

Kosilova Olha,

Candidate of Political Sciences,

Associate Professor, Researcher, Taras

Shevchenko National University of

Kyiv, Kyiv, Ukraine

ORCID ID 0000-0002-5574-3771

CLASSIFICATION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF HUMAN AND CITIZENS BY THE FUNCTIONS OF RIGHTS IN THE LEGAL SYSTEM OF GERMANY

The article analyzes the fundamental rights and freedoms, which are enshrined in the Basic Law of Germany and Ukraine. The article states that groups of rights are allocated according to the types of fundamental rights functions. Thus, within the subjective-legal function of rights, which is divided into subspecies: the protective function of the provision of goods, the function of equality and complicity. the following groups of rights are distinguished: «right to liberty / protection rights», «right to receive certain benefits» (which is broader than the right to social protection), «equality rights», «rights to participation». The article gives examples of the norms of each group of rights, in accordance with the functions of rights under the Basic Law of Germany and Ukraine.

The rights to liberties / protection rights, respectively, in national legal science is interpreted as negative rights, which are conferred on a person from birth and not depend on state will. In Ukrainian jurisdictions, such rights include personal (civil rights). The rights to receive benefits can be correlated with positive rights, that is, the right to receive some support and preferences from the state to the individual. In Ukrainian social rights are predominantly positive rights. While in Germany, this group of rights also includes, for example, the right to equal conditions to physical and mental development and status in the society of illegitimate children, the right to create private schools, the right to petition or

complain to the competent authorities and to the parliament, the right to compensation for acts of public authority, and others. So, a person can claim significant preferences and benefits from the state because he or she is part of this political community. The rights of persons are of paramount importance in the activity of all state bodies of Germany. Equal rights require equal treatment of the person, regardless of gender, race, origin, religious belief, etc. In Germany, there are also «special equality» rights that apply only to Germans. It is about equal access to public service, the right to equal civil rights and responsibilities in every federal state. In Ukraine, equality rights are enshrined in the Basic Law, but are interpreted as a principle of equality, not as a separate group of rights. Rights to participation concerns the political rights of citizens, both in Ukraine and in Germany, with some exceptions mainly affecting citizens of the state.

Keywords: functions of rights and freedoms, defense rights, rights to benefits, equality rights, rights to participation, positive rights, negative rights.

REFERENCES

1. *Yelnikova M.O.* (2015) *Klasyfikatsiia konstytutsiinykh prav v konteksti pravorozuminnia*. “Classification of constitutional rights in the context of legal thinking”. Scientific Bulletin of Kherson State University Iss. 2, vol.1. P. 77–81. URL: http://www.lj.kherson.ua/2015/pravo02/part_1/20.pdf (date of application: 20.09.2019) [in Ukrainian].
2. *Konstytutsiine pravo Ukrainy*. “The constitutional law of Ukraine”: textbook for students of higher education institutions; for editing V.P. Kolisnyka and Yu.H.Barabasha. Kharkiv.: Pravo, 2008. 416 p. [in Ukrainian].
3. *Sovhyria O.V., Shuklina N.H.* (2018) *Konstytutsiine pravo Ukrainy*. “Constitutional Law of Ukraine”. Full Course: Study Guide. Kyiv: Yurinkom Inter. 556 p. [in Ukrainian].
4. *Klasyfikatsiia*. “Classification”. URL: <https://uk.wikipedia.org/wiki/%D0%9A%D0%BB%D0%B0%D1%81%D0%B8%D1%84%D1%96%D0%BA%D0%B0%D1%86%D1%96%D1%8F> (date of application: 21.09.2019) [in Ukrainian].

5. Klasyfikatsiia. Yurydychna entsyklopediia. “Classification. Legal Encyclopedia”: Ed.: Yu.S. Shemshuchenko. K.: Ukrainian Encyclopedia M.P. Bozhana, 2001. Vol. 3. 792 p. URL: <http://leksika.com.ua/20070908/legal/klasifikatsiya> (date of application: 20.09.2019) [in Ukrainian].
6. Jarass. Spezielle Gleichheitsrechte. URL: <https://www.juracademy.de/grundrechte/gleichheitsrechte.html> (date of application: 21.09.2019) [in German]
7. Pieroth B., Kingreen T., Schlink B., Poscher R., Grundrechte C.F. Müller GmbH, 2016. 357 s. [in German].
8. Funktionen der Grundrechte – Arten und funktionen in der Übersicht. URL: <https://www.juracademy.de/grundrechte/grundrechte-arten-funktionen-uebersicht.html> (date of application: 20.09.2019) [in German].
9. Ipsen J. Staatsrecht II Verlag: Vahlen; Auflage: 29., überarbeitete (28 August 2017). 325 s. [in German].
10. Hufen F. Staatsrecht II § 5 Rn. 3. C.H.Beck; Auflage: 3., aktualisierte und überarbeitete Auflage (19. Oktober 2011). 755 s. [in German].
11. Lüth-Urteil des Bundesverfassungsgerichts (BVerfGE 7, 198). URL: <http://www.servat.unibe.ch/dfr/bv007198.html#Opinion> (date of application: 21.09.2019) [in German].
12. Grundgesetz für die Bundesrepublik Deutschland. URL: <https://www.gesetze-im-internet.de/gg/GG.pdf> (date of application: 20.09.2019) [in German].
13. Kataloh yurydychnykh pozytsii Konstytutsiinoho Sudu Ukrainy. “Catalog of the legal position of the Constitutional Court of Ukraine (1997-2018)”. URL: <http://ccu.gov.ua/storinka-knygy/4-prava-svobody-i-obovyazky-lyudyny-i-gromadyanyna> (date of application: 21.09.2019) [in Ukrainian].
14. Konstytutsiia Ukrainy. “Constitution of Ukraine”. Information of the Verkhovna Rada of Ukraine. 1996. No. 30. Art. 141. [in Ukrainian].
15. Rolf Schmidt. Grundrechte. Grasberg bei Bremem. 2015. 430 s. [in German].

16. Rechte und korrespondierende Pflichten. Libertar-konservative Betrachtungen über die modern Gesellschaft. URL: <https://catocon.wordpress.com/tag/negatives-recht/> (date of application: 20.09.2019) [in German].

17. Hans Heinrich Rupp. Einteilung und Gewichtung der Grundrechte/ Handbuch der Grundrechte in Deutschland und Europa. Band II /C.F. Muller, Verlagsgruppe Huthing Jehle Rehm GmbH, Heidelberg, Munchen, Landsberg, Berlin. 2006. 1548 s. [in German].

18. Parteispenden-Urteil des Bundesverfassungsgerichts (BVerfGE 8, 51, 64 f). URL: <http://www.servat.unibe.ch/dfr/bv008051.html> (date of application: 21.09.2019) [in German].

19. Gesetz über die politischen Parteien (Parteiengesetz). URL: https://www.bundestag.de/resource/blob/189336/5d192027d48c097aa998a2eb8713a060/pg_pdf-data.pdf (date of application: 20.09.2019) [in German].

20. Hans D. Jaras Funktionen und Dimensionen der Grundrechte/ Handbuch der Grundrechte in Deutschland und Europa. Band II /C.F. Muller, Verlagsgruppe Huthing Jehle Rehm GmbH, Heidelberg, Munchen, Landsberg, Berlin. 2006. 1548 s. [in German].