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## PROTECTION OF RIGHTS AS A MECHANISM OF PUBLIC MANAGEMENT

### ПРАВОЗАХИСТ ЯК МЕХАНІЗМ ПУБЛІЧНОГО УПРАВЛІННЯ

*The fact that the state's enforcement of human rights and law enforcement functions must be ensured with the help of consistent determination of subjects, principles, methods to it was grounded. It was determined that the special place among these components belongs to institutional element. It was defined that it is a public and private phenomenon, and a factor of improvement of the mechanisms of human rights state policy.*

**Key words:** *state policy, mechanism of human rights, public and private phenomenon.*

*Обґрунтовано, що виконання державою правозахисної і правоохоронної функцій повинно відбуватися за допомогою системного визначення суб'єктів, принципів, способів тощо. Визначено, що серед цих складових особливе місце займає інституційна. Установлено, що вона є публічно-приватним явищем і чинником удосконалення механізмів правозахисної державної політики.*

**Ключові слова:** *державна політика, механізм правозахисту, публічно-приватне явище.*

**Problem setting.** The task of constitutional state building, achievement of independent standards of human rights protection, observance of the Constitution, legislation and international regulations is especially urgent for Ukraine. The state of protection of human and civil rights and freedoms in Ukraine is an evidence of improper political and legal conditions of its provision. This, in turn, complicates the situation with domestic policy, causes social tension and aggravates the country's international position. All these facts demonstrate the relevance of the research of the peculiarities of implementation of human right function in the country.

**Recent research and publications analysis.** The functions of the state, including human rights and law enforcement of interests of the country, society and individuals are covered in the scientific works by V. Bakumenko, Yu. Garyacha, N. Karpachova, N. Karpeko, A. Kolodii, O. Lutkovska, R. Mullerson, A. Pomaza-

Ponomarenko, P. Rabinovich, O. Samofalova, V. Shapoval, M. Shulga, R. Voitovich, K. Volynka, O. Yevsyukov and others [2; 4; 6].

**Paper objective.** Marking the scientific achievements of these scientists, it should be noted that there is the need in comprehensive description of mechanisms of human rights state policy as a public phenomenon, and of the peculiarities of the state policy in this field. Our paper objective is based on this.

**Paper main body.** In the state policy, human rights protection component is not eloquent and significant, while the conditions and guarantees of human rights protection, which remain mainly at the level of declarations, are not systemic and equal for everyone. Meanwhile, the regulatory and organizational framework is available in Ukraine, and the index of law-enforcement officers' numbers is high enough to implement law-enforcement and human rights protection functions. Nevertheless, the inefficiency of law-enforcement agencies in Ukraine is defined by the quality of personnel and financial provision. The withdrawal of law-enforcement officers from the discharge of their duties, misuse of powers, direct violation of the rights of citizens by them and arbitrariness cause the relevant attitude to them in Ukrainian society [1].

As of today, the tendency of applying force (coercion, intimidation) towards citizens dominates over the law-enforcement and human rights protection methods. The indices of Ukrainian citizens' distrust of law-enforcement agencies and judicial system, which are intended to protect human and civil rights and freedoms, have reached a critical level, particularly in comparison with the level of trust in social institutions and state authorities.

The poll carried out by the Democratic Initiatives Foundation and Razumkov Centre's sociological service demonstrates that citizens assess the activity of law-enforcement system extremely negatively: the activity of police was positively assessed by 26 percent of respondents and negatively – by 64 percent; the activity of prosecutor's office – 23 percent and 64 percent respectively; the activity of courts – 20 percent and 69 percent respectively. Moreover, the following dangerous tendency develops: a part of citizens (19 percent of respondents) treats lynch law as “a single way of justice,” a significant part (35 percent of respondents) considers lynch law “inadmissible in general, but justified in certain cases,” and 38 percent of respondents consider it “inadmissible” [5].

The right to justice is one of the key problems of Ukraine. Nevertheless, the share of unexecuted decisions of national courts is supercritical, as it reaches 70 percent (according to the Ministry of Justice of Ukraine) [4]. This means that even after a court decision, only a part of citizens is able to achieve justice. Moreover, due to the low level of trust in judicial system in Ukraine, the citizens have to seek assistance in the international institutions. Ukraine is one of those countries, the citizens of which apply to the European Court of Human Rights the most frequently. It should be noted that its decisions are mostly not executed as well. As a result, Ukraine's positions in international rankings are low when the standards of human rights, corruption overcoming, etc. are assessed. A special concern is

caused by a negative dynamics of these rankings, as it has not only reputational consequences, but also the economic ones, which are connected with the investment attractiveness of the country. In their reports, such international human rights organizations as Human Rights Watch and Amnesty International indicate deficiencies in the system of criminal justice and the absence of guarantees of the rights of detained persons in Ukraine, torturing of the detained persons, pressure on and persecution of the representatives of mass media and public activists [3].

Thus, the fact that the state authorities do not properly protect the rights of citizens, while the citizens mainly do not apply to them in case of violation of their rights, is dangerous for the social and political stability, as under the condition of further weakening of the law-enforcement and human rights protection function of the state authorities, the solution of conflicts in the society shifts outside legal framework, while the public legitimacy of power appears under threat. The institute of advocacy is intended to help in the solution of the indicated situation. Based on the Article 131<sup>2</sup>, there is advocacy in Ukraine for professional legal assistance provision. Only an advocate represents another person in court and defends this person from criminal charge. It should be emphasized that based on the p. 16<sup>1</sup> of the Transitional Provisions of the Fundamental Law of Ukraine, representation of the state authorities and local self-government in courts will be carried out only by prosecutors and advocates (starting from January 1, 2020). Therefore, we consider the fundamental analysis of, first, the peculiarities of development of the institute of advocacy as a social and legal one, and second, the activities of Ukrainian human rights organizations and movements as a promising direction of scientific studies. Despite the fact that the influence of NGOs on the field of human rights and the degree of ‘penetration’ of their control is much lower than the state one, this influence has clear tendency to development.

There is a noticeable demand on this activity in Ukrainian society. Thus, according to the results of research carried out in May 2013 by the Democratic Initiatives Foundation and Razumkov Centre’s sociological service, 57.4 percent of respondents consider that NGOs shall chiefly deal with the protection of socially vulnerable groups, 49.7 percent consider that they shall provide people with legal and other assistance in the assertion of their rights, 45.5 percent think that they shall control the authorities, and so on [3].

In general, the environment of organizations of civil society, that is positioned as human rights ones, is heterogeneous and has different degree of effectiveness of activities. In this segment, the range of these organizations with long experience and efficient activities has been formed: Kharkiv Human Rights Protection Group, Ukrainian Helsinki Human Rights Union, Committee on Protection of Human Rights, Committee of Voters of Ukraine, Vinnytsia Human Rights Protection Group, International Society for Human Rights in Ukraine, International League for the Protection of the Rights of Ukrainian Citizens, etc. The indicated organizations are recognized as the leading ones in the ranking of human rights organization compiled by the experts [7; 8].

In addition, the efforts of civil society organizations are combined through the establishment of coalitions of human rights organizations and movements. It should be noted that the forms of and the methods used by human rights organizations are different: from the programmes and measures to the participation in authorized and unauthorized protest actions. Since the political and legal guarantees of human rights protection are insufficient in Ukraine, the range of human rights organizations and movements focuses their influence on political field by forcing law-enforcement authorities to deliver lawful judgements.

Sometimes the institutions of civil society harm the interests of society by their activities. Thus, 'oversaturation' of criminal content in the majority of mass media creates additional background of tension in the society. While minimum attention is paid to the information that may help citizens to protect their rights and interests, as well as to the information about successful human rights activities. It should be noted that human rights organizations extend the scope of their activities in the field of human rights protection and have already become firmly established in the structure of NGOs. Meanwhile, human rights organizations in Ukraine are traditionally dependent on foreign donors and are mainly linked to both international intergovernmental and international non-governmental human rights organizations instead of the state human rights institutions in Ukraine. Therefore, it is an urgent task for Ukraine to solve this problem situation with the purpose of provision of national security, which includes the interests of the country, society and individuals.

**Conclusions.** The establishment of effective system of human rights protection provides for the formation of comprehensive concept of changes in the field of interaction between state agencies and human rights organizations, and the implementation of targeted measures of the state policy. Meanwhile, the establishment of this system is favoured by the extension and intensification of the relevant public management mechanisms and practices, which are applied by human rights organizations. For this purpose, it is necessary to study the following issues: 1) the prospects of activity of the institute of advocacy; 2) the functioning of a special independent body to investigate crimes committed by officials, in particular the law-enforcement ones; 3) the expediency of development of additional mechanisms of control of the selection of personnel in law-enforcement and judicial systems by appropriate civil organizations; 4) the need in renewal of the format of public monitoring of human rights protection in the activities of law-enforcement agencies, etc.

#### References:

1. Analytical note on law-enforcement function implementation by the organizations of civil society. Web 31 March 2019 <<http://www.niss.gov.ua/articles/1283/>>.
2. Yevsiukov, O.P. "The role of advocacy in the organizational mechanism of state administration in the field of social and economic security." *Law and State Administration* 2 (2018): 61–66. Print.
3. *Civil sector and politics: interaction, neutrality or struggle? – nation-wide and*

*expert poll*. Web 31 March 2019 <[http://www.dif.org.ua/ua/polls/2013-year/gromadskii-sektor-i-politika-vzaemodija\\_-neitralitet-chi-borotba\\_---zagalnonacionalne-ta-ekspertne-opituvannja.htm](http://www.dif.org.ua/ua/polls/2013-year/gromadskii-sektor-i-politika-vzaemodija_-neitralitet-chi-borotba_---zagalnonacionalne-ta-ekspertne-opituvannja.htm)>.

4. Lutkovska, V. "Execution of court decision is an integral part of the fundamental right – the right to a fair trial." Web 31 March 2019 <[http://www.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=2700:2013-05-23-06-46-02&catid=14:2010-12-07-14-44-26&Itemid=75](http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2700:2013-05-23-06-46-02&catid=14:2010-12-07-14-44-26&Itemid=75)>.

5. *Assessment of the activity of law-enforcement agencies by the population of Ukraine (The research carried out by the Democratic Initiatives Foundation and Razumkov Centre's sociological service in April 2012)*. Web 31 March 2019 <<http://www.dif.org.ua/ua/polls/2012-year/1756.htm>>.

6. Pomaza-Ponomarenko, A.L. "The role of the institute of presidential power in the field of national security". *Theory and practice of state administration and local self-government: electronic collection of research papers 1* (2019). Web 31 March 2019 <<http://el-zbirn-du.at.ua/>>.

7. *Ranking of human rights organizations and human rights advocates of Ukraine. November 29, 2011*. Web 31 March 2019 <<http://galinfo.com.ua/news/99573.html>>.

8. *World report 2013. Ukraine*. Web 31 March 2019 <<http://www.hrw.org/world-report/2013/country-chapters/ukraine?page=3; Annual Report 2013>>.

#### **Список використаних джерел:**

1. Аналітична записка щодо здійснення правозахисної функції організаціями громадянського суспільства. URL: <http://www.niss.gov.ua/articles/1283/>.

2. Євсюков О. П. Роль адвокаційності в організаційному механізмі державного управління у сфері соціально-економічної безпеки // *Право та державне управління*. 2018. № 2. С. 61–66.

3. Громадський сектор і політика: взаємодія, нейтралітет чи боротьба? – загальнонаціональне та експертне опитування. URL: [http://www.dif.org.ua/ua/polls/2013-year/gromadskii-sektor-i-politika-vzaemodija\\_-neitralitet-chi-borotba\\_---zagalnonacionalne-ta-ekspertne-opituvannja.htm](http://www.dif.org.ua/ua/polls/2013-year/gromadskii-sektor-i-politika-vzaemodija_-neitralitet-chi-borotba_---zagalnonacionalne-ta-ekspertne-opituvannja.htm).

4. Лутковська В. «Виконання судового рішення є невід'ємною складовою фундаментального права – права на справедливий суд». URL: [http://www.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=2700:2013-05-23-06-46-02&catid=14:2010-12-07-14-44-26&Itemid=75](http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2700:2013-05-23-06-46-02&catid=14:2010-12-07-14-44-26&Itemid=75).

5. Оцінка населення України діяльності правоохоронних органів. Ставлення до самосуду (Дослідження проведене Фондом «Демократичні ініціативи» та соціологічною службою Центру Разумкова у квітні 2012 р.) [Електронний ресурс]. – Режим доступу: <http://www.dif.org.ua/ua/polls/2012-year/1756.htm>.

6. Помаза-Пономаренко А. Л. Роль інституту президентської влади у сфері забезпечення національної безпеки. Теорія та практика державного управління і місцевого самоврядування. 2019. № 1. URL: <http://el-zbirn-du.at.ua/>.

7. Рейтинг правозахисних організацій і правозахисників України. 29 листопада 2011 р. URL: <http://galinfo.com.ua/news/99573.html>.

8. *World report 2013. Ukraine*. URL: <http://www.hrw.org/world-report/2013/country-chapters/ukraine?page=3; Annual Report 2013>.