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Protection of human rights and freedoms as a component of the preventive function of the police force

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Abstract

The purpose of the research is to provide theoretical generalization and implementation of a complex scientific and applied task on the formation of a concept of the content of the protection of human rights and freedoms as a component of the preventive function of police forces, providing the development of proposals and recommendations aimed at improving legislation and law enforcement practice. The details of police officers' activities aimed at protecting human rights and freedoms were investigated. The methodological basis of the research was the dialectical method of scientific cognition used to visualize the legal, functional, organizational and procedural aspects of the protection of human rights and freedoms in the activities of law enforcement agencies. It is concluded that the effective performance of the task of enforcing human rights and freedoms, at least by the National Police of Ukraine, to some extent depends on the mechanism of adequate legal regulation of these activities by means of consistent laws and other normative legal acts.

Keywords: human rights; human freedom; protection; security; preventive function.

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La protección de los derechos humanos y las libertades como componente de la función preventiva de los cuerpos de policía

Resumen

El propósito de la investigación es brindar la generalización teórica y la implementación de una compleja tarea científica y aplicada en torno a la formación de un concepto sobre el contenido de la protección de los derechos humanos y las libertades como componente de la función preventiva de los cuerpos policiales, proporcionando el desarrollo de propuestas y recomendaciones encaminadas a mejorar la legislación y la práctica de aplicación de la ley. Se investigaron los detalles de las actividades de los agentes de policía destinadas a proteger los derechos humanos y las libertades. La base metodológica de la investigación fue el método dialéctico de cognición científica utilizado para visualizar los aspectos jurídicos, funcionales, organizativos y procesales de la protección de los derechos humanos y libertades en las actividades de los organismos encargados de hacer cumplir la ley. Se concluye que el desempeño efectivo de la tarea de hacer cumplir los derechos humanos y las libertades, al menos por parte de la Policía Nacional de Ucrania, depende en cierta medida del mecanismo de regulación legal adecuada de estas actividades por medio de leyes coherentes y otros actos jurídicos normativos.

Palabras clave: derechos humanos; libertad humana; protección; seguridad; función preventiva.

Introduction

Proclamation of Ukraine as a state governed by the rule of law places increased demands both on the power structures regarding clear legal regulation, its quality and efficiency, and on implementation of this regulation. At the same time, in the conditions of intensive rule-making and law-enforcement activities inherent in modern Ukraine, the problem of legal and technical perfection of legal acts is primarily actualized.

It is strengthened in connection with implementation of legal policy in our country, since domestic legal science has the task of developing a modern concept of defining the general principles, scope, methods, methodology of researching legal concepts and their interpretation. Effectiveness of implementation of legal acts of Ukraine depends on performance of these tasks, since the domestic legal framework was formed on the basis of properly Ukrainian legal acts, as well as laws and other legal acts adopted before the proclamation of Ukrainian independence, and therefore called

in the Ukrainian language - in this case terms are preserved but not always in their true meaning.

Ukraine has joined a number of international organizations, which makes it necessary to harmonize national legislation with the international law, in particular the law of the European Union. One of the requirements set by the majority of international organizations, whose membership Ukraine already has or is seeking to gain, is the harmonization of its legal acts with the legal norms and standards of these organizations, which will affect the meaningful conceptual unity of Ukrainian regulatory acts and other legal acts and legislation of the European Union.

The purpose of this article is to provide theoretical generalization and implementation of a complex scientific and applied task concerning formation of a theoretical concept about content **of protection of human rights and freedoms as a component of the preventive function of the national police bodies** providing development of proposals and recommendations aimed at improving legislation and law enforcement practice.

1. Literature review

In the theory of law, the mechanism of legal regulation, the mechanism of implementation of rights and freedoms and the mechanism of ensuring implementation of human rights and freedoms are distinguished. In addition to the mechanism of implementation of constitutional subjective rights and freedoms, the mechanism of ensuring implementation of these rights is of great importance. It is a component of the mechanism of implementation of subjective human rights and freedoms.

The need for such a mechanism arises when implementation of a constitutional subjective right does not require intervention of the state, its bodies and officials as a mandatory party in the process of implementation of this subjective right (Onishchenko, 2010). On the part of the state, only actions are needed regarding guarantee of rights and restoration of the violated right. The specified mechanism contains elements that contribute to creating conditions for exercising of freedoms, protection and defense against offenses, participation in reproduction of violated human rights.

Specifics of the mechanism concerning implementation of the function of protecting human and citizen rights by representatives of the NPU depends on their performing their functions and tasks, as well as on the principles of the law enforcement system. Law enforcement and human rights protection functions are a component of the multi-functional activity of the NPU. As an executive-administrative body of the state, the NPU has

the state-authority necessary to fulfill its duties and realize its humanistic purpose - namely protection of human and citizen rights in accordance with the current legislation and its own competence (Law of Ukraine, 2015).

Researcher Negodchenko believes that the mechanism of ensuring (enforcement of) human rights and freedoms in activities of the NPU includes the following elements: legal norms and legal acts as forms of their presentation; individual legal documents; legal facts; legal relations; subjective rights and legal obligations; forms and methods used to organize exercising of subjective rights and legal obligations (*Nehodchenko, 2003*).

According to Husariev, the phenomenon of the legal status of an individual determines relationship between this individual and the law used by the state to outline limits of possible activities for the subject, his/her position in relation to other subjects and, taking into account individual or typical characteristics of the subject the law reflects the full legal position of this individual, his/her certain unification or limitation (*Husariev, 2005*).

The concept of “mechanism of protection of human rights” and the concept of “mechanism of legal regulation” partially coincide. The latter covers legal norms - official rules with the model of human behavior; legal facts ensuring the validity of the rule of law; legal relations - specific models of behavior for subjects based on norms and legal facts; acts of realization of subjective rights and legal obligations in the form of observance, execution and use of the right; acts of application of legal norms; elements of legal awareness and legal culture (*Nehodchenko, 2003*).

However, the mechanism of human rights protection, unlike the legal enforcement mechanism, integrates all this in organization and actions of the police, it goes beyond legal regulation and it is also implemented in legal protection and defense. The following elements are integrated in the structure of the mechanism of enforcement of human rights: a) law-regulatory and law-enforcement mechanisms; b) conflict resolution mechanisms; c) identification, informational, organizational, promotional elements combined for procedural and legal regulation of behavior and legal education of individuals with the aim of satisfying legal rights and interests of people. This is manifested in the actions of citizens, their involvement in public associations, human rights non-governmental organizations, elections and other types of influence on state and local self-government bodies.

At the same time, during the period of the state sovereignty of Ukraine the subject of independent research in the national legal science was presented as only some organizational and legal principles of the mechanism of enforcement of fundamental rights and freedoms in activities of law-enforcement bodies. In view of this, relevance of the research is primarily due to the need to highlight content of **protection of human rights**

and freedoms as a component of the preventive function of the national police bodies.

2. Materials and methods

The research is based on works of foreign and Ukrainian researchers concerning **protection of human rights and freedoms as a component of the preventive function of the national police bodies.**

The role of the National Police of Ukraine in the system of enforcement of human rights was clarified with the help of the epistemological method; the conceptual apparatus was deepened thanks to the logical-semantic method, and the essence of the concepts “protection” and “defense” was defined. Components of such a mechanism of protection were investigated by using a system-based structural method. Structural-logical method was used to define the main directions for optimization of protection of human rights and freedoms in activities of the National Police of Ukraine.

3. Results and discussion

The legislation on human and citizen rights and freedoms in Ukraine meets high international legal standards; a democratic concept of the relationship between a person and the state has been established, according to this concept a person in Ukraine is recognized as the highest social value; the ratio and role of structural elements of a citizen legal status of a citizen are changing, since the priority belongs not his/her duties, but to his/her rights and freedoms.

At the same time, the current legal status of Ukrainian citizens is characterized by weak social and legal protection, insufficient guarantee of rights and freedoms, and the absence of the necessary security mechanisms. In Ukraine, the issue of not only the declaration, but also the possibility of exercising and protecting human and citizen rights is being addressed and updated. Human life requires real implementation of declared rights and freedoms, i.e. development of a legal mechanism for their enforcement, which should guarantee efficiency of rights, freedoms and duties determined by the Constitution.

Effectiveness of the principle of the rule of law established by Art.8 of the Constitution of Ukraine (Law of Ukraine, 1996) is conditioned by legal laws, the exercise of the state power on the basis of its division into legislative, executive and judicial ones, as well as by the equality of legal entities before the law and the court, the responsibility of the state to a person, and not

only that of a person to the state, recognition of personality, his/her life and health, honor and dignity, inviolability and security.

In the context of implementing the conceptual idea of the rule of law and international standards of human rights in Ukraine, actualized is the problem of filling with real content the rights and freedoms of a person and citizen established by the Constitution of Ukraine, giving them a real declarative status. Since the “reality of rights and freedoms of citizens” (its essence) is highlighted with the help of a system of interconnected material and procedural aspects of the mechanism of providing this reality (implementation, protection, defense) (Leheza *et al.*, 2021).

Also actualized is the problem of determining the role of the state, its bodies, in particular the National Police of Ukraine (hereinafter referred to as the NPU), in the provision of human rights and freedoms, as well as the limits of their interference and responsibility. The NPU, which is the central body of executive power that serves society by means of ensuring protection of human rights and freedoms, counteracting crime, maintaining public safety and order (Law of Ukraine, 2015) is the closest to the population in terms of their competences. Activities of NPU representatives are subject to the requirement of legality which is within the limits of the rule of law and consists in preventing arbitrariness in relation to a person. According to the type of legal regulation, the NPU should adhere to the principle of prohibition: “anything not directly permitted by the law is prohibited.” Therefore, procedures (processes) of implementing prescriptions of legal norms concerning protection and defense of human rights and freedoms are significant, which requires clarifying the specifics of professional activities of each unit in these processes (Leheza *et al.*, 2021).

The NPU faces important tasks in the context of Ukraine’s orientation towards joining the European Union, the leading one of these tasks consists in strengthening the authority of its employees among the population, transforming them into real servants of people, ready to provide timely assistance and guarantee protection of rights and freedoms to citizens of Ukraine.

Nowadays, every person increasingly understands that the essence of his/her rights and freedoms consists not so much in their declarative proclamation but faster in ensuring their implementation as well as in material, legal and other guarantees provided by the state and its bodies for their consistent and comprehensive implementation. Special law enforcement means play an important role among these guarantees.

Along with other legal institutions and law enforcement agencies the NPU belongs to the general system of guaranteeing rights and freedoms of individuals by the Ukrainian state. Effectiveness of activities in this direction is conditioned through broad powers provided by the Constitution

of Ukraine (Law of Ukraine, 1996), the Law of Ukraine “On the National Police” (Law of Ukraine, 2015) and other legislative acts in order to ensure legality and observance of human rights and freedoms by means of initiative (proactiveness), authority among the country’s population as well as by means of accessibility.

Observance of human rights and freedoms, formation of a proper and effective national system of judicial protection is one of the urgent tasks of the state. From now on, the main activity of our state is human rights and freedoms, and guarantees of their implementation. The Constitution of Ukraine entrusts the state with affirmation and provision of these rights and freedoms as its main duty. No wonder, in contrast to the previous appeal “A person for the state”, the Constitution of Ukraine in 1996 proclaimed a new one “The state for a person”.

The state is responsible to the people for its activity. Affirmation and provision of human rights and freedoms is the main duty of the state (Article 3). Philosophical development of the problems of human rights and freedoms (from liberal-humanistic positions) is associated with the name of I. Kant. The philosopher noted:

If there is a science that is really needed by a person it is the one that I teach, - and specifically, the one that properly shows a person his/her place in the world, that teaches what one must be in order to be a person (Bilous, 2019: 35).

The Constitution of Ukraine and the current legislation assign the function of protecting the rights and freedoms of citizens of Ukraine to the state represented by competent state bodies; and the state shall guarantee everyone the right to apply for protection of his/her violated rights (Leheza *et al.*, 2022).

One of the main tasks of the law-enforcement activities of the NPU is to ensure rights and freedoms and, above all, safety of people. The police (along with other law-enforcement bodies) is called to ensure operation of the mechanism of legal protection and defense of human rights and freedoms, its functions are various: from creating safe conditions for implementation of human rights and freedoms in public places to protection against criminal violations and encroachments on human rights and freedoms with the adoption of legal coercive measures (Skuratovskaia, 2016).

The basis of the mechanism of protecting rights and freedoms of a person and citizen is formed by legal principles, norms (legal guarantees), as well as conditions and requirements to the NPU activities, activities of its officials, citizens who collectively ensure compliance, implementation and protection of rights and freedoms of citizens.

The most important element of the mechanism for enforcement of rights and freedoms, (one that largely determines effectiveness of other elements) is the guarantee of enforcement of rights and freedoms. The main purpose of this element is to create necessary conditions for immediate, effective and reliable protection and defense as well as or provision of legal assistance. Up to date, there is an urgent need for further research of guarantees concerning enforcement of rights and freedoms and finding ways to increase their effectiveness (Leheza *et al.*, 2020).

Guarantees of enforcement of human rights and freedoms as a general concept are the main means to provide each individual with effective protection and defense of human rights. One of the types of legal guarantees is legal responsibility as a specific legal means of ensuring realization, protection and defense of human rights and freedoms as well as fulfillment of legal obligations (Leheza *et al.*, 2018).

Legal liability is a compulsory restriction or deprivation of certain benefits provided by the law and applied by the state authorities. It is always accompanied by moral condemnation of offenders. There are the following main types of legal liability disciplinary one, civil one, administrative one and criminal one (Leheza *et al.*, 2022).

Legal liability is applied only under certain circumstances stipulated by the law, which are specified by the cause of liability. Such a cause is the fact of committing an offense.

In contrast to other types of liabilities (moral one, public one, family one), legal liability shall be applied only to those who have committed an offense, i.e., violated the rule of law, the law, as far as legal responsibility of a person is individual (Art. 61 of the Constitution of Ukraine) (Law of Ukraine, 1996). Offenses (violations) are reflected in certain actions, mostly active ones, in particular, in behavior that contradicts legal norms, that is, illegal behavior. At the same time, such behavior always harms someone: other people, organizations, society or the state. As far as such behavior causes negative social consequences it is prohibited by the law (Husariev, 2005).

Legal guarantees of rights and freedoms are a set of conditions, special legal methods and means used for unhindered implementation of these rights and freedoms, their protection and assurance. Such guarantees, recorded in the Constitution and legal acts, form the legal mechanism for implementation of laws. Since the system of legal guarantees of human rights and freedoms is a normative-legal means, they should be considered as a complex of mutually connected and mutually interacting normative-legal and institutional-organizational guarantees (Leheza *et al.*, 2022).

Conclusions

So, effective performance of the task of enforcement of human rights and freedoms by the NPU depends to some extent on the mechanism of proper legal regulation of these activities by means of laws and other normative legal acts. The purpose of such legal regulation should be as follows: determining the range of social relations that need to be ensured by the NPU (the content, scope of implementation, list of entities using certain opportunities are specified in the normative acts); highlighting the powers (rights and duties) of the NPU services, their officials during implementation of rights and freedoms of citizens, state bodies and their representatives, public organizations, as well as the legal regulation of preventive measures, means of persuasion and coercion, grounds, conditions, order of their application; determining types and measures of liability of NPU employees for non-fulfillment or improper fulfillment of powers concerning enforcement of rights and freedoms of citizens (ensuring the principle of legality in activities performed by police officers).

The mechanism of organizational and legal enforcement of human rights and freedoms by the NPU is a single, integrally and qualitatively independent phenomenon of the legal system, which is a complex of interconnected and interacting prerequisites, means and conditions that create appropriate legal and factual opportunities for everyone to fully exercise his/her rights and freedoms.

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