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INTERNATIONAL HUMAN RIGHTS AND FREEDOMS: PROBLEMS OF LEGAL AND SOCIOLOGICAL ASPECTS CORRELATION

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Abstract

This publication considers the peculiarities of formation and development of individual rights, their legal consolidation and internationalisation. The peculiarities of natural and positive law in interaction are revealed. Historical stages of legal socialisation of an individual and legislative consolidation of certain norms, benchmarks, standards, values are analysed. Under the influence of changing conditions of development of international interaction, they have been established for many years and designed to regulate the process of interaction between people according to their interests. Attention is focused on the legislative consolidation of the inviolability and uniformity of procedures and methods of protection of international human rights and freedoms. The article shows that the category of international human rights standards is one of the most important topics of legal science and practice, but the very process of their emergence and formation should be referred to the problems of sociology. Researchers of the human rights institute interpret the concept of international human rights standards in different ways. First of all, this is due to the fact that this concept is not enshrined in international legal documents, but it has significant social and political implications.

Keywords: Human rights, positive law, standards, values

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1. Introduction

The issue of human rights persists in the long term and remains relevant. The importance of assessing the possibilities of creating this institution lies in understanding its history, researching the main stages of the formation of human rights. This is because, in general, the entire history of the formation of the institution of human rights can be seen as a way of step-by-step recognition of the benefits and values of the human person at all levels of relationships.

Theoretical research and substantiation of legal and sociological approaches to human rights, including international ones, in many respects allows us to understand the various sides of the phenomenon under study, their interrelation and modern evolution.

The historical development of an individual's freedom and rights has a stage structure. Each stage of development can be represented in it by its own legal concept of socialisation of an individual as a subject of law and its own ideas about the rights and duties, freedom and burdens granted to it.

In a broad sense, human rights and freedoms appear as a significant quality of any type of civilisation, which reveals the position of the individual in society, legal and moral conditions of its existence and development. Therefore, it is important to determine the compliance of the rights enshrined in legislation with the real possibilities of society.

2. Problem Statement

The gradual emergence of human rights seems interesting as a measure to compensate for the inability of human beings to fully live and carry out their activities, to develop, to socially improve.

The first stage is referred to the period of the Ancient World, i.e. the 5th-6th century B.C. It was during this period that thoughts of human rights appeared in the minds of thinkers of Ancient Rome and Ancient Greece. Even at that time, everything was limited by public interest and class stereotypes. This was expressed in the fact that some subjects had their rights and others were deprived of their rights.

Authors in the scientific literature note that "in general, ancient consciousness did not know the idea of human rights (only the rights of the citizen)". This is due to the fact that the individual, dominant in ancient society, was presented only as a segment of society: it states that any possible or perceived conflict between private and public interests was resolved in favour of the latter.

The second stage in the formation of sociological ideas about human rights can be attributed to the Age of Enlightenment. The ideas of this period are contained and disclosed in the works of such thinkers as G. Grotius, S. Montesquieu, T. Jefferson, I. Kant, B. Spinoza, D. Locke. It was at this stage, as a result of the social contract, that the concept of power emerged, giving rise to an understanding of the essence of power as a consequence of the application of law by man, and the ability to resist any violence and injustice on the part of power.

At this stage, the work of J. Locke has a certain value. In his writings, J. Locke argued that at birth every person has the right to life, liberty and property. The basis of Locke's teachings was the understanding of law as a means of implementing and realising human freedoms.

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This is a particular difference between the Age of Enlightenment and the earlier period of historical development of human rights, as the interest of the individual, his rights in society and social status become the priority.

The third stage should be counted from the adoption of a number of landmark documents, including the U.S. Declaration of Independence of 1776 and the French Declaration of the Rights of Man and the Rights of the Citizen of 1789.

Both documents were based on the inferences of the best scholar-philosophers of the time, political and legal doctrines that reflected the needs and efforts to change the social order, to shape the relationship between people and power.

Therefore, by declaring the nation independent of Great Britain, the U.S. Declaration of Independence also ensured the innate equality of all and guaranteed citizens the right to life, liberty in all its manifestations.

The Declaration of the Rights of Man and the Citizen indicates a special stage in the emergence of human rights by regulating the right to liberty, property, security. The Declaration made human rights absolute, attributing to them eternity, sanctity and immutability.

The fourth stage of the formation of the institution of human rights is characterised by the fact that the provisions on the need to ensure and protect the institution of human rights acquire transnational features (Semenov, 2022). This is largely caused by the historically significant events of the Second World War, which had dire consequences for many countries. As a result, the Universal Declaration of Human Rights was developed and enacted in 1948.

The above-mentioned document was adopted in the form of a UN General Assembly resolution, helped to emphasise its special nature and importance.

Broadly speaking, its provisions have a special status among countries that also universally apply its provisions in accordance with national law. This demonstrates the importance of the Declaration as an emerging international custom.

E.V. Kirichek in his works described the 1948 Declaration as a code of mutually acceptable behaviour of countries, peoples, corporations, organisations and citizens, while B.A. Safarov calls the declaration "a starting point for human rights partnership".

The Declaration became a peculiar trend for members of the international community and led to the unification of national laws on human rights issues and the formation of a unified social order. However, these international acts were not isolated; other documents of great importance in the field of human rights were adopted during the mentioned periods.

In addition to conventions, declarations and covenants, other lesser-known documents were also adopted, such as administrative instructions agreed by states, statutes of tribunals and other bodies and organisations whose purpose was to regulate human rights (Lantseva, 2022).

Summing up the analysis of the stages of development of the institution of human rights, it should be noted that at the current stage of the creation of the institution of human rights, it is necessary to universalise the legislation of countries.

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3. Research Questions

However, at present there are a number of shortcomings in the field of human rights protection, the overcoming of which should become an urgent problem for the coming decades (Lantseva, 2022).

This problem is related to the growing impact on society of the activities of multinational corporations, as there are currently virtually no levers to pressurise and regulate such relationships within the framework of purely national legislation. Social pressure is increasing.

Apart from their considerable economic potential, available economic resources rarely incomparable to the income of an entire state, the lack of regulation is a comfortable environment for situations to arise, in which human rights will be violated to some extent.

As a result of globalisation, another problem that the world community must solve at this stage of the creation of the institution of human rights is the actual consolidation of the rights of migrants, migrants, whose number is increasing every year. And it is hardly possible to slow down this growth (Abrahamyan & Golubkina, 2019).

The solution to the problem seems obvious at first glance, migrants and citizens of the state should be equal to the rights granted to them, but in reality this balance is not always observed. Therefore, despite the fact that the institution of human rights has come a long way, it is still necessary to solve both newly emerging problems and improve the norms of law that ensure the integrity of the already formed legal array.

4. Purpose of the Study

In modern society, one of the fundamental aspects of the world order is the protection of human and civil rights. The fragmentation of national legislative systems and the inconsistency of the actions of the international community in this area create a significant gap in ensuring universal respect for fundamental rights. This study aims to substantiate the need to form common social foundations that will ensure a uniform understanding and application of the principles of human and civil rights protection at the global level.

5. Research Methods

The application of the provisions of international law allows fully implementing the protection of human rights and legitimate interests in society. International law makes it possible to move away from the strict requirements and norms of national law and does not create dependence on the will of the state, which reveals its social significance as an international independent guarantor of human and civil rights and freedoms.

International law regulating human and civil rights can be characterised as a system of norms of international law. They are expressed mainly in international conventions, agreements and covenants and regulate international and some domestic relations, including in the field of protection of human and civil rights and freedoms (Simonova, 2022).

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This is only a small part, defining the scope of state regulation by permitted methods and techniques in the state through their full adoption or by specifying individual rules.

The emerging national peculiarities reflected in legislation and law enforcement practice are aimed, in general, at achieving the enshrined international standards at the state level.

The complexity and multi-level nature of standards in the sphere of human and civil rights are detailed and begin to be implemented from the social level, from the level of society, completing their formation at the level of the state.

In general, there is nothing to prevent the state from providing additional guarantees and compliance by expanding to improve the content of human rights norms.

It is this possibility that implies the application of almost all international human rights conventions usually on the impossibility of interpreting a term or provision of a treaty in the direction of restricting human rights, reducing the degree of protection (Boran-Keshishyan et al., 2019).

Particular attention should be paid to the characteristic features of international human rights standards, as they are characterised by a certain ambiguity.

In the first place, the duality of legal provisions enshrining global human rights standards is determined by the fact that the regulation is subject to agreements determined in advance by the parties, and sometimes even those that have had time to develop into international custom.

In this aspect, the world standards approved and used by the state are international standards in the sphere of human rights and freedoms.

The civilist doctrine has developed a theory of mediation, whereby a person does not acquire rights, cannot bear duties and is not held liable under international law, since he has no connection to it and is not considered to be its subject. In this respect, it should be concluded that rights are given to a person solely in accordance with his/her nationality, citizenship.

This approach is based on the international ideological understanding that dominated Soviet legal theory – a denial of the international legal personality of the individual and his or her rights by the state.

A person cannot be directly positioned solely from an international legal perspective and endowed with rights and duties under international law to the exclusion of national law. World human rights standards apply to individuals indirectly: only by incorporation into the norms of domestic law through the definition of their social belonging.

It should be noted that the implementation of such provision is currently difficult. Internationally enshrined standards not only condition the existence of rights, duties and responsibilities of the parties owing to the relevant international agreement or international custom, but also explicitly transfer rights and responsibilities to the individual within the national jurisdiction.

The main characteristics of global human rights standards are conditioned by the following provisions: the nuances of textual formulations of most normative legal acts at all levels of regulation are often similar. This suggests that many international instruments use formulaic formulations that allow for a common phrase to reveal a single essence. Hence, the most commonly used phrases are "everyone has the right...", "no one can be...", "a person has the right..." and others.

Such language is derived from the fundamental rights and freedoms granted to the individual and secured by the State through the application of human rights standards.

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There is a view that such textual formulations are used solely for the purpose of facilitating the technical part of the work: in fact, one cannot speak of the direct governability of an individual under international law.

In light of the above, the provisions of the International Covenant on Civil and Political Human Rights regulate the unwavering obligation on the part of the state to ensure the enforcement of such rights equally in the same way. This is done without placing emphasis on the colour of skin, language, religious beliefs, political and other convictions of people, without establishing a framework of social distinction, property wealth.

Each State which has recognised its obligation to respect human and civil rights and protect freedoms, which has acceded to the provisions of the Covenant, unless otherwise provided for in domestic legal regulations. It is under an obligation to do everything possible and necessary, within the framework of the legal order prevailing in the country, to ensure the rights and freedoms of the individual in society (Fedorova & Chizhikova, 2022).

Under the Covenant, States make commitments:

i. to condition the application of the most effective legal framework for the protection of violated human rights, even in the case of violations by state officials;
ii. to provide legal defence to any person who needs it from the public authorities, the authorities and the judiciary.
iii. to ensure that remedies are applied by authorised bodies and entities.

Article 2 of the 1966 International Covenant on Economic, Social and Cultural Rights regulates similar rules.

The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms also enshrines an obligation to respect human rights. This obligation is incumbent on High Contracting Parties, which, by acceding to the Convention, ensure, within their jurisdiction, that they fulfil the promise.

In general, the implementation of international standards in national law and the formation of law enforcement practice is not the only way to ensure the rights and freedoms of the individual.

The implementation of internationally recognised human rights and freedoms, in accordance with national law, does not have a mandatory enforcement priority under the principle of "sine qua non". But it is generally supported by simplifying the mechanism for applying the principle and making it more effective.

6. Findings

Human rights granted and secured by international law, even if they are not enshrined in the norms of national law, have a universal character and can be incorporated into national legislation as an independent element.

Human rights, as international standards shaped by sociological factors, can have a regulatory impact already by virtue of the fact that people fully enjoy their rights and freedoms.

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It is therefore appropriate to indicate that the possibility of defending one's immediate rights and freedoms is provided by international judicial bodies, institutions, for example, in the case of recourse to the International Court of Human Rights.

Also, the possibility of referring to international standards in the process of enforcement of the latter at the national level does not depend on the constitutional provisions of the national legal system.

The Constitution of the Russian Federation thoroughly regulates all available universally recognised social norms and principles of international law, which can be attributed to the primary source of regulation of human rights and freedoms, and can be reasonably considered a kind of global standard of human rights.

As stated in the Constitution of the Russian Federation, our country is the guarantor of human and civil rights and freedoms throughout the country. The legal system of the Russian Federation recognises as part of its legal system international agreements, covenants and treaties that mediate human rights.

Also, within the framework of the international rights and freedoms granted, a person may defend oneself by resorting to the principle of "proprio nomine".

Acting directly within the state, standards of human rights and freedoms are protected at the level of national law and are not directly dependent on their actual legal enshrinement.

The purpose of international standards of individual rights is manifested through their functions:

i. identifying a number of rights and freedoms that are recognised as internationally binding;
ii. formulating the essential characteristics and content of any of these rights and freedoms of a person to be protected by means of an application to the relevant authority;
iii. forming a list of obligations binding on the state as a guarantee of inevitability of granting such rights to an individual;
iv. legislating restrictions and prohibitions that can be applied to human rights;
v. developing a unified procedural procedure for ensuring human rights.

Most international human rights standards are confirmed at the national level through constitutional and legal regulation. But we should not forget that they are developed in the process of socialisation and are established as independent legal and political norms, international standards and institutions, exclusively through the transfer of individual experience into practical activity. Therefore, the enshrined international human rights and freedoms are norms tested and learnt by a person, regulating the formed moral attitudes.

7. Conclusion

Focusing on the problems of correlation of legal and sociological aspects in the issues of international human rights and freedoms, a number of conclusions should be drawn:

i. The category of international human rights standards is one of the most important topics of legal science and practice, but the very process of their emergence and formation should be referred to the problems of sociology. Researchers of the human rights institute interpret the concept of international human rights standards in different ways. First of all, this is due to the fact that this concept is not enshrined in international legal documents, but it has significant social and political implications.

ii. The parameters of international human rights standards represent the normative minimum of regulation of human rights and freedoms. World standards are oriented towards establishing the minimum required to preserve the legal status of an individual. It provides for the presentation of these specific characteristics as a measure for any authority, regardless of socio-political, financial and cultural conditions.

iii. The level and completeness of state regulation of human rights and freedoms is determined by the existing international standards that mediate the formation of human rights in a particular state.

iv. World human rights standards are essentially "social norms" reflected in unified provisions at the international and regional levels, as well as in the form of international customs and established traditions.

v. The lack of specificity of the norms of international instruments and some uncertainty in the field of human rights does not reduce or prevent the normative effect of these documents at the national level, the introduction of other rules and norms for the social development of the individual and his life in society.

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