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ПРОФЕСІЙНО-ОСОБИСТІСНІ ТА МОРАЛЬНО-ЕТИЧНІ ЯКОСТІ ЯК ОДНА З ГОЛОВНИХ ВИМОГ ДО ПРЕТЕНДЕНТА В АДВОКАТИ

Анотація

Статтю присвячено дослідженню та аналізу правових норм, в яких передбачені вимоги для набуття статусу адвоката та заняття адвокатською діяльністю. Зосереджено увагу на тому, що відбір кандидатів в адвокати повинен проводитись не лише за критерієм рівня теоретичних знань та практичних навичок, але й з урахуванням особистісних та морально-етичних якостей, оскільки всі вказані риси формують цілісну особу кандидата, та створюють передумови для отримання високого статусу адвоката. Обґрунтовуються пропозиції щодо нормативно-правового закріплення професійно-особистісних та морально-етичних вимог до претендентів в адвокати.

Ключові слова: набуття права на заняття адвокатської діяльністю, вимоги до набуття статусу адвоката, адвокатська етика, морально-етичні вимоги.

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ПРОФЕССИОНАЛЬНО-ЛИЧНОСТНЫЕ И МОРАЛЬНО-ЭТИЧЕСКИЕ КАЧЕСТВА КАК ОДНО ИЗ ГЛАВНЫХ ТРЕБОВАНИЙ К ПРЕТЕНДЕНТУ В АДВОКАТЫ

Аннотация

Статья посвящена исследованию и анализу правовых норм, в которых предусмотрены требования для получения статуса адвоката и осуществление адвокатской деятельности. Сосредоточено внимание на том, что отбор кандидатов в адвокаты должен проводиться не только по критерию уровня теоретических знаний и практических навыков, но и с учетом личностных и морально-этических качеств, поскольку все указанные черты формируют целостную личность кандидата, и создают предпосылки для получения высокого статуса адвоката. Обосновываются предложения нормативно-правового закрепления профессионально-личностных и морально-этических требований к претендентам в адвокаты.

Ключевые слова: приобретения права на занятие адвокатской деятельностью, требования к получению статуса адвоката, адвокатская этика, морально-этические требования.

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FOREIGN POLICY AS A STATE'S CHOICE AND MODERN INTERNATIONAL LAW

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The article is devoted to the analysis of the definition and meaning of the right of choice, to the research of the issue of a state's choice (a state as a subject of international law). The definition and meaning of foreign policy as a general course of a state in international affairs, as a state's choice, are given and analyzed. The correlation between foreign policy and international law, the influence of international law on foreign policy and the influence of foreign policy on modern international law are investigated. Some certain features of modern international relations are determined. On the basis of legal literature the definition of modern international law as the law of development is given.

Keywords: choice, right of choice, foreign policy, international law, modern international law, the law of development, international relations, politics, law.

Resolution of the problem. The questions of choice and the right of choice are quite complicated and controversial. It's all due to the multidimensionality of a term "right" and due to the absence of unity in understanding of the term "choice". Choice is understood in the correlation between the process of the decision-making and the objectification of the result of this process (decision as a result).

One of the spheres of right of choice realization is foreign policy that is conducted by the state and its authorized subjects.

It is quite difficult to define the nature and essence of foreign policy clearly and simply. It is mainly the sum of separate, situational decisions and actions and it is very difficult to trace and explain clearly visible connections between them.

Relevance of the research topic is also due to the fact that in general foreign policy depends on the degree of adaptation of a state to the environment where similar subjects act, on collaboration, each country follows mainly own national interests that is why a compound of these interests is needed. As a purposeful activity politics is an inalienable part of human vital functions through which national, group and individual interests are realized, social systems regulation, reformation or even modification are done. We can talk about such a modification of international law nowadays, namely about its transformation into the law of development. Politics is the dominant sphere of social life and largely determines modern international law as the law of development.

State of research. Foreign policy caused an interest of many scientists including the representatives of international law doctrine. Some aspects of the problem were researched by such scientists as V. Bashtannik, M. Malsky, D. Levin, M. Lebedeva, I. Lukashuk, Rosenau and some others. The issues concerning the law of development which is also under many scientists' interest, were researched by Flory M., Pellet A., Virally M., Tuskoz J., Yakubovskaya N. and others. Their works and some other works on international law were the fundamental basis for research of the issues examined in this article. However foreign policy which significantly determines modern international law has never been researched in the theoretical context of choice and the right of choice.

The main purpose of the article is to discover and generalize theoretical and some practical grounds of foreign policy as a general course of a state in international affairs and of modern international law as the law of development in the context of the right of choice on the basis of complex and comprehensive analysis of doctrine.

Basic material. The term "choice" in philosophical science is studied through such terms as "freedom" and "will". Freedom of human will expresses the dynamic, purposeful and transforming role of human being towards determining conditions and expresses particularly unrepeatable reflections of objective reasons in human activity. Freedom of will is represented by freedom of desire and freedom of behavior, and the absence of coercion.

Choice is a consciously volitional activity of a subject as for the decision of behavior variant in certain sphere and the objectification of the result of such activity in the act of a subject.

Right of choice is based on freewill and it comes forward as a major side of social (including legal) regulation of the behavior of people.

Choice is shown in the process of realization of legal instructions, during combination of state will with separate legal subjects' will, including relations on cooperation of the state with other subjects of international law.

Thus, one of the spheres of right of choice realization is foreign policy that is conducted by the state and its authorized subjects.

With the emergence of a state that is a universal political organization operating on the basis of administrative-territorial division and citizenship and carrying out a management by means of the specialized vehicle, arbitrage and legal enforce-

ment [19, p. 15] there was a necessity for a collaboration and communication with other states, in the activity that expresses general policy of the state in international affairs. Foreign policy is one of the major functions of a state that determines its essence. In fact, functioning and development of any state as a subject of international law and international relations cannot take place without its external connections with other subjects of international law. It is an objective necessity of the existing social development.

Foreign policy is almost always expressed in the form of double mixture of compromises: between national politicians and statesmen and between national diplomacy, and on the other hand, between certain state and its foreign partners and opponents for purposes of collaboration, satisfaction of the interests and certain mutual development.

While connecting and subordinating interests of nation-states, interests of all humanity and its separate parts, foreign policy has been and remains dual. The reflection and idealistic ideas about justice in the world and hard practical calculation of imperious elites that distinguish the necessities of the countries which are generated by a situation composed of perspective aims of transformation of world order, - all these components can be found in foreign policy.

Foreign policy is a component of politics in general which has all-embracing character and a great importance in social relations regulation.

Y. Kazancev considers that foreign policy is a general course of a state in international affairs [7, p. 339]. We share this definition, however it needs clarification. Really, foreign policy is the course of a state, the choice of a state, but today such a choice is not enough, because it is necessary for the subjects of modern international law to collaborate and cooperate.

This statement is also mentioned by V. Bashtannik and E. Sulima: "Foreign policy is an activity of a state in international arena which regulates relationships with other subjects of foreign-policy activity, leans against economic, demographic, military, scientific, technical and cultural potentials of the interactive states" [5, p. 52-65]. Being a subject of international law, a state makes its choice in the relations with other subjects and this choice can be named foreign policy.

Nowadays period of global transformations of the world is characterized by special significance of the influence of cultural factor consequences on foreign policy as the choice of a state. Culture performs as an arena of the most persistent cooperation of people, their mutual enrichment and understanding. People and countries are under influence of cultural differences, which represent their values, points of view, interests, customs, historical hopes and fears [8, p. 151-153]. Different states and different regions have a different level of strategic advantages that was rooted on the early stage of their existence and now they form the state's experience under the impact of philosophical, political, cultural and informative characteristics of the state and its elite. Thus international law is directed to the collaboration between different legal cultures, their common and individual development, and their symbiosis.

Foreign policy is based on the great number of coordinates. Among them are: inner policy, terms, resources, determinations of its aims and tasks, composition of social forces and groups, character and maintenance of public interests, degree of support inside a country, etc.

Another quite important problem of definition of foreign policy is an issue about an understanding of its correlation with inner policy of a state. As foreign policy is an activity of a state, it cannot be dissociated from inner policy; moreover, it is the derivative of inner (domestic) policy.

The contents of politics objectively caused by will of people, is actually mediated by its authorized institutional representative which is a state. It is due to the fact that a significant part of domestic and foreign policy of a state is regulated by means of law, law-making process, political-legal decisions, and they are established in a normative form and based on the principles of international law.

Modern interpretation of the content of foreign policy cannot be limited by narrowly applied approach that reduces its destination to the pragmatic tasks of current legislation adequacy's estimation and its further improvement. Foreign policy by its essence and social aims has to be a special and necessary component of public policy, to assist fixing and providing the country's political choice authorized by people will and accepted by its political leaders.

It is possible to assert that foreign policy is an attempt to adapt national social and political system to international, and in general it has an aim to achieve and maintain the dynamic balance between them and development of these systems.

The main aim of foreign policy is providing of national interests and this is impossible to attain without the developed collaboration and the respect of legal interests of other countries and international community as a whole.

The basic tasks of foreign policy are strengthening of state's society structure by strengthening of its position in the system of the states, and also all people interests' protection on international arena. So, the main aim is a development of the state, people, modern global problems solving, that is impossible without collaboration, without limitations of the sovereignty, including in favor of the powers of international organizations and other international institutes, by the adoption of appropriate international legal norms that is why modern international law can be considered as the law of development.

As M. Baymuratov says, international law is as a result of public practice, it appeared as a way of people material interest's realization, especially in connection with international relations that change constantly. It has carried out and is carrying out enormous influence on the development of states and people. International law is a system of legal principles and norms of treaty and customary character, agreements that arise up as a result of cooperation between states and other subjects of international communication and regulate relations between them for peaceful coexistence [4, p. 6], for development.

The efficiency of international law as the law of global security and collective responsibility of

the states before humanity and as the law of development admits structural collaboration of the participants of international communication in the solving of two basic tasks, namely to provide the functioning of the existing mechanism of peace secure and also to elaborate new legal norms.

The object of the legal regulation of international law is represented by international relations that are relations between states as the subjects of international law [9, p. 7-9; 18, p. 118].

Every state as a subject of international law conducts its foreign policy on world arena, but it is realized by its authorized agents of external relationships. And they must be recognized in such a quality by international law and order. They carry out a choice guiding by certain interests and depending on existent conditions. And it would be correct to agree with to Y. Illiyn who asserts that politics and law are in constant interaction. This is a process and it is objective. Law becomes dead without political life and actually each rule of law should serve life [6, p. 197].

In democratic society politics is carried out for people and through people. The general principles of democratic policy are: optimal connection between universal and national; humanistic orientation; overcoming of violence and criminality; morality and patriotism.

So, international law is a complex of legal norms and institutes regulating relations in international community with the aims of peace, justice and development [15, p. 9].

As M. Virally writes, international law of development represents a transformation that goes through all international law, a transition from the law of peaceful coexistence to international law of collaboration [3, p. 219-280].

That is why we share M. Flory's and A. Pellet's point of view that international law of development and international law are identical. As they think, international law of development gives international law the purposefulness. And a fight against economic backwardness and an achievement of the real independence by the poorly developed countries are such purposes [1, p. 31]. Among them is also a transformation of existing international law into an active instrument of inequality reduction [2, p. 6].

The law of development unites all the norms aimed at the international assistance of development [15, p. 274-278]. International law of development is the new dimension of international law; it is a way to revise international law.

The international relations' level of development is characterized by adequate intentions in foreign policies of states as for the strengthening of democracy and human rights.

On the other hand, the degree of foreign policy's basic tasks' security and the degree of state interests' security depends on its relations with other countries. Independent states do not develop in a vacuum; they cooperate with one another and act as subjects of politics of higher level – world policy that means that the states act in the sphere of international relations.

International relations are the space where different forces (global, regional, multilateral and bilateral) face and cooperate on different levels:

state, military, economic, political, social and intellectual [17, p. 20].

As A. Muradian notes, all international relations can be divided into two basic types: relations of rivalry and relations of collaboration [13, p. 8-10]. Such collaboration is impossible without foreign policy. International relations consist of foreign policies of different states which are the main actors of international relations as independent subjects, and as the members of some organizations.

Foreign policy regulates the relationships of this state with other states, provides realization of its needs and interests in international arena.

International relations become more universal, various, equally binding for all subjects of international law that is why they should be examined as an integrated system and foreign policy of every state is hardly to understand in isolation from the system of international relations which this state enters and which determines its foreign policy in a certain way [9, p. 29].

It is important to underline such a significant line of foreign policy as participation in international organizations that opens additional possibilities for an active voice in international relations.

Modern international system is exclusively difficult. The existence of different centers of force, cultures and civilizations on the world arena is under no doubt. The main question is what conclusions make statesmen and diplomats and how they apply this knowledge in foreign policy aims.

All countries should be interested in the stable system of international relations based on the principles of equality of rights, mutual respect and other principles of international law. This system is designed to provide reliable protection of every member of the world community in military, economic, humanitarian and other spheres.

However there are different reasons why states do not use the potential of international law in full. As I. Lukashuk marks, many of them including the great powers do not hasten with its progressive development and its functioning mechanism improvement [10, p. 8].

It is worth to remember that law gives people's political requirements an obligatory character. Thereby it fixes the relations developed as a result of certain policy and impacts their durability. Politics has its direct expression in law. By fixing political requirements in certain standards of behavior, law gives them a character of obligatory norms, but these norms are surely based on general principles of law which are their precursors and express the sense of justice of some classes or of all people - in democratic society, and also have their own independence. Law does not only fix the relations developed as a result of politics realization but also creates the organizational forms of such realization.

On the other hand, politics influences law actively. The role of politics in law-making process is exclusively large. Political ideas often grow into the principles of law, and certain political requirements or political choices become special legal norms. Politics also largely determines the process of legal norms realization, i.e. the application of law in practice. It is not an automatic process; it is the process of conscious human activity, the result of choice.

International law and foreign policy are also two separate, but indissolubly linked parts of international life: foreign policy participates in creation and realization of norms of international law and at the same time obeys to these standards; international law developed and used in the process of foreign policy activity sets the scope and form of this activity.

While applying the norms of international law foreign policy fills them with that certain political content and their real value can be changed depending on this content. Social and political contents of the norms and institutes of international law could change not only up to historical epochs, but even during the same epoch depending on the character of the foreign policy applying these norms and institutes, depending on the choice.

The same norms of international law which are used in conformity with their legal content, in different cases may serve different political purposes and have different social and political content; however politics carried out by means of international legal norms cannot undermine the principles of peaceful coexistence, sovereignty and other inviolable foundations of modern international relations and international law.

The influence of international law on foreign policy is shown in three aspects: firstly, by imposing certain obligations on the states international law creates limitations for their foreign policy that prevent actions incompatible with the norms of international law. Secondly, by giving certain rights to the states international law gives them additional possibility and a facility for defending of their interests guarded by these rights, so international law is a support for their foreign policy, their choice. Thirdly, international law contains norms regulating the activity of organs carrying out foreign policy [9, p. 7-9].

Foreign policy is carried out in international environment whose specificity is determined by: polycentricism, complication, consistency, globality, cultural pluralism and informative ambiguity [12].

As G. Rosenau notices, foreign policy activity is built on cooperation of two correlations: location and dynamics of forces in international arena and internal factors foremost social [14, p. 174].

Any foreign policy is an attempt to adapt national public political system to international one, and in general we can affirm that foreign policy is aimed at the accomplishment and maintenance of dynamic balance between them [11, pp. 3-11], that is development which is impossible to obtain without close collaboration.

Politics as a state's choice determines direction of international law development. Thus a role of foreign policy in cooperation of domestic law with international law [16, pp. 107-112] is to give such influence on formation and development for those norms and institutes in international law which will maximally represent national interests and the choice of a state as far as it is possible, and which will help to obtain international interests and development.

Conclusions and proposals. Choice is a consciously volitional activity of a subject as for the decision of behavior variant in certain sphere and the objectification of the result of such activity in

the act of a subject. One of the spheres of right of choice realization is foreign policy.

Foreign policy is based on the great number of coordinates. Among them are: inner policy, terms, resources, determinations of its aims and tasks, composition of social forces and groups, character and maintenance of public interests, degree of support inside a country, etc.

Foreign policy is an attempt to adapt national social and political system to international one, and in general it has an aim to achieve and maintain the dynamic balance between them and the development of these systems.

International law is a complex of legal norms and institutes regulating relations in international community with the aims of peace, justice and development.

International law of development gives international law the purposefulness.

Foreign policy participates in creation and realization of norms of international law and obeys to these standards; international law developed and used in the process of foreign policy activity sets the scope and form of this activity. While applying the norms of international law foreign policy fills them with that certain political content and their

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Politics as a state's choice determines the direction of the development of international law.

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ЗОВНІШНЯ ПОЛІТИКА ЯК ВИБІР ДЕРЖАВИ ТА СУЧАСНЕ МІЖНАРОДНЕ ПРАВО

Анотація

Стаття присвячена аналізу поняття і змісту права вибору, дослідженню питання права вибору держави як суб'єкта міжнародного права. Аналізуються поняття та зміст зовнішньої політики як загального курсу держави у міжнародних справах, як вибору держави. Досліджується співвідношення зовнішньої політики і міжнародного права, вплив міжнародного права на зовнішню політику та вплив зовнішньої політики на сучасне міжнародне право. Міжнародні відносини розглядаються як сукупність зовнішньополітичної діяльності держав. Визначаються певні риси сучасних міжнародних відносин. На підставі юридичної літератури надається визначення сучасного міжнародного права як права розвитку.

Ключові слова: вибір, право вибору, зовнішня політика, міжнародне право, сучасне міжнародне право, право розвитку, міжнародні відносини, політика, право.

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ВНЕШНЯЯ ПОЛИТИКА КАК ВЫБОР ГОСУДАРСТВА И СОВРЕМЕННОЕ МЕЖДУНАРОДНОЕ ПРАВО

Аннотация

Статья посвящена анализу понятия и содержания права выбора, исследованию вопроса права выбора государства как субъекта международного права. Анализируются понятие и содержание внешней политики как общего курса государства в международных делах, как выбора государства. Исследуется соотношение внешней политики и международного права, влияние международного права на внешнюю политику и влияние внешней политики на современное международное право. Международные отношения рассматриваются как совокупность внешнеполитической деятельности государств. Указываются определенные черты современных международных отношений. На основании юридической литературы дается определение современного международного права как права развития.

Ключевые слова: выбор, право выбора, внешняя политика, международное право, современное международное право, право развития, международные отношения, политика, право.

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DEFINITION OF RESPECT FOR HUMAN DIGNITY AS A PRINCIPLE OF CRIMINAL PROCEEDINGS

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The author reveals the main point of human dignity as an independent principle of criminal proceedings. Reflection of this provision in the national legislation is defined. The content of given principle and its implementation in criminal procedural activities being studied. The international acts components of this principle being examined.

Keywords: principle, honour, dignity, respect, security of person, criminal proceedings.

Definition of the problem. According to Art. 28 of the Constitution of Ukraine everyone has the right to respect for his dignity. No one shall be subjected to torture, cruel inhuman or degrading treatment or punishment. No man without his free consent shall be subjected to medical, scientific and other experiments. International instruments which stipulates the requirements of

Art. 28 of the Constitution of Ukraine includes: the Universal Declaration of Human Rights 1948 (Art. 5) and the International Covenant on Civil and Political Rights 1966 (Art. 7), the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or those Inhuman or Degrading Treatment or Punishment of 1975. In addition to above, there are internationally ac-