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ІНФОРМАЦІЙНА ФУНКЦІЯ СУЧАСНОЇ ДЕРЖАВИ

Анотація

У статті зосереджується увага на подальшому дослідженні теоретико-правових засад сутності інформаційної функції та визначення її місця і значення в системі функцій сучасної держави в умовах глобалізації та інформатизації суспільства. Досліджується феномен сучасної держави в зв'язку з певними державно-правовими змінами у світі та надається визначення «сучасна держава». А також пропонуються інновації в сфері інформаційних відносин – «електронне урядування».

Ключові слова: глобалізація, інформатизація, функції сучасної держави, інформаційна функція, сучасна держава, електронне урядування, доступ до публічної інформації.

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ИНФОРМАЦИОННАЯ ФУНКЦИЯ СОВРЕМЕННОГО ГОСУДАРСТВА

Аннотация

В статье сосредоточено внимание на дальнейшем исследовании теоретико-правовых основ сущности информационной функции и определении ее места и значения в системе функций современного государства. Исследуется феномен современного государства в связи с определенными государственно-правовыми изменениями в мире и предоставляется определение «современное государство». А также предлагаются инновации в сфере информационных отношений – «электронное управление».

Ключевые слова: глобализация, информатизация, функции современного государства, современное государство, электронное управление, доступ к публичной информации.

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TRAVEL OF RELIGIOUS ORGANIZATIONS MEMBERS OUTSIDE UKRAINE: PROBLEMS AND PROSPECTS OF INTRODUCING VISA-FREE REGIME FOR UKRAINE

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The substance of the right to freedom of travel – as an individual's constitutionally enshrined and guaranteed by state possibility to travel freely and choose his/her place of residence at his/her discretion, to leave and enter the territory of Ukraine was examined. The questions of providing benefits in issuing visas to members of religious organizations were considered. The specifics of the procedure of applying to consular offices of the EU member countries and the prospects for the introduction of a visa-free regime for Ukrainian citizens were investigated. The question of the European Union strategy for the introduction of a visa-free regime for Ukrainian citizens was studied.

Keywords: visa-free travel, visa, and religious organization, the right to freedom of travel, consular offices, and international relations.

The relevance of the research is confirmed by the insufficient extent of investigations on the problem of providing benefits for issuing visas to members of religious organizations and the prospects of introducing visa-free regime for Ukrainian citizens.

Analysis of Recent Achievements and Publications. Outstanding Ukrainian and foreign scientists have repeatedly investigated issues related to the creation of the European Union, its system of legal rules and the integration of Ukraine into the legal framework of the European Union.

Theoretical basis of the study of these issues were laid in the works of such professionals in the field of general theory of law as M. Oborotov, P. Rabinovich and M. Azarkin, as well as the specialists in administrative law V. Averyanov, E. Doldin, S. Kivalov, and L. Bily-Tiunova. Attention is drawn to the studies carried out by such scholars as M. Arakelyan, A. Vishnyakov, A. Baev, V. Vasilenko, L. Gritsaenko, I. Gritsyak, B. Gubsky, S. Gusevsky, P. Demchuk, and V. Denisov.

Aspects of the problem, not previously considered. This paper discusses the issues of privileges for issuing visas to members of religious organizations, the specifics of submitting documents to the consular offices of the member countries of the European Union, and the prospect of a visa-free regime for Ukrainian citizens in the light of the strategy of the European Union.

The purpose and objective of the article was to study the question of issuing visas to members of religious organizations, the prospect of a visa-free regime for Ukraine to EU countries, and the system of scientific views and research on this topic.

Presentation of the basic material. A person's legal right to travel belongs to human rights of the first generation, which embody the liberal-democratic values founded on the study of natural innate human rights, formulated in the early period of bourgeois revolutions. This right is an essential element of individual freedom; it is directly related to other rights and freedoms and is a necessary condition for their realization. The right to free travel is one of the most significant manifestations of individual freedom and is a prerequisite for the realization of such rights and freedoms, as the right to work, the right to free exercise of one's abilities and security of person, to health protection and medical care, to education. The right to freedom of travel is the basis for a full human activity.

The freedom of travel and choice of one's place of residence as a human right to travel freely throughout a country, to choose one's place of residence or stay, to leave the country and return to it, is one of the fundamental individual human rights, which are included in the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948 [1].

The constitutional recognition of the right to freedom of travel in the modern Ukraine [2] and its further specification in the legislation were the embodiment of democratic reforms in the country. This right is an essential element of the individual freedom; it is directly related to other rights and freedoms and is a necessary condition for their implementation.

Article 24 of the Law of Ukraine "On the Freedom of Conscience and Religious Organizations" [3] regulates the issues of international relations and contacts of religious organizations and believers. It states that religious organizations and believers, alone or together with others, have the right to establish and maintain international relations and

direct personal contacts, including travel abroad for pilgrimage or participation in meetings and religious activities. In accordance with the law in force, the participants of these contacts and activities are allowed to acquire, receive and carry with them religious literature and other informational materials of religious content. Religious organizations may send citizens abroad to study at religious schools and invite foreign nationals for this purpose.

Cooperation between the European Union and Ukraine in the direction of the freedom of travel in the context of signing the Association Agreement and visa-free regime for Ukrainian citizens travelling to the member states of the EU is based on: supporting the development of the Ukrainian system of personal data protection; developing the necessary legislative and institutional framework in the field of migration management; continuing the visa dialogue, developing relevant conditions for the implementation of a visa-free regime between Ukraine and the European Union in long-term perspective; ensuring full implementation of the Agreement between Ukraine and the EU on visa facilitation and readmission of people; developing, implementing and improving policies, the legal framework and procedures of integrated border management. The harmonization of Ukrainian laws with the EU laws on the travels of persons should primarily be carried out in the direction of achieving a visa-free regime with the EU.

The agreement between Ukraine and the EU on visa facilitation was signed on June 18, 2007 (entered into force on 1 January 2008) [4].

On July 23, 2012 in Brussels, an agreement was signed between the EU and Ukraine on amending the Agreement between Ukraine and the EU on visa facilitation. This agreement established the right to a simplified issuing of free, multiple-entry visas to members of religious organizations.

To receive religious visas, the members of religious organizations must submit the following documents to the EU countries consular offices:

- A written application of the religious organization registered in Ukraine, stating the purpose, duration and frequency of trips;
- Information on the person's affiliation to the religious organization.

The document confirming the registration of religious organizations in Ukraine is an extract from the Unified State Register of Legal Entities and Physical Persons – Entrepreneurs, which contains information that the organizational and legal form of the legal entity in question is a religious organization.

On July 23, 2012 in Brussels, an agreement was signed between the EU and Ukraine on amending the Agreement between Ukraine and the EU on visa facilitation, the key element of which was the provision on the perspective of introducing a visa-free regime for Ukrainian citizens.

The Action Plan Ukraine – the EU in the field of justice, freedom and security, in force since 2001 and revised in 2007, creates a general framework for cooperation between Ukraine and the EU in the field of justice, freedom and security.

The Action Plan, in particular, provides for the introduction of biometric passports, retirement of passports that do not meet the standards of ICAO,

strengthening of the measures to combat illegal migration, improvement of border management, bringing of the legislation and asylum policies in accordance with international standards in this field, etc. After Ukraine fulfils all the criteria of the Action Plan, the European Commission, according to the legislative procedure provided for in the Treaty on the Functioning of the European Union ("Treaty of Lisbon"), will make a proposal to the European Parliament and the Council to abolish the visa regime for short trips of Ukrainian citizens (holders of biometric passports) by amending the EU Regulation № 539/2001.

To date Ukraine has fulfilled 18 of the 54 recommendations of the European Commission regarding the receipt of a visa-free regime. This was mentioned by the Foreign Minister of Ukraine Pavlo Klimkin during an hour of questions to the government [5]. The Foreign Minister also expressed his hope that the final, 6th report of the monitoring mission on the implementation of the Action Plan to liberalize the visa regime with the EU by Ukraine expected on December 15, 2015, will be positive. P. Klimkin is confident that Ukraine may get a visa-free regime with the European Union in late summer – early autumn, 2016 [6]. He noted that currently the laws adopted by the Verkhovna Rada are under examination in the European Union, as well as in the FATF.

Fulfilling the requirements of the EU to Ukraine, the Ukrainian Parliament in November 2015 adopted a number of laws, including the anti-discrimination amendment to the Labour Code, the limitation of the Security Service powers, laws concerning the arrest of property, the special confiscation, the establishment of the Agency for return and management of assets acquired by illegal means, and others.

The anti-discrimination amendment to the Labour Code introduced by the Verkhovna Rada of Ukraine provides for the prohibition of any discrimination in employment, in particular the violation of the principles of equality of rights and opportunities, direct or indirect restriction of the rights of employees based on race, colour, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social or foreign origin, as well as discrimination, which concerns the age, health, disability, suspicion or the presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in trade unions and other associations of citizens, participation in a strike, etc. [7].

The Draft Law on Amendments to the Criminal and Civil Codes of Ukraine concerning the improvement of the institute of special confiscation to address the corruption risks in its application №2541a provides that money and valuables that are in bank accounts, or deposited in banks, other property transferred by a person who had committed a crime to a third party free of charge or in return for a sum that is significantly below the market value, is subject to special confiscation. The circumstances relating to a third party must be established in courts on the basis of sufficient evidence.

The law says that the special confiscation cannot be applied to the property, which is owned by the purchaser [8].

"Special confiscation should be applied to certain criminal offenses, which include corruption offenses, violations associated with money laundering, terrorism, and crimes in the sphere of drug trafficking" – said the head of the Committee on Legislative Support of Law Enforcement Andriy Kozhemyakin.

According to the head of the Committee on Legislative Support of Law Enforcement Andrei Kozhemyakin, the government proposed to expand the institute of special confiscation; however, after the Committee had carefully worked over the provisions of the European Union directives to freeze the confiscation of the proceeds of crime, it came to believe that the requirements of special confiscation do not apply to all crimes.

"It must be applied to certain criminal offenses, which concern corruption offenses, violations associated to money laundering, terrorism, and crimes in the sphere of drug trafficking" – said Kozhemyakin [9].

Deputies approved the bill №2542a, amending the Code of Criminal Procedure concerning the specification of investigative jurisdiction of the pre-trial investigation [10].

The document allocates criminal cases between different law enforcement agencies. It takes into account a number of recommendations of the European Commission, in particular – on the elimination of jurisdiction duplication and the

Elimination of alternative jurisdiction for terrorist offenses (they are investigated by the SSU).

The draft law also limits the power of the Security Service in the investigation of crimes against national security.

The document was adopted in the framework of implementing the European Union recommendations for the prevention of organized crime and fight against it. The document limits the powers of the Security Service to conducting the pre-trial investigation and exercising criminal proceedings in criminal offenses in the sphere of national security and defence, as well as those related to terrorism.

The Parliament of Ukraine adopted the bill №2540a, which authorizes the seizure of assets, which may be instruments or evidence of crime, or were obtained by criminal means [11]. The purpose of this arrest is to ensure criminal proceedings, to ensure a civil suit in a criminal proceeding, and to ensure confiscation or special confiscation. According to the law, the goal of the seizure is to avoid the opportunities to hide, damage, or destroy the property in question.

The property which can be arrested includes assets owned, used or disposed of by the suspect, accused, convicted, third parties, or juridical entities, to which the norms of criminal law can be applied.

The Verkhovna Rada voted for the creation of an agency for the return and management of assets acquired by unlawful means [12]. The bill No 3040 "On the National Agency of Ukraine for the Identification, Investigation and Management of Assets Derived from Corruption and Other Crimes" was developed by the Ministry of Justice with the participation of the Prosecutor General. The Agency will only keep the arrested assets and manage them through representatives selected by

competition. The disposal of the arrested property will be carried out only by court order or on the request of the owner in the cases under Article 100 of the Criminal Procedure Code (if, for example, the property is perishable). The arrested property will be disposed of only in accordance with the provisions of the Criminal Procedure Code.

Ukraine must implement a number of judicial and human rights reforms before its citizens will be granted a visa-free regime with the EU. This was stated by the President of the European Commission, Jean-Claude Juncker in his letter to the President of Ukraine Petro Poroshenko [13].

“The progress in the implementation of reforms in the fight against corruption remains one of the key priorities in order to achieve a visa-free regime with the EU for Ukrainian citizens” – said Juncker. According to him, Ukraine also has to change its labour laws to prohibit discrimination based on sexual orientation and to establish an agency for returning confiscated assets.

Conclusions. The Law of Ukraine “On the Freedom of Conscience and Religious Organizations” pro-

vides that religious organizations and believers, alone or together with others, have the right to establish and maintain international relations and direct personal contacts, including travel abroad for the pilgrimage, participation in meetings and religious activities, as well as for training at religious schools.

The freedom of travel and choice of the place of residence is a natural and inalienable liberty, which belongs to everyone from birth, is recognized by the international community and is fixed by all the fundamental international instruments on human rights.

On July 23, 2012 in Brussels, an agreement was signed between the EU and Ukraine on the amendments to the Agreement between Ukraine and the EU on visa facilitation. These agreements establish the right to a simplified registration of free visas to members of religious organizations.

The adoption of bills of the visa-free set by the Verkhovna Rada brings Ukraine closer to the full implementation of the Action Plan on the visa regime liberalization for Ukrainian citizens with the EU.

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ВИЇЗД ЗА МЕЖІ УКРАЇНИ ЧЛЕНІВ РЕЛІГІЙНИХ ОРГАНІЗАЦІЙ: ПРОБЛЕМИ ТА ПЕРСПЕКТИВИ ЗАПРОВАДЖЕННЯ БЕЗВІЗОВОГО РЕЖИМУ ДЛЯ УКРАЇНИ

Анотація

Досліджено сутність права на свободу пересування – як конституційно закріпленої і гарантованої державою можливості індивіда на свій розсуд вільно пересуватися, вибирати місце перебування і проживання, вільно виїжджати і в'їжджати на територію України. Розглянуто питання надання пільг на оформлення віз для членів релігійних організацій, визначено специфіку процедури надання документів до консульських установ країн членів Європейського Союзу та перспективи запровадження безвізового режиму для громадян України. Вивчено питання стратегії Європейського Союзу щодо запровадження безвізового режиму для громадян України.

Ключові слова: безвізовий режим, віза, релігійна організація, право на свободу пересування, консульські установи, міжнародні зв'язки.

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ВЫЕЗД ЗА ПРЕДЕЛЫ УКРАИНЫ ЧЛЕНОВ РЕЛИГИОЗНЫХ ОРГАНИЗАЦИЙ: ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ ВВЕДЕНИЯ БЕЗВИЗОВОГО РЕЖИМА ДЛЯ УКРАИНЫ

Аннотация

Исследовано сущность права на свободу передвижения – как конституционно закрепленной и гарантированной государством возможности индивида по своему усмотрению свободно передвигаться, выбирать место пребывания и жительства, свободно выезжать и въезжать на территорию Украины. Рассмотрены вопросы предоставления льгот на оформление виз для членов религиозных организаций, определена специфика процедуры предоставления документов в консульские учреждения стран членов Европейского Союза и перспективы введения безвизового режима для граждан Украины. Изучены вопросы стратегии Европейского Союза по введению безвизового режима для граждан Украины.

Ключевые слова: безвизовый режим, виза, религиозная организация, право на свободу передвижения, консульские учреждения, международные связи.