolidation of human rights, as a freedom normalised in a certain way was implemented, in particular, in Article 627 ("freedom of contract") of the Civil Code of Ukraine (Civil Code of Ukraine 2003), where the right of a person to freely enter into an agreement, the election of contractors and the establishment of the content of the relevant legal relationship were reflected. In addition, Article 3 of the same Code proclaims freedom of business one of the foundations of civil law;

6) The consolidation of the established approach, according to which human rights – its specific needs or interests – are considered in the norms of civil law as the right of the individual to freedom and to meet the essential needs;

7) Human rights have been consolidated, as already mentioned, and as inalienable, natural qualities of an individual in the second book "Personal non-property rights of an individual".

8) The approach to understanding human rights as a system of guarantees aimed at ensuring the life activity of an individual has fragmentarily consolidated, for example, Article 282 of the Civil Code of Ukraine regulates the guarantee of the elimination of the danger created as a result of entrepreneurial or other activities that endanger life and health (Civil Code of Ukraine 2003);

9) The concept, according to which human rights are understood as a "system of rules for respecting mutual obligations and responsibilities of a human and the state", legalised by the legislator as the basis of the entire codified national act in the form of principles and norms of the relationship between human and state, which provide an individual with the opportunity to act on your own discretion (Dobryansky 2006). The implementation of the latter approach, although is not dominant in the national doctrine of human rights, but the most fully reflects the essence of this phenomenon and gets its essential consolidation in the norms of domestic civil legislation.

In such way, it can be stated that the civil legislation of Ukraine supports doctrinal views of the human rights institution introducing legalised interpretations of certain categories of rights into national legal regulation. However, despite the partial compliance of the national legislation of Ukraine with international standards and requirements in the field of human rights, the following problems of further development and intensification of the introduction of the human rights doctrine into the sphere of civil legislation of Ukraine can be singled out, namely:

1) The durability and declarative nature of national legal reforms;

2) Fragmentation and mediation of the convergence of the national legal system with the legal systems of the member states of the European Union in the context of Eurointegration;

3) Lack of unified doctrinal approaches to consolidating the essence and content of human rights in the norms of the civil legislation of Ukraine;

4) Gaps in domestic legal regulation;

5) Partial inconsistency of national civil law with international standards and human rights requirements.

6) Absence of an exhaustive list of implemented human rights;

7) Permanent dynamics of changes in the nature, content, interpretation, scope and number of human rights in a globalized world.

8) Inefficiency of the domestic mechanism of civil protection of human rights and others.

For the latter problem, it is advisable to dwell in more detail within this article. Thus, the ultimate goal of any legally significant activity is achieved through the orderly interaction of certain phenomena, forms the mechanism of the corresponding activity. In this sense, it is advisable to speak about the mechanism of legal regulation, the mechanism for the implementation of liability, etc. Thus, the mechanism of civil protection is a necessary and indispensable dynamic characteristic of modern legal reality. In the field of legal science, legislation and judicial practice, the category "mechanism of protection of human rights" is widely represented (Subedi 2011). In this case, as a rule, external in relation to an owner of the right phenomenon, which is defined as international and internal, judicial and extrajudicial protection, etc., is meant (Engstrom 2010). In this case, the mechanism of protection of rights in one way or another is deduced at the level of the mechanism of legal regulation and is largely constructed in a meaningful way by analogy with it. There is an approach according to which the mechanism of human rights protection is in a different plane than

the mechanism of legal regulation. At the same time, since the object of research is not only the activities of the protected person, but also law enforcement bodies, the elements of procedural implementation inevitably are involved in the outlined mechanism. The literature proposes various definitions of human rights protection in civil legislation, depending on the concept shared by the authors. The generalisation of the latest publications in the above fields (Harris 2014, Bassiouni 2015, Rabinovich 2015, Zhigalkin 2015, Christova 2018) has made it possible to distinguish three main concepts of understanding such protection:

1) the function theory – protection is considered as a function of the civil security system, which, in the form of special measures (or their totality), is aimed at termination of specific violations, restoration (compensation) of violated rights and interests or providing conditions for their implementation in other forms;

2) the theory of measures – protection is understood as the system of measures envisaged by the law to combat offences;

3) the theory of activity –protection is understood as activities of empowered or competent authorities to remove obstacles to the implementation of rights by entities.

The theories of activities and measures are the most widely used, but despite the attractiveness of defining protection as activity (allows establishing the active nature of actions, more precise determination of the basis and objectives of protection), in this, there is a replacement of concepts: the concept of "implementation of protection" is actually analysed instead of the concept of "protection" (Mavronicola 2012). Proceeding from the fact that the theory of measures is most in line with the essence of the protection of rights, it is possible to define "the protection of human rights in civil law" as a system of measures designed to ensure the inviolability of the right, restoration of violated law and termination of actions that violate the rights of a person.

It is worth pointing out that the mechanism of civil protection of human rights can be schematically reflected as follows. Using a certain means of civil protection, a person concerned, alone or with the help of the state (which, in this case, applies its arsenal of public-legal protection), carries out the measure of civil protection, which follows from the normative and actual basis of civil protection. Thus, the ultimate goal of protective activity is achieved. The following logically closed connection is deployed: the preconditions (normative and actual basis) of protection – security features – arsenal of protection – goals of protection. The central link in the list is security capabilities, because the direction of all protective activities of the subject of civil protection directly depends on their content. In this case, the "mechanism for the protection of human rights in civil legislation" is necessary to be understood as the type of legal mechanism, as well as the dynamic unity of legal phenomena, by means of which the objective of human rights activation is achieved by a person concerned.

In this case, protection is a legal activity, the possibility of implementation of which is provided by protection civil legal norms. These norms are one of the prerequisites for civil protection – the legal prerequisites, thus forming the normative basis for the relevant activity. Undoubtedly, a holistic, dialectical perception of the proposed concept of civil protection is unrealistic without the formation of a proper comprehensive understanding of the protection legal norm and its structure. In legal science, in those or other variations, the legal norm is considered to be a formally determined, mandatory rule of general conduct, established or authorised by the state and protected by its coercive force. Thus, the legal norm, acting as the legal basis for civil protection, represents the unity of the form (enshrined in the source of the right of disposal) and content (the logically constructed judgment of the legislator), that is, the notion of "norm of law" has the same meaning. In the context of these doctrinal provisions on the protection of human rights in the civil law of Ukraine, special attention needs to be given to the legislative consolidation of the mechanism for its implementation. Thus, Chapter 3 of the Civil Code of Ukraine regulates in detail the variability of actions of an entity during the exercise of the right to protection (Civil Code of Ukraine 2003). At the same time, it should be noted that the legislator in this chapter significantly narrows the implementation of the doctrine of human rights at the conceptual-categorical level. In particular, the title of this chapter contains the notion of "civil rights and interests", which

significantly reduces the scope of human rights that are protected, despite the lack of a legalized interpretation of the term. Despite the large number of works devoted to the study of various aspects of the protection of civil rights and protected by law interests, it should be noted that the legal literature also does not form a well-defined and comprehensive definition of this concept.

First of all, the mechanism for the implementation of human rights protection in civil law envisages the freedom to choose the form of protection and the provision by competent domestic institutions of assistance in implementing the chosen model of person's behaviour. In the last years of the implementation of the judicial system reform, a qualitatively new level of national legal proceedings and a significant increase in the effectiveness of the judicial protection of human rights in the territory of Ukraine can be observed (Kucher 2008). However, in spite of the positive changes, citizens are forced to apply actively to the European Court of Human Rights in order to protect their rights, as enshrined at international as well as national level.

From the theoretical point of view, special attention should be paid to the Resolution of the High Specialised Court of Ukraine on the Review of Civil and Criminal Cases "On the Application by the Courts of International Treaties of Ukraine in the Administration of Justice". This Resolution, providing legal form to doctrinal conclusions that have not been defended in the scientific literature for more than one year, directly pointed out to the courts the need to apply international human rights treaties as "direct, valid law", as well as the interpretation of their provisions (or relevant norms of national law) during the enforcement of international standards, which accumulated in the practice of the relevant international institutions. Thus, in paragraph 14 of the aforementioned resolution, it is expressly stated that "the rules of direct action are subject to the application, in particular, of the norms of international treaties of Ukraine, which consolidate human rights and fundamental freedoms" (On the application by courts… 2014). Given that Ukraine recognises the jurisdiction of the European Court of Human Rights in all matters relating to the interpretation and application of the Convention, the application of the courts of this Convention should be carried out with due regard to the practice of the European Court of Human Rights not only with regard to Ukraine but also with respect to other States.

The role of the European Court of Human Rights in the legal system of Ukraine actively attracts the attention of researchers; there are individual publications and integrated dissertations devoted to it. This problem is in the focus of modern state policy, including in connection with the reform of the judicial and law-enforcement system, the legal education system, and is also a priority direction of support from leading international organisations and their centres in Ukraine. Accordingly, the civil interpretation of the human rights doctrine in the light of the Court's practice requires not only the use of the legal position of the international judicial body in relation to specific rights and freedoms, but also taking into account its doctrinal approaches. As rightly noted by G. Christova (2018), the determining role of the European Court of Human Rights practice in the national legal system is due not only to the mandatory force of court decisions in cases against Ukraine but also to the legally recognised possibility of applying the European Court of Human Rights practice to the courts of Ukraine of all jurisdictions in the administration of justice. Recent tendencies have only increased the attention to the above-mentioned jurisprudence and the formation of a legal basis for the effective implementation of the convention standards in the national order, taking into account the principle of subsidiarity and responsibility of the state in order to guarantee everyone who is under its jurisdiction fundamental rights and freedoms.

In this context, attention is drawn to the position of Rasim Babanli, the head of the Department of Analytical and Legal Work of the Supreme Court, and Pavel Pushkar, head of the Department for the enforcement of judgments of the European Court of Human Rights in the Directorate General for Human Rights and Rule of Law of the Council of Europe, which are described in Forensic-legal newspaper (On the question of (ir) relevant… 2019). They argue that, despite the unambiguousness of the law, the enforcement of judgments of the European Court of Human Rights is not without problems that are associated with the perception, understanding and application of the decisions of the said judicial institution. One of the first issues in this context is the question of whether the practice of law in Ukraine, which was formed in decisions solely

concerning Ukraine as the respondent State, is a source of law, and whether such a source of practice may be formed in decisions concerning other states. First of all, it should be noted that the practice of this court directly is unique, and that is why the conclusions drawn up in the case concerning a particular state apply to other cases under similar legal grounds. The content of the court's activity, in this case, is the model of interpretation of the rules of the international treaty is to check that, under certain circumstances, the applicant has acted within the limits of his or her obligations under the Convention and did not allow it to be violated (On the question of (ir) relevant… 2019). Thus, this court interprets the provisions of the Convention, developing them to the specific circumstances that are the subject of consideration of the case. Consequently, both the provisions of the Convention and their interpretation are universal, and if the European Court of Human Rights has recognised in certain circumstances the violation of the Convention with respect to one state, then, using the precedent methodology, the court shall examine a similar interpretation of similar circumstances that have arisen in another state. The above arguments show that the application in Ukraine is subject to both the decisions of the European Court of Human Rights, as adopted by Ukraine, and the decisions made with regard to other states. From a theoretical point of view, such statements also follow more general provisions of international law, in particular the Vienna Convention on the Law of Treaties (Budlender 2006). In general, this thesis proves that today in Ukraine there is a sufficient legal and regulatory framework for the proper application of the European Court of Human Rights practice and the interpretation of the human rights doctrine taking into account the developed civil standards and approaches at the national level.

Taking into account the foregoing it can be argued that in modern society there is a process of increasing the activity of an individual in protecting his or her rights. The process of putting state control and elimination of human and civil rights violations becomes primary. And the possible formation of such a legal branch as “human rights”, already seems something close and real. Legal policy outside interests of an individual or to the detriment of interests of the state has no right to exist. Therefore, the mechanisms for monitoring the compliance of civil legislation with the goals and objectives of the humanistic development of the state and personality become necessary and constantly functioning. The search for optimal models of interaction of a human and the state is topical and complicated issue. In such way, the state, in the person of their bodies, will be the subject of a mechanism for the direct implementation of rights and freedoms of an individual in the event of participation in legal relationships on the principles of equality with other entities of the mechanism of the direct implementation of rights and freedoms of an individual, without the use of power and enforcement measures of influence.

The mechanism of protection of human rights, existing in the territory of Ukraine and enshrined in the norms of civil law, is a permanent, dynamic and reformed instrument for introducing the human rights doctrine into domestic law. Moreover, it can be stated that the election of the European integration vector for development and ensuring the implementation in the civil justice of the established case law of the European Court of Human Rights promotes the creation of a single integrated approach to the implementation, consolidation and protection of the institution of human rights in the civil legislation of Ukraine. In order to strengthen the entry of international human rights standards into national law and law enforcement it is up to national courts to take into account, when making decisions, doctrinal and normative provisions of protection and defence of human rights. Complex transformations of domestic legal awareness, legal thinking, law-making and law enforcement can provide a qualitatively new level of consolidation and implementation of the Institute of Human Rights in Ukraine.

DISCUSSION

A conceptual-categorical apparatus, about which the hottest discussions in scientific circles unfold in recent years, has the direct significance in the maximum and effective implementation of the human rights doctrine in the civil legislation of Ukraine. The necessity of adapting the national terminology of law to European requirements and international human rights standards in the context of the prospect of Ukraine joining the united European legal space makes it particularly

important to study the modern terminology of law, especially civil law. This allows tracing the common and different in the development, composition and structure of the national terminology system of law and international law, especially in the light of different languages (Sinyuta 2012). In modern conditions, it is necessary to seek a linguistic compromise, which can only be achieved through the unity of legal terminology.

The development of a stable system of legal opinions and definitions is not only a result of scientific study, but also a necessary condition, one of the priority directions of legal reform. Only such a system can ensure the reform of civil law in the light of the priority of the doctrine of human rights, its identical interpretation, as well as the correct implementation of the legal rules governing the relevant legal relationship. Accuracy and comprehensiveness of legal formulations, their adequate language implementation, correct and uniform operation of legal terminology largely determine the effectiveness of legislation, contributing to the full protection of rights of individual citizens, legal entities, society and the state.

In this context, it is advisable to focus on the discussion of the concept-categorical apparatus in the field of human rights, which is used in the current normative legal acts of the civil law of Ukraine, its updated and borrowed main terms of international terminology and its gradual entry into the national system of civil legislation. It is quite justified that the attention of legal scholars to the specification and additions to those already established as sources of a generally recognised unified regulator of social relations in the field of human rights and serve as the basis for the perception of modern legal definitions. The various studies conducted on this topic did not exhaust all of its aspects, but only created a certain factual precondition for the study of the terminological layers of the civil law field, the starting point for further methodological study of the terminological potential of the language of civil law in the context of the implementation of the doctrine of human rights.

As I.P. Zhigalkin (2015) rightly points out, the conceptual categorical apparatus is a peculiar phenomenon that determines the cultural aspect of the law-making process, its practical orientation. Terminology in the legal language has a special role: it acts as the primary material of expression of the will of a subject, it is the initial link in the construction of the legal text. Consequently, the concepts serve as the basis for further research. The attempt to provide clear and logically constructed terminology units, namely, the civilised concepts of human rights, has been made recently in the national scientific space, therefore, the terminology studied belongs to the modern terminology systems that are in the development stage.

In general, different approaches to human rights terminology, definitions and interpretations of terms depend on human rights concepts supported by certain scholars and promoted to implementation in civil law. As already stated in the article's contents – various conceptions of human rights are partly reflected in the civil legislation of Ukraine that has two opposing views on the identified implementation process. So, on the one hand, considering the diversity of doctrinal approaches to human rights in civil legislation – this is seen as a progressive tendency of the legislator's "listening" to the leading areas of science in the preparation and adoption of normative legal acts of civil legislation, including a comprehensive codified act. However, on the other hand, this phenomenon causes difficulties and confusion in legal understanding and law enforcement. In particular, the interpretation of the same "man-centrist" standards, taking into account different approaches and scientific views, can be fundamentally opposed, which in turn deforms the mechanism of human rights implementation at the stage of its proclamation and legislative consolidation. In particular, there are still disputes over the separation of civil rights from human rights at the legislative level.

Moreover, Article 3 of the Civil Code of Ukraine provides for judicial protection of civil law and interest, narrowing the concept formed by representatives of the doctrine of human rights (Civil Code of Ukraine 2003). V. Orlenko and L. Orlenko (2011), exploring views of Thomas Payne, determined that in his book "Human Rights" T. Payne divided all the rights into natural and civic. The first, in his opinion, are inherent in man from nature (freedom of speech, print, conscience, equality, happiness, etc.), and the second – those belonging to a person as a member of society

(property rights, the right to protection), are closely linked. Given the fact that the Ukrainian Constitution is based on a liberal concept with origins in the doctrine of natural law, it is worth emphasising that it is personal (civil) rights that are an integral part of the current civil legislation of Ukraine, and they are not considered to be granted by the state to their citizens, but as belonging to a person from birth, they exist irrespectively on the state's activities and are inalienable and inviolable. In addition, scholars have stressed that civil rights are a priority, as they are prerequisites for the implementation of any other rights and freedoms (Mappa 1999).

At the same time, in fact, it is possible to speak of narrowing the terminology of the scope of human rights. The right holders are all people in all countries and territories of the world, since all UN member states must adhere to the provisions of the Universal Declaration of Human Rights and ensure the universal and effective recognition and implementation of human rights (Dzehtsiarou 2011). In fact, national legislation, in particular civil law, should detail the content and scope of human rights, rather than restrict them to narrow-minded terminology units. Summarising the above, it is possible to state that civil law science as a whole has not formed a clear understanding of certain categories, in addition, different terms in the definition of homogeneous social phenomena and the consolidation of human rights have been used. However, the above can be considered an indicator of the development of legislation, which reflects the dynamics of the process of improving legal terminology. Thus, the diversity of terms in the field of human rights and their interpretations in civil legislation is an indicator of its reforming.

CONCLUSION

In today's conditions, the concept of human rights is one of the most researched and, at the same time, the most debatable and controversial in legal and philosophical thinking. Noting the enormous humanistic and moral nature of human rights, scientists maintain the view that human rights, in the light of the latest world civilisation transformations, have lost their sign of their universality. Modernised concepts of human rights are characterised by scholars and lawyers as "human-oriented Europeanized doctrine", the main components of which are the following: a) social conditionality of the content of human rights, their dependence on the level and nature of the development of society on the basis of interaction; b) the historical nature of the content and genesis of human rights. This explains the possibility of emergence of new human rights, which did not exist in the legal field of the state in general, their modification and systematisation, depending on the content and amount.

The European vector of development of Ukraine has led to intensification of the implementation of the human rights doctrine in all areas of domestic legislation, including civil law. The adoption of the Civil Code of Ukraine became the determining basis for the legal choice of the country in order to ensure the protection of the entire list and scope of human rights. Today, the reform of the national civil law, which takes place against the backdrop of international globalised transformations, is fully oriented towards human-centrist standards and requirements, unifying the convergence of national and international human rights doctrines and gradually introducing their unity into the civil law of Ukraine.

Moreover, it has been proved that the doctrine of human rights goes beyond the scope of one branch of law and legislation, thereby ensuring the organic inclusion in the content of the rights and freedoms of civil law. Recent challenges and compliance with doctrinal proclaimed concepts also create difficulties in law enforcement and the legal understanding of human rights in the context of civil law in Ukraine. Most of the problems are caused by factors such as imperfect legal regulation, the lack of real civilised human rights by the state, the variability of the conceptual-categorical apparatus of the human rights doctrine in civil law, the inadequacy of state policy and the declarative nature of the mechanism for the implementation and protection of human rights and others.

However, today it is possible to speak of progressive steps and positive prospects not only of legislative implementation, but also of ensuring the effectiveness and efficiency of the human rights doctrine in the civil law of Ukraine. At this time, the role of the individual in the process of

realising rights and freedoms is steadily increasing, in connection with which the level of its social activity increases, as well as a reappraisal of the significance of the compulsory influence of state bodies and officials on the regulation of all spheres of the person's activity and the proper provision of his/her rights. In Ukraine today one can speak of the formation of a "culture" of the implementation of the practice of the European Court of Human Rights during the implementation of the human rights doctrine in civil law and in the administration of justice.

In turn, the study of ways of forming a conceptual-categorical apparatus of the civil law of Ukraine, through the prism of the European legal understanding of the human rights doctrine, promotes the creation and development of qualitatively uniform and conceptually common European-wide foundations of the system of national civil law and its harmonisation with the legislation of the European Union in the field of human rights. Taking into account the foregoing, it is possible to state that the modern national civil legislation of Ukraine is a stable basis and consolidates the various conceptual approaches to the doctrine of human rights, moreover, the branch is ready for qualitative and effective transformations and improvements on the way to ensuring the substantive unity of doctrine and the right at the national level.

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