

GENESIS OF THE FORMATION AND DEVELOPMENT OF HUMAN RIGHTS IN THE FIELD OF NATIONAL SECURITY

The article is devoted to the study of the genesis of the formation and development of the human rights in the field of national security and to clarify the future legal model of national security in the term of human rights. The purpose of the article is to elucidate historical background and genesis of human rights in the field of national security. The research methodology is based on the general scientific dialectical method of scientific cognition. In addition, for the more comprehensive research of the genesis of human rights in the field of national security special scientific methods were used, in particular, historical-legal, formal-legalistic, formal-logical, contextual method of prediction. In article argues that the degree of protection of human and civil rights and freedoms from their violation is determined by the level of guarantee of each of these rights and freedoms. In accordance with principle of guarantee of the human rights and civil rights and freedoms, their strengthening is carried out both directly in the Constitution of Ukraine and in the current legislation. Position according to which state can choose to select a course that ensure national security in order to create a favorable condition for social development and provide the protection of the vital interest of the individuals, society and the state itself from internal or external threat can be called a policy of a national security. It is emphasized that the current stage of the development of the human rights in the national security began with adopting of the Association Agreement between Ukraine, on the one hand, and European union, the European Atomic Energy Community and their Member States, on the other. It is stated that among the fundamental human rights in the context of ensuring the right of national security to its subjectivity is a right to security, which has a feature of absolute right and at the same time is a subjective right in a specific legal relation in the field of national security. The right to security in the concept of human subjectivity has axiomatic significance as the initial formula of human-centered legal reality. It is concluded, that legal norms that constitute the core of the institution of national security law should be the norms of human rights in the field of national security, and the principle of ethnocentrism should be the basis of the national security law. In Ukraine the process of reforming human rights legislation in the aspect of national security is ongoing and needs further improvement. In particular, in terms of development and adoption of the Cyber Security Strategy of Ukraine, a long-term planning document, which determines the priorities of national interests of Ukraine in the field of cybersecurity.

Key words: human rights, national security, rule of law, genesis of human rights, cybersecurity, human rights doctrine.

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Introduction

Over the last decades, interest in the concept of human security in Ukrainian jurisprudence, and in foreign researches has increased, issues of questioned problems have become relevant in the context of non-military threats. In current time in discourse of social sciences is reviewing the starting point for determining security from state to the person that create the need of develop new aspect of the problem – security of person. In this case, the accent of researches has shifted from threat of use of force and state control to the analysis of non-military threat, such as, violation of the human rights, global warming, adverse environmental conditions, hunger and poverty, health security. The key factor was a change of sources of threats, their global multilevel nature, the ability of the threats to flow across the borders of one state to another, from one region or even continent to another (Зіатдінов, 2020). According to N. Konyshev (Коньшев, 2014), an alternative of to the state-centric approach in the field of security policy as referent of security, came in the late XX century. The concept of security of person challenging state-oriented meaning of security focusing on person as main referent of security. Scholar stated, first of all, policy of security must be focused on neutralizing threats to personal security, and secondary, that responsibility for security also lies with the individual (public groups), in this way, the state is given only the role of tool and not independent subject of politics (Коньшев, 2014). The main proponents of this approach are post-positivists (including representatives of post-Marxism, postmodernism, constructivism and feminism), who proposed that the main referent of security be the individual (public groups), but not the state. Another problem is the absence of a single definition of person security in political practice. On the other hand, different organization, including international, and even doctrinal documents of individual states widely interpret the definition of person security. At the same time for the better understand and establish patterns and predict the future of the development of human rights in the field of national security, the task is to explore key preconditions and historical periods of these rights, to identify gaps in the legal field.

The study of the genesis of human rights in the field of national security is based on the results of studies of well-known domestic and foreign scientists, including: V. Antonov, I. Aristova, V. Abramov, P. Bogutsky, M. Hrushevsky, D. Ziatdinov, V. Konyshch, M. Pushak, G. Sytnyk, V. Smolyanyuk, E. Titko, V. Fedorenko, H. Yuskiv and others. Despite the development of a number of theoretical and legal studies of certain aspects of the theory of human rights to security, the peculiarities of their origin and development in Ukraine require a deeper scientific understanding.

The purpose and goal of the study

The purpose of article is to clarify historical backgrounds of formation and genesis of the human rights in the field of national security. The methodology of this study is based on the general scientific dialectical method of scientific knowledge. And of course, for a more comprehensive study of genesis of human rights in the field of national security, it is also used special scientific methods were also used, in particular, historical-legal, formal-legal, formal-logical, contextual method of prediction.

Presentation of the main material

Analyzing the scientific aspects of the formation of constitutional-legal principles in the field of national security of Ukraine, it should be noted, that they appeared as extremely complex, contested and long, but very important and necessary for sustainable development process of society and state. The preconditions for this process were laid in different historical epochs, which were mediated by a number of economic and political factors: social division of labor, the emergence of private property, social differentiation members of society and class formation, the struggle for economic and political power. Practically all nations have gone through this process. In the Kievan Rus, where the leading direction in the development of the method of organizing the ordering of the state system of society and organizing the joint life of people and ensuring their security is the genesis of the statehood of the Eastern Slavs, where the main form of pro-state ordering is the principalities as tribal groupings of society, headed by tribal leaders (princes) , it is in the figure of the prince that all power is concentrated, but his main role was to protect society from external threats «to lead the army» (Грушевский, 1906).

That's why first period of the development of human rights in the field of national security should be considered the period of existence of Kievan Rus as a state (IX–III centuries). In fact, the customs regulated and resolved the issues of protection and security of Kievan Rus, served as legal basic of functioning of the military organization of ancient Kievan society. (Тацій, Рогожина, Гончаренко, 2003).

However, at the beginning of XIII century, the process of fragmentation of Kievan Rus intensified significantly, which strongly effected on the increasing numbers of endless confrontations and infighting, which resulted in the separation of the armed forces of the Russian state. This process actually questioned not only the combat effectiveness of the state itself, but also the level of its security.

The defining and turning point in the development of human rights in the field of national security was a period from the middle of the 20th century until nowadays. The adoption of the Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly Resolution 7 217 A (III) of December 10, 1948, should be considered a strategically important stage in the development of legal protection of human rights. In this international treaty declares that every person is entitled to all rights and freedoms, set forth in this declaration, without to race, sex, color, religion, political and other opinions, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (Верховна Рада України, офіц. сайт, 2021). This provision, first of all, proves that the world community recognizes human life, human freedom, honor, dignity and the right to security and inviolability of the highest social values and the object of special legal protection.

With the creation of the United Nation Organization, UN Charter proclaimed that united people seek to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and to be a center for harmonizing the actions of nations in the attainment of these common ends. (Верховна Рада України, офіц. сайт, 2021) International Covenant on Civil and Political Rights (ICCPR) (adopted in 1966, entered into force in 1976) (Верховна Рада України, офіц. Сайт, 2021) one of the key international human rights treaties, the ICCPR declares that all people have a broad range of civil and political rights and sets up ways to monitor their respect by the member states. Ukraine, after ratifying this agreement took this responsibility. These provisions confirmed in the Final Act of the Conference on Security and Cooperation in Europe in 1975 (Верховна Рада України, офіц. сайт, 2021).

The Law of Ukraine “On Fundamentals of National Security of Ukraine” adopted in 2003 (repealed on the basis of Law № 2469-VIII of June 21, 2018 (Тацій, Рогожина, Гончаренко, 2003)) defined main directions of state policy on national security and human rights to security, but unfortunately, so far, the policy still remains somewhat fragmentary, unbalanced and quite contradictory. In large part this is a result of the lack of qualified analysis and prediction of state national security policy in Ukraine, and also effective mechanism of its implementation (Ситник, 2010). In this regard, the main landmark and vector must be aimed on balancing guarantees of respect for human and civil rights and freedoms in the system of national security as a whole. V. Antonov presumes, the degree of protection of human and civilian rights and freedoms from their violation is determined by the level of guarantee of each of these rights and freedoms. According to the principle of guarantee of human and civil rights and freedoms, their consolidation is carried out both

directly in the Constitution of Ukraine and in the current legislation. The state must choose a course, which can ensure national security in order to create favorable conditions for social development, as well as ensuring the protection of vital interests of the individual, society and the state from external and internal threats can be called national security policy. Its main goal and content is to ensure safety of important interest of Ukraine, as well as free development of person and flourished of all society and state (Антонов, 2017).

Approved by the Decree of the President of Ukraine of March 14 2016, № 92/2016 The Concept of Development of the Security and Defense Sector of Ukraine focused on determination ways to build national security and defends capabilities that will restore Ukraine territorial integrity within the internationally recognized state borders, to guarantee a peaceful future of Ukraine, as a sovereign and independence, democracy, social and legal state, and also ensure the creation of national crisis response system, timely detection, prevention and neutralizing of external and internal threat to national security, guarantee personal safety, constitutional human and civil rights and freedoms, cybersecurity, rapid joint response to crises and emergencies (Указ Президента України, 2016). At the same time the main objects of national security are citizens – their constitutional right and freedoms, and also life and health. Consequently, the main purpose of every legal and democratic state, which determine person as a highest social value, is to ensure proper living conditions, preserve health, honor, dignity, the right to self-recognition and of course private property (Кобко, 2018) However, in different cases, a person can be both an object and subject of legal relations in the field of national security.

According to P. Bogutsky, which should be supported, the law of national security determines a person as a highest subject of law, which subjectivity is justified by the legal nature, directly depends on ability to ensure national security. In the view of this, important right of human existence – the right to life, in fact proclaims the basic idea of national security in its anthropological sense. Other right and freedoms of person confirm and deploy the properties of the legal person as a subject of the law of national security and existing social relations, strategic communications (Богущий, 2020).

Citizens of Ukraine take a part in civil control through public associations which of they are members, through local council deputies, personally by appealing to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights or state bodies in the manner prescribed by the Constitution of Ukraine, the Law of Ukraine “On public associations” and other laws of Ukraine. The sphere of public supervision may be limited exclusively by the Law of Ukraine “On State Secrets” Citizens who believe that their rights, freedoms or legal interests have been violated by decisions, actions or inactions of the security and defense sector or their officials, have a right to appeal to the court, Commissioner of the Verkhovna Rada of Ukraine for Human Rights, use any other protection mechanism of rights and freedoms provided by the legislation of Ukraine (Articles 10, 11 of the Law of Ukraine “On National Security of Ukraine”).

Further prospect of Ukraine's integration into the European Union, primarily depends on the state of national security within the country. After all, rightly noted by L. Polyakov (Поляков, 2021), in Ukraine and EU both have the same fundamental values, that need to be preserved and secured. In particular, the value condition for accession to the EU, according to the Treaty on European Union, is the observance by the candidate country principle of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law; readiness to build trust, stability, independence and the effectiveness of institutions that guarantee democracy and the rule of law. As for Ukraine, declaring its intention to join the EU our country, absolutely, share such values, and even proved that it is ready to defend them.

Current stage of development of human rights in the field of national security started in 2014 with the adoption of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, ratified by the Law of Ukraine of 16.09. 2014 № 1678-VII (Верховна Рада України, 2014). According to the agreement, which is predominantly economic in nature, the parties agreed to strengthen cooperation in justice, freedom and security in order to ensure rule of law and respect for human rights and fundamental freedoms. There are no provisions on specific actions and obligations in this document, it largely emphasized the European political and legal course of Ukraine and European security principles. The Law of Ukraine "On National Security of Ukraine" adopted on June 21 2018, finally defined and consolidated the priority of human rights in the field of national security. Modern state policy in the field of national security and defense is aimed at protecting: peoples and citizens, their life and dignity, constitutional rights and freedoms, safe living conditions; society – its democratic values, welfare and conditions for sustainable development; the state – its constitutional order, sovereignty, territorial integrity and inviolability; territory, natural environment, from emergencies. The main principle, which determine the procedure for formulating state policy in the field of national security and defense include: 1) rule of law, accountability, legality, transparency and compliance with the principles of democratic civilian control over the security and defense sector and the use of force; 2) compliance with international law, participation in the interest of Ukraine in international efforts to maintain peace and security, interstate systems and mechanisms of international collective security, etc.

Today, it should be presumed, that Ukraine as a state, proclaims that each state has a right to guarantee its own security by integrating into such security structures, that best suit its interests. By abandoning the policy of non-alignment, Ukraine is building new approaches to national security, giving priority to participation in the improvement and development of Euro-Atlantic and European system of collective defense. And for that Ukraine will seek to integrate into European political, economic, legal space in order to get EU membership, as well as deepen

cooperation with NATO to achieve the criteria necessary for membership in this organization (Криштанович, Пушак, Флейчук, Франчук, 2020).

It is necessary to presume, that among fundamental human right in the context of ensuring the right to national security of its subject is the right to security, which has the characteristics of absolute law and at the same time is subjective right in a certain legal relation in the field of national security. The right to security in the concept of human subjectivity has axiomatic significance as the initial formula of human-centered legal reality. At the same time, human rights to security forms a corresponding institution of natural security law (Богуцький, 2020). Thus, the legal norms that constitute the institution of national security law at the core should be norms on human rights in the field of national security, and the principle of ethnocentrism should be the basis of the field of national security law.

Conclusions

Legal relations on ensuring human rights in the field of national security historically have public and legal nature and are aimed at establishment peace, ensuring and guaranteeing by the state the right of every person on personal and public security. The main qualitative changes in the system of legal relations of individual rights in the field of national security took place in the 20th and early 21st centuries. This period that witnessed the reappraisal of such rights and finally affirmed life and health and human rights to security as the highest social value of mankind. In Ukraine, the process of reforming human rights legislation in terms of national security is ongoing and needs further improvement, in particular, in terms of development and adopting of the Cybersecurity strategy of Ukraine is a long-term planning document, in which determines the priorities of national interests of Ukraine in the field of cybersecurity, existing and potentially cyber threats to the vital interests of man or citizen, society and state in cyber space. In addition, the problem of state control of the main indicators of these rights is significant and relevant.

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ГЕНЕЗИС СТАНОВЛЕННЯ ТА РОЗВИТКУ ПРАВ ЛЮДИНИ У СФЕРІ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

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Статтю присвячено дослідженню генези становлення та розвитку прав людини у сфері національної безпеки, а також з'ясуванню майбутньої правової моделі забезпечення національної безпеки в аспекті забезпечення прав людини. Мета статті полягає у з'ясуванні історичних передумов формування та генези прав людини у сфері національної безпеки. В основу методології дослідження покладено загальнонауковий діалектичний метод наукового пізнання. Крім того, для більш всебічного дослідження генезису прав людини у сфері національної безпеки використано також спеціально-наукові методи, зокрема, історико-правовий, формально-юридичний, формально-логічний, контекстуальний метод прогнозування. У статті аргументується, що ступінь захищеності прав і свобод людини та громадянина від їх порушення визначається рівнем гарантованості кожного з цих прав і свобод. Відповідно до принципу гарантованості прав і свобод людини і громадянина їх закріплення здійснено як безпосередньо в Конституції України, так і в чинному законодавстві. Обґрунтовується позиція, згідно з якою держава має обрати курс, який забезпечує національну безпеку з метою створення сприятливих умов для суспільного розвитку, а також забезпечення стану захищеності життєво важливих інтересів особи, суспільства і держави від зовнішньої і внутрішньої загрози, і він може бути названий політикою національної безпеки. Наголошується, що визначено, що сучасний етап розвитку прав людини у сфері національної безпеки розпочався із прийняттям Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони. Наголошується, що серед основних прав людини в контексті забезпечення правом національної безпеки її суб'єктності є право на безпеку, яке має ознаки абсолютного права та водночас є суб'єктивним правом у конкретних правовідносинах у сфері національної безпеки. Право на безпеку в концепції суб'єктності людини має аксіоматичне значення як вихідна формула людиноцентризму правової реальності. Зроблено висновок, що правові норми, що становлять інститут права національної безпеки, ядром мають становити норми про права людини у сфері національної безпеки, а принцип етноцентризму має бути покладений в основу галузі права національної безпеки. В Україні процес реформування законодавства у сфері прав людини в аспекті забезпечення національної безпеки триває та потребує подальшого удосконалення, зокрема, в частині розробки та прийняття Стратегії кібербезпеки України, що є документом довгострокового планування, в якому визначаються пріоритети національних інтересів України у сфері кібербезпеки.

Ключові слова: права людини, національна безпека, верховенство права, генезис прав людини, кібербезпека, доктрина прав людини.