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# LEGAL TERMINOLOGY ON HUMAN RIGHTS: ORIGIN, INTERPRETATION, FUNCTIONING

*"ignorantis terminis ignoratur et ars"*

*(Jogn Rastel) [1]*

There is a growing tendency nowadays to use legal terms on human rights not only in international documents, national legislation and courtrooms, but also in politics, government administration and other spheres of life. Terms concerning human rights are among legal terms most frequently used by people in everyday life due to the clarity of their meaning, their topicality and highly emotive, even rhetoric potential. As Samuel Donnelly noted "rights and the effort to understand their meaning and function have become the most important topics in the key dialogue of the 20th century." [2]

We understand legal terminology on human rights as an open system of words and word combinations which are used in the norms of international and domestic law with regard to human rights and in other spheres of social life, and which express the concepts belonging to the sphere of human rights.

## **Interpretation of the term "human rights"**

The first systematic interpretation of the language of rights was performed by W. N. Hohfeld (1879-1918). He stated that the word "right" is used generically to denote any sort of legal advantage, specifically "claim" (demand, complaint), "privilege", (benefit), "power" (ability, possibility), or "immunity" (privilege). [3] According to Hohfeld's view, in its narrowest sense, the term "right" is used as the correlative of duty (obligation) and its nearest synonym is the term "claim" (demand, complaint). [4]

Henceforth, there were many attempts to interpret the concept of "right", [5] which testified to the complexity of this problem and obviously the impossibility to come to a more or less identical interpretation of the nature of rights, since they can be used in different contexts and can be analyzed from different points of view. The interpretation of this definition in Black's Law Dictionary confirms the abovementioned. The term "right" is defined here as follows: ...in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification, it answers to one meaning of the Latin "jus", and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law... Taken in a concrete sense, a power, privilege, faculty or demand, inherent in one person and incident upon another. Rights are defined generally as "powers of free action". And the primal rights pertaining to men are enjoyed

by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a "right" is well defined as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others." [6] This very entry in Black's also provides some other notions of the term "right."

Thus, the term "right" in the meaning which it contains in the word combination "human rights", extends past the bounds of only some possibilities of a person which are necessary for his or her existence and development in concrete historic conditions, as it is interpreted in domestic legal science. This term can also mean demand, claim, privilege, etc.

### **The origin and development of the terminology on human rights**

The term "human rights" was first used not long ago, in 1942, when 26 allied nations expressed in a UN Declaration, their firm conviction "that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands". [7] This term replaced the phrase "natural rights" and the later phrase "the rights of man" which was not universally understood to include the rights of women.

The predecessors of the word "right" were the words "liberties" and "franchises". Some philosophers even identified these terms. Thus, Thomas Hobbes pointed at frequent confounding of the Latin terms "Jus" and "Lex", English "Right" and "Law" (Ukrainian "*pravo*" and "*zakon*"), although they should be distinguished because Right consists in liberty to do, or to forbear, whereas Law determines and binds; so that Law and Right differ as much as Obligation and Liberty. [8]

In J. Holt's opinion, "right" is, perhaps, the broader term, because "rights" may be enjoyed by custom whereas "liberties" resemble more closely privileges which are granted. [9]

The Latin term "*jus*" (right) in the analyzed meaning is found already in Latin philosopher M.T. Cicero's works, as e.g., *uxores eodem iure sunt quo viri* "to have the same rights" etc. [10] At the end of the 12th and the beginning of the 13th century, the Latin term "*iura coronae*" was used in English charters rendering the concept of "the rights of the Crown", which through the idea of "rights of the kingdom" acquired the meaning of "rights of freemen in the kingdom". Thus, in the Magna Carta, the liberties are granted not to the kingdom but to the freemen of the kingdom. [11]

The idea of natural rights is also found in the works of John Locke. Thus, in "The Second Treatise of Government" the term "a right" is used quite often in such combinations as "a Right to punish the Offender", "a Right of property", etc. [12]

The next important stage in the development of the language of rights was in the 17th-18th centuries, when the English Petition of Rights (1628), the English Bill of Rights (1689), the American Declaration of Independence (1776), the Virginia Declaration of Rights (1776), etc., were adopted. We can nominate to this list the Ukrainian Constitution of Pylyp Orlyk (1710), the first democratic Constitution in the world which guaranteed many rights and freedoms.

The next wave in the development of the language of human rights took place in the 20th century and, as H. Burgers considers, this development has not yet reached its culmination. [13] The terminology on human rights has been enriched and elaborated since the adoption of the Universal Declaration of Human Rights, the International Covenants of 1966, and other international acts on human rights. The process of unifying this terminology is still going on.

## The development of Ukrainian terminology on human rights

The Ukrainian term “right” which is similar to the Latin term “*jus*” contains several meanings: 1) legislation, a system of generally binding rules (norms) of behavior (which corresponds to the English term “law”) which is set or sanctioned by the state and (2) somehow substantiated grounds, ability, possibility to do, act, use something, etc. (which corresponds to the English term “right”) [14]

The Ukrainian terminology on human rights traces its beginnings from the Rus' Truth, international agreements and other legal acts of Kyiv Rus'. Thus, the treaty between Byzantium and Rus' in 912 stipulates the right of a person accused of a crime to have his or her case tried in court: “The crime should be so completely proven by facts that the judges have complete faith in these facts”. [15] Let me note that this norm was in effect a long time before the Magna Carta of 1215, which on page 39 proclaimed that: “no freemen shall be taken or (and) imprisoned or disseized of his property or exiled... except by the lawful judgement of his peers or (and) by the law of the land”. [16]

As stipulated by the Rus' Truth, there was no death penalty in Kyiv Rus', the right to ownership was respected (“If someone takes someone else's horse, or weapons, or clothes and the owner recognizes them in someone's possession in the district, then the owner has a right to take [back] his property, and in turn for the offense, collect 3 hryvnias”. [17] The old Rus' law provided women with a higher status than Roman or old German law, in which a woman, daughter, wife, mother were always required to have a guardian and had no power under the law throughout their entire lives. In Ukraine, on the contrary, a woman had her own separate property, even while her husband was alive, and after his death, it did not constitute a common inheritance. The woman herself became a full-fledged head of the family (“If a woman remains a widow after her husband has died, then she should receive a share of the property, and the assets provided to her by her husband shall remain in her possession as surplus...”) [18]

Covenants and Constitutions of laws and liberties of the Zaporizhia Army between the honorable Pylyp Orlyk, the newly-elected Hetman of the Zaporizhia Army and elders, colonels and the above-mentioned Zaporizhia Army in 1710, include articles about protecting the inviolability of laws and liberties; on the right to ownership of land not only by the hetman, but also by monks, priests, childless widows, elected and ordinary Cossacks, court servants and private persons; on the right to elect Cossack and ordinary “*uryadnyky*” (officials) and especially “*polkovnyky*” (colonels) by free will and voting; and on the right of Cossack widows, their wives and orphans, women whose husbands were at war or involved in other military service to be free from common obligations and taxes. [19]

The next important step in proclaiming human rights in Ukraine was the period of the Ukrainian National Republic and Western Ukrainian National Republic. The Third Universal (Proclamation) of the Ukrainian *Tsentralna Rada* guaranteed “freedom of speech, the press, worship, assembly, association, strikes, the inviolability of a person and his or her residence as well as the right and opportunity to use one's native language in dealing with all administrative agencies”. [20] Jews, Russians, Poles and others living in Ukraine were granted national-personal autonomy to guarantee their own self-government in all matters of their national life. [21] The Fourth Universal of the Ukrainian *Tsentralna Rada* proclaimed: “In the independent Ukrainian National Republic, ethnic groups will enjoy the right to national-personal autonomy granted to them by the Law of January 9”. [22] We are referring to the Law of the Ukrainian *Tsentralna Rada* on “National-Personal Autonomy” (January 9, 1918) which granted every ethnic group inhabiting Ukraine “the right within the Ukrainian National Republic to national-personal autonomy, that is the right to independently organize their national life, which is implemented by the bodies of the National Union...” [23] Not a single European state had such a law. The first deputy secretary on Jewish Affairs in the General Secretariat of Ukraine, Moshe Zilberfarb, compared this law with the acts of the Great French Revolution. While the latter declared human rights, the Ukrainian law declared rights of ethnic groups. [24]

The Constitution of the Ukrainian People's Republic of 1918 and the draft Fundamental State Law of the Ukrainian People's Republic paid serious attention to the rights of Ukrainian citizens. Both acts contained articles on the equality of men and women without "any difference to faith, nationality and origin"; nobody could be detained in the UPR without a court warrant unless he or she was engaged in wrongdoing; the dwelling place of a citizen was considered to be inviolable; "an inspection (search)" could only be conducted on the basis of a court order and in instances stipulated by law; "correspondence privacy" was established; freedom of conscience and religion was secured, as well as the freedom to change religion; all religions acknowledged by the state had the right "to organize public worship, perform religious rites and establish religious associations"; full freedom "to change one's residence" was proclaimed (freedom to move and transfer one's property within the state, the right to emigrate beyond the boundaries of the state, except in cases stipulated by law) [25]

The terminology on human rights which was used in the 1920-30s can also be found in decrees and resolutions of the Council of People's Commissars, for instance, in the 1921 decree on "discharge from the military service due to religious convictions", which stipulates that persons who cannot serve in the military due to religious convictions are given the right, according to a resolution by the People's Court, "to replace this service with sanitary/health-oriented duties for a period equivalent to the time of conscription service..." [26] In the 1921 Resolution issued by the Council of People's Commissars on "Providing Security for Professor V. Danulevskiy" for his exceptional scholarly service and high level of cultural educational activity, he is guaranteed inviolability of his housing and property which is in his personal possession. [27]

The next period of development of Ukrainian terminology on human rights took place during the era of the Ukrainian Soviet Socialist Republic, which, on the one hand, could not help but become a very important period of development for these analyzed terms due to the adoption of numerous international acts on human rights, but on the other hand, was a period of authoritarian interference into the Ukrainian language, violent reformation in the direction of merging it with the Russian language. The documents and materials of the 1920-50s were placed in conformity with the newly-adopted orthography while corrections and other changes in language were not allowed.

The 1937 and the 1978 Constitutions of the Ukrainian SSR included some chapters on citizens' fundamental rights and obligations, but their placement after the chapters on the basis of social order and policy testified to the priority of the state, society over the individual, citizen. In the first place, economic and cultural rights were proclaimed. [28] Among political rights, the right to unite into political parties was declared, which under the conditions of a one-party regime, was accepted as fiction. An entire series of rights, which were proclaimed in the 1919 Constitution of the Ukrainian SSR are missing from the 1937 and 1978 Constitutions, for instance, "the right to shelter all foreigners who are persecuted for their religious deeds and also for deeds directed against governmental interests, which prohibited the interests of the bourgeois class." [29] These Constitutions also did not contain proclamations about the right to change one's residence, the right to strike, etc.

The adoption of the Constitution of Ukraine on June 28, 1996, became an important stage in the development of Ukrainian terminology on human rights and includes Chapter 2 on "Human and Citizens' Rights, Freedoms and Duties" which fully complies with international legal acts on human rights. 42 articles in this chapter directly determine human and citizens' rights and freedoms, and as is noted in Article 22, are not exhaustive. We can speak about a certain rhetoric regarding human rights in the Constitution of Ukraine. Among the new terms on human rights which thus far, have not been used in Ukraine's legislation are such terms as "the right to free development of his or her personality" (Article 23); "the inalienable right to life" (Article 27); "the right to entrepreneurial activity (Article 42); "the right to an environment that is safe for life and health (Article 50); "the right to know his or her rights and duties" (Article 57), etc. The terms on human rights in the Constitution have been interpreted.

## **Functioning of legal terminology on human rights**

The legal term "right" expresses a generic notion and it is typically used in combination with other words which concretize its meaning, such as: "the right to education", "the right to freedom and security of a person", etc.

Such terms-phrases may, in their turn, express generic notions in relation to some other phrases. Thus, the term "the right to life" is generic in relation to a phrase such as "the right to life of the mother and that of the unborn child", etc. As C. Wellman states, the human right to life might imply that "capital punishment is always morally wrong, or that it is not morally wrong for a person to kill in self-defense, or that a murderer has forfeited his or her right not to be executed, or that the state owes each of its citizens the means of sustaining his or her life, or that a terminally ill patient can make a doctor's act of euthanasia morally permissible by waiving his or her right to life". [30]

Terms on human rights which are absolutely identical as to their form may have different meaning and interpretation in the legislation of different states. On the one hand, the American Convention on Human Rights declares the right to have one's life protected from the moment of conception, [31] while the Universal Declaration of Human Rights does not include such statements.

Today, a group of nations is trying to change the definition of the term "human rights". Countries such as China, Columbia, Cuba, Indonesia, Iraq, Iran, Libya, Malaysia and others are trying to prove that at a time when human rights are general with regard to their nature, they should be considered within the context of the dynamic and evolutionary process of the development of international standards, bearing in mind the importance of national and religious specificities and different historic, cultural and religious backgrounds. Thus, the universal nature of human rights can be discussed on the level of terminology, words, their enumeration in international law as ideal standards.

## **The problem of unifying Ukrainian terminology on human rights**

An analysis of the texts of effective and former Constitutions of Ukraine, Ukraine's laws that address human rights, and international acts on human rights in English and their Ukrainian translations proves that Ukrainian terminology on human rights faces the same problems as does legal terminology on the whole. These issues were addressed during the conference on Codifying Ukraine's Legislation, which was organized by the Ukrainian Legal Foundation. [32]

On the one hand, terms on human rights are part of the terminology system of international law, while on the other, they are an integral part of domestic law, and thus, in accordance with the 1969 Vienna Convention on the Right of Agreements, can have specific meanings which differ from their typical meaning in international legal acts. Having determined (in accordance with the Laws on "The Effectiveness of International Agreements on the Territory of Ukraine" of 1991 and on "International Agreements of Ukraine" of 1993) that international agreements which have been concluded and duly ratified by Ukraine constitute an integral part of national legislation, Ukraine has set itself the task of unifying Ukrainian legal terminology, specifically with regard to human rights, bringing it into compliance with international terminology on human rights.

During the process of unifying terms on human rights, the problem of the conformity of each Ukrainian term with its "twin" term in international law becomes important. For instance, the English term "the right to a nationality" corresponds to the Ukrainian term "the right to citizenship," and not to nationality, since the English word "nationality" means belonging to the state. The term "nation" in English, along with the mean-

ing "nation, people" also means "state" in contrast with the Ukrainian term "nation" which is not perceived as a synonym for the word "state". However, "The Dictionary of the Ukrainian Language", along with the definition of this word as "a concrete historical form of a community of people" lists its second meaning as "state, country". [33] It is in this very sense that it is used in the name "The United Nations Organization", that is, states.

In an instance where there is no absolute or approximate equivalent of an international term, it is necessary to use a term that conveys an analogous concept in the Ukrainian language. For example, let us look at the English word "privacy" which is used in Article 12 of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his privacy, family..." [34] The English term "privacy" is translated here as "personal life." The same norm is incorporated into the Constitution of Ukraine (Article 32). Let us note, however, that the term "personal life" does not absolutely convey the meaning of the English word "privacy" — a state of solitude. US courts interpret this right as "freedom from surveillance or disclosure of intimate affairs", and also in a broader sense as "the freedom to engage in certain activities" and "to make certain sorts of choices without governmental interference". [35]

Often there are difficulties with regard to the translation of legal terms used in international legal acts when the interpretation of definitions which are related by them are not provided. For example, "the right to development" as a collective right of the people was further clarified in the 1992 Rio de Janeiro Declaration on the Environment and Development as "the right to sustainable development." It is translated as "*stalnyi rozvytok*" in Ukrainian sources, [36] which is a carbon copy of the Russian term "*ustoichivoie razvitiie*." At any rate, reservations about the inadequate translation of "*ustoichivoie razvitiie*" were expressed by the Russian lawyers themselves. [37] The word "to sustain" means "to support" and when the suffix "able" is added, it is translated as "supported." One of the meanings of the verb "support" is to be capable of bearing, withstand; to preserve, maintain in a certain condition. [38] Thus, the terms "supported" and "sustainable" can be considered synonyms and using the the word combination "*stalnyi rozvytok*" as a translation of "sustainable development" is quite acceptable.

The problem of selecting a national or international term is a topical issue faced by both Ukrainian terminology on human rights and international legal terminology as a whole. [39] Which term should receive preference: "*implementatsiia*" (from the Lat. *implementum* — implementation) or "*vprovadzhenia*", "*tortury*" (torture) (from the Lat. *fortor* — executioner) or "*katuvania*," etc. The text of the Constitution proves that there is a tendency to use traditionally national terms on human rights. Thus, if Article 5 of the Ukrainian translation of the Universal Declaration of Human Rights reads: "no one shall be subjected to torture..." and the word "*tortury*" is used, then Article 28 of the Constitution of Ukraine reads: "no one shall be subjected to "*katuvania*" and the term "*katuvania*" is used.

The use of carbon copy translations, mainly from Russian, to determine concepts in the sphere of human rights, such as the environment, social security, etc., can be viewed as a drawback. The effective Constitution of Ukraine has also tended to use national terms, for instance, as in Article 50: "Everyone has the right to an environment that is safe for life and health..." Obviously, credit belongs to the Ukrainian Commission on Legal Terminology, which linguistically analyzed the draft Constitution.

Thus, terminology on human rights — as an open system — is incorporated into both international and domestic legal terminology, which makes the problem of its unification especially topical. Compiling dictionaries on human rights terminology (thesauruses, interpretive dictionaries, bi- or multilingual dictionaries, etc.) would help resolve this problem. [40] Only after such dictionaries are compiled will it be possible to develop the foundation for unifying Ukrainian terminology on human rights.

#### FOOTNOTES:

- [1]. "He who does not know scientific terms, inevitably does not know the very science." See Rastel, J. *The Expositions of the Terms of the Laws of England. 1526–1527. Fol. Aiiia-b.*

- [2]. Donnelly, S. *The Language and Uses of Rights: a Biopsy of American Jurisprudence in the Twentieth Century*. Lanham, N.Y., Lnd: University Press of America, 1994, p. 1.
- [3]. Hohfeld, W. N. *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. Westport: Greenwood Press, 1978, p. 71.
- [4]. Ibid.
- [5]. See: Wellman, C.A. *A Theory of Rights. Persons under Laws, Institutions and Morals*. Rowman and Allanheid Publishers, 1985, p. 57; Hart, H. L. A. *Definition and Theory in Jurisprudence // Law Quarterly University Press*, 1977, Vol. 70, pp. 12–13; Dworkin, R., *Taking Rights Seriously*. Cambridge, Mass.: Harvard University Press, 1977, pp. 82-85; Rabinovych, P.M. *Fundamental Human Rights: Concepts, Classifications, Tendencies // The Ukrainian Annual of Human Rights*, 1995, No. 1, pp. 15–18; and others
- [6]. *Black's Law Dictionary*. St. Paul, Minn.: West Publishing Co., 1991, p. 919.
- [7]. Lawson, E. *Encyclopedia of Human Rights*. N.Y., Wash., Lnd.: Taylor & Francis Inc., 1991, P. IX.
- [8]. *The English Works of Thomas Hobbes*. 1839, Vol. 3, p. 117.
- [9]. Holt, J.C. *Magna Carta and Medieval Government*, Lnd., Ronceverte: Hambledon Press, 1985, p. 205.
- [10]. Simpson, D.P. *Cassell's New Latin Dictionary*. 1968, p. 331.
- [11]. Holt, J.C. Ibid., p. 210.
- [12]. Locke, J. *Two Treatises of Government*. 1963, p. 312, 341.
- [13]. Burgers, H. *The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century // Human Rights Quarterly*, 1992, Vol. 14, p. 447.
- [14]. See, *The Dictionary of the Ukrainian Language*. 11 Vols: Vol. 7, Kyiv: *Naukova Dumka*, 1976, p. 506.
- [15]. *Rus' Chronicle*, translated by L. Makhnovets according to the Ipatskyi list. Kyiv: *Dnipro*, 1989, p. 20.
- [16]. *Magna Carta, The Great Charter. Four on Magna Carta and History of Our Liberty*. 1965, p. 132.
- [17]. *The Rus' Truth. II. Comments*, ed. by Academic Hrekov, B.D. Moscow-Leningrad, an Academy of the USSR publication, 1947, p. 99.
- [18]. Ibid., p. 640.
- [19]. *Covenants and Constitutions of Laws and Liberties of the Zaporizhia Army. History of Ukrainian Constitutionalism (in documents): International Law Forum, Huta-Syniohora*, 1996, pp. 7–10.
- [20]. *The 3rd Universal of the Ukrainian Tsentralna Rada*. Ibid., p. 20.
- [21]. Ibid.
- [22]. *The Fourth Universal of the Ukrainian Tsentralna Rada*. Ibid., p. 23.
- [23]. *The Law of the Ukrainian Tsentralna Rada on National-Personal Autonomy. National Relations in Ukraine in the 20th Century*. Kyiv: *Naukova Dumka*, 1994, p. 71.
- [24]. See Hunchak, T. *Symon Petliura and the Jews*. Kyiv: *Lybid*, 1993, p. 8.
- [25]. See *The Constitution of the Ukrainian People's Republic of 1918; Fundamental State Law of the Ukrainian People's Republic (draft), The History of Ukrainian Constitutionalism (in documents)*, pp. 24, 32–35., etc.
- [26]. *A Collection of Laws and Orders*. 2d ed., 1921, No. 1, p. 21.
- [27]. *A Compilation of Laws and Orders*. 2d ed., 1921, No. 6, p. 193.
- [28]. *The Constitution (The Fundamental Law) Ukrainian SSR 1937; The Constitution (The Fundamental Law) Ukrainian SSR 1978. The History of Ukrainian Constitutionalism (in documents)*, pp. 62–63, 69–72.
- [29]. *The Constitution of the Ukrainian SSR*. Ibid., p. 50.
- [30]. *Welman, C. Above-Indicated Work*, p. 2.

- [31]. American Convention on Human Rights, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36 (entered into force July 18, 1978).]
- [32]. See S. Holovaty. On the Necessity to Compile Dictionaries on Ukraine's Legal Terminology. *Ukrainian Law*, 1994, Part 1, p. 55; S. Holovaty. Terminology Problems in the New Codification of Ukraine's Legislation. *The Status of the Codification Process in Ukraine. Synopsis of the Third All-Ukrainian Conference*, Kyiv: 1995, p. 127.
- [33]. Dictionary of the Ukrainian Language: 11 vols, Vol. V. Kyiv: *Naukova Dumka*, 1974, pp. 232-233.
- [34]. The Universal Declaration of Human Rights. *Human Rights: International Agreements of Ukraine*. Kyiv: *Yurinform*, 1992, p. 20.
- [35]. See Glendon, M.A. *Rights Talk: The Impoverishment of Political Discourse*. New York: Free Press, 1991, p. 57.
- [36]. See Bittner, O. The Individual in the World of Economy. *Uriadovy Kurier*. July 25, 1996, p. 12
- [37]. See Perchihin, Y.A. Can Development Be Sustainable or about Linguistics. *Hlobe-Russia. Information Bulletin. International Organization of Parliamentarians for a Balanced Environment*. 1995, No. 2, p. 2.
- [38]. The Dictionary of the Ukrainian Language, Vol. VI, p. 517.
- [39]. See Antonovych, M. Unifying Terminology on International Law. *Politics and Time*, 1996, No. 11, pp. 65-68.
- [40]. Examples of such dictionaries in English and Russian can include: Marie, J. *Glossary of Human Rights: Basic Terms in Universal and Regional Instruments, English-French*. Paris: Edition de la Maison des Sciences de l'Homme Paris; Stormoken, B. *Human Rights Terminology in Sciences de l'Human Rights Terminologie in International Law: A Thesaurus*. — Dordrecht, Boston: M. Nijhoff, 1987; *Dictionary of Human Rights and Rights of People*. Moscow, 1993.