

1. ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА. ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ ВЧЕНЬ. ФІЛОСОФІЯ ПРАВА

DOI: 10.35774/app2026.01.006

УДК: 342.7:796

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THE SUBJECTIVE RIGHT TO PHYSICAL CULTURE AND SPORT IN THE SYSTEM OF CONSTITUTIONAL HUMAN RIGHTS IN UKRAINE

The article provides a comprehensive constitutional and legal analysis of the subjective right to physical culture and sport within the system of constitutional human rights in Ukraine. It is substantiated that the right to physical culture and sport has an independent meaning, while being closely interconnected with such fundamental rights as the right to health care, the right to rest, the right to education and the right to free development of the personality. The provisions of the Constitution of Ukraine, national legislation and international acts in the field of human rights that directly or indirectly enshrine the right of a person to engage in physical culture and sport have been analyzed. It has been established that the right to physical culture and sport is an independent subjective constitutional right, which is simultaneously integrated into the system of social and cultural human rights. Its legal nature is based on the provisions of the Constitution of Ukraine, in particular Articles 3, 49 and 50, as well as on special legislation in the field of physical culture and sport. This right combines an individual legal aspect, which provides an opportunity for a person to independently implement physical culture and sport, and a social and legal aspect, which provides for the state's obligations to create conditions for mass, accessible and inclusive sports. The content, signs and features of the implementation of the subjective right to physical culture and sport are determined, as well as the range of its subjects and the state's obligations to create appropriate conditions for its implementation. The social significance of the specified right in the context of modern challenges is emphasized, considering the need to ensure the health of the nation, social integration and inclusion. The conclusion is made on the expediency of further improving the constitutional and legal mechanism for guaranteeing and implementing the right to physical culture and sport in Ukraine.

Keywords: right to physical culture and sport, subjective right, constitutional human rights, physical culture, sport, human rights guarantees.

Опанасюк Н. А.

Суб'єктивне право на фізичну культуру і спорт у системі конституційних прав людини в Україні

У статті здійснено комплексний конституційно-правовий аналіз суб'єктивного права на фізичну

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культуру і спорт у системі конституційних прав людини в Україні. Обґрунтовано, що право на фізичну культуру і спорт має самостійне значення, водночас перебуваючи у тісному взаємозв'язку з такими фундаментальними правами, як право на охорону здоров'я, право на відпочинок, право на освіту та право на вільний розвиток особистості. Проаналізовано положення Конституції України, національного законодавства та міжнародних актів у сфері прав людини, що опосередковано або безпосередньо закріплюють право особи на заняття фізичною культурою і спортом. Встановлено, що право на фізичну культуру і спорт є самостійним суб'єктивним конституційним правом, яке водночас інтегрується у систему соціальних і культурних прав людини. Його правова природа ґрунтується на положеннях Конституції України, зокрема статтях 3, 49 і 50, а також на спеціальному законодавстві у сфері фізичної культури і спорту. Це право поєднує індивідуально-правовий аспект, що забезпечує можливість особі самостійно реалізовувати заняття фізичною культурою і спортом, та соціально-правовий аспект, що передбачає обов'язки держави щодо створення умов для масового, доступного та інклюзивного спорту.

Визначено зміст, ознаки та особливості реалізації суб'єктивного права на фізичну культуру і спорт, а також коло його суб'єктів і обов'язків держави щодо створення належних умов для його реалізації. Акцентовано увагу на соціальній значущості зазначеного права в умовах сучасних викликів, зокрема з огляду на необхідність забезпечення здоров'я нації, соціальної інтеграції та інклюзії. Зроблено висновок про доцільність подальшого вдосконалення конституційно-правового механізму гарантування та реалізації права на фізичну культуру і спорт в Україні.

Ключові слова: право на фізичну культуру і спорт, суб'єктивне право, конституційні права людини, фізична культура, спорт, гарантії прав людини.

Problem Statement. The development of physical culture and sport constitutes an important prerequisite for ensuring public health, enhancing individual social activity, and achieving the state's sustainable development goals. In contemporary legal doctrine, increasing attention is being paid to determining the place of the right to physical culture and sport within the system of constitutional human rights, particularly in light of the expansion of socio-cultural rights and the strengthening of the state's role in creating conditions for their realization. The relevance of this study is conditioned by the need for a theoretical understanding of the essence of the subjective right to physical culture and sport, clarification of its constitutional origins, and identification of its substantive content.

The Constitution of Ukraine does not contain an explicit provision enshrining an individual's subjective right to physical culture and sport. At the same time, a systematic and teleological analysis of its provisions provides grounds to assert that such a right has an indirect constitutional basis and is realized through a set of inter-related fundamental human rights and freedoms.

First of all, pursuant to Article 3 of the Constitution of Ukraine, the human being, his or her life and health are recognized as the highest social value, while the affirmation and safeguarding of human rights and freedoms is defined as the primary duty of the state [1]. Physical culture and sport are among the most effective means of preserving and strengthening an individual's physical and mental health; therefore, the creation of conditions for participation in physical culture and sport emerges as a constitutionally determined obligation of the state.

This approach is consistent with international legal standards in the field of physical culture and sport. Thus, under Article 31 of the United Nations Convention on the Rights of the Child, every child has the right to rest, leisure, and to engage in play and recreational activities [2]. The UNESCO International Charter of Physical Education, Physical Activity and Sport (2015) explicitly proclaims the right of every individual to access physical education, physical activity, and sport as an integral element of human dignity [3]. Similar approaches are reflected in the instruments of the Council of Europe, in particular in the European Sports Charter, which recognizes sport as a socially significant activity and an object of public responsibility of the state [4].

Literature Review. The issues of subjective human rights, social rights, and constitutional and legal guarantees of their realization have been comprehensively developed in the works of leading domestic legal scholars, thereby forming the necessary theoretical and methodological foundation for studying the human right to physical culture and sport as an independent subjective social right.

A significant contribution to the development of the general theoretical foundations of subjective human rights was made by P. M. Rabinovych, who focused on their conceptual nature, structure, content, and mechanisms of constitutional protection. In his works, subjective rights are interpreted as legally guaranteed opportunities of the individual, ensured through corresponding obligations of the state. These approaches constitute an important theoretical starting point for further analysis of social rights, including the right to physical culture and sport, as a right that requires an active role of the state in creating conditions for its realization [5–9]. General theoretical is-

sues concerning the concept and place of subjective rights within the legal system are also systematically presented in P. M. Rabinovych's textbook *Fundamentals of the Theory and Philosophy of Law* (2021) [10].

A substantial contribution to the study of social constitutional rights was made by O. F. Skakun, who analyzes the right to housing, health care, and social protection, formulating general approaches to the classification of social rights and the determination of their legal nature. The criteria and approaches proposed by the author make it possible to conceptually substantiate the inclusion of the right to physical culture and sport within the category of social human rights and to determine its place in the system of constitutional rights and freedoms [11].

The issue of the right to sport in constitutional law has been directly addressed in the works of A. S. Slavko. In his study *The Right to Sport in Constitutional Legislation: A Comparative Legal Aspect* (2022), the author analyzes various models of constitutional recognition of this right, emphasizing its connection with the right to health protection, the principle of equality and non-discrimination, and the overall system of human rights and freedoms [12].

A separate group of scholarly works is devoted to the guarantees of the realization of the right to sport in Ukraine. In particular, V. V. Berch, V. V. Zaborovskiy, and Yu. M. Bysaha (2023) provide a thorough analysis of the constitutional and legal guarantees of the right to sport, revealing their content, orientation, and normative framework within the current constitutional regulation. Their research allows for a deeper understanding of the legal nature of the state's obligations to ensure conditions for participation in physical culture and sport [13]. In the same context, Yu. M. Bysaha and M. V. Bielova (2023) examine the right to sport among other constitutional rights and freedoms, emphasizing the necessity of creating a favorable socio-legal environment as a key element in the realization of social human rights [14].

Certain aspects of the realization of sporting rights are also examined within the context of special legal statuses. In particular, O. O. Turianytsia (2021) analyzes the mechanisms for the realization of the rights of professional athletes within constitutional and labor law, which makes it possible to identify the specific features of sporting legal relations; however, this approach does not encompass the right to physical culture and sport as a general subjective right of every individual [15].

At the same time, domestic legal doctrine demonstrates a fragmented approach to the study of the right to physical culture and sport. In most works, it is considered either as an element of state policy in the field of physical culture or as a derivative of the right to health protection, without a comprehensive constitutional and legal understanding of it as an independent social right with its own structure and system of guarantees.

Foreign studies demonstrate a diversity of approaches to defining the legal nature of the right to sport. Thus, Jain, in the article *Towards a Human Right to Sport* (2025), argues for the recognition of sport as an independent human right based on international law and international conventions, emphasizing its integration into the universal human rights system [16]. At the same time, Simone Pearce and Jay Sanderson (2024) draw attention to the difficulties of fundamentally defining the right to sport as a separate human right, particularly in the context of creating an accessible and inclusive environment for persons with disabilities. The authors criticize the formal proclamation of a "right to sport," noting that its various interpretations may lead to segregation rather than equal participation, and propose considering sport through the prism of the principles of non-discrimination and equality [17].

In this context, M. F. Krüger (2021) analyzes the right to physical culture and sport from a human rights perspective, as well as the obligations and limitations arising in the process of its practical realization, particularly in European states. The author examines the provisions of declarations adopted by the International Olympic Committee, UNESCO, and the Council of Europe, emphasizing that the ideal of "sport for all" encounters significant legal, social, and institutional barriers [18].

Special attention should also be given to comparative legal studies on the constitutional recognition of the right to sport in European states (in particular, Italy), which demonstrate various models of incorporating sporting rights into national constitutional law and confirm the absence of a unified approach to their legal formulation.

Thus, despite the existence of a substantial body of scholarly literature, the human right to physical culture and sport has not yet received a comprehensive constitutional and legal analysis as an independent subjective social right, which determines the relevance and scientific novelty of the present study.

The purpose of the study is to conduct a comprehensive constitutional and legal analysis of the subjective right to physical culture and sport within the system of constitutional human rights in Ukraine, based on a human rights-based approach. The study aims to determine the legal nature, content, and structural elements of this right; to identify its place and role within the overall human rights protection framework; and to substantiate

directions for enhancing constitutional and legal guarantees of its effective realization, taking into account contemporary societal challenges and international human rights standards.

Presentation of the Main Research Findings. Article 49 of the Constitution of Ukraine plays a key role in the formation of the right to physical culture and sport, as it obliges the state to promote the development of physical culture and sport [1]. This provision is imperative in nature and establishes a normatively defined obligation of the state. It not only determines the general direction of state policy but also forms the constitutional basis for the emergence and realization of an individual's subjective right to engage in physical culture and sport. Constitutional law doctrine and the legal positions of the Constitutional Court of Ukraine (hereinafter – the CCU) have repeatedly emphasized that the state's obligations enshrined in the Constitution in the social sphere are directly linked to ensuring and effectively realizing human rights and therefore cannot be regarded as merely programmatic or declaratory.

The aforementioned provision of Article 49 of the Constitution of Ukraine is closely and systematically connected with Article 3 of the Basic Law, according to which the human being, his or her life and health are recognized as the highest social value, and the affirmation and safeguarding of human rights and freedoms constitute the primary duty of the state. In this context, the development of physical culture and sport emerges as one of the key instruments for fulfilling the state's constitutional obligation to preserve and strengthen human health, ensure physical and mental well-being, and create conditions for the full development of the individual.

At the same time, the right to physical culture and sport correlates with Article 50 of the Constitution of Ukraine, which guarantees everyone the right to an environment that is safe for life and health. Participation in physical culture and sport objectively requires the creation of safe, healthy, and environmentally appropriate conditions, which gives rise to the state's obligation to ensure adequate infrastructure, sanitary and hygienic standards, and environmental safety within the sporting environment. In its jurisprudence, the CCU has consistently emphasized the systemic nature of constitutional rights and freedoms, as well as the necessity of interpreting them in conjunction with the obligations imposed on the state [1].

Thus, taken together, the provisions of Articles 3, 49, and 50 of the Constitution of Ukraine form an integral constitutional and legal foundation for the right to physical culture and sport, within which the constitutional obligation of the state is transformed into a legally guaranteed opportunity for the individual to realize the corresponding subjective right. This allows the right to physical culture and sport to be regarded as an important element of the system of social and cultural human rights, the ensuring of which constitutes an integral component of the modern constitutional legal order of Ukraine.

Article 24 of the Constitution of Ukraine, which guarantees equality of citizens in rights, also plays an important role in this context. This means that access to physical culture and sport must be ensured without discrimination on any grounds, except for limitations established by law and justified by objective factors, including safety requirements, health conditions, or the specific characteristics of certain sports.

Accordingly, the subjective right to physical culture and sport should be understood as a state-guaranteed opportunity for an individual to freely engage in physical culture and sport, to use relevant infrastructure, and to rely on legal mechanisms of protection for the purposes of preserving health, ensuring harmonious development, and achieving self-realization.

From a doctrinal perspective, the content of the subjective right to physical culture and sport encompasses: the individual's right to freely choose types of physical and sporting activities; the right to equal access to sports infrastructure facilities; the right to appropriate and safe conditions for engaging in sport; the right to state support and protection in the field of physical culture and sport; and the right to judicial and other legal remedies in the event of violations of the relevant rights and legitimate interests.

Thus, the right to physical culture and sport constitutes an independent subjective constitutional right that is simultaneously integrated into the system of social and cultural human rights. Its legal nature is grounded in the provisions of the Constitution of Ukraine, in particular Articles 3, 49, and 50, as well as in special legislation governing the field of physical culture and sport. This right combines an individual-law dimension, which ensures the individual's ability to independently engage in physical culture and sport, with a social-law dimension, which presupposes the state's obligations to create conditions for mass, accessible, and inclusive sport.

The main structural elements of this right include: the subject of the right (the individual), the object of the right (activities in the field of physical culture and sport, as well as access to sports infrastructure), the content of the right (participation in sport, health-oriented physical activity, and involvement in sporting events), as well as state guarantees and protection mechanisms.

The subjects of the right to physical culture and sport are all individuals present on the territory of Ukraine, including persons with disabilities and other socially vulnerable groups. In accordance with its constitutional obligations, the state creates conditions for the realization of this right, including the development and implementation of state policy in the field of physical culture and sport; the establishment and maintenance of relevant infrastructure; legislative and organizational measures ensuring access to sport; support for mass, adaptive, and professional sport; as well as educational and awareness-raising initiatives aimed at increasing the level of physical activity among the population.

The jurisprudence of the Constitutional Court of Ukraine (CCU) plays an important doctrinal and law-enforcement role in shaping the mechanisms for ensuring this right. The CCU has repeatedly emphasized the systemic nature of constitutional rights, the interconnection between subjective rights and state obligations, and the necessity of active state intervention to create conditions for the realization of social and cultural rights. Owing to these legal positions, the right to physical culture and sport acquires effective protection within the constitutional legal order rather than remaining a merely declaratory norm [19, 20].

The social and legal significance of the realization of this right is manifested in the improvement of public health, disease prevention, the promotion of an active lifestyle, and the strengthening of social integration and inclusion. At the same time, the legal implementation of the right to physical culture and sport enhances the effectiveness of constitutional guarantees, integrates social rights into the legal system, and contributes to sustainable development, social cohesion, and the preservation of the workforce.

Conclusions. The right to physical culture and sport should be regarded as an independent component of the system of constitutional human rights, characterized by a complex nature and grounded in the constitutional principle of recognizing the human being, his or her life and health as the highest social value (Article 3 of the Constitution of Ukraine). The realization of this right is directly linked to the protection of the right to health care (Article 49 of the Constitution of Ukraine) and the right to an environment safe for life and health (Article 50 of the Constitution of Ukraine), which determines its integration into the system of social and cultural human rights.

The effective exercise of the right to physical culture and sport requires further improvement of constitutional and legal guarantees, in particular through the development of normative regulation, clarification of the scope of the state's obligations, and strengthening of institutional mechanisms for its implementation. The study substantiates the necessity of an active role of the state in shaping and implementing a consistent and balanced policy in the field of physical culture and sport, aimed at creating accessible, safe, and inclusive conditions for the realization of this right by all categories of the population. The implementation of these approaches constitutes an important prerequisite for ensuring an adequate level of public health, social cohesion, and the sustainable development of Ukrainian society in the context of contemporary challenges.

Prospects for Further Research. Further research should focus on deepening the theoretical understanding of the right to physical culture and sport, conducting a comparative legal analysis of national and European approaches to its protection, and developing practical recommendations for improving legal regulation and mechanisms for the realization of this right.

References

1. *Constitution of Ukraine*. (1996). Law of Ukraine No. 254k/96-VR of 28 June 1996 (as amended). Retrieved from <https://zakon.rada.gov.ua/rada/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in English]
2. *Convention on the Rights of the Child* (1989). United Nations. Retrieved from <https://www.unicef.org/ukraine/documents/convention-full> [in English]
3. *International Charter of Physical Education, Physical Activity and Sport* (1978/2015). UNESCO. Retrieved from https://zakon.rada.gov.ua/go/995_350 [in English]
4. *Council of Europe*. (2021). European Sports Charter (Recommendation CM/Rec(2021)5 of the Committee of Ministers of 13 October 2021). <https://www.coe.int/en/web/sport/the-european-sports-charter> [in English]
5. Rabinovych, P. M. (2015). Do modernizatsii konstytutsiino-pravovoho statusu liudyny i hromadianyna (Lviv proposals) [On the modernization of the constitutional and legal status of the individual and the citizen; in Ukrainian]. *Publichne pravo - Public Law*, (3), 20–33. Retrieved from http://nbuv.gov.ua/UJRN/pp_2015_3_4 [in Ukrainian]
6. Rabinovych, P. (2013). Osnovopolozhni prava liudyny: sotsialno-antropna sutnist, zmistova klasyfikatsiia [Fundamental human rights: socio-anthropic essence and substantive classification; in Ukrainian]. *Visnyk Natsionalnoi Akademii Pravovyh Nauk Ukrainy - Bulletin of the National Academy of Legal Sciences of Ukraine*, (2), 10–16. Retrieved from http://nbuv.gov.ua/UJRN/vapny_2013_2_4 [in Ukrainian]

7. Rabinovych, P. (2005). Potrebovyi doslidnytskyi pidkhyd – instrument ziasuvannia sotsialnoi sutnosti prav liudyny [Needs-based research approach as a tool for understanding the social essence of human rights; in Ukrainian]. *Pravo Ukrainy - Law of Ukraine*, (7), 94–97 [in Ukrainian]
8. Rabinovych, P., & Khavroniuk, M. (2004). *Prava liudyny i hromadianyna [Human and civil rights; in Ukrainian]*. Kyiv: Atika [in Ukrainian]
9. Rabinovych, S. P. (2008/2009). Vzaiemozviazky pryrodnoho ta pozytyvnoho prava: metodolohichni zasady doslidzhennia [Interrelations between natural and positive law: methodological foundations of research; in Ukrainian]. *Problemy filosofii prava - Problems of Philosophy of Law*, 6–7, 64–72 [in English]
10. Rabinovych, P. M. (2021). *Osnovy teorii ta filosofii prava [Fundamentals of the theory and philosophy of law; in Ukrainian]*. Lviv: Medicine and Law Publishing House [in Ukrainian]
11. Skakun, O. F. (2021). *Teoriia prava i derzhavy [Theory of law and the state; in Ukrainian]* (4th ed.). Kyiv: Alerta [in Ukrainian]
12. Slavko, A. S. (2022). Pravo na sport u konstytutsiynomu zakonodavstvi: porivnialno-pravovyi aspekt [The right to sport in constitutional legislation: a comparative legal aspect; in Ukrainian]. *Analitichno-porivnialne prevoznavstvo - Analytical and Comparative Jurisprudence*, (4), 69–74. <https://doi.org/10.24144/2788-6018.2022.04.12> [in Ukrainian]
13. Berch, V. V., Zaborovskyi, V. V., & Bysaha, Yu. M. (2023). Zmist, spriamovanist ta napovnenist konstytutsiino-pravovoi harantii prava na sport [Content, orientation, and substance of the constitutional and legal guarantee of the right to sport; in Ukrainian]. *Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu - Scientific Bulletin of Uzhhorod National University. Series: Law*, 77(1), 65–70. <https://doi.org/10.24144/2307-3322.2023.77.1.10> [in Ukrainian]
14. Bysaha, Yu. M., & Bielova, M. V. (2023). Pravo na sport sered inshykh konstytutsiinykh prav ta svobod liudyny i hromadianyna [The right to sport among other constitutional rights and freedoms of the individual and the citizen; in Ukrainian]. *Analitichno-porivnialne pravo - Analytical and Comparative Jurisprudence*, (2). <https://doi.org/10.24144/2788-6018.2023.02.7> [in Ukrainian]
15. Turianytsia, O. O. (2021). Mekhanizm realizatsii prav profesiinykh sportsmeniv v Ukraini: konstytutsiino-pravovyi analiz [The mechanism for the realization of the rights of professional athletes in Ukraine: a constitutional and legal analysis; in Ukrainian]. *Yuruduchnyi visnyk Uzhhorodskoho Natsionalnoho Universytetu - Law Review of Uzhhorod National University*, 64, 13–18. <https://doi.org/10.24144/2307-3322.2021.64.13> [in Ukrainian]
16. Jain, S. (2025). Towards a human right to sport. *International Sports Law Journal*, 25, 141–154. <https://doi.org/10.1007/s40318-025-00311-1> [in English]
17. Pearce, S., & Sanderson, J. (2024). *The myth of a “human right to sport”: How human rights can lead to true inclusion for children with disability*, 223–246. <https://doi.org/10.1007/s40318-024-00275-8> [in English]
18. Krüger, M. F. (2021). Physical education and sport between human rights, duties, and obligations: Observations from Germany. *Societies*, 11(4), Article 127. <https://doi.org/10.3390/soc11040127> [in English]
19. Constitutional Court of Ukraine. (2021). *Legal positions of the Constitutional Court of Ukraine: Index of legal positions on human and civil rights and freedoms* [in Ukrainian]. Kyiv. Retrieved from https://web.ccu.gov.ua/sites/default/files/pokazhchyk_ksu_2021.pdf [in English]
20. *Constitutional Court of Ukraine* (2023). Decision of 22 March 2023 No. 3-r(II)/2023 [in Ukrainian]. Retrieved from <https://ccu.gov.ua> [in English]

Стаття надійшла 07.01.2026

Стаття прийнята до друку 18.02.2026

Стаття опублікована 30.04.2026.