of the EU's core values. In turn, the content of the latter is disclosed through the interpretation of certain rights and freedoms of human and citizen, guaranteed by the Union.

It is noted that the European Union has reformed the general theory of electoral law, since it used to prevail in the concept of membership of political rights to elect and be elected to the authorities and self-government only in the presence of the national citizenship of the electoral state.

It is proved that the uniqueness of the EU citizens' rights system is determined by the right to good administration in the Charter. This right regulates the main benchmarks for the procedural activity of EU institutions in their relations with citizens.

The conducted research gives grounds to state that due to the uniqueness (supranationality) of the law of the integration association itself, the presence of such a phenomenon as the citizenship of the European Union, its citizens has more rights, compared with citizens of third countries. In particular, this concerns the electoral rights (the right to elect and be elected at elections of different levels) and the opportunities guaranteed in their relationship with the authorities - the institutions of the European Union.

Keywords: *citizen's rights; European Union; citizenship of the European Union; Charter of Fundamental Rights; electoral rights; good administration.*

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REFLECTIONS ON HANNAH ARENDT'S "THE PERPLEXITIES OF THE RIGHTS OF MAN", THE PROBLEM OF A REFUGEE AND THE PROBLEM OF A STATE OF EXCEPTION

Беркманас Т. Роздуми з приводу праці Ханни Арендт «Непорозуміння з прав людини», проблема біженця і проблема стану винятків. Мета цього короткого аналізу – надати певне уявлення про взаємозв'язок між концепціями і, разом з тим, явищами «прав людини», «біженця», «надзвичайної ситуації», а також «сучасної держави» і, нарешті, «права» в цілому. Незважаючи на те, що Ханна Арендт бачить біженця повністю за рамками права, її певні поняття, з одного боку, повністю організованого / цивілізованого людства, а, з іншого боку, його (тобто людства) нездатності створити універсальне / вічне право (як громадянських прав / прав людини), незалежне від суверенітету сучасної держави, вказують на невдачу сучасності / модернізму (як певного проекту) як тісно пов'язаного з ідеологією правового позитивізму. Ця невдача сама по собі робить біженця (як безправну людину) можливим. Завершальний лейтмотив аналізу полягає в тому, що урядам слід уникати надмірного використання винятків із сучасного конституційного регулювання (особливо, що має досить уніфікований / універсальний компонент прав людини), якщо вони хочуть пом'якшити це занепокоєння Арендт.

Ключові слова: *права людини, виняток, біженець, громадянські права.*

Formulation of the problem. Contemporary world, as a political-legal one, undergoes fundamental changes. We may differentiate between what happens more at the surface and what are the causes of that at deeper layers of the political-legal field. At surface we see masses of refugees marching to Europe from the Middle East and Sub-Saharan Africa, to the USA from Central America, to certain South America states from Venezuela, their basic rights being violated, we are constantly bombarded by a "terrorist threat" narrative, and so on. However, at the deeper level we may also discern certain, so to say, "design flaws" that also could be conceived as the causes of those phenomena. The design is that of a "modern/contemporary state".

Objectives of the article. In this presentation I will focus on two of those flaws – one is related to the human rights, another – to the state of exception/emergency. Both will be tied to the phenomenon and together a problem of a refugee.

Basic content. In the essay "The Perplexities of the Rights of Man" [7] Hannah Arendt relates the concept of a refugee to that of a state, primarily being the nation state. The form of this relation is total disjunction: refugee is stateless person. However, her idea is that statelessness (being totally *outside* any state, abandoned/unprotected by any state) corresponds to something totally outside any law/legality, it is the state of rigthlessness ("no law exists for them" [7, p. 36]); while being in the state corresponds to the being protected by law, being under the rule of law of a state as its citizen. Thus, she misses from sight the correlation between legal positivism, being the dominant functioning legal ideology of "modern democracy/state", and legal nihilism. Legal positivism, in itself and in some sense, provides with the vacuum of law. In the culminant ideology of legal positivism – that of Kelsen – legal norm is empty variable, it can have any content [2; 4-5]. And the content of the *Grundnorm* – the only norm that has contents under his pure theory of law – contains only the empowering of the omnipotent sovereign [4, p. 196]. This way, in terms of Giorgio Agamben, we are all the refugees in the campus, called "modern state", or, even more, all modern World is a big Campus with the inside 'barracks' called "states". In this context it does not matter whether we are, actually, stateless or in a state – it is the same situation of legal vacuum.

There is one place in Arendt's essay where we could sense that her approach is not so alien to that of Agamben. While talking about the calamity of modern phenomenon of proliferation of refugees – stateless persons, persons having not rights whatsoever – she states that:

This calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any 'uncivilized' spot on earth, because whether we like it or not we have really started to live in One World [7, p. 37-38].

Together with Agamben we could add that this One World is the Campus (Campus from the capital "C") [1, p. 176].[*] *However*, Arendt right after that states:

Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity [also – as she states in other place "any community whatsoever"] altogether [1, p. 38].

This passage shows that the fundamental problem that remains is exactly that of a possibility of *humanity* as something above the state and, even more important, state-al citizenship. In other words, the phenomenon of a state (with its law, its boarders, its citizenships and so on) in itself makes refugees possible. The only way to remake it or, on more Trumpian words, 'to make refugee human again', is to rise above the state with certain system of values. In some sense, we need stateless law for the stateless refugee. The main refugee related problem here is not the statelessness as possible condition of a human, but statelessness as possible condition of law/right, *stateless law* here meaning the one being beyond/above the state. This might be proved by Arendt's statement on the failures of modern politics, including the failures of the so-called modern liberal politics:

Civil rights … were supposed to embody and spell out in the form of tangible law the eternal Rights of Man, which by themselves were supposed to be independent of citizenship and nationality. All human beings were citizens of some kind of political community; if the laws of their country did not live up to the demands of the Rights of Man, they were expected to change them [1, p. 34].

In this context we could remember rather well-known thesis of Cicero:

True law is right reason conformable to nature, universal, unchangeable, eternal <…>. This law cannot be contradicted by any other law and is not liable either to derogation of abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal law of justice. It needs no other expositor and interpreter than our own conscience. It is not one thing at Rome, and another at Athens; one thing today, and another tomorrow; but in all times and nations universal law must forever reign, eternal and imperishable. It is the sovereign master and emperor of all beings. God himself is its author, its promulgators, its enforcer [3, p. 436-437].

It appears that in the 21th century we are *still* dreaming or, maybe, we are *once again* dreaming about, we may say so, very much *other l*aw than that of modernity. Modernity is the epoch of the law that can be changed and is changed. The conception, vision and, we may say so, reality of unchangeable law is lost there. We can ask: truly – what kind of the law it is, if it can be changed, if it can be today one, tomorrow – another? Is it *law* at all? Even if changed in accordance to the procedures? What kind of predictability and security we, actually, have here?

[*] "the camp … is the new biopolitical *nomos* of the planet".

Positive law is exactly this way dynamic, to use Kelsenian terminology.

To repeat a bit, the only way to stop this never-ending dynamics and unpredictability of law, is to have/institute law *without exceptions*, at any time, at any place and for whomever, be it citizen or refugee. Recently in Lithuania Aušra Vainorienė has defended her dissertation called "The Legal Grounds for the State of Emergency/Exception". Therein she reviewed various attempts at national and, more importantly, international (United Nations mechanisms, European system of the protection of human rights) level to somehow legally control this long-disturbing [6], phenomenon called "state of exception/emergency". There she writes:

It is noticeable that the provisions related to the state of emergency are more and more included into national law and/or become the part of constitutions. [Then] problems rise up on the compatibility of these provision with the international law. The Committee of the UN on Human Rights expressed concern that certain states have deviated from their international obligations on human rights by relying on such provisions of national law on the state of emergency that are in contradiction with Article 4 of International Covenant on Civil and Political Rights. State of emergency often coincides with the violations of human rights. … The most vulnerable groups in such cases are national minorities, refugees, also journalists and human rights activists [8, p. 135-136].

This passage clearly shows that internal/national constitutional regulation not only is a weak safeguard against violations of human rights under the pretext of state of emergency/exception but that also international law with certain unification attempts related to this conception (i.e. that of a sate of exception) fails. We still have very big diversity of the conceptions (both at scholarly and regulatory levels) of the state of exception in the world. As we know, Schmitt would not be surprised. For him, state of exception cannot be regulated in principle [6, p. 6-7]. It is just outside law and all attempts to put it into its scope are condemned to fail. Government will always have tools to manipulate the system if it deems needed to do so. Today one of the common means to do that is the concept (not phenomenon) of terrorism. As Aušra Vainorienė continues:

Terrorism has raised serious problems in the Western states [she has in mind the United Kingdom, Ireland and the USA] not because of its direct consequences but because this threat was used to justify long lasting exceptional measures. State of emergency, together with wide and abstract antiterrorist laws, can give to the government wide discretion, overstepping the limits set by the constitution [8, p. 136-137].

Conclusion. I think that people in the Ukraine, which now faces destabilized situation (or even *de facto* war) in its Eastern regions, should have a good sense of the perplexities of the practical and ideological configurations covered in this short analysis. But, to finalize, despite all the complicacies of the situation, I would only wish this country and its government to safeguard its Constitution (especially its human rights component) as much as possible, even if sometimes temptations to depart from its normative scope are pressing.

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SUMMARY

This short analysis aims at giving certain insights on the correlation among the concepts and together phenomena of 'human rights', 'refugee', 'state of exception/emergency', and also 'modern state' and, finally, 'law' in general. Despite that Hannah Arendt locates a refugee totally outside the scope of

law, her certain insights on, on the one hand, totally organized/civilized humanity and, on the other hand, its failure to institute universal/eternal law (as civil/human rights) independent of the modern state's sovereignty, point to the failure of the modernity (as certain project) as tightly tied to the ideology of legal positivism. In paradox, this failure itself makes a refugee (as a rightless human) possible. The finalising leitmotiv of the analysis lies in the thesis that governments should avoid overuse of exceptions to the modern constitutional regulation (especially as having rather unified/universal human rights component) if they want to temper this Arendt-type anxiety.

***Keywords**: human rights, refugee, exception, civil rights.*

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ЗАГАЛЬНА ДЕКЛАРАЦИЯ ПРАВ ЛЮДИНИ ООН І КОНСТИТУЦІЙНЕ ПРАВО США

Проаналізовано особливості сприйняття основних положень Загальної декларації прав людини ООН у Сполучених Штатах Америки. Доведено, що національна правова система США не сприятлива для визнання основних положень цього міжнародно-правового акта в якості керівництва з правового регулювання основних прав і свобод громадян країни-лідера світового співтовариства.

***Ключові слова:** міжнародно визнані права людини, конституційне право США, гуманітарна політика США.*

Постановка проблеми. Загальна декларація прав людини представляє собою перше глобальне вираження невід'ємних прав, які мають усі люди. Складена представниками багатьох країн, де існували та існують різні правові та культурні традиції, вона була проголошена Генеральною Асамблеєю ООН у Парижі 10 грудня 1948 року як єдиний стандарт захисту прав людини для всіх народів та всіх націй [1]. На жаль, у нас майже не згадують, що серед творців тексту Загальної декларації прав людини був академік В. Корецький. Більше того, уродженець міста Дніпро став автором першої статті Декларації: «Всі люди народжуються вільними і рівними у своїй гідності та правах. Вони наділені розумом і совістю і повинні діяти один щодо одного в дусі братерства». При тому лише за цю першу статтю всі члени комісії ООН проголосували без заперечень [2].

Незважаючи на те, що Загальна декларація прав людини була прийнята резолюцією Генеральної Асамблеї ООН і її правовий статус та юридична сила досі дебатуються, вона справила значний вплив на розвиток міжнародного права захисту прав людини, а її положення були включені до всіх сучасних багатосторонніх міжнародних договорів щодо захисту прав людини. Практика Міжнародного Суду ООН засвідчує, що універсальні стандарти прав людини, які були вперше закріплені у Загальній декларації прав людини, а потім знайшли своє відображення у Міжнародному пакті про громадянські і політичні права і Міжнародному пакті про економічні, соціальні і культурні права, широко застосовується у світі не лише у мирний час, а й під час збройних конфліктів. Тому не випадково Елеонора Рузвельт, американська громадська діячка, дружина президента США Франкліна Делано Рузвельта, назвала її Великою Хартією вольностей для всього людства, адже її положення є універсальними для всіх країн світу [3, p. 4-5].

На жаль, іноді наша держава дотримується її положень формально. Ось чому потрібно встановити, який зарубіжний досвід імплементації вказаного акта в національну