

**FEDERAL STATE EDUCATIONAL INSTITUTION OF HIGHER
EDUCATION URAL STATE LAW UNIVERSITY**



as a manuscript

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**THE CATEGORY "RIGHT TO DEFENCE": PROBLEMS OF THEORY,
HISTORY AND RESEARCH METHODOLOGY**

Specialty 12.00.01 - Theory and history of law and state; history of doctrines about
law and state

ANNOTATION

dissertation for a scientific degree candidate of legal sciences

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Yekaterinburg – 2021

The relevance of the dissertation research. The issues of the protection situation of the individual rights and freedoms in state and legal reality, in the era of new strategic tasks, in the conditions of the formation of the Russian Federation information society, in which information and the level of its application and accessibility radically affect the economic and socio-cultural living conditions of citizens, are the axiological core in building relationships between an individual, society and the state.

The level of protection of the individual rights and freedoms determines a social climate in a state governed by the rule of law. The state guarantee, observance and defence of human rights and freedoms is the responsibility of the latter, the content of which boils down to the existence of a system of state bodies, including those administering justice. In the context of the constant reforms, the defence functions of the system of human rights and freedoms were assigned to various state bodies (administrative, church, law enforcement, military), which led Russia to the need to build a new model that would allow realizing the right to defence in the modern conditions of the state and legal development.

The theory of state and law vision is not only to gain a deep understanding of development patterns and functioning of state-legal phenomena, but also in giving lawyers modern tools of legal activity, among which one of the most effective is the method of conceptual and categorical work, in which, on the one hand, the introduction of new concepts of law and the state, conditioned by social development, into the thesaurus of jurisprudence, and on the other hand, clarification and updating of the basic, fundamental categories of jurisprudence, which include the category of "right to defence", is carried out.

The right to defence had being developed gradually, but it was recognized as an inalienable human right already in the constitutions of the first generation, it has acquired a number of new aspects in the modern era, including the new risks and the new opportunities associated with the peculiarities of the post-industrial society (the newest rights and the newest threats rights, the e-justice, the opportunities for the defence of rights in interstate bodies). Therefore, the modern era of social and

legal life leads to the need to define the right to defence as a legal category in the theory of law, based on the analysis of the historical retrospective, the modern legal thinking and the implementation of state and legal institutions as characteristics of a legal reality that make it possible to formulate conclusions and judgments about the need to preserve axiological approaches to understanding and realizing the right to defence in the new state and legal reality, is especially important in the era of the formation of the information society and the information state, in which the individual becomes an active and possibly vulnerable participant.

The scientific analysis of the jurisprudence categories is a vital need for improving of the conceptual thinking of a modern lawyer through updating the categorical apparatus of jurisprudence.

Ultimately all that is due to the new trends and phenomena in the public and legal life, the urgent requests of legal practice and therefore they indicate the need to transform legal categories based on their general scientific significance.

The right to defense as a legal category is the basis for the legal regulation of public life, which has a dynamic character in legal reality, including new ideas about law. The right to defense is one of the conditions for the democratic development of the rule of law, based on the priority and protection of human rights and freedoms, it plays an important role in the construction of legislation, law enforcement reality. Being a legal value that allows for the restoration of violated rights and freedoms and remaining the central institution of the legal space, the institution of protection it provides and ensures the protection of human and civil rights and freedoms.

The peculiarity of the theoretical understanding of the right to defence in the theory of state and law is expressed in the identification of trends in its modern understanding. The first approach to understanding the right to defense defines it as a general legal idea that has ontological and axiological significance in the modern categorical apparatus of the theory of state and law, which makes it possible to define the right to defense as a legal category. The second approach is conditioned

by the universality of the right to protection of the rights and freedoms of the individual as a legal idea, reflecting the right to defence as a principle of law in the system of law and the system of legislation. The third approach to understanding the right to defence is expressed in the individual human right, which allows to turn a legal idea into a legal reality, ensuring the normal life of the individual.

At the same time, the modern understanding of the category “right to defense” allows us to assert that the current legislation of the Russian Federation practically does not provide for the legal consequences of its violation, as a general legal, universal and individual category in the system of law. In this case, it does not meet the requirement of fair justice, the development of the rule of law and the provision by the state of the idea of protecting human rights and freedoms and violates the rule of law. In this regard, the actions of state bodies, taken and as a result, violated the legal category, cannot be recognized as really ensuring the rights and freedoms of a person and a citizen and do not recognize rights as the highest value.

All above mentioned actualizes the research in this sphere of legal regulation. The annual Address of the Russian Federation President to the Federal Assembly, dated February 20, 2019, notes that the achievement of a new quality of life for all generations of Russians can be ensured only with the dynamic development of Russia, and additional legislative guarantees are needed to protect people. Therefore, the study of the right to defence as a legal category is necessary to understand the interaction of the state, civil society and each individual at the present stage of development of the Russian Federation.

The purpose of the dissertation research is to obtain new data on the doctrine of the right to defense, to identify trends in the modern understanding of the category “right to defense”, as well as to develop theoretical and practical conclusions, proposals and recommendations for the use of the category of “right to defense” in the current legislation of modern Russia for strengthening the rule of law in modern Russia, and ensuring the protection of human and civil rights and freedoms.

This goal is achieved by solving the following *research tasks*:

- to reveal the origins and formation of the construction of the right to defence in the continental tradition of law;
- to characterize the historical and legal consolidation of the right to defence in the history of Russian statehood in the X-XVIII centuries;
- to analyze the right to defense during the reform period of the judicial system of Russia (the second half of the 19th - beginning of the 20th centuries);
- to give a legal description of the Soviet legislation governing the right to defense;
- to disclose the right to defense as a general legal idea expressed in a legal category;
- to define the right to defense as a universal legal idea, reflecting it as a fundamental principle of the development of the Russian Federation legislative system;
- to reveal the singularity of the right to defence as a legal category through the prism of the rights of the individual, which ensures the protection of the rights and freedoms of the individual in the state legal development of society and the state;
- to determine the need to preserve the ideological principles and the axiological significance of the right to defense as a legal idea in the context of reforming the Russian Federation legislative system.

Methods and methodology used in the study. The following methods are used: general principles of scientific knowledge (objectivity, comprehensiveness, completeness, etc.); general scientific methods (system analysis, the method of ascent from the abstract to the concrete, the historical method); private scientific methods (formal legal, comparative methods) to solve the set tasks in the dissertation research. The potential of the used methods allowed the dissertation candidate to solve not only theoretical, but also applied problems posed in the study.

The object of the dissertation research is social relations, reflecting the processes and patterns of the emergence and development of the right to defense as a legal category for the protection and protection of the system of human and civil rights and freedoms, based on an axiological assessment of this legal phenomenon.

The subject of this work is the rule of law regulating the right to defence as a category, reflecting the current level of knowledge about the general laws of the emergence, development and functioning of the protection and protection of human and civil rights and freedoms in the theory and history of law in its genesis.

The theoretical significance of the study lies in the fact that it allows us to define the right to defense as a general legal, universal and individual idea, expressed in the modern legal understanding in the categorical legal apparatus of jurisprudence, to substantiate the historical features of the development and formation of the right to defense in Russia in the X-XXI centuries. The provisions and conclusions of the dissertation research make it possible to clarify, and in some cases, revise modern assessments of the implementation of the right to defense as a legal category in the modern Russian science.

The practical significance of the research lies in the fact that the theoretical provisions and conclusions can be used in the legislative process; when preparing regulatory legal acts; in the reform and development of the judicial system; in research activities in the analysis of the current state of the right to defense, certain aspects and guarantees of its implementation. The conclusions made by the author and the proposed understanding of the "right to defense" allows to give a modern interpretation and essence of this legal phenomenon, as well as to correct the behavior of subjects of law in the modern legal reality, realizing the right to defense. In addition, the understanding of the legal category "the right to defence" makes it possible to eliminate the shortcomings of the Russian Federation legislation related to ensuring the right to personal protection.

The scientific novelty of the dissertation research is the substantiation of the modern understanding of the category "right to defense" as a general legal, universal and single legal idea in the theory of law; its doctrinal, legislative and

law enforcement foundations of widespread use in the modern legal science are revealed.

In the research process, the following results were obtained, representing scientific novelty:

- the grounds for the emergence and stages of development of the right to defense as a process reflecting relations and patterns in state-legal reality have been determined;

- analyzed the right to defense as a general legal idea based on the priority of protecting human rights and freedoms, in general in law and in its branches;

- it has been proved that the right to defense is a universal legal idea, which is a legal principle of law, acting as a foundation for building a system of legislation and serves for law enforcement;

- the analysis of the legal regulation of the right to defense at the present stage of the Russian state and legal development as a single legal idea expressed in the law of the individual and allowing to determine its axiological significance for legislation, lawmaking, law enforcement;

- the specifics of the implementation of the right to defense as a single legal idea, its role for law enforcement practice and the legal consequences of its non-compliance are identified;

- the conclusions and judgments about the need to preserve the axiological approaches to the understanding and application of the legal category of the right to defence in the context of reforming the Russian Federation legislative system have been scientifically substantiated and proved.

The novelty of the dissertation is substantiated by the provisions submitted for defense.

1. Based on the historical and legal analysis of the legal regulation of the right to defence in the system of the Russian state legislation, the author concludes that initially this category was enshrined as a function of state bodies for the administration of justice, caused by the need to ensure the protection of human and civil rights, but in the process of legal regulation gradually acquired the

characteristic features and signs of a general legal principle. Thus, the emergence of the right to defence as a legal category is a natural result of the process of legal regulation of the mechanism for the protection human rights and freedoms in the state legal reality of that historical period, representing a general legal idea for the construction of all legislation, regardless of the legal nature of regulated public relations. The author of the dissertation research comes to the conclusion that the modern legal science and legislation retain the legal continuity of some provisions used in various historical periods of legal regulation of the right to defense.

2. The dissertation proves that the right to defense is a general legal idea that has ontological and axiological significance, which makes it possible to define it as a legal category. In this regard, the author of the dissertation formulated the definition of the right to defense as a legal category, where the right to defense is a legal permission determined by the natural legal feature, expressed in objective law and guaranteed by the obligated subject in the person of the state, expressed in the desire and actions of the subject to reflect the threat to personal or public interest.

3. The author of the dissertation highlighted the signs that characterize the right to defense as a legal category, which include:

- versatility, expressed in the fact that it allows to ensure the protection of other human and civil rights and freedoms, acting as one of the important components of building a system of legislation, since the absence of the right to defence as a general legal idea devalues other provisions of legislation and deprives of significant legal guarantees;

- fundamentality, manifested in the construction of legislation in force on the territory of the Russian Federation, with the aim of realizing the right to defence and the availability of fair justice, as well as the development of the rule of law;

- universality, meaning that the right to defence belongs equally to a person, as an individual, regardless of social group, and to a citizen, regardless of belonging to a separate state, it is guaranteed and implemented in the ways and conditions established by the rules of conduct enshrined in regulatory legal acts ;

- law enforcement significance, implying the fact that in law enforcement activities the right to defence is represented by a fundamental and inalienable human right that guarantees the implementation of generally recognized principles and norms of international law, since a violation of this right makes it possible to recognize judicial acts as not ensuring the protection of rights and freedoms.

4. The right to defence, in modern legal regulation exists as a declarative principle (an attribute of abstract thinking) in the norms of the basic law of the state, guaranteed to individuals by the state, meaningfully existing in a practical plane in the legislation of the country as the named means and methods of its direct implementation by everyone to whom it is addressed. Accordingly, the right to defense is a universal legal idea of various norms governing public relations, establishing not only the mechanism for regulating it, but also the requirements, the observance of which is directly prescribed by the state to the participants of the relevant legal relations.

5. On the basis of a theoretical and legal analysis of the approaches to understanding and classification of the principles of law it is argued in the dissertation that the right to defense is a central element of the country's legal space, ensuring the protection of substantive and procedural rights, private and public, belongs to general legal principles and ideas of building legislation in a state governed by the rule of law in order to ensure the protection of the state guaranteed human and civil rights and freedoms.

The right to defense should be considered as one of the fundamental principles of law because it:

- is a fundamental and inalienable right that is guaranteed to everyone and regulated by the Constitution of the Russian Federation; presupposes the protection of other rights and freedoms enshrined in the current legislation of the Russian Federation;

- should be defined as a fundamental category of the general theory of law that guarantees the protection and restoration of violated or disputed rights and freedoms;

- represents the doctrinal basis of law, expressed in the defence of all legal norms in the entire system of law;

- signs that characterize it as a general legal idea reflect its essence, defining it as the basis for building any branch of law and significance in law enforcement.

6. The author of the dissertation proves that the right to defense is a principle of law and it is an object of state-legal reality in the form of an institution for the protection of relations regulated by the legislator. Since, being an abstract and objective law, the right to defense is manifested in every normative legal act, consolidates the beginning of the idea and the foundation for the protection of certain rights and freedoms. In addition, the rule of law ensures the protection of the rights and freedoms guaranteed by it to every person and citizen, regardless of the field of legal knowledge, therefore, the right to defence as a principle of law is the limit of generalization both in the system of law as a whole and in a specific branch of law. The right to defence means the possibility of a subject to protect his rights and freedoms in a manner permitted by law, not only within the framework of domestic law, but in the relevant international bodies, therefore it acts as a principle characteristic of the entire legal system of the state.

7. The author of the dissertation determined the axiological significance of the right to defense as a legal category in the theory of law, which boils down to the following:

- the right to defence is unified and invariable, since in the course of historical development it is a category that underlies the dynamics of the development of the entire system of legislation in private and public branches of law, representing at the same time an individual (single), special or universal and general legal phenomenon, and also acts throughout the territory of the Russian Federation and cannot be limited or suspended;

- it is perfect, i.e. it expresses the idea of the certain highest standard of protection in the consciousness and legal consciousness of the individual, subject to mandatory recognition and observance by the state;

- viable and objective, since it is understood intuitively, comprehended by reason and reflected in the provisions of the Constitution of the Russian Federation and in the entire system of the Russian Federation legislation;

- universal, since it belongs to every person from birth, having both national and international recognition and observance.

Approbation of the dissertation research results. The main provisions contained in the dissertation are reflected in 9 scientific articles published by the author in journals recommended by the Higher Attestation Commission at the Ministry of Science and Higher Education of the Russian Federation, as well as in 4 articles published in other scientific editions. The author's scientific works reflect the results of the study.

The research topic corresponds to the specialty passport 12.00.01 - Theory and history of law and state; history of doctrines about law and state.