

# Теорія та історія держави і права; історія політичних та правових учень. Конституційне право; муніципальне право. Філософія права

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## Compelling issues of realization of human and civil rights and liberties in Ukraine

*Compelling issues of the rights and liberties of man and citizen are studied in the article, guarantees of human and civil rights and liberties are analyzed, factors have been affected on enforcement of human and civil rights and liberties in Ukraine are studied.*

**Keywords:** *human rights, liberties, guarantees of the rights and liberties of man and citizen, an enforcement of human rights, the mechanism of legal regulation.*

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## Проблемні питання реалізації прав і свобод людини і громадянина в Україні

*У статті досліджуються проблемні питання реалізації прав і свобод людини і громадянина, проаналізовані гарантії реалізації прав і свобод людини і громадянина, досліджені фактори, які впливають на стан забезпечення прав і свобод людини і громадянина в Україні.*

**Ключові слова:** *права людини, свободи людини, гарантії реалізації прав і свобод людини і громадянина, реалізація основних прав, механізм правового регулювання.*

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## Проблемные вопросы реализации прав и свобод человека и гражданина в Украине

*В статье исследуются проблемные вопросы реализации прав и свобод человека и гражданина, проанализированы гарантии реализации прав и свобод человека и гражданина, исследованы факторы, влияющие на состояние обеспечения прав и свобод человека и гражданина в Украине.*

**Ключевые слова:** права человека, свободы человека, гарантии реализации прав и свобод человека и гражданина, реализация основных прав, механизм правового регулирования.

### **Challenge problem**

Ukraine has taken the path of building a democratic state since independence. This should be based on the principle of the rule of law and recognition of rights and liberties of man and citizen. Everyone have authorized with inalienable and imprescriptible rights since the birth. The purpose of existence of Ukraine and of any other country is to ensure an enforcement of these rights.

A major problem of both domestic and foreign policies of all states of the international community is the rights and liberties of an individual and a citizen today. The state level of enforcement of human rights and liberties is a measurement of state democratic development.

### **A review of recent studies and papers**

The problem of the realization of human rights in Ukraine was researched by V. Boutkevitch, E. Zakharov, V. Kolesnichenko, O. Kostenko, P. Rabinowitch and others.

### **Remaining challenges**

There is a need for fundamental studies of guarantees of the realization of human rights, despite of the widespread studies of rights and liberties of man and of the citizen. Also, to identify ways to overcome arise obstacles in the implementation of the rights and freedoms of man and citizen in Ukraine. Constitution of Ukraine has been had for twenty-five years of Ukrainian independence most norms that are about human rights and liberties, but they did not become reality, and remained at the level of norms-declarations,

i.e. have a programmatic nature and must be implemented in the future.

### **Draw the objectives of research**

The aims of the article are to study the guarantees of fundamental rights and liberties of man and citizen, to define the problematic issues that exist in the implementation of human and civil rights and liberties in Ukraine, to find ways to overcome the obstacles that appear in the implementation of the rights and liberties of man and citizen in Ukraine.

### **Discussion**

An enacting clause of the Constitution of Ukraine said that «the Verkhovna Rada of Ukraine on behalf of the Ukrainian people – Ukrainian citizens of all nationalities, expressing the sovereign will of the people, aspiring to ensure human rights and freedoms, and life conditions worthy of human dignity, adopts this Constitution a Fundamental Law of Ukraine» [1]. The Fundamental Law of the country has a whole title devoted to human rights, freedoms and duties of man and citizen, more than forty-seven rules of law about human rights and only four about duties. Such attention to Human Rights indicates that the approval and protection of human rights and freedoms is the main duty of the state. Under the p. 2 art. 3 human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State. The state is responsible to the individual for its activity. This constitutional rule of law should be the basis of modern legislation. The level of development of the state shows its relation

to the rights of man and citizen. According to J. Donnelly, «human rights should be treated as a national interest» [8, p. 218].

P.M. Rabinovich wrote that «human rights – it is human capacity, which are necessary for existence and development in specific historical conditions, and are determined objectively by attained level of human development and have to be general and equal for each and everyone» [7, p.5]. The principle of equal rights is embodied in Constitution of Ukraine. According to art. 24 rights and liberties of man and citizen are not just inalienable and imprescriptible, and recognized by the State, but also rights and freedoms of human are ensured and shall not be abolished by the State. Under the art. 22 of Fundamental Law the constitutional rights and freedoms shall be guaranteed and shall not be abolished. According to p. 3 art. 22 of Constitution of Ukraine: «The content and scope of the existing rights and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws» [1]. «Human freedom – it is not just human capacity to act and to eliminate any obstacles in their realization. There are system of cultural, socio-economic, political and legal guarantees of rights and freedoms in each society to determine relations between man and state, and to create real capabilities of realization of rights and freedoms» [9, p. 184]. Human rights are consensual by the nature therefore they play an important role in peace-making in society and ensuring stability of its development [10, p. 35]. Current Constitution of Ukraine has assumed as a basis the western concept of human rights and has foretold that human rights prevail over society. The purpose of the state – to provide and guarantee human rights. For this reason, paragraph 1 of art. 92 of the Constitution of Ukraine notes that the rights and freedoms of the person and the citizen, a guarantee of these rights and freedoms, fundamental duties of the citizen are determined only by laws of Ukraine [1].

Different constitutions of foreign countries embodied a special body of constitutional control or constitutional supervision (in Ukraine it is the Constitutional Court of Ukraine). The main work of this body is to ensure the rule of the basic law, including

fundamental rights and freedoms of human and citizen. As A.O. Selivanov and A.A. Strizhak said, in the sphere of individual rights and freedoms, the Constitutional Court ensures consistency and adjusts regulations, establishing their compliance with the Constitution of Ukraine, checks for the legitimacy of state invasion of personal freedom. Scientists notice, and we should agree with them, that the criterion for the legality are constitutional provisions of the working Constitution of Ukraine, which should be duly specified in the legislation [11, p. 180]. According to S. Shevchuk, «restrictions on realization of fundamental rights and freedoms established by positive law, must complied with the criteria of rationality, social necessity and proportionality. Activities of the constitutional courts and international jurisdictional bodies (European Court of Human Rights) fit the most to provide their proper guarantee, which promote the full recognition of judicial precedent as source of law» [12, p. 28].

On June 17, 1997, the Verkhovna Rada of Ukraine ratified the European Convention on Human Rights (1950). Ukraine looked up to generally accepted universal values and European standards. That led to ratification of the protocols to the European Convention on Human Rights, including the Protocol №11. The jurisdiction of the European Court of Human Rights had been governed throughout Ukraine since that time. That decisions were binding on the entire territory of Ukraine according to article 46 of the European Convention. Ukraine adopted the Law «On implementation of the decisions and the application of the European Court of Human Rights» № 3477-IV of 23.02.2006 [13], that was intended to regulate the relations arising in connection with the State's duty to comply with the decision of the European Court of Human Rights in cases against Ukraine; to eliminate the violation by Ukraine of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; to implement of the European human rights standards in the Ukrainian legal proceedings and administrative practice; to create prerequisites for reducing the number of applications to the European Court of Human Rights against Ukraine. The European

Court of Human Rights drew attention to the fact that human rights must be seen and provided not only theoretical and illusory, but as a concrete and active rights [4, p. 90]. Situation that has developed today about amount of applications to the European Court of Human Rights against Ukraine is one of the highest, evidenced by statistics of the Court in 2015, which promulgated the chairman of the European Court of Human Rights Guido Raimondi at a press conference in Strasbourg. Ukraine remains one of the leaders of the number of cases as in previous years that considered by the European Court of Human Rights. Yes, we have retained the lead position of the number of applications which were submitted in the court. On 65,000 cases about 21.4 % – submitted against Ukraine. In the second place – Russia with 14.3%, in the third – Turkey (13%). The overwhelming number of Ukrainian cases – old property disputes related to the decisions already taken in the Ukrainian courts. Although, we are leaders in the amount of cases only, and if counted by the number of people, Ukraine is not a leader and took thirteenth place, the worst variables are Hungary, Liechtenstein and Moldova. By the number of court decisions about violations of human rights rendered by the European Court of Human Rights in 2015, Ukraine – in fourth place, throughout year was 50 decisions. The first place is occupied by Russia (109), followed by – Turkey (72) and Romania (72) [15].

Today, there are many obstacles in the realization of the basic rights and freedoms of man and citizen. This is deeming, on the one hand, the low level of legal awareness and legal culture of representatives of state and local authorities, individual citizens, the lack of interaction of state bodies, the lack of expertise of the legislation and rule-making about observance of human rights, poor governance, lack of practice monitoring of realization of human rights, and on the other hand, it is the transitional nature of the state and society. To overcome these obstacles, the state should create real guarantees not only the realization of fundamental rights and freedoms of human and citizen, but also provide them with adequate protection. Considering the issues of realization of rights, there are three

components of the structure of the enforcement mechanism: 1) providing mechanism (the introduction to enforcement of the citizens' rights); 2) the mechanism of realization (the actual implementation of these rights); 3) ensuring mechanism of rights and freedoms, which should be effective as of violation of the rights and renewed rights [16, p. 123]. The enforcement of basic human rights – is the process of their materialization, during which everyone gets the benefit, which is the content of the rights. Ensuring of basic constitutional rights is to create favorable conditions for their enforcement and protection. These favorable conditions are guarantees. Thus, the core of the process to ensure the fundamental rights and legitimate interests of man is the creation of guarantees of their enforcement [17, p. 102]. As rightly pointed E. J. Lukashev, «social development put forward and will again put forward new challenges, increasingly complex situations that require adjustment of parameters of relations «the human – the state». But at the same time the principle of individual freedom as its highest value should remain unchanged» [18, p. 17]. In the legal literature, there are many approaches to the determination of the content of the guarantees. Some scientists mean by these concept tools, methods of actually ensure rights and freedoms of citizens, others – tools, methods and conditions for ensuring effective implementation granted to citizens of democratic rights and freedoms, the third – the conditions, methods and tools to ensure the actual possibility of using the democratic rights and organizational and legal tools for their protection. Under the constitutional guarantees of fundamental rights and legitimate interests understand the general conditions and special (legal) tools enshrined in the Constitution and other legal acts that create the actual possibility to use fundamental rights, to satisfy the interests and to protect them reliably [19, p. 49]. Much attention is paid to the analysis and classification of legal guarantees in the legal science, including in constitutional law. At the same time, there are different points of view on the classification of guarantees. Almost all authors are unanimous in saying that allocate general and special guarantees. The differences mainly arise about a specific

accessory of institutional guarantees. Some scholars have identified them as a separate group of guarantees in addition to general and legal [20, p. 194-203], others include them in the general guarantees [21, p. 30], and others – in the legal [22, p. 25]. In our opinion, the general safeguards are: economic, political, social and ideological. Special safeguards are legal and organizational. General guarantees are aimed at ensuring the realization of human rights and freedoms and at their protection in cases of infringement, and combine all objective and subjective factors.

Political guarantees, which are closely linked to the existing political order, are: democratic, legal and social state, national sovereignty, separation of powers, political pluralism, freedom of speech, etc. The economic safeguards include: existing in the state ownership, the availability of market relations, economic freedom of citizens, the free choice of the forms and types of work, the presence of various forms of business activity. The social guarantees are: state social security in case of disability due to illness, unemployment, disability, old age, establishing a living wage, etc. For ideological guarantees are: the lack of censorship, the lack of a mandatory ideology, ideological pluralism of social life, as well as promote the development of national minorities and indigenous peoples living in the territory of Ukraine.

Special guarantees are system of legal tools and effective rights of the state bodies, of officials and civil groups, which contribute to processes of enforcement, protection and renewed the rights and freedoms of legal entities, their content is to provide of state-power generally binding character of the human rights and their protection. Legal guarantees have constitutional and legal forms of consolidation. Thus, the constitutional guarantees are: appeal in court the decisions of the state bodies and officials; the right to compensate of losses caused by unlawful decisions of the persons or entities acting on behalf of the state; the right to legal assistance; the opportunity to receive information on the content of rights and duties; the presumption of innocence of the person; the possibility of restricting the constitutional rights and freedoms. Institutional guarantees are characterized

as effective rights of state officials and civil groups to create necessary conditions for the realization of the rights and freedoms (it is the existence of the Verkhovna Rada of Ukraine, which is through the adoption of laws determines not only the rights and freedoms, but also reinforces the guarantees of their enforcement; the President, who acts as a guarantor of fundamental rights and freedoms of citizens and the guarantor of the Constitution of Ukraine; the Cabinet of Ministers of Ukraine, carries out measures aimed at ensuring the rights and freedoms; the local state administrations shall ensure in the territory of a certain administrative-territorial units the rights and freedoms of man and citizen; the bodies of local self-government, the judiciary and the prosecutor's office). The presence in Ukraine of the Ukrainian Parliament Commissioner for Human Rights is supplementary constitutional guarantee of enforcement of fundamental rights and freedoms of human and citizen.

There is a relatively stable understanding in legal science of the concept of mechanism of legal regulation as a system of legal tools, which are the most organized in a consistent manner to overcome the obstacles standing in the way of satisfying the interests of legal subjects [23, p. 145]. Therefore, the aim of the state is not only to ensure the rights, freedoms, and to minimize the impact on its negative impact in the socio-economic processes. On the one hand, excessive protection of the state can lead to a narrowing of the range of rights, freedoms, and therefore could appear a totalitarian political regime in which the state has total control over the individual, interferes in all spheres of human life. On the other hand, the restriction of functions of the state (the directions of the state influence on social relations), or the elimination of the state as an organization, will lead to a political crisis, will contribute to the emergence of conflicts and the establishment of the unstable political situation.

### **Conclusions**

In summary, it should be noted that human rights in Ukraine can be realized on the assumption that the authorities radically change their attitude to the adoption and protection of human rights, the implementation of its main

objectives. The key idea of all democratic countries today is respect for human rights and freedoms. No matter what course and na-

tional idea are declared by state, but matters a person with her/his rights and freedoms, her/his interests which should be in the center.

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