Determination of legal remedies for human rights

Визначення юридичних засобів захисту прав людини

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human rights, rights, freedoms, guarantees, means, legal means, legal remedies for human rights.

Ключові слова:

права людини, права, свободи, гарантії, засоби, юридичні засоби, юридичні засоби захисту прав людини.

Human rights, guaranteed by the constitutions and international treaties of the countries, must be implemented. One of the means of realizing human rights is that they can be protected in case of violation. The real protection of human rights is one of the most crucial problems of the present time; and this issue is the subject of serious scientific analysis. It is impossible to develop and strengthen a democratic state without the establishment of inalienable human rights and freedoms, and the normative consolidation of their guarantees in the public consciousness and social practice. The state is obliged to exercise its activity in ensuring human rights, in creating material, organizational, social, and political conditions for the full use of human rights and freedoms.

In order to ensure the implementation and protection of rights and freedoms of man and citizen, the Constitution and legislation afford opportunity for citizens to carry out certain actions, as well as to form a system of state bodies, where its purpose is to assist citizens in the implementation and protection of their rights. Possibilities for citizens to protect their own rights and freedoms and the system of bodies that protect and ensure these rights and freedoms form a legal mechanism for the protection of human rights[1]. Therefore, the study of peculiarities of legal remedies for human rights is an urgent issue for the present time, as their improvement and alignment in conformity with international standards require a thorough analysis of the issue.

Issues of implementing human rights were investigated in the works of such researchers as V. Babkin, M. Baimuratov, O. Bandura, M. Buromenskyi, Yu. Voloshyn, Ye. Hida, O. Honcharenko, O. Horova, M. Davydova, V. Denysov, A. Kolodii, O. Kopylenko, A. Krusian, N. Nyzhnyk, M. Orzikh, V. Pohorilko, P. Rabinovych, O. Skakun, O. Skrypniuk, I. Slidenko, V. Tatsii, Yu. Todyka, V. Fedorenko, O. Frytskyi, V. Shapoval, S. Shevchuk, Yu. Shemshuchenko et al. However, despite the sufficient number of scientific elaborations concerning human rights and their protection, the issue of improving and modernizing legal means of human rights protection requires further thorough research.

The purpose of the article is to establish the current state and prospects of the development of legal remedies for human rights.

The optimal legal means of ensuring human rights, their development and effective use is a vital condition for the development of civil society and the rule of law. The theoretical and scientific-practical content of the concept of "legal means of ensuring human rights" is stipulated by distinguishing a special type of legal realities that deal with legal phenomena in the light of their functional purpose.

Legal regulation is always carried out with the help of a personal "set of instruments", specific and established to legally guarantee the achievement of the goals of the legislator. This feature distinguishes it from other forms of legal influence. By means of legal regulation, legal norms can be issued or sanctioned within the limits of certain types, "models" of the regulation of social relations. In addition, legal regulation is a purposeful activity, in which the interests and needs of the individual are met; legal conflicts, collisions and legal disputes are resolved, etc. It should be aimed at specific life situations that require solution.

Legal regulation of social relations involves the implementation of legal means that create certain opportunities, guaranteed by the state and society, to meet the interests of each subject of law, regardless of the positive or negative social tendencies of the development of society. The existence of legal means is not connected with the autonomous separation of them from other legal phenomena, the existence of which is interconnected and

[1] Вітюк О. Система захисту прав людини. URL: http://desn.gov.ua/index.php?option=com_content&view=article&id=2254%3A2012-10-05-10-16-34&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua.

interdependent. That is, in the legal system of the state, all legal phenomena are considered from the point of view of their functional purpose. If this phenomenon bids for the status of a legal remedy, the main condition in this case should be the ability to become an instrument for solving the tasks within the legal field.

The nature of legal remedies proceeds from the fact that they are legal phenomena for achievement of the goals of legal regulation, ensuring the realization of the interests and needs of the subjects of law. In the domestic legal literature, there is no unity of thoughts regarding the definition of this notion.[2] Therefore, the ambiguity of approaches to the definition and understanding of the essence of legal remedies for human rights compels us to investigate this phenomenon comprehensively.

On December 10, 1948, the General Assembly of the United Nations adopted the first international legal document proclaiming the basic rights and freedoms of the individual – the Universal Declaration of Human Rights. It consolidated the foundations of the world law and order in the field of human rights and determined the ways of forming the appropriate national legislation of many countries of the world. The fundamental rights and freedoms defined in these documents are aimed at creating and providing normal conditions of life.[3] Thus, it should be emphasized that rights and freedoms of man and citizen are not any abstract content of the law-governed state, but they require the solution of specific tasks – recognition and promotion of such rights, freedoms and legitimate interests. Such promotion involves safeguard and protection of the rights of citizens. In addition, promotion and protection of rights and freedoms of man and citizen are not just a separate task of the law-governed state but its aim, the general direction of activity that must be implemented in all areas of public administration, in particular, in terms of expanding the scope of rights and freedoms of man and citizen, improving the content and nature of their guarantees, including legal guarantees of legal protection[4], in particular, the establishment of proper mechanism for promotion and protection of human rights.

The modern doctrine of human rights is based on the fact that the process of state-legal promotion of human rights includes three directions of state activity: 1) contribution to implementation of human rights; 2) safeguard of human rights; 3) protection of human rights.[5] Today, there is a widespread notion of a law-governed state, where legal means ensure maximum implementation, safeguard and protection of fundamental human rights effectively. It should be noted that legal guarantees of human rights and freedoms in the national law include a system of means and institutions aimed at creating conditions for implementation of human rights, ensuring their comprehensive safeguard and protection from violations.[6] It is the urgent need for scientific knowledge of the phenomenon, which is reflected in the notion of legal remedies for human rights, the identification of its essential features and specific manifestations.

For the first time, the interpretation of the term "legal means" was carried out at the branch level – in civil law, the content of which meant that legal means – legal ways of solving of appropriate tasks, achieving their goals by subjects.

With the help of the concept of "legal means", phenomena (instruments, processes), through which the goals of the legislation are solved, can be generalized. The main thing in the theory of legal means is that "what social tasks these legal mechanisms are capable of solving, where and how they can be used in practical legal activities, achieving socially significant results".

The use of this concept allows recognizing the functional, applied aspect of the legal system. In accordance with S. Aleksieieev, the issue of legal means is not so much the question of separation into a separate subdivision of certain elements of legal reality as it is a question of their particular viewpoint in a particular perspective – their functional purpose, their role as instruments of optimal solution of social problems. In all cases, we have fragments of legal validity, considered from the point of view of functional purpose, their role as instruments of legal influence.[7]

[2] Авдюгін Р. Забезпечення прав людини в Україні: міжнародні та національні засоби забезпечення. Права людини. URL: http://vuzlib.com/content/view/1371/91/; Марченко М. Проблемы теории государства и права: учебник. М.: Норма-Инфра, 2001. 528 с.

[3] Білозьоров Є. Правові гарантії захисту прав і свобод людини в Україні: реалії та проблеми. Адвокат. 2009. № 8 (107). С. 26.

[4] Соколенко О. Захист прав громадян як основна функція правової держави. Часопис Київського університету права. 2013. № 2. С. 118–119.

[5] Права людини: соціально-антропологічний вимір: колект. монографія / за ред. П. Рабіновича. Львів: Світ, 2006. Серія І «Дослідження та реферати». Вип. 13. С. 246; Скакун О. Теория государства и права: учебник. Х.: Консум; Ун-т внутр. дел, 2000. С. 206.

[6] Богачова Л. Юридичні гарантії прав і свобод людини і громадянина в європейському та національному праві. Державне будівництво та місцеве самоврядування: зб. наук. пр. НДІ держ. будівництва та місц. самоврядування Нац. акад. прав. наук України. Х.: Право, 2011. Вип. 22. С. 64.

[7] Авдюгін Р. Правові засоби як гарантії забезпечення прав людини. Юридичний вісник. URL: http://www.pravnuk.info/2013-12-27-15-15-31/885-pravovi-zasobi-yak-garanti%D1%97-zabezpechennya-prav-lyudini.html.

It is also worth noting that the concept of legal remedies for human rights has not a uniform interpretation in modern jurisprudence because various researchers interpret such key terms as "protection" and "means" differently. In addition, in the general theoretical and branch literature, it is possible to see a number of other terms indicating nearly the same (and sometimes – the same) concept of "means" of protection: ways, methods, forms, measures of protection, etc.[8] Therefore, we are faced with a quite logical question: what does the term "legal remedies" mean?

The study of any phenomenon is carried out by means of a certain methodology, which is objectively determined primarily by the subject of the study. As noted in the literature, "the subject of research" leads to "a research method". Analyzing such a phenomenon as legal remedies (and developing an appropriate concept), statements of social and philosophical theory of activity and statements of philosophical and philosophical-legal instrumentalism (as a certain branch of philosophy of pragmatism, which is based on the protective approach) may be acceptable methodological principles.

From the standpoint of the socio-philosophical theory of activity, any conscious human activity has its structure. This structure includes, in particular, such elements as the need (it determines, "pushes" the subject to a certain type of activity), the goal (the ideal image of the desired result of such activity), the means (it carries out the transformation of reality). Specificity of the mentioned structural elements of the activity causes its certain types. Thus, the activity will be considered legal if its structure consists of the actual legal elements: a legal need, a legal purpose, a legal means.

Answering the question: what kind of phenomenon can you consider properly legal, we proceed from the fact that the legal phenomena are legitimized by the formal and mandatory declaration of the state will or the result of declaration of such will.

The further classification of the legal activity by types will not be an exception. Thus, remedial activity, the main purpose and content of which is the protection of human rights (or other subjects), contains specific groups of legal needs (which are determined only by human rights, and no other legal activity), legal objectives and – that most important – legal means. This group of legal means will be called legal remedies.[9]

It should also be mentioned that legal remedies (as well as all other types of legal means) can be used not only in the jurisdictional activity (its special feature is officialdomity, and its subject is the state or an authorized entity), but in the remedial positive, legally meaningful behavior. In the process of application of the necessary defense by a person, operational sanctions of legal remedies are used, although this activity of human rights protection is non-legal by its nature (although it creates legal consequences). Therefore, legal remedies include both state and non-state legal means of "independent" protection.

The state legal protection of human rights is the law-enforcement jurisdictional activity of the competent authorities, aimed at enforcement of the legal obligation necessary for the implementation of human rights, restoration of such rights, and prevention or elimination of their violation. The proposed interpretation of this basic concept causes an interpretation of derivative concepts on the structural elements of this activity, as well as their classification. For example, the legal need causing remedial activity may include the need for justice; the need for formal determination of the subject's rights and obligations in case of a dispute (situation of legal uncertainty); the need for the application of such a legal (and not any other) procedure, in which the violation of the subject's right is adequately restored or the threat of its violation is eliminated[10], and this guarantees the observance of law.

In fact, the legal purpose of such activity (desired result) can be considered the certainty of the subject's rights in these situations, their protection because of the use of such procedures. The purpose of such activity is to improve the results of eliminating the consequences of violation of the subject's right or to prevent the violation; it is objectified in a certain legal act (documentary or active).

Conclusions. Summing up the research, we can state that legal means of protecting human rights are legal remedies defined at the national and supranational level, the direct application of which helps a person to

[8] Права людини: соціально-антропологічний вимір: колект. монографія / за ред. П. Рабіновича. Львів: Світ, 2006. Серія І «Дослідження та реферати». Вип. 13. С. 246.

[9] Права людини: соціально-антропологічний вимір: колект. монографія / за ред. П. Рабіновича. Львів: Світ, 2006. Серія І «Дослідження та реферати». Вип. 13. С. 247.

[10] Права людини: соціально-антропологічний вимір: колект. монографія / за ред. П. Рабіновича. Львів: Світ, 2006. Серія І «Дослідження та реферати». Вип. 13. С. 248.

protect completely his/her infringed rights in the remedial activity. In addition, these legal remedies for human rights should be fully ensured at the national level and in any case should not be questioned and should be enforced by all members of society. Thus, legal remedies for human rights are the necessary components that ensure the development of the state and society.

Summary

The analysis of scientific publications of domestic and foreign researchers, which concern different approaches to the study of such a phenomenon as legal remedies for human rights, is carried out in the article. The author focuses on the fact that rights and freedoms of man and citizen are not any abstract content of the law-governed state, but they require the solution of specific tasks – recognition and promotion of such rights, freedoms and legitimate interests. Such promotion involves safeguard and protection of the rights of citizens, which provide for the establishment of proper mechanism for promotion and protection of human rights. A classification of legal activity by types was conducted. The main types of legal activity include remedial activity, law enforcement activity. The place of legal remedies in these types of legal activity is determined. The purpose of such activity is indicated.

Анотація

У статті проведено аналіз наукових публікацій вітчизняних та закордонних дослідників, які присвячено різним підходам вивчення такого явища, як юридичні засоби захисту прав людини. У роботі акцентовано увагу на тому, що права і свободи людини та громадянина становлять не якийсь абстрактний зміст правової держави, а вимагають від неї виконання цілком конкретних завдань – визнання та забезпечення таких прав, свобод і законних інтересів. А таке забезпечення охоплює охорону та захист прав громадян, що передбачає створення належного механізму забезпечення і захисту прав людини. Проведено видову класифікацію юридичної діяльності, до якої належать правозахисна юридична діяльність та правозастосовна юрисдикційна діяльність. Визначено місце юридичних засобів захисту в цих видах юридичної діяльності. Встановлено мету такої діяльності.

References:

1. Вітюк О. Система захисту прав людини. URL: http://desn.gov.ua/index.php?option=com_content&view=article&id=2254%3A2012–10–05–10–16–34&catid=353%3A2012–03–22–14–34–14&Itemid=3172&lang=ua.
2. Авдюгін Р. Забезпечення прав людини в Україні: міжнародні та національні засоби забезпечення. Права людини. URL: http://vuzlib.com/content/view/1371/91/.
3. Марченко М. Проблемы теории государства и права: учебник. М.: Норма-Инфра, 2001. 528 с.
4. Білозьоров Є. Правові гарантії захисту прав і свобод людини в Україні: реалії та проблеми. Адвокат. 2009. № 8 (107). С. 26–30.
5. Соколенко О. Захист прав громадян як основна функція правової держави. Часопис Київського університету права. 2013. № 2. С. 118–121.
6. Права людини: соціально-антропологічний вимір: колект. монографія / за ред. П. Рабіновича. Львів: Світ, 2006. Серія І «Дослідження та реферати». Вип. 13. 432 с.
7. Скакун О. Теория государства и права: учебник. Х.: Консум; Ун-т внутр. дел, 2000. 704 с.
8. Богачова Л. Юридичні гарантії прав і свобод людини і громадянина в європейському та національному праві. Державне будівництво та місцеве самоврядування: зб. наук. пр. НДІ держ. будівництва та місц. самоврядування Нац. акад. прав. наук України. Х.: Право, 2011. Вип. 22. С. 56–70.
9. Авдюгін Р. Правові засоби як гарантії забезпечення прав людини. Юридичний вісник. URL: http://www.pravnuk.info/2013-12-27-15-15-31/885-pravovi-zasobi-yak-garanti%D1%97-zabezpechennya-prav-lyudini.html.

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