

The right to private life as a value (philosophical and legal aspect)



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Abstract. The article dwells upon studying privacy and private law in a modern philosophy of law. The article defines a concept of a person's private life, analyses the Ukrainian legislation related to the protection of rights to the private life of a person, determines types, ways and forms of protection of the rights to private life of a person. In the context of the article the emphasis was put on a fact that for the Ukrainian philosophy of law and Ukrainian legislation the issues of private life are relatively new, dated approx. the last third of the XX century, and this causes a number of terminological and substantial problems requiring an urgent solution. It is proved that the right to private life is a concretization of the Western European

worldview values and absolute value of human being.

Keywords: *philosophy of law, law, person, human rights, private, public, private life of a person, personal life, personal data, protection of rights, defense of rights.*

Problem statement.

Despite all charm of a public life, in case of wide involvement of a person to the public life and political processes, each of us is striving to have his/her own private life, elements of which can be brought to the public eye and become known to others only of our own freewill (registration and updating of pages in the social networks, voluntary providing of information about yourself, publication of correspondence, etc.). The inviolability of private life, social establishments and state, level of respect to private life of everyone are the signs of maturity of society. Nowadays Ukraine is a transitive society within the framework of which its own civilized forms of relationships between people, person and state, state and social organizations are forming. And this explains a closer attention of scientists to clarification of essence and protection of private life of individuals.

Analysis of recent research and publications. The analysis of scientific literature on the issues of privacy has showed that today there are quite different conceptual approaches to the definition and development of a stated problem. Besides, the issues of privacy took a prominent place in the works of authors studying the value priorities of modern culture, such as Z. Bauman, A. Touraine, P. Sztompka, A. Giddens, R. Sennett, U. Beck, S. Lash, G. Lipovetsky, Y. Khodus and others. The further developments related to privacy protection in Ukraine of purely legal nature are represented by the works of M. Havroniuk, V. Tertyshnyk, Y. Rymarenko, V.S. Syvukhin, P. Andrushko and A. Chernobai.

Setting goals and objectives. Despite the fact that today the issue of privacy is legitimized in the world and native humanitaristics, its

problems are not fully disclosed in the Ukrainian philosophy of law. Besides, a necessity of formation of new (non-legalized) view to the issue of private in the law is an answer to new ideological and worldview challenges: national jurisprudence should become a «person-oriented» which in general corresponds to the objectives of modern humanitaristics: «To a certain extent the human sciences are opposed to the natural sciences, but include social disciplines. They are united by a common object, a person, at the same time the social sciences (psychology, economics, sociology, political studies, anthropology and ethnography) are supported by a quantitative knowledge and use mathematical tools. To the contrary, the human sciences (history, philosophy, cultural studies, literature studies and art history) use value judgements and qualitative methods» [2, p. 21].

The problem of person and human beginning is a fundamental and key for the jurisprudence despite all etatistic and positivistic thoughts. A person in his\her various capacities, status and role dimensions is alpha and omega of the science of law; human is the very same force making the law by itself. The multidimensionality and ambiguousness of Human as a phenomenon generates the issues that need a scientific understanding. One of such issues is a correlation of private and public in Homoius; how two mutually exclusive needs are coexisted in one person: to be among others and to be in the limelight, but at the same time to need a zone of own closedness and privacy. The Existence of «private and public» in a person is an object of a deeper morphological layer of human existence, which is possible in the system of binary oppositions (V. Bachinin and V. Vovk wrote about the binary oppositions in the law of their days) ¹. That is why "in each person there are two cultural and ideological orientations, the manifestation of which can be called "public person" and "private person" [7]. And for the first time the terminological differentiation between "public person" and "private person" was formulated and processed in the Western European sociology on the basis of analysis of social realias of the Western Europe [8].

In the field of jurisprudence, the private is most often written in the context of civil and private law, but at the same time another ill-researched question in the law such as: Does a person have the right to privacy of his\her life, and if being so, is protection of his\her closedness his\her own business? are there social (including legal) mechanisms of protection and security of this closedness, is left behind the scenes. At the moment, it's not about the intimacy of human life, we will be thinking about the "private", which is antipode of "public".

The study of private law is closely related to the sociological and cultural studies, as

¹ Bachinin VA Moral and legal philosophy. Kharkiv, 2000. - 208 s .; Vovk V. M. "Freedom" and "non-freedom" as a binary opposition to the Roman legal system of values / V.M. Vovk // The current issues of politics: volume of scientific works / [under the editorship of S.V. Kivalov; under the editorship of O. V. Kozachenko]. - Mykolaiv: Rumyantsev G.V., 2009. - edit 38. - p. 75-80.

modern person, opposite to a person of agrarian or industrial age, is in a large number of different social ties and relationships causing development of practices for implementation of social roles. "... any social relations (both public and private) are highly dramatized and represent certain social performances, with certain typical roles, masks, standard social collisions, etc. But public and private relationships are different performances that are intended to solve various social interaction tasks and are based on different scenarios. The safe relations with the authorities and comfortable relations with immediate social circle are based on various types of human behavior and its cultural images, and the distinction between them has been increasing from one age to another"[7].

In the broad interpretation of the sphere of the private as a specific feature of society, we will use the definition of Y. Khodus: "Private sphere is the inner world of an individual (that he\she can choose, form, modify, change and use), which today defines the individual identity in the same way, as it was previously defined by large social entities and public sphere (social structures of society, institutions, large communities - class, ethnicity, gender) [6]. That is, the entire range of systemic and sense-creating potentials of individual is a territory of his\her privacy.

It's reasonable to speak about the private in two following aspects: existential and social. The existential nature of the private and its forms of expression, depending on the specific social and cultural context, is a domain of philosophical research. As for the social aspect of the private, it refers to the limits of "one's own" adopted in a particular society: the society recognizes the presence of such a sphere of life through a system of social institutions and mechanisms and this sphere should not be publicized in every member (with the exception of their own free will), as well as it creates a system of measures to prevent invading by the outsiders. But, in our opinion, today "private" becomes a desirable and perceived value of each person. Modern social realias are distinguished with constant and persistent attempts to destroy the limits of everyone's privacy, to make his\her life transparent, to deprive secrecy mostly using achievement of scientific and technological progress. The real achievement of such openness will give a way

to total control by the social institutions over the life of an individual, will cause a partial or even complete loss of personal identification and will open a way for algorithmization and standardization of everyone's behavior.

The need for research of the private in law is directly caused by the modern social and cultural context. Today we live in a world where it is very difficult to keep one's own privacy, new types and forms of communication, social networks, mobile communications, surveillance cameras, credit cards, online banking, online trading, etc. allow getting information about a specific person. Understanding the features of the present days, the civilized world has created a system of civilized measures that allow a person to protect his/her privacy. Such civilized measures include legal means. Following this point of view, a person has the right to be in such social relations, which enable him/her to be one's own master; to have protection from interference in his/her life by the officials, other people or state (except cases clearly defined by the law) and to be able to satisfy interests and needs and to realize himself/herself as a personality using natural and social possibilities for that purpose.

The native legal opinion works with the concept of "private life". This concept is found in the texts of regulatory documents, although in our opinion, the concept of "private" is wider than "private life" in its scope. Therefore, we cannot agree with the point of view expressed in the native legal literature that a private life is broadly defined as a constitutional human right to inviolability of various secrets and personal details; in the strict sense – it is information of a personal nature not considering personal data that allows identifying a person in society [1], since the author works only in the sphere of legal law and thus narrowing the field of research of private life.

Until the second half of the XX century, the native legal theory had been interpreting a phenomenon of the private as a manifestation of bourgeois individualism, which was quite understandable as it was based on the political and ideological prejudice of the Soviet science. The negative attitude to private life in Ukraine changed since the 70s of the XX century. The issues of private life were gradually included in the field of legal researches. And only in the 90s of the XX century, under the pressure of serious

worldview, ideological, social, political and economic changes, the private life became a domain of native legal theory and became an integral part of the vocabulary of jurisprudence and legislation. The native lawyers discovered a phenomenon of privacy, which was implicated to the cultural, political and legal life of the Western European community. For the European culture, privacy, individualism, person-centeredness and freedom are one-way phenomena specifying and emphasizing a high significance and unconditional value of Human in the European context.

Since the 90s, the native legal community allowed to get acquainted with the international human rights instruments, where the privacy stood proudly among. The legislation of modern democratic countries, as well as a number of international documents contains norms related to the right of a person to the inviolability of private life. The most well-known international documents, aimed at protecting privacy as an attribute of human being, are the following: "UN Guiding Principles on the Regulation of Computer Card Registers with Personal Data" d.d. 1990, "Convention of the European Council for the Protection of Individuals with regard to Automatic Processing of Personal Data" d.d. 1981, "Additional Protocol to the Convention of the Council of Europe on the Protection of Individuals with regard to the Automatic Processing of Personal Data, in relation to supervisory authorities and transborder flows" d.d. 2001, "Resolution No. 1165 of the Parliamentary Assembly of the Council of Europe on the right to privacy" d.d. 1998, "Recommendation No.R (99) 5. of the Committee of Ministers to Member States for the Protection of Privacy on the Internet" d.d. 1999, "Recommendation No. R (2010) 13 of the Committee of Ministers to Member States of the Council of Europe on the Protection of Individuals with regard to the Automatic Processing of Personal Data in the Context of Profiling", d.d. 2010, "Resolution of the Parliamentary Assembly of the Council of Europe No. 1843 on the Protection of Privacy and Personal Data on the Internet and Online Media" d.d. 2011. The quintessence of protection of private life, in our opinion, is formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Its Article 8 states that everyone has the right to respect to his/her private and

family life, homes and correspondence. The governmental bodies cannot interfere with the exercise of this right, except cases when such interference is clearly defined by the law and is necessary in a democratic society in the interests of national and public security or economic well-being of the country in order to prevent disturbances or crimes, to protect health, morals or rights and freedoms of others [3].

This state of affairs is quite obvious in view of the fact that the contemporaneousness stands for a principle of priority of interests of an individual, a person is treated anthropologically as much as possible, since he/she is an absolute value and a higher purpose, and social institutions, public interests, corporate values are proclaimed to be secondary having only instrumental function.

In accordance with the regulations of the Constitution of Ukraine, the sphere of private

life includes any confidential information about person, i.e. information that is not allowed to be collected and disclosed without consent of a person, except cases provided by law. A number of articles of the Constitution of Ukraine guarantee the right to privacy: the provisions of the Article 30 are aimed at protection of territorial privacy (integrity of home), the Article 31 – privacy of communication (secret of correspondence, telephone conversations, telegraph and other correspondence), Article 32 - informational privacy ("no one shall be subject to interference in his or her personal and family life, except cases provided by the Constitution of Ukraine", "it is not allowed to collect, store, use and disseminate confidential information about person without his/her consent"), and Article 28 - some aspects of physical privacy (no one shall be subject to medical, scientific or other experiments without his/her free consent) ".

Conclusion.

Modern native science of law has a number of unresolved issues related to protection of person's private life. In particular, the issue of definitions and content of "private life" needs a serious consideration; there is no unambiguous definition of object and subject of crime with infringement of private life; criteria for qualifying a crime / misdemeanor in the sphere of infringement of private life, etc. have not been worked out too.

Modern Ukrainian philosophy of law does not stand aside from the main directions of study of social and legal life. Today, open and accessible theoretical, legal, and philosophical European experience in building a society based on respect to each individual allows us to make specific steps towards building a civil society in Ukraine.

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