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INSTITUCIONALIZACIYA OF RIGHT OF DEFENCE IN DIFFERENT LEGAL SYSTEMS: FEATURES AND PROBLEM ASPECTS

In the article deals with the nature of the mechanism of protection of human rights and civil and defined its components. For the first time in an article delineating the concept of «other remedy» and «mechanism for implementing human rights of defense», they also provided a clear interpretation and traced their relationship. The author analyzes the impact of civil society on the effectiveness of the mechanisms and stresses the need to increase their efficiency.

Keywords: protection, right to defense, legal system, the institutionalization of the right to defense.

The paper analyzes the process of formation and development of the institution of the right to defence in different jurisdictions. The article studies the characteristics and problematic aspects of the institutionalization of the right to defence.

The relevance of this article is not in doubt since without the analyzing the process of formation and development of the institute of the right to defence it is not possible to improve the institution of defence of human rights in whole in modern society. The theoretical analysis of institute of the right to defence as a philosophical and legal phenomenon is necessary in conditions of our society development because the right to protection is the main value in the development process of human civilization. In addition, the article compares historical development of the institute of the right to defence in countries which represent different legal systems (England, USA, France, Germany, Russia, Ukraine, Iran and Afghanistan), including legislative securing of the possibility to execute the right to defence.

It should be noted that the right to defence has philosophical roots, as the idea of its origin and development is the basis of the human existence philosophy. Taking this into account the author analyses the right to defence with the main idea of the theories of creationism, evolution and synergy. The right to defence arises from

different religious tenets of faiths, like Christianity, Islam and Buddhism.

It is obvious that development of defence occurred exponentially and thus it evolved. First there was a self defence, which is in the process of evolution improved and became a defence. Together with the defence arises the right to defence because everybody needs defence. Thus, the defence in the same way as the right to defence is a self-organizing process that has evolved for the whole period of the existence of human civilization.

The article states that the right to defence is one of the basic human and civil rights, but it is not clearly assigned to any national and international legal act. Though it follows from their main provisions that a person has the right to defend his or her rights by any means.

In our opinion, the term "right to defence" should be clearly defined and secured by specific provisions in the basic laws of the world states. The problematic aspects of the institutionalization of the right to defence are connected with the optional nature of the constitutions of the states that belong to a religious family law, which precludes citizens of these countries to defend their rights under the law. No one should violate this law and restrict a person in the exercise of his defence.

The characteristic of the institutionalization of the right to defence is its different philosophical interpretation and legal understanding. Another particularity of the institutionalization of the right to defence is differently fixed by law the possibility to defend their human rights in the constitutions of the above mentioned states. Constitutions of the states that belong to the same legal family have similar provisions on the right defence. This is due to the historical and cultural conditions of each country. Constitutions of the Romano-Germanic civil law system have similar wording on the feasibility of man's right of defence.

Thus, the constitutions of France, Germany, Russia and Ukraine fix everyone's right to apply to the courts for their rights defence. England and the United States belong to the Anglo-American legal system that is why the interpretation of the right to defence of their fundamental law is somewhat different than in the constitutions of Romano-Germanic family. In the U.S. Constitution the right to

defence is understood as the right to protect an individual, housing, securities and property from unreasonable searches. The constitutions of Iran and Afghanistan also guarantee the right to legal recourse. However, these states belong to a religious family law where adopted constitutions are declarative in nature, while in reality the social life of the people is subject to religious rules and canons.