

РЕЦЕНЗІЇ

REVIEW

ON THE MONOGRAPH “ADMINISTRATIVE AND LEGAL PROTECTION OF PERSONAL NON-PROPERTY RIGHTS” WRITTEN BY O.O. PUNDA, PHD IN LAW, ASSOCIATE PROFESSOR

The monographic research done by O. O. Punda is devoted to the important problem of administrative and legal protection of personal non-property rights. It is a legal phenomenon that for a long time remained as the object of scientific interest exclusively for the representatives of private law science. At the same time, personal non-property rights such as the right to life, to personal freedom and inviolability, to health, to medical care and to other rights are not an exclusive civil law phenomena. At present time these rights are a decisive element of the social transformation of the Ukrainian society. This state of affairs causes an increasing attention to the further development of the theory of personal non-property rights. It is necessary to rethink its certain provisions in a new manner, to create new theoretical constructions, to determine the role and importance of public authorities in the process of the rights protection and security. Accordingly, in domestic jurisprudence, there is the growing need for the theoretical developments of the mechanism of positive regulation of the implementation and protection of personal non-property rights.

Over the past decade, a number of scientific works that reveal a wide range of issues related to personal non-property rights have been developed. Such surge in interest to the mentioned problem is not accidental, because at present time the problem of determining the place of personal non-property rights in the legal sphere is one of the leading topics that attracts the attention of practicing lawyers and it is discussed at the scientific level. The problem is in the fact that in many legal areas of application of personal non-property rights the acute issues arose due to the domination of the ideas of exclusiveness and supremacy of only their private - law regulation in the law doctrine at the beginning of the XXI century.

Although the degree of scientific development of the problem of personal non-property rights is quite high, and it is proved by an array of publications of the theoretical and practical nature, the very dynamism of relations in this field, the new technological developments, the invention of new areas and methods of their application require an adequate modern and perspective regulation of these relations. It should be noted that the problems of protecting personal non-property rights have always attracted the attention of representatives of legal science, practical specialists, but they are not sufficiently researched in administrative law. In view of the fact that the overwhelming majority of research on personal rights was carried out in previous periods of development of modern legal opinion, when these legal phenomena were more closely related to the sphere of private law, the prospects of modern public-law regulation of personal non-property rights not only constitute a substantial interest in science, but also they are necessary for law enforcement practice.

The balance and an organic combination of public and private legal measures in the area of the practical application of the norms of law will prevent the disturbance of the balance of interests of an individual, a society and a state. The removal of the administrative and legal levers of influence on social relations at the theoretical level in the first decade of the XXI century weakened the state guarantees of the protection of such relations in the practical sphere of everyday life of a person. Without administrative and legal protection personal non-property rights remain declarative and ineffective normative provisions. It can be said that at the present stage, the need for a new quality of state bodies' activity is connected with the protection and security of personal non-property rights.

The matters related to the practical scope of the activity of state authorities in the sphere of assistance in the implementation of certain personal non-property rights are of particular attention at present time. The clarification of the content of their powers will contribute to a more

complete understanding of the processes of exercising these rights and of the problems that arise or may arise in this area.

Therefore, the study of the peculiarities of the **legal protection of personal non-property rights** done by O. O. Punda, PhD in Law, Associate Professor, and reflected in the monograph "**Administrative and Legal Protection of Personal Non-Property Rights**" is sufficiently timely and relevant. This is one of the first monographic studies of the mechanisms for the protection of personal non-property rights, conditioned by the real needs for the theory and practice of application of administrative legislation in order to ensure the effective realization of personal non-property rights and the delineation of allowable restrictions.

The familiarisation with the main provisions, conclusions and proposals of the monograph indicates a successful conceptual approach to the consideration and solution of the problem of studying the administrative and legal protection of personal non-property rights.

The monograph consists of five sections, each of which is associated with the constituent elements of the state bodies' activities regarding the legal protection of various personal non-property rights. The first section is devoted to theoretical and methodological aspects of the protection of personal non-property rights. The positive thing in the study is that the author considers the problem from different points of view - philosophical, social, legal and from the perspective of administrative and civil law. The author rightly emphasizes that the administrative and legal protection of personal non-property rights is the application of the methods of administrative and legal regulation to social relations regarding the exercise of personal non-property rights in cases of necessity of ensuring public-law interests, of ensuring law and order and assisting in the realization of rights by certain individuals, and the administrative and legal mechanism for the protection of personal non-property rights itself looks like a system of norms regulating relations in the field of activity of public subjects that guarantee the implementation or facilitate the implementation of personal non-property rights, aimed at the realization of powers between the parties to these relations, in case of violation of which the measures of the state influence are applied. The original methodology of the research confirms the reliability of the scientific statements and conclusions formulated in the monograph.

The complex use of various methods of scientific research (historical and legal method, method of modeling, formal legal method, method of system and structural analysis, comparative method, etc.) has allowed the author to fulfill the main tasks he has faced: to define the concept of personal non-property rights; to make their classification; to determine the content of personal non-property rights to life, health, personal safety, personal integrity, personal freedom, the right to the family and the right to private placement and others; to develop recommendations aimed at ensuring the clarity of the legal conceptual apparatus in the administrative and legal protection of personal non-property rights.

The important part of the monograph is the second section, in which O.O. Punda considers the mechanism of ensuring the right to life and eliminating the danger to life and health, the content of the right to life as a personal non-property right, the definition of modern trends in the choice of an organizational and legal model of health care and the provision of medical care, including emergency situations. The considerable attention is paid to the issues of the administrative and legal provision of the right to personal safety.

The scientifically substantiated logic of author's views allows to conclude that the administrative and legal protection of personal non-property rights of a person to life lies in providing guarantees for a person to independently solve the issues of his own natural life and, in certain circumstances, the life of others. It is aimed at realization of reproductive and genetic rights, at protection of one's life and health, as well as the life and health of another physical person from unlawful encroachments, at the possibility to participate in medical, scientific and other experiments, as well as at ensuring other vital needs according to the principles of natural inalienable dignity of every person, justice, natural expediency (reasonableness) and unconditional compliance with public morality and regulatory requirements of the law.

O.O. Punda argues that the basis of personal non-property rights is the legal interests of an individual, aimed at ensuring his/her existence as a living being in conditions that this person determines for himself/herself as acceptable ones. Definitely, there may be certain controversial judgments, but in general they do not refute this thesis, but only illustrate the plurality of views on the problem.

The monographic research substantiates the feasibility of creating a separate legislative act on the regulation of blood donation in Ukraine. Once again, one should agree with the author that among the most important provisions of the law, which are obligatory to be consolidated at the level of separate legal norms, there are the following ones: the concept of a donor, specification of the circle of persons who are forbidden to take blood from, the concept of donor reserve, the content of donor secrets.

It is necessary to agree with the author's definition of the right to personal safety of a person as the right to avoid the undesirable environmental, technogenic and social surroundings (environment) in any form, and the right to actively counteract dangerous factors personally or to eliminate them by specially authorized subjects, as well as the ability to obtain information that characterizes the state of security. This approach allows to develop appropriate mechanisms for implementing each element included in it.

In the third section of the monograph, the author reasonably gives the definition of the right to personal integrity, as the human right to independently make a decision on the integrity of his organism during the life time or after death, the protection of the person from any unwanted influence, contact or encroachment and the right to personal freedom as a guarantee to protect not only the external, but also the inner world of a person, that gives the possibility to involve the content of this right as a whole into legal regulation.

The advantage of the structure is that the details of the constituent elements of the right to personal integrity in the legislation will contribute to more effective regulation of possible patterns of behavior in the process of exercising the right to physical, mental and mnemonic integrity.

It should be noted that the work contains well- thought-out and logical conclusions for each section. They correspond with the tasks of the study and the provisions of its novelty. The results obtained are independent and deserve a positive assessment, as the validity and reliability of the scientific findings, conclusions and recommendations obtained in the work is based on the use of a broad source base. The undoubted advantage of the work is a thorough analysis of judicial practice materials in accordance with the research areas.

O.O. Punda rightly argues that the analysis of the mechanism for the protection of personal non-property rights demonstrates its incompleteness due to the lack of sufficient regulatory regulation of these relations, the absence of the bodies of the specialized competence, the creation of which is provided by the current legislation, the incompleteness of the process of optimizing the functions and powers of the authorities responsible for promoting the implementation of personal non-property rights to life, health and personal safety (dispersal of these functions by different ministries and departments), and at last, lack of statutory registers and databases stipulated by the legislation, and it eliminates the possibility for both monitoring and planning organizational and managerial measures.

The author's position regarding the administrative and legal protection of the right to freedom of literary, artistic, scientific and technical creativity and their results is interesting in terms of the problem under study. The fourth section of the monographic research is devoted to some features of the provision of the right to choose occupation. Thus, the author notes that the right to public service must be considered as a kind of exercise of non-property rights to freedom to choose occupation.

At the same time, the organic element of the civil servant's exercise of his subjective right to choose a kind of occupation is the right to a professional career, which must be implemented on a competitive basis, from the time of admission to the civil service and completing the replacement of higher vacant posts.

O.O. Punda also pays considerable attention to the topical issues of freedom of movement in contemporary conditions. The right to freedom of movement, according to the author, includes the following components: the right to free movement without control (escort) on the territory of Ukraine and abroad; the right to leave Ukraine and to unimpeded return (for citizens); legal guarantee to make impossible to be expelled (the right to protection from expulsion); a legal guarantee of protection against unjustified and unreasonable restrictions on the right to freedom of movement and legal guarantees of special conditions for access to certain areas of public and private nature.

On the example of the right to freedom, the author successfully demonstrates the organic interaction between public-law and private-law mechanisms of legal regulation: constitutional law defines the general meaning of this right; administrative law outlines imperative constraints and special conditions for its implementation; civil law focuses on ways of protecting and on the certain models of its implementation.

The particular attention is paid to the burning issues of freedom of assembly and association. The administrative and legal protection of the right to peaceful assembly and association is in completion of the development of legislative regulation of social relations in this area, in the adoption of a law of Ukraine that would regulate the issue of peaceful assembly, which should ensure a balance of public and private interests in order to ensure free development of an individual and to make it possible to express their views and beliefs.

The author makes the correct conclusion that feeling concern about the comprehensive development of a person, the rights and freedoms of citizens, and satisfaction of constantly growing needs, the state attaches great importance to the fact that the personal interests of citizens are properly correlated with the interests of a group and society, so that all members of the society properly fulfill their duties and adhere to the necessary discipline.

O.O. Punda has outlined the measures that are necessary for improvement of the national legislation and they are of practical orientation. At the same time, in order to increase the level of protection of personal non-property rights on the part of the authorities, it is possible to propose such models of administrative and legal misdemeanors that will include administrative liability for violation of personal non-property rights. Thus, the monograph contains a set of theoretical and practical issues related to the study of the concept, content and processes of protection and implementation of personal non-property rights, place, importance and procedure for organizing the activities of public authorities and their officials in this area. It should be noted that when preparing this work for publication the interesting empirical material and a sufficient number of sources of domestic and foreign well-known scientists on the subject have been used. When studying the topic and formulating the conclusions, the foreign experience in the field of protection of personal rights have been used widely.

Analyzing the research carried out in the monograph, it should be noted that the issues of the activity of state authorities in the field of administrative and legal protection of personal non-property rights are highlighted at a high scientific level, while the proposals for improving the current legislation provided in the monograph, require special attention and implementation, for example, the development of conceptual foundations of the scientific approach to the administrative and legal provision of protection of personal non-property rights. The noteworthy detail is that it is one of the first monographic studies devoted to issues of administrative and legal protection of personal non-property rights.

Accordingly, in the scientific publication O.O. Punda substantiates and consistently presents the results of research on the administrative and legal protection of personal non-property rights. In this respect, the proposed book may be useful to a wide range of scholars, teachers, students of higher education institutions (not only of the legal areas), to lawyers - practitioners and anyone interested in the current problems of security and protection of personal non-property rights.

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