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## **HISTORY OF THE FORMATION AND DEVELOPMENT INSTITUTE OF REMEDY INFORMATION RIGHTS AND FREEDOMS AND CIVIL RIGHTS**

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### **ABSTRACT**

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This article examines the history of formation and development of the institution of judicial protection of information rights and freedoms of man and citizen..

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### **INTRODUCTION**

Championship in determining the rights and freedoms associated with Immanuel Kant thought, "If there is a science that requires a person, it is the one that I teach - and specifically one that properly shows man his place in the world - and that's teaches who have to be to be a man. "It represented a clear assertion of the freedom of the individual in accordance with his dignity. Assuming that the policy should be subject to moral and right, the philosopher said: "The right person should be considered sacred, the effort is not worth it to state power." Present position allows to state that the legal thought of Kant illustrates the relationship between freedom and its provision by the state; source of law is the man; and the main function of the state - ensuring human rights and freedoms.

Historically, first appeared rights, rather than their guarantees: the value and inviolability

of life, equality of persons before the higher powers. Although they perceived on a subconscious level and not defined as a right, but reflected the ancient myths and beliefs.

### **ANALYSIS OF RECENT RESEARCH**

Evolving over time, the idea gradually gained positive traits (freed from religion), appeared philosophical and legal theories of human rights, then - a combination of rights, freedoms and their guarantees. Today recognition and legal protection of the rights and freedoms of man and citizen are the main feature of the rule of law. On this basis a modern democracy different from its prototype.

In order to clarify the legal meaning of "rights" and "freedom" of man and of the citizen were analyzed scientific publications, court cases on the protection of human rights and civil rights in the courts of general

jurisdiction and the Constitutional Court. Research has shown that there are different approaches to the definition of these concepts.

"Human Rights - is an individual natural features that make its life, human dignity and freedom of action in all spheres of public life."

This approach defines the law as certain features that are essential for human existence and its development in specific historical conditions. They objectively determined by the achieved level of human development (economic, spiritual, social) and should be universal and equal for all people. The above statement is similar in structure to the previous one, although the shape is not associated with freedom of activity, yet the content implies equality.

#### **THE MAIN MATERIAL.**

Man can not exist without satisfying their needs, without the possession of material and spiritual wealth; to meet these needs and benefits people need rights and freedoms. Same as above, in the above definition refers to equality in rights and freedoms as in the distribution of material and spiritual wealth, that it is inherent to man (of equality benefits not mentioned).

Recognition of Human Rights reaches age ancient thinkers: the Pythagoras - the man is the measure of all things; in Aklidamanta - God created all free nature nobody made a slave; in Cicero - between people there is no difference, a person is a citizen of the world. Though ancient scientists human rights and freedoms associated (implicitly) with the distribution of wealth, they say nothing about the spiritual side of life.

Determination of Rights and Freedoms to consider with regard to the level of society, that is, as secured by the Constitution and other laws of Ukraine the opportunity to have, possess, use

and dispose of the economic, political and cultural conditions of society and legislated state. Human rights are interpreted as social human capacity to act freely, to choose the type and extent of their behavior in order to provide diverse material and spiritual needs of the person by using certain social benefits within the limits set by legislative acts. In the above position limits law defining freedom achieve material and spiritual needs, while the VF approach Pohorilko - freedom is given more attention than the factors which limit (the Act).

Building on the concept of human rights, a judge of the Constitutional Court Shapoval believes that it is not only social, but also a legal category. Established in positive law, and thus recognized by the state, they acquire as a subjective right, which only can be realized. From this definition is consistent definition of MV Kostytsky: "Human rights - a concept that characterizes the legal status of a person in relation to the state, its features and claims in the economic, social, political and cultural spheres." Together, we believe that in both definitions is that they constitute a basic human quality - the quality of the subject.

Without claiming to be universal definition of human rights, arguing that this law, which required a man in her manifestation as the subject of human progress. On this basis, one can argue that human rights are the ones that need it as a subject of state-building. This statement is consistent with the difference of human rights with the rights of the citizen, which is that a person is defined as a bio-social phenomenon, as a citizen comes from special relationships with the state. Since subjective rights enshrined in the law, then much difference between them.

Analysis of the key assertions of the concept of "human freedom" allowed foregone conclusion about the presence of certain features mentioned concept: freedom

from birth; no one has the right to violate their natural basis; in a democratic society, the state is the guarantor of human freedom; amount of freedom reflects the principles embodied in many European countries and in Ukraine in the Constitution of our country states that a person has the right to do anything except what is prohibited by law; it is the principle of equal legal opportunities, legal assistance and legal protection. The difference between the rights and freedoms of well characterized VM Shapoval because observes that law enables the acquisition of individual social benefits, and freedom means non-interference in the acquisition of goods (right, in fact, means "give" and freedom - "do not bother").

Because of human freedom and civil rights in the "pure" do not talk, because each state sets limits on the freedom of exercise of the rights of others, so "established order, which directs state activities to protect individual freedom." This constitution guarantees the rights and freedoms of everyone in their maximum development. In most EU countries, human dignity is the source of rights and freedoms. For example, in the US (see Art. 2.3.) Is recognized as a desire for total freedom.

Russian scientists value the rights and freedoms reduced to that freedom allows a person to manage on your own. But it always involves the limits of individual behavior, due to his stay in the human society and the need to take account of the freedom of others. As a component of the category of human rights and citizens' concept of freedom is enshrined in the Constitution or other piece of legislation the possibility of certain human behavior. Human rights define the scope of permissible behavior of the individual, within which it has no human dignity can realize themselves as free citizens. In our opinion, the scope of permissible conduct

includes every opportunity to apply to court to protect rights.

In domestic and foreign legal literature the rights and freedoms of man and citizen are classified by different basis because information rights and freedoms of individuals in the same researchers clearly marked, in others - indirectly. We think you need to focus on the bias which has emerged today: open information society, as a condition of democracy indicates a direct relationship information rights and freedoms to all other rights and freedoms of man and citizen. Based on the above considerations, the work is not carried out an analysis of possible classifications of information rights and freedoms (although touching on foreign law). With the natural character of the rights and freedoms are inalienable and inseparable from human nature and its nature. Disclosure characteristics "inalienable", "natural" has led to the fact that they were understood in the legal sense - as the right to life and health, honor and dignity, to freedom to obtain and use information, to privacy, that is, a subjective right - to an individual, is indispensable to a specific individual.

The practical value of the rights and freedoms is their reality, that is, to exercise the powers arising from the content of a particular subjective rights. With the development of philosophical and legal thought expanding circle of human rights and their implementation requires safeguards. The ultimate guarantee of rights and freedoms is the remedy. Ruling Justice, provides everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine and international treaties. The courts, as public authorities are required to promptly and effectively to protect those rights and freedoms in civil, criminal and administrative proceedings. These types

of proceedings as a form of implementation of judicial power, directly related to the constitutional provisions, rights and freedoms and their guarantees determine the essence and direction of the state; rights and freedoms of man and citizen are protected by the court; the right of everyone to protect their rights and freedoms from violations and encroachments by any means not prohibited by law.

The eminent jurist AF Koni wrote that where the question of the relation of the whole society to their fellow citizens, to limit their personal freedom for the common good and the protection of the rights of individual citizens - that justice must find expression in legislation, which is higher, the deeper it peers into the truth of human life needs and opportunities - in the justice system.

Courting - is one of the most important ways to protect civil rights and liberties of the subjects of law, which takes the form of justice and guaranteed by the state. It can be interpreted as a subjective right of everyone to restore his violated rights special body - the Court. In science, criminal procedural law under court protection is defined as "a set of organizational and procedural rules provided by the suspect, the accused and the victim to protect their rights and interests."

Courting is an effective guarantee of the realization of all the rights and freedoms of man and citizen, applies to an unlimited number of persons. It is being implemented under the following conditions: the existence of separate and independent judiciary; establish principles of justice and the judiciary; guaranteed access to justice, local authorities, officials and public servants. The essence of the institute judicial protection, in which the Court takes the top spot as the organ of justice that best regulates the right to judicial protection. Accordingly, the right to judicial protection - it provides an opportunity law of persons and entities to protect their

rights in the courts of general jurisdiction and constitutional. This right should be viewed in two ways: on the one hand, as one of the constitutional rights of the state, on the other hand - as the law that establishes a universal mechanism for protecting any and all of the above rights.

The court can not refuse to justice, if a citizen of Ukraine, foreigner or stateless person believe that their rights and freedoms infringed or violated established or created obstacles to their implementation or there are other narrowing of rights and freedoms. The refusal of the court to accept the claim and other claims, complaints, issued in accordance with applicable law, a violation of the right to judicial protection (Article 64 of the Constitution of Ukraine).

There is also the expansion of judicial activities, including the legality of decisions, acts or omissions of public authorities, local authorities, officials and public servants. The advantage of judicial review of administrative that the court acts as a state. Court independent and obey only the law; activity takes place in the court hearing and the procedure for its conduct is regulated by law. The court provided publicity, publicity, direct involvement of stakeholders. The democratic principles of justice create the most favorable conditions to determine the facts of the case and make a lawful, reasonable and fair solution.

Human and civil rights to judicial protection is implemented using two elements: regulatory framework (set of legal resources) and institutional (activities relevant public authorities) elements. The legal basis is the constitutional provisions and specifying the legislation through which the fixing of rules of conduct designed to ensure a uniform procedure and the stability of the regulation of social relations in the field of human rights to judicial protection. The normative basis gives the judicial protection of their own legal

forms as a source of knowledge and guidance in the legal field.

The institutional element includes activities of public authorities, which, through its power provides assurance, implementation, protection and restoration of human rights to judicial protection. Leading role in the mechanism of ensuring human and civil rights to judicial protection, holds court system, which provides access to justice to each based on the Constitution and laws of Ukraine.

The essence of judicial protection as jurisdictional institute the rule of law provided by the Constitution of Ukraine. This Constitution recognizes the separation of state power in Ukraine into legislative, executive and judicial; it has the highest legal force and guarantees each going to court to protect the constitutional rights and freedoms; Justice is administered solely by the courts, whose jurisdiction extends to all legal relations arising in the state. The principles of judicial power by the Law of Ukraine "On the Judicial System and Status of Judges".

Appeal rights and civil judicial protection provided by Article 55 of the Constitution of Ukraine, which, moreover, gives anyone the right to challenge the decisions, acts or omissions of public authorities, local government officials and employees; to apply to the relevant international judicial institutions after exhaustion of domestic remedies.

Based on the Law of Ukraine "On the Judicial System and Status of Judges" right to judicial protection includes: 1) guarantee any of its rights, freedoms and legitimate interests of an independent and impartial tribunal established under the law; 2) a fair and impartial hearing within a reasonable time limits prescribed by law; 3) The right of everyone to participate in its case in the manner specified by the procedural law

of the court of any instance (see. For jurisdiction in para. 2.1.).

Deprive any right to have his case in court, the jurisdiction to which it belongs, is impossible. Judges in the judiciary are independent and subject only to the law. The basic principles of justice are: 1) legality; 2) the equality of all before the law court and the court; 3) provide proof of guilt; 4) competition and freedom to provide their court their evidence and to prove to the court; 5) Maintenance of public prosecution in court; 6) ensuring the accused the right to a defense; 7) openness of the trial and its complete recording by technical means; 8) ensuring the appellate and cassation court decision, except in cases determined by law; 9) bound by the decisions of the court.

Protective function of the court is realized through components: 1) the prevention of infringement of the rights and freedoms; 2) updating; 3) the abolition of regulations or decisions of the authorities in case of inconsistency law; 4) damages caused by violations of human rights and freedoms; 5) a violation of the culprit and his responsibility.

Among the growing number of rights and freedoms is the most important information. These rights are conducive to the formation of the person, and thus society, because the level of the latter depends on the sophistication of its members. At the heart of information rights is the notion of information. The essence of the term "information" (from the Latin "informatio") that is a clarification statement, message. As a means of providing information to understand human existence in society, a source of knowledge to satisfy their own needs, way of governance. This is the most important means of political, economic, spiritual and social life. From the information depends on the formation of the human person.

Domestic legislation differently treats the concept of "information" that can be seen from the table given in Appendix A. Considering the given definition, it can be argued that information - is not only collected the data or information society is a resource whose value is to meet human needs.

CC of Ukraine carries information to the intangible benefits, due to its special legal nature and the lack of substantive content. Its Article 16 provides for the right of every person to go to court to protect your personal non-property and property rights and interests. Part 2 st.200 Civil Code of Ukraine have the right to subject relations in information demand the elimination of violations of his rights and compensation of material and moral damage caused by such violations. Protection of civil rights and interests of information relations is also in accordance with rule 16 of the Civil Code of Ukraine, where among the ways to protect: the recognition of rights; recognition of the transaction null and void; termination in violation of law; termination of legal relations; compensation and other methods of compensation for property damage; compensation for moral (non-property) damage.

## CONCLUSION

Thus, the protection of information rights is in accordance with the norms of Ch. 3 CC of Ukraine general methods listed in its Article 16, and special methods established by separate laws. Court able to protect individual rights related to the information by other means as may be stated in the agreement or by law (see. P. 2.1.).

Information rights and freedoms of man and citizen arose immediately. They synthesized the centuries-old desire of people, which covered different aspects. Most researchers, it was associated with the individual's right to information; some talk about it right in terms

of technology dissemination; there were those who pointed out the limitations to access to information; others - fought for freedom of expression and dissemination of information through the media; some studies concerning rights related to information security; considered in terms of individual rights to seek information and more.

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