Problems of ensuring and effective legal regulation in the field of human rights protection in the international law

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Abstract. The doctrinal provisions of the institution of international human and civil rights and freedoms in the second half of the twentieth century became critical among other institutions of international and national legislation. This institution has become an indispensable attribute of the legal state representing a significant result of the legal development of society. The problems of legal regulation and the need to protect human rights in modern society have not been sufficiently developed, and require a holistic, comprehensive approach to the study of the institution of human rights and freedoms and citizens. Currently, the recognition of human and civil rights and freedoms reveals the level of development of the country, shows the readiness of the state for international legal integration and further interaction with other states at a higher level.

1 Introduction

The study of the peculiarities of building relationships in the national and international aspect reveals the existence of complex processes of interaction within the world community-state-person chain. The issue is particularly relevant due to the effectiveness of measures and their importance for the national and international systems of law in the field of human rights protection.

The relevance lies in the fact that the framework of law enforcement in each country contains examples of violation of human and civil rights and freedoms, and in this case there is no tendency to depend on the level of development of the country, its political regime and the development of legal awareness of civil society.

The possibility of violation of human rights and freedoms cannot be excluded.

The immediate impetus for violation can be any action, and sometimes even inaction.

Social, political or personal rights may be violated and this does not depend on the degree of development of methods and mechanisms for ensuring human rights.

In general, in the event of a violation, we can talk about the lack of elaboration and efficiency of the functioning of the institution of public legal consciousness, but it is not always possible to maintain legal consciousness in society at the proper level and be responsible for the reaction caused by it.

The state has a certain interest in forming the foundations of legal consciousness, the development of culture in society, familiarizing citizens with the basics of legislation in the field of rights and freedoms belonging to them, forming a negative attitude towards violations in the field of human rights.

However, to solve the problem of violation of human and civil rights and freedoms, compensation for shortcomings in this area, it is necessary to apply great efforts aimed at developing processes for the protection of human rights, including from the point of view of the applied international regulatory legal acts.

National institutions need the support of the international community, but the latter do not provide it to the proper extent, making the effectiveness of ensuring human rights at the mercy of the circumstances.

With all the difficulties and shortcomings of the existing mechanism of international human rights, the confidence in it remains on the part of the international community.

The difference in the levels of development of states and the methods and means used to resolve the problems of restoring violated human rights and freedoms, the different attitude of state structures to the provided categories, is a criterion that will not allow excluding the further occurrence of problems and conflicts in this area as soon as possible.

It should also be noted that the development of national legal systems, in the aspect of human rights and freedoms, is restrained at the global level, since the boundless consolidation and provision of human and civil rights and freedoms may negatively affect the representatives of other states and the world community as a whole, crossing the line of an adequate perception of the institution of human rights.

The actual consolidation of human rights and freedoms at the international level makes it possible to monitor the observance of these rights in other countries where, due to current circumstances and development, such rights may not be granted to citizens, which,
However, does not exclude the need for their restoration and further legislative consolidation and observance.

The actual comparison of international standards on human rights and the rights presented by the state and enshrined in the national legal system may reveal problems and inaccuracies. However, only the possibility of a reference comparison of such rights and freedoms allows openly speaking about them and taking appropriate legal measures to eliminate such problems and gaps.

2 Materials and Methods

The definition of “human rights” was formulated and studied immediately after the end of the American War of Independence. The introduction of this concept is associated with the signing of the Declaration of Independence in 1776. Regulations during the specified period begin to be “filled” with the specified terminology.

However, it is worth noting that the UN Charter meaningfully regulates only the provisions on human rights.

Scholars and lawyers reveal the concept of “human rights” through several system-forming concepts, among which the following should be distinguished:

• securing the ability to achieve a certain level of individual freedom, to fully disclose the right to self-determination in both national and international legal acts;
• establishing clear boundaries and limits of human rights and restricting the interference of authorities, bodies and the state as a whole;
• protecting essential human goods that ensure the achievement of the individual’s vital interests in society;
• establishing international standards ensuring the stability of relations in society;
• ensuring the security of the individual and the state by establishing and achieving the level of personal security of each individual person and citizen.

The national doctrine provides for many definitions and terms on human rights. In generalized form, it is advisable to understand human rights as a single measure of possible behavior (freedom), allowing a person to self-realize, develop, satisfy his life needs during a certain period of historical development of society and the needs of cultural, historical, technological, and legal development of society corresponding to this time. Such human rights do not require mandatory legislative consolidation but must be recognized and guaranteed by the state.

The actual ability of states to ensure and protect the rights and freedoms of a person and a citizen, while preventing their violations by any actors, constitutes the principle of respect for human rights.

The mixing of two levels of regulation of human and civil rights issues confirms the dual nature of regulation of such an institution of law, it is the mixing of the provisions of international and national legislation that fully guarantee the fulfillment of the rights of certain categories of citizens, groups of persons, teams, while the exclusive protection of human and civil rights at the international level, without involving national norms of a particular state, is not fulfilled.

The disclosure of the principle of respect for human rights and freedoms formed the basis for the legislation in the field of human rights protection, which is applied at all levels of legal regulation.

The basic understanding and application of the principle is closely related to the adoption of the UN Charter in 1945. This regulatory act, among other principles, enshrined the principle of protecting the rights of an individual as international.

The provisions of paragraph 3 of Article 1 of the UN Charter pointed out that one of the goals of the United Nations, which directly affects the development of international cooperation, is “to promote and develop respect for human rights and fundamental freedoms for all, without distinction of race, sex, language and religion...”.

The UN Charter emphasizes the independence of the institution of international rights from such social categories as race, gender, belonging to any language group or religious belief of an individual.

This issue was also considered and enshrined in the Final Act of the Council for Security and Cooperation in Europe (CSCE) in 1975, where for the first time they openly declared the need to recognize such a principle as fundamental, significant for the world community.

In general, this consolidation was a consequence of the need to fix and implement the principle of protection of human rights and freedoms in customary international law and treaty norms.

The emerging law enforcement practice allowed the recognition of the principles of protection and respect for human rights in the form of international standards, which once again confirmed the intention of states not only to grant rights and freedoms, but also not to violate them.

The rights and freedoms of a person enshrined at the legislative level determine his position in society and form the basis of relations with the state.

Several rights and freedoms, however, are not unlimited, even despite their consolidation as international standards.

Such a restriction, for example, may be established in accordance with the provisions of the International Covenant on Civil and Political Rights of 1966, according to which, and due to special cases specified in the legislation, restrictions may be imposed, if necessary, to ensure the safety of the state, the people, public order, and the safety of the citizens themselves.

Emerging or existing threats, which may result in mass casualties, harm to many the population of the country or the state as a whole, give the parties to the treaty the authority to introduce measures that suppress these threats, even if violations of human rights and freedoms may occur.

The analysis of the international legislation revealed an interesting trend, for example, despite the lack of clear regulation of the concept of “human rights”, there
are several criteria in the UN Charter that indirectly indicate their existence. This is evidenced by the indication in the document of the need to ensure the equal, full existence of a person, to provide the opportunity to carry out activities of the latter, in accordance with an independent choice. There is also a reference in the preamble to the fundamental democratic freedoms granted to a citizen by his state [1].

In general, it should be noted that it is possible to guarantee the protection of human and civil rights and freedoms only if the normative international acts governing such rights and freedoms are recognized by the state and implemented into national legislation.

Currently, the active development and improvement of the human rights institution is carried out under the auspices of the United Nations, including under the continuous control of the International Labor Organization (ILO) and the UN Specialized Agency for Education, Science and Culture (UNESCO).

However, it should be emphasized that the resolutions adopted by these organizations are advisory in nature, but due to their global nature and coverage of problems, they are considered by many states and are applied in practice.

3 Results and Discussion

Human and civil rights are the basis for the development of harmonious legislation in synergy with national and international standards of human and civil rights and freedoms.

The formation and consolidation of many human rights speaks of civilization, the development of society and, to a greater extent, the creation of a legislative array on human rights and freedoms, which allows fully regulating relations between the state and society.

Besides, the very fact of documenting the provisions on human rights in any legislative act is not yet a guarantee and an indicator of the ability to obtain a qualitative result from the protection of a violated right and its restoration, in this regard, it becomes relevant to elevate this problem to the rank of important, requiring resolution and being acute for the state and society.

The lack of a unified understanding of the studied institution and the foundations of its legal international and national regulation once again emphasize the specifics and complex nature of the analyzed legal phenomenon.

At the same time, it should be noted that at the current stage the international community is interested in the development and implementation of single unified methods and principles that will form a unified procedure for law enforcement and regulation in the field under study.

The state is entrusted with many functions that it is obliged to implement.

Among the general, it is necessary to include the function of ensuring the effective protection of human and civil rights and freedoms, ensuring the rights to a comfortable environment and, the safety of material and intangible goods significant for humans [2].

The widespread consolidation and application of human rights makes it possible to consider the actual significance of this institution of international law, its functional fullness and significance for national legal systems.

From the point of view of the law enforcer, the very fact of applying international standards in the field of human rights is the guarantor of their implementation at the state level.

The Universal Declaration on Human Rights of 1948 is the first international document of this kind to establish a global definition of the rights of all citizens. The provisions are defined and distributed in 30 articles and are fully included in the International Bill of Human Rights.

In general, it should be recognized that in an atypical form, in the form of human rights, the usual moral foundations were enshrined. Thus, humanity, compassion, truth were enshrined, which made it possible to apply them everywhere and legally [3].

Fixed provisions, universal rules may be applied by any person, at any time, to protect and restore the violated right.

The advisory nature of the provisions contained in the declaration did not prevent the states from using them and introducing them into the national law in many countries.

The significant nature of the declaration made it possible to develop provisions and adopt independent international acts on their basis. Such documents include:

- International Covenant on Civil and Political Rights,

Considering the special importance of the provisions of international legal acts in the field of human and civil rights and freedoms, it is advisable to assist in their observance, to develop the fundamental foundations of respect, regardless of the social, material, and personal qualities and characteristics of interacting actors.

It should be especially noted that the Russian Federation, like any other state, is also interested in ensuring the protection of the interests and rights of its citizens. As noted earlier, the foundations of such interest are manifested in the provisions of the Constitution of the Russian Federation, which assigns the dominant role to the President of the Russian Federation, as a guarantor, to the Constitutional Court of the Russian Federation – as the most impartial and authorized judicial body to resolve such issues, the Prosecutor’s Office of the Russian Federation – as a state body with supervisory powers in the areas of compliance with the law and the Commissioner for Human Rights in the Russian Federation [4].

The main measures that are used to protect the violated rights and freedoms of a human and citizen should include:

- application of the provisions of the domestic law and order to protect violated rights and freedoms;
— possibility of appealing to international jurisdictional bodies to restore violated rights and freedoms.

In view of the development of human rights at the international level, more and more countries declare their readiness to develop in the field of law and create an appropriate base for the full and comprehensive protection of human and civil rights and freedoms.

Due to the efforts made to resolve the dispute on violation of the rights of a citizen, the state provides for the possibility of appealing against the decisions made and directly appealing to the international judicial authorities if it is necessary to resolve a conflict that cannot be resolved within the framework of the national judicial system [5].

Currently, there are certain problems regarding the protection of human rights. Thus, in law enforcement practice, states often refuse to apply unified international provisions, replacing them with similar national norms of law, which negatively affects the achieved result and, in general, creates obstacles to the development of the principle of international universality.

The development of the state mechanism in the field of regulating issues of ensuring and protecting human rights and freedoms is also seen as a problem. This trend also makes us think about the need to develop the relevant legal provisions.

It should also be noted that from a formal and organizational point of view, it is necessary to ratify the provisions of a specific legal act for the entry of an international treaty into force. This process may be delayed in time and the actual entry of this international act into force may last for years.

4 Conclusion

The study of scientific literature and the analysis of the opinions of individual authors who are experts in the studied issues made it possible to conclude that the lack of a sufficient terminology base significantly worsens the quality of the adopted regulatory provisions, since it excludes the possibility of the same type of legal understanding, creates terminological confusion, preventing the possibility of forming institutions of law of different countries in a single plane.

In general, it is necessary to agree with the opinions of several authors, since within the framework of the identified problems there is not only the task of studying international relations, but also the need to form a security mechanism for observing human rights and freedoms within the framework of such international relations and national interaction between people and power structures.

Currently, the dialogue between states is complicated due to the need to ensure the protection of the rights and freedoms of citizens fully and comprehensively.

It is quite difficult to achieve mutual understanding due to the prevailing differences in cultural, legal, social issues concerning the world community and individual states.

The exclusive application of a “delicate” business approach, the regulation of controversial provisions, taking into account international agreements reached through a dialogue between the representatives of the world community and states, interaction at the level of government, intergovernmental and non-governmental organizations, will allow going beyond complex geopolitical trends and coming to a common understanding in matters of regulation and ensuring international legal acts human rights and freedoms and citizens.

In general, it seems appropriate to ratify international agreements and conventions, to introduce certain legal institutions and structures into national legislation. For example, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Optional Protocol to the Convention on the Rights of Persons with Disabilities, as they contain additional provisions, to basic acts that may be effectively applied. To create favorable conditions to ensure the human rights and freedoms, it is necessary to conduct an in-depth scientific and doctrinal study in the field of human rights, which will have a qualitative impact on the institutions introduced into the national legislation and the legislative body as a whole.

In general, the protection of rights and freedoms on the world stage remains one of the problematic features of ensuring human rights in modern society.

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