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FREEDOM AND REASONABLENESS AS LEGAL VALUES OF THE MODERN DIGITAL EUROPEAN SOCIETY

The purpose of the article is to establish the essence of freedom and reasonableness as legal values of the modern digital European society. It was determined that the signs of freedom in social legal relations are: free choice of opportunities to realize the rights granted to the subject; inadmissibility of abuse of procedural rights; the validity and appropriateness of the formalization of procedures for the realization of procedural rights and interests. On the basis of a comparative legal analysis of the legislation of foreign countries, it was determined that there are problems with the normative definition of the understanding of freedom and reasonableness as legal values of the modern digital European society. It is emphasized that a unified normative approach to the understanding of freedom and reasonableness as a value of social relations has been introduced in Germany, Belgium, Italy, the Netherlands, Luxembourg, Greece and other EU countries. It has been determined that in Spain the principles of equality and effective provision of freedom are defined as principles of constitutional importance that guarantee the right to effective legal protection. It has been established that freedom and reasonableness as legal values of the modern digital European society are the fundamental principles on which the legal order in Europe is built. Freedom is a fundamental legal value in the European legal tradition, which is guaranteed by the Constitutions of the EU member states and the Charter of Fundamental Rights of the European Union. It was determined that digitalization promotes open access to public services, education and information, which increases the level of democracy and transparency. It was determined that the adoption of the General Data Protection Regulation (GDPR) is an example of regulation aimed at protecting the digital rights of European citizens. It was determined that the digital society of Europe faces a number of challenges in preserving freedom and reasonableness as legal values: cyber threats; monopolization of digital platforms; equal access to digital technologies.
Key words: *reasonableness, freedom, digital rights, legal regulation, value of law, permission, procedures.*

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СВОБОДА ТА РОЗУМНІСТЬ ЯК ПРАВОВІ ЦІННОСТІ СУЧАСНОГО ЦИФРОВОГО ЄВРОПЕЙСЬКОГО СУСПІЛЬСТВА

Метою статті є встановлення сутності свободи та розумності як правових цінностей сучасного цифрового європейського суспільства. Визначено, що ознаками свободи в суспільних правовідносинах є: вільний вибір можливостей для реалізації наданих суб'єкту прав; недопустимість зловживання процесуальними правами; обґрунтованість та належність формалізації процедур реалізації процесуальних прав та інтересів. На підставі порівняльно-правового аналізу законодавства зарубіжних країн визначено, що є проблеми нормативного визначення розуміння свободи та розумності як правових цінностей сучасного цифрового європейського суспільства. Підкреслено, що єдиний нормативний підхід до розуміння свободи та розум-

ності як цінності суспільних відносин запроваджено у Німеччині, Бельгії, Італії, Нідерландам, Люксембургу, Греції та іншим країнам ЄС. Визначено, що в Іспанії принципи рівності та ефективного забезпечення свободи визначаються як принципи конституційного значення, що гарантують право на ефективний правовий захист. Встановлено, що свобода та розумність як правові цінності сучасного цифрового європейського суспільства є фундаментальними принципами, на яких будується правовий порядок у Європі. Свобода є основною правовою цінністю в європейській правовій традиції, що гарантується Конституціями держав-членів ЄС та Хартією основних прав Європейського Союзу. Визначено, що цифровізація сприяє відкритому доступу до державних послуг, освіти та інформації, що підвищує рівень демократії та прозорості. Визначено, що прийняття Загального регламенту про захист даних (GDPR) є прикладом регулювання, що спрямоване на захист цифрових прав європейських громадян. Визначено, що цифрове суспільство Європи стикається з низкою викликів у збереженні свободи та розумності як правових цінностей: кіберзагрози; монополізація цифрових платформ; рівний доступ до цифрових технологій.

Ключові слова**:** *розумність, свобода, цифрові права, нормативно-правове регулювання, цінність права, дозвіл, процедури.*

Statement of the problem. Issues of ensuring freedom in public legal relations of natural persons arise from EU law, in particular regarding violations of public law in the exercise of their powers by EU institutions, their officials or in case of their inaction, including that which resulted in harm to them, only in the order of appeal primarily to the Court, which at the same time largely acts as a body of administrative justice at the EU level. The EU Court is a court for, so to speak, privileged applicants (member states, relevant EU bodies). Thus, part four of Article 263 of the Treaty on the Functioning of the European Union (Treaty on the Functioning of the European Union, 2012) establishes a rule that allows any natural or legal person to initiate proceedings in the General Court of the European Union , hereinafter - GCEU) not only against any decision of the EU bodies addressed to this person or which concerns him directly and personally (individual act), but also against a normative legal act, if it directly applies to him.

In other words, the Treaty on the TFEU enshrines a formula of individual judicial protection that allows individuals, in contrast to, for example, German administrative law, to challenge certain regulatory acts (EU directives, etc.) provided they apply to these individuals and directly limit or violate their rights and legitimate interests guaranteed by acts with higher legal force (EU treaties, the Charter of Fundamental Rights and other legal acts).

The state of scientific development of the problem. The scientific-theoretical basis of the study of freedom and reasonableness as legal values of the modern digital European society was formed on the basis of the use of scientific developments of such scientists as: M.A. Boyaryntseva, M.Yu. Vikhlyaev, Yu.A. Volkova, R.A. Kalyuzhnyi, O.V. Kaplina, D.A. Kozachuk, T.O. Kolomoets, V.K. Kolpakov, E.V. Kurinnyi, Yu.O. Leheza, R.V. Myroniuk, T.T. Polyanskyi, S.V. Prylutskyi, V.V. Tylchik, O.S. Fonova, O.Yu. Khablo, A.S. Stefan, T.S. Yatsenko and others.

The purpose of the article is to establish the essence of freedom and reasonableness as legal values of the modern digital European society.

Presentation of the main material. The locus standi construction (the right to be a plaintiff in court) provides for the admission of natural persons to the process of ensuring formal legality in the sphere of rule-making and law enforcement activities of EU institutions and indicates that the Treaty on the TFEU provides for an «interest» and not a «subjective» system of ensuring freedom in social legal relations in the public sphere.

This brings it closer to the French model of administrative justice. In particular, Article 41 of the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights of the European Union, 2000) defines the right of everyone within the EU to the proper (effective) provision of freedom in public legal relations, which is the guiding principle of the modern European administrative process. In particular, it was established that everyone has the right to have their case considered and decided impartially, fairly and within a reasonable time by EU institutions and bodies (Leheza, 2021). This right includes, in particular, guarantees of opportunities for each person: to be heard before individual measures are taken concerning him; access to information about oneself in compliance with legitimate interests, confidentiality, professional and commercial secrecy; the duty of administrative bodies to motivate their decisions regarding a person; to compensate for any damage caused by EU institutions or officials in the performance of their powers, in accordance with the general principles of the legislation of the member states; apply to EU institutions and receive a response from them in one of the official languages of the Treaties.

In addition, in Art. 47 of the Charter of Fundamental Rights of the EU enshrined, by analogy with Articles 6 and 13 of the Convention on the Protection of Human Rights and Fundamental

Freedoms, the right of everyone to an effective remedy and a fair trial. In particular, it is stipulated that anyone whose rights and freedoms guaranteed by EU law have been violated has the right to: effective legal remedies in court; for a fair and public hearing of the case within a reasonable time by an independent and impartial court previously established by law; protect yourself by any permitted means; for legal aid when he does not have sufficient funds. These provisions of the Charter, as well as the fundamental rights guaranteed by the Convention, which are general principles of EU law, establish the principles by which natural persons can apply for the protection of their rights and legitimate interests in accordance with EU law (Greer, S., J. Gerards, and R. Slowe, 2018).

All member states of the European Union must contribute to the effective provision of freedom in public legal relations. This, first of all, is implemented within the framework of public legal relations as a limitation of requirements for the elimination of situations of abuse of procedural rights, which is understood as a certain established regulatory mechanism for the implementation of the right to administrative protection. The realization of freedom in public legal relations is defined as granting the subject the right to choose a range of goals, means of protection of his rights in the field of public-management legal relations. Therefore, this means the possibility of a person to act at separate stages of filing an administrative lawsuit and its further consideration, starting from the stage of initiating proceedings and ending with the stage of execution of a court decision, but at the same time, as we have already emphasized, the realization of freedom in social legal relations must meet the requirements of propriety, proportionality and reasonableness.

As for national courts, the principle of effective provision of freedom in public legal relations determines the value of a person acting at his own discretion, without violating the rights, interests and aspirations of other participants in legal relations in the process of protection aimed at the availability of legal remedies against violations. This is the presence of effective actions of a person in connection with the violation of legal rights or interests, and a guarantee of providing all possible means for further effective actions.

In particular, in France, although the law does not directly establish the principle of effective provision of freedom in social legal relations, it follows from certain general principles. Yes, French law does not guarantee procedural rights. The reason for this is that in the French approach, the law is considered as an objective norm aimed at achieving the goals of effective administration. At the same time, the principles of effective provision of freedom in public legal relations, effective protection of rights and fair trial recognize and cover the following requirements: equal rights of access to administrative and administrative documents; the right to justify court decisions and the duty of administrative bodies to justify their decisions; the principle of equality of arms in adversarial administrative proceedings, the right to be heard, the right to remedies and access to courts where independent and impartial judges decide cases within a reasonable time (such rights are in fact significant components of effective protection) (Gutman, 2019). So, the signs of freedom in social legal relations are: free choice of opportunities to realize the rights granted to the subject; inadmissibility of abuse of procedural rights; the validity and appropriateness of the formalization of procedures for the realization of procedural rights and interests. French administrative law is, in fact, based on case law, which creates certain problems for the accessibility of the law.

It should be noted that the modern French model of administrative justice is typical of Germany, Belgium, Italy, the Netherlands, Luxembourg, Greece and other EU countries. In Spain, the principles of equality and the effective provision of freedom in public legal relations are principles of constitutional importance that guarantee the right to effective legal protection. In Germany, the activity of administrative courts is enshrined in the Constitution of the Federal Republic and is an effective model for the implementation of a citizen's right to judicial protection against violation of his rights by state authorities. In Hungary, although the principle of effective provision of freedom in social legal relations still does not have an independent legislative basis, it derives from the principle of a fair trial, enshrined at the constitutional level. According to the provisions of the Constitution, any (natural or legal) person whose rights or legitimate interests have been directly violated by an administrative act may challenge it in court.

A feature is the presence of three types of constitutional complaints in Hungarian legislation. The «axio popularis» system means the legal possibility for any person to apply to the Constitutional Court, claiming that a law, legal position or legal norm as a whole contradicts the constitutional provisions, and to demand the annulment of a decision, action or act. The purpose of a constitutional complaint is also to protect a person from encroachments, in particular during court proceedings or administrative

proceedings. The right to protection also includes the mechanism of appeal to the ombudsman. The Commissioner for Fundamental Rights and Freedoms (the parliamentary ombudsman) can initiate the procedure for revising the law in the Constitutional Court on the basis of the "ex-growth facto" principle. The Human Rights Commissioner has broad powers to investigate the work of administrative bodies, may initiate various procedures for compensation of damage or restoration of rights or legitimate interests of citizens. At the same time, the prosecutor is obliged to monitor the legality of final or normative decisions made by administrative bodies, if the appeal against the decision was not considered by the court (Prechal, 2017).

In our opinion, the principle of effective provision of freedom in social legal relations is so deeply rooted in EU law that some scholars are convinced that it has a quasi-constitutional status. All relevant parts of EU law have their origin in the common constitutional traditions of the member states, which is clearly recognized in the founding documents of European integration and in the judicial practice of European courts. In general, the principle of effective provision of freedom in social legal relations provides for the possibility of a person whose rights and interests have been violated, to use the available and state-guaranteed means of legal protection to effectively ensure freedom in social legal relations in order to restore his rights; challenge administrative acts in court, present own evidence during the proceedings, freely choose opportunities for exercising the rights granted to the subject, prevent abuse of procedural rights, ensure the validity and appropriateness of the formalization of the procedures for the implementation of procedural rights and interests, as well as in general by one's effective actions to contribute to the restoration of justice.

Conclusions. In each state, the principle of effective provision of freedom in social legal relations is implemented in different legal ways and in different areas, depending on the model of the organization of administrative justice. For the successful legal reform and European integration of Ukraine, it is important to take into account the practice of European states in the sphere of ensuring freedom in public legal relations regarding the introduction of changes to the current legislation. It is worth noting that the positive experience and high standards of European countries are gradually being introduced into the rule-making process of our state. At the same time, the consolidation of the basic principles of the activity of administrative courts at the constitutional level (for example, France, Germany, etc.) will contribute to the implementation of the principle of effective provision of freedom in social legal relations, established by the provisions of international documents.

In the modern world, administrative justice is the only universal institution for the protection of the legally enshrined freedoms of citizens, which embodies a combination of two independent mechanisms, namely the executive and judicial branches of power. In addition, this institution is recognized as universal both within the framework of the national legal system and on a global scale. Taking into account the achievements of European states in the field of administrative process, legal standards developed at the European level, studying the practice of the European Court of Human Rights is necessary for the development and improvement of the theoretical and regulatory framework of administrative courts in Ukraine in the process of effectively ensuring freedom in public legal relations. The system of properly ensuring freedom in public legal relations is one of the important conditions of the European administrative space. The effectiveness of the national system of ensuring freedom in public legal relations depends on the success of the process of implementation and approximation of the legislation of the European Union, taking into account not only its content, but also its form.

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