

## Internal affairs bodies in the mechanism of providing of rights and freedoms of man

Органи внутрішніх справ у механізмі забезпечення прав і свобод людини

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### Key words:

*legal mechanism, organs of internal affairs, rights and freedoms of man, human rights, legal status, society.*

### Ключові слова:

*правовий механізм, органи внутрішніх справ, права та свободи людини, права людини, правовий статус, суспільство.*

**Formulation of the problem.** The real possibility of realization and defense of basic rights of man is provided a concrete person above all things by the legal mechanisms of the state. Providing of rights and freedoms of man is conditioning, necessary for realization human rights, and directions of government activity are providing of realization of human rights, guard and defense of rights and freedoms of man. Exactly the state is under an obligation to provide everybody, if its rights are broken, effective facilities of legal defense.

**Analysis of recent research and publications.** The problem of place and role of organs of internal affairs in the mechanism of providing of rights and freedoms of man highlighted in the writings of I.V. Korzun, I.P. Lanovenko, F.A. Lopushanskyi, M.P. Melentieva, O.S. Mihlin, A.A. Muzyka, O.M. Bandurko, G.S. Semakov, V.V. Skybytskyi, V.M. Smitienko, V.A. Serebriakova, Ye.V. Sereda, S.Yu. Farenjuk, T.A. Shulezhko, O.N. Yarmysh and other scientists.

Legal mechanism of providing of human rights – one of important facilities of influence, control process of providing, which is built-in in the structure of providing of human rights and operates for maintenance of it the normal stable state, removals of defects, which appear<sup>1</sup>.

**Statement of purpose of the article.** The aim and the object of the study is to analyze the place and role of the internal organs in the mechanism to ensure human rights and freedoms and defined the powers of internal affairs bodies in the mechanism of providing of human rights.

**The main material of the research.** The major factor of the real providing of rights and freedoms of man, next to their confession, observance and respect, guaranteeing, which is carried out by specific facilities – guarantees, which give all elements of legal status persons of the real maintenance, due to which unimpeded realization of rights and freedoms, their guard from possible illegal encroachments and defense, becomes possible from illegal violations, is.

Taking into account differences in guaranteeing (providing) of human right it is possible to divide into two groups. Rights for realization of which in society belong to first from them, in the state already there are necessary terms and facilities (foremost, terms are economic, material), or realization of which does not require perceptible financial charges from the side of citizen. To this group rights belong mostly personality and political. One of the most convincing indexes of social realization of such rights there is that it is possible to set the real legal guarantees of their functioning, guard and defense.

Other group is human rights providing needs in realization of which, those or other social charges, above all things material, – material, financial, «skilled» – it rights are socio-economic, cultural. If at disposal of society, the states exist facilities, necessary for providing realities of realization of certain right by every citizen, it can be «equipped» legal guarantees, and consequently, can purchase status of valuable equitable legal right. In

<sup>1</sup> Bagpipe K.G. Problems of a mechanism to ensure individual rights and freedoms / K.G. Bagpipe // Bulletin of Zaporizhia Law Institute. – 2000. – № 3. – P. 38–48.

those cases, when the mentioned facilities temporarily inaccessible and must appear in a prospect (for example, rights on habitation, on the proper level of the financial providing), the proper human right can be proclaimed the state only as intention, purpose, aspiration which will send its activity to organization, on stimulation of the gradual forming of the proper terms for realization of concrete right<sup>2</sup>.

One of major backer-ups rights and freedoms of man the organs of internal affairs is an administrative supervision essence of which consists in the active and systematic looking after a conduct, by actions both separate citizens and different groups of people in the process of their intercourse; in the estimation of their actions; comparison of accordance of conduct of person the norms of administrative law, analysis and prognostication of such conduct; conditioning for providing of the personal rights for honest before a law people; warning and stopping of offences; use of measures on the exposure of persons which create obstacle a man in realization of these rights and freedoms.

To the derivatives from an administrative supervision as backer-up rights and freedoms of person the organs of internal affairs is a right for the relation of requirements and orders of administrative character. In the case of refuse, non-fulfillment or improper implementation, by public servants or separate man of requirements, orders of workers of militia, in relation to conditioning for legitimate realization of rights and freedoms of man, and also their defense, in the field of public peace and safety, militias are given plenary powers to apply the measures of compulsion both preventive character.

The measures of suppression are used in the cases when there is the real threat of credible not legal actions which encroach upon rights and freedoms of person and can cause it harm. Such measures have preventive character.

In those cases, when the measures of suppression came short, the measures of the administrative stopping, aimed at stopping of not legal conduct, removal of harmful consequences, conditioning, for defense of the personal rights for a victim, are used. In most cases of application of measures of the administrative stopping it is related to offence which creates the real threat of inviolability of person, in a that number in necessary cases – and offender.

The method of defense of the personal human rights is jurisdiction activity of militia, which is used in relation to the violator of rights and freedoms of man. For jurisdiction activity it is conferred the right the circle of public servants of organs of internal affairs, which express the reaction of the state on a not legal conduct by taking away of imperious act, is expressly certain a legislation, executing the certain form of influence on the conduct of person thus, educating it in a spirit respect to the laws, warning of feausance of the repeated offences.

Considerable part of relations in relation to providing of rights and freedoms of man in the field of public peace and safety is provided the norms of administrative law. Carrying out the analysis of essence of these relations, it follows to go out from position the «state is personality», and in which the state comes forward on behalf of society, and personality as a man is provided with concrete rights and duties which make it legal status. Question of providing of rights and freedoms of man in the general context of problems of it legal status it remains one of most actual and meaningful, the more so on the stage of forming in Ukraine of the legal state. Without regard to wide developed of this theme by legal science, round these questions numeral discussions precede to this time.

On the whole, mechanism of providing of rights and freedoms of man in activity of organs of internal affairs it is possible to present as two subsystems. First is the system of guard, which includes for itself legal facilities which set the limits of legal limitation the organs of internal affairs of individual freedom of citizens (facilities of guaranteeing) and providing of legality during application of measures of compulsion, that limit such freedom (facilities of guard). Second is the system of defense – makes unity of legal facilities, which provide proceeding in the broken right, bringing in, to responsibility of guilty, compensation of harm, caused offence (facilities of guaranteeing), and organization of activity of organs of internal affairs, in relation to realization of legal facilities of defense of rights and freedoms of man (facilities of defense). The necessity of application of facilities of defense arises up in the case of violation of rights and freedoms of man the public servants of organs of internal affairs. The use of internal affairs of the noted measures organs is regulated laws and other legal acts, which are complemented organizational and control-observant by activity, which allows realizing the real legal acts and the same to prevent illegal encroachment from the side of separate people, public servants, on rights and freedoms of man.

<sup>2</sup> Gurenko M.M. The development of political and legal thought on guarantees of rights and freedoms of man and citizen : [monograph] / M.M. Gurenko. – K., 2002. – P. 252.

Functioning of Ukrainian society in the high-quality new state takes place at permanent economic and socio-political changes that foresees the necessity of providing of public law, personal safety of citizens, all patterns of ownership and vitally important interests of society and state enforcement. For this reason location of organs of internal affairs in Ukraine is determined the them by a functional orientation on: defense of rights and freedoms of man, proclaimed Constitution of Ukraine, laws of Ukraine and international agreements of Ukraine; prevention violation of rights and freedoms of man and assistance their renewal; realization operatively official to activity in accordance with Constitution of Ukraine, legislation, international standards, in this industry; an improvement and subsequent development of international cooperation is in industry of defense of rights and freedoms of man; providing of equality all before a law and prevention of any forms of discrimination in relation to realization of the rights and freedoms a man; an assistance legal knowledge of population and defense of confidential information is about a person<sup>3</sup>.

Actually all internal and external functions of the state directly or mediated directed on providing, realization and perfection of honest before a law guarantees of rights and freedoms of man. In obedience to it public organs and other imperious subjects of the state are certain in the process of realization by them the activity obliged more concretely and in detail to realize positions which are contained in the norms of Constitution of Ukraine. It touches public of different degrees authorities, and also public and official servants foremost<sup>4</sup>. Providing, realization, guard and defense of rights and freedoms of person, is carried out through their various functions that touch industry of legal status of person. At the same time guaranteeing of rights and freedoms is not leading direction of their activity, but carried out mainly in connection with the use of general post imperiously administrative plenary powers. The special place in this system is occupied by a court, office of public prosecutor and other law enforcement authorities. Law enforcement authorities are the system of state and the public formings the basic function of which is a fight against criminality and other offences. The office of public prosecutor, courts, organs of Ministry of justice, organs of Ministry of internal affairs, security Service, State department of Ukraine on questions implementation of punishments, Custom service, boundary service, advocacy, notary, tax militia, different state commissions and committees which carry out, law-enforcement activity<sup>5</sup>.

The social role of Ministry of internal affairs of Ukraine in the state is stipulated it having a special purpose setting, executive tasks and functions, by forms and methods of activity, well-regulated a legislation. The main setting of organs of internal affairs consists in realization of guard and defense of man, his rights, freedoms, personal and property safety. Therefore in this direction of activity of militia most model comes forward as a subject of providing of safety that called to execute the function of mass law-enforcement maintenance of population<sup>6</sup>.

The sphere of activity of organs of internal affairs has a difficult structure. It includes for itself the certain groups of public relations, which are constrained: with protecting of person and state from criminal and other not legal encroachments; with providing of public peace and public safety; with defense of objects regardless of patterns of ownership; with opening and investigation of crimes; with providing of observance of rules of stay in Ukraine of foreigners and persons without citizenship and others like that.

At the same time a militia will realize separate rights and freedoms of man and citizen, which are not related to protective activity, but foresee the grant of the proper services, also.

The analysis of tasks and functions that is executed by different subdivisions of the system MIA Ukraine testifies that in activity of organs of internal affairs (to the militia) of question of providing, realization, guard and defense of rights, freedoms and legal interests of man occupy the special place. Practically all services of organs of internal affairs by means of various facilities and methods participate in the decision of these tasks directly on the areas of work<sup>7</sup>.

<sup>3</sup> The administrative activities of the Interior. Chapeau: [textbook for students and university students of MIA of Ukraine] / ed. I.P. Holosnichenko, Ya.Yu. Kondratyev. – K., 1999. – P. 5.

<sup>4</sup> Administrative Law of Ukraine : [manual for legal. universities and faculties] / ed. J.P. Bytyak. – Kharkov, 2000. – P. 59.

<sup>5</sup> Protection of rights, freedoms and lawful interests of citizens of Ukraine in the process of policing : mater. of the scientific and practical conf. (Department for work with personnel of the Ministry of Internal Affairs of Ukraine, Donetsk Inst ext. Affairs Ministry of Ukraine in Donetsk. Proc. University of those, 27 April 2001) ; I.G. Kirichenko. – Donetsk, 2001. – P. 4.

<sup>6</sup> Klimovich O. National system of human rights (in the context of the Convention on Human Rights and Fundamental Freedoms / O. Klimovich // Law of Ukraine. – 2001. – № 1. – P. 34–37.

<sup>7</sup> Anufriev M.I. The bodies of internal affairs at the turn of the millennium / M.I. Anufriev // Science Bulletin of Dnipropetrovsk Legal Institute of the Ministry of Interior of Ukraine. – 2000. – № 1. – P. 3–15.

The analysis of legislation and practices of work of various services allow to define such basic directions of activity of organs, services and subdivisions of MIA of Ukraine in relation to providing of realization, guard and defense of constitutional rights, freedoms and legal interests of citizens : defense of man, his life, health, rights, freedoms and legal interests regardless of age, sex, nationality, racial belonging, languages and others like that; non-admission is in the activity of illegal limitations and violations of rights, freedoms and legal interests of citizens.

A militia next to other law enforcement authorities is called to bring a mechanism over of legal safeguard in an action. She must provide application of measures of state compulsion, having for an object removal of obstacles for realization a man and citizen of the rights and implementation of duties, proceeding in them the broken rights, freedoms and legal interests, bringing in of winy persons to legal responsibility<sup>8</sup>.

The characteristic feature of activity of organs of internal affairs is that they in relationships with an individual present all society, and at defense of his interests quite often forced scope, set by a law, succeeded to limitation of rights and freedoms of this person. But such limitation swims out exceptionally from confession of respect of rights and freedoms of other persons, inhibition of requirements of moral, public peace, general prosperity<sup>9</sup>.

Quality of work of militia largely depends on her legal settlement, implementations of duties that are put before her workers. These duties must be based on principles of humanity and observance of rights and freedoms of man.

#### **Conclusions and recommendations for further research.**

The organs of internal affairs (militia), comparatively with other law enforcement authorities, decide the widest circle of the questions, related to defense of rights, freedoms and legal interests of man. From essence of right swims out, that realization of constitutional rights and freedoms of man is impossible without providing of these rights organizationally-executive activity of public organs and public or official servants, because activity of the last is the certificate of reality of freedom of person, by the necessary factor of transition of legal possibilities of fruition, envisaged in Constitution of Ukraine, in practice of vital functions of everybody in our country. Therefore it is very important to define a role and value of the state on the whole, her separate organs in providing of realization of constitutional rights and freedoms of man. Here an important role is played by effective activity of law enforcement authorities, in particular organs of internal affairs (to the militia). Their functions in the mechanism of realization of rights and freedoms of man, as marked already, various: from creation of the assured terms of their realization in public places to defense criminally of broken, with application by law of the forced measures.

#### **Summary**

The article examines the place and the role of internal affairs bodies in the mechanism of providing of human rights and freedoms. It is defined the powers of internal affairs bodies in the mechanism of providing of human rights.

#### **Анотація**

У статті розглянуто місце і роль органів внутрішніх справ у механізмі забезпечення прав і свобод людини. Визначено повноваження органів внутрішніх справ у механізмі забезпечення прав людини.

<sup>8</sup> Negodchenko O.V. Ensuring human rights and freedoms and investigative / O.V. Negodchenko // Bull. to share experiences of MIA of Ukraine. – K., 2003. – P. 14–21.

<sup>9</sup> Guide E.A. Universal human rights standards and ensure their implementation in police activity : abstract. dis. ... candidate of legal sciences / E.A. Guide. – C. : National Academy of Sciences of Ukraine, Inst of State and Law. V.M. Koretsky ; K., 2000. – P. 8–10.

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