

MODERN PROBLEMS OF THE GENERAL THEORY OF HUMAN RIGHTS: UKRAINIAN CONTEXT

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Abstract: The article is devoted to the analysis of modern legal issues related to the general theory of human rights. It was determined that in connection with changes in society and globalization, human rights face new complex challenges. The ontogeny of the universality of human rights and the cultural diversity of society, the impact of technological challenges on human rights, the observance of the rights of migrants and refugees, the protection of the rights of journalists and freedom of speech, economic and social rights, etc. are considered. The need to ensure effective protection of human rights for human rights organizations, the academic community, and states around the world has been proven. The need for constant updating and adaptation of legal mechanisms to address new challenges and changes in society and ensure universal principles of human rights is determined.

Keywords: human rights; globalization; theory of human rights; freedom of speech; legal protection of human rights.

1 Introduction

In recent decades, humanity has faced complex challenges in the field of human rights, which is currently reflected in the general theory of human rights. The concept of human rights has deep historical roots, but modern realities bring changes to the perception of them and endanger their effectiveness and protection. Considering the significant relevance of this issue, it is worth noting its multifacetedness, which requires a comprehensive approach to taking into account the legal aspects of the realization of human rights. It is worth noting that currently, the protection of human rights faces the challenge of preserving the universality of the principles of human rights under the condition of significant diversity of cultures, traditions, and values. Quite often, there is a conflict between universal human rights and cultural diversity, which calls into question generally accepted standards and norms. In addition, the intensive development of information technologies has led to the emergence of new forms of human rights violations, such as cyber bullying, privacy violations, discrimination based on algorithms, etc. Therefore, the modern general theory of human rights must objectively take into account these challenges and provide adequate protection against 'technological violations' of rights.

World practice also shows that the growing volumes of migration and numerous military conflicts in the world endanger the rights of refugees and migrants. Therefore, there is a need for new approaches to the protection of the rights of these vulnerable groups by both national and international legal mechanisms. In addition, military conflicts and the threat of terrorism can also lead to significant restrictions on the rights and freedoms of citizens, which requires an effective balance between the protection of human rights and security measures implemented by state authorities. Climate change should also be included among the modern problems related to human rights and freedoms because the general theory of human rights must adapt to the objective challenges associated with climate change

and the ecological crisis. Humanity faces threats to life and health, which question the right to health and adequate access to natural resources. At the same time, problems related to economic inequality remain relevant, because the distribution of resources and access to economic opportunities in society is often uneven, which leads to the violation of human rights, especially in the context of poverty and social exclusion.

Therefore, the general theory of human rights must adapt to modern challenges and develop strategies to ensure the protection of human rights in all spheres of life. Ensuring the universality, integrity, and effectiveness of human rights is a necessary task for preserving the dignity and development of society. Therefore, the need for research and development of modern strategies for the protection of human rights is becoming particularly relevant at the moment, and special attention should be paid to educational programs that promote awareness of human rights and cultural tolerance of society.

2 Literature Review

Human rights are one of the basic principles of the modern legal order and a guarantee of a dignified life and freedom for every individual. However, in connection with intensive changes in society and globalization, new complex problems and challenges for the general theory of human rights began to arise, which requires an in-depth study of key aspects of modern legal issues of human rights. In particular, it is worth noting the work of M. Iovane, who examines the universality of human rights in the context of cultural diversity of society. At the same time, the question is investigated whether universal principles can be effective and adapted to all cultures, religions, and traditions. The work claims that such tension affects the protection of human rights and a debatable approach is formed regarding the possibility of combining universal standards of human rights taking into account the cultural characteristics of society [4].

Important in the context of modern technological challenges is the study of human rights conducted by M. K. Land and J. D. Aronson, who argue that with the emergence of new technologies, in particular digital ones, human rights are also exposed to new threats. The work focuses on how the use of modern technologies affects privacy, freedom of speech, freedom of thought, and other fundamental rights. An important achievement of the authors is the development of new legal mechanisms to ensure the protection of human rights in the digital age [5].

It is also necessary to note the research of M. Popescu and K. Libal in the field of protection of the rights of migrants and refugees. In particular, the aggravation of the migration situation and the refugee crisis observed in recent years calls into question the effectiveness of international and national mechanisms for the protection of the rights of these groups. The study focuses on the need to ensure adequate protection and observance of human rights during migration and the process of protecting refugees [9].

In addition, research aimed at studying the observance of journalists' rights and freedom of speech remains relevant. In particular, the main emphasis is on freedom of speech and the right to information, as one of the main indicators of a democratic society. However, journalists and media workers often face censorship, harassment, and violence. The study of this problem, carried out in the works of such scientists as A. Lewis [6] and J. L. Andsager [1], proves the importance of developing legal mechanisms to protect the rights of journalists and ensure their safety.

Another important aspect of human rights research is the study of their economic, social, and cultural dimensions. This problem is sufficiently widely disclosed in the work of K. Roth, who

notes that a significant percentage of the population currently does not have sufficient opportunities to meet basic needs guaranteed by international norms. The author justifies that, on the basis of this, there is a need to improve mechanisms for the protection of social and economic human rights [12].

The study of compliance with environmental human rights acquires particular importance in human rights research. In particular, A. Boyle claims that, in recent years, there has been a significant increase in the importance of observing environmental rights in the context of climate change and environmental disasters. The study focuses on how exactly environmental threats affect people's health and how it is necessary to develop new legal approaches to ensure the effective protection of human rights in this area [2].

In general, the modern legal problems of the general theory of human rights are quite complex and multifaceted. This determines the need for constant updating and adaptation of legal mechanisms to new challenges and changes in society to ensure effective protection of human rights and prohibition of any form of their violation.

3 Materials and Methods

To conduct analysis of modern legal issues of the general theory of human rights, general methods of scientific research were used, including a literature review, analysis of scientific publications, investigation of documents of international organizations and reports of human rights organizations. The comprehensive approach provided for the phased implementation of the study based on the use of the following sequential methodology:

- A systematic analysis of academic articles, dissertations, and other sources related to the subject of human rights and the general theory of rights was carried out. A selective approach to literary sources made it possible to focus on key aspects of modern legal problems.
- The analysis of international documents was carried out – the main international legal documents were analyzed, in particular, the Universal Declaration of Human Rights [15], the International Covenant on Civil and Political Rights [14], the International Covenant on Economic, Social and Cultural Rights [15], and others. This made it possible to make a comparative analysis of international standards and approaches to human rights.
- A critical analysis of the results was applied – the collected data were critically analyzed and summarized to formulate conclusions regarding the modern legal issues of human rights. Key challenges and trends affecting the protection of human rights in the modern world are identified.
- The main trends and problems related to the general theory of human rights are formulated. Conclusions were made regarding the necessity of adapting legal mechanisms to new challenges, ensuring a balance between universality and cultural diversity, as well as developing new approaches to the protection of human rights in the modern information and technological society.

Thus, the application of a complex approach to the study of modern legal issues made it possible to identify key trends and challenges related to the general theory of human rights.

4 Results and Discussion

As it is known, international standards of human rights constitute only the necessary minimum of socially meaningful features that can be defined exclusively in a consensus-contractual manner, since the latter objectively do not have an a priori meaning independent of social existence. At the same time, these features represent a concentrated core of widely recognized universal human values, which must be respected in every case of the realization of relevant human rights. These standards include, first of all, so-called absolute human rights (that is, those whose content and scope cannot be limited under any circumstances), as

well as rights arising from the norms of international customary law and the observance of which must be ensured on the territory of all states, even in case of non-adherence of any of the latter to the relevant international act.

Such rights include the right to life, liberty, and security of the person, the right of a citizen to freedom of thought, conscience, and religion, the right to participate in the implementation of state affairs, the right for equality before the law, the right to a public hearing by an independent and impartial court, the right to vote, the right concerning freedom of speech, press, and many others. The specified rights are inalienable to a person, they express the independence of the individual from state power. The state is obliged to refrain from interfering in the spheres regulated by these rights. That is, all people are equal and free in their dignity and rights. Human rights and freedoms are inviolable and cannot be revoked.

The deep transformational processes taking place in social life at the present time necessitate a fundamental renewal of the legal system, starting with the problems of legal understanding and ending with issues of improving the forms of expression of law. That is why in recent years, increasingly more attention has been paid, in particular, to the study of various aspects of one of the fundamental principles – the principle of the rule of law. The effectiveness and fairness of the legal regulation of social relations, the level of ensuring the rights and freedoms of a person and a citizen largely depends on its implementation.

In Ukraine, the reassessment of legal reality is stimulated today by the adoption of a whole series of new fundamental codes for the entire legal system, primarily civil, criminal, and family codes, a significant part of which, in their innovations, can no longer fit into rather rigid traditional general theoretical canons. Thus, the general principles of civil legislation are the inadmissibility of arbitrary interference in the sphere of a person's personal life; inadmissibility of deprivation of property rights, except for cases established by the Constitution of Ukraine and the law. It implies freedom of contract; freedom of entrepreneurial activity, which is not prohibited by law, as well as judicial protection of civil law and interest, justice, good faith and reasonableness [8].

According to the Constitution of Ukraine, human rights and freedoms and their guarantees determine the content and direction of state activity; affirming and ensuring human rights and freedoms is the main duty of the state. At the same time, the state, in turn, recognizes a person, his life, inviolability, honor, and dignity as the highest social value. With the help of separate mechanisms of law, the state provides each person with equal opportunities in the use of subjective rights.

The rights of the first generation are the rights that protect human freedom from unjustified state interference. However, human freedom can have unlimited boundaries, a person can abuse it. If all people are equal and do not need the help of the state, then when various kinds of conflicts arise, each of the parties will insist on their rights, which makes it impossible to make a fair decision. Therefore, human freedom must be limited by the legal framework. Such frameworks should be established by the state, which will regulate the limits of the realization of human rights and perform the function of dispute resolution [13; 17].

At present, decisions of the European Court of Human Rights are becoming increasingly more important for the formation of the "face" of the legal system of Ukraine. In particular, the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" regulates relations arising in connection with the state's obligation to implement the decisions of the European Court of Human Rights in cases against Ukraine, with the need to eliminate the causes of Ukraine's violation of the Convention on the protection of human rights and fundamental freedoms and related protocols, with the introduction of European human rights standards into Ukrainian judicial and administrative

practice, with the creation of prerequisites for reducing the number of applications to the European Court of Human Rights against Ukraine.

However, the legal field as a whole continues to be perceived by public consciousness and reproduced by legal theory in the context of the mechanisms of implementation of state power, law – only as a means of carrying out certain administrative tasks, practically – as a command of the state. It is not by chance that in legal literature, especially at the level of branch studies, the definition of law as “a set of legal norms established or sanctioned by the state” prevails today, to which some other criteria can sometimes be added as optional, that do not violate its essence and orientation [7].

At the same time, the International Covenant on Economic, Social and Cultural Rights includes several rights-limiting articles (5, 6, and 9), among which the most generalizing prescription is contained in Art. 4: “...the state can establish only such limitations of these rights as are determined by law, and only to the extent that this is compatible with the nature of the specified rights, and solely for the purpose of promoting the general welfare in a democratic society” [16].

The modern interpretation of human rights is determined by the fact that they (human rights) are considered a criterion for evaluating the functioning of all states of the world community when they take positive (active) measures in the “human rights” sphere (first of all, regarding the legislative consolidation of new human rights, the creation of effective mechanisms for their protection, the establishment of socially justified limits of their implementation) [3]. At the same time, the combination of functional-activity analysis with structural-component analysis allows concluding that the category of “opportunities”, used to reflect the essential features of human rights, has two main functions:

1. Denoting the potential behavior of a person aimed at satisfying his needs and interests.
2. Ensuring the upward development of a human being in the direction of its transformation into a unique representative of the human race – a personality.

Therefore, there are reasons to state that the considered rights perform certain functions both for the person himself (instrumental in nature) and for society as a whole (ensuring its orderliness and upward movement).

Thus, it can be argued that human rights are not ontologically universal, but synchronously universal – in the sense that all people living today have them. In the modern world, human life is recognized as an unconditional value. Therefore, the decisive contribution of individual rights to the emergence of the world order is to reinforce its obligations regarding the value of human life. An additional decisive contribution of human rights to the world order is that the rights of individuals increase the pressure on states, corporations, and international organizations, which are the most powerful subjects in the international arena. The human rights movement opposes the concentration of power in corporate hands [11].

In its turn, the International Covenant on Civil and Political Rights already has six articles (6, 13, 18, 19, 22, 25), which in one way or another contain rights-limiting fragments, mention the principles and conditions of state-legal limitation of rights of a person. For example, we cite article 19, which establishes that the exercise of the rights provided for in paragraph 2 of this article (the right to free expression of one’s opinion, which includes “the freedom to seek, receive and disseminate any information and ideas, regardless of state borders, orally, in writing whether by means of print or artistic forms of expression or other means of his choice”) imposes special duties and special responsibility [14]. It may, therefore, be associated with certain restrictions, which, however, must be established by law and be capable:

- To respect the rights and reputation of other persons;
- To protect state security, public order, health, or morals of the population.

As a result, the functions of law are reduced to the fullest possible regulation of social relations, which leaves no room for the initiative of citizens to realize their own interests, the functioning of civil society institutions, and local self-government bodies. On the other hand, the adoption of a law as an order subject to compulsory execution appears to be the result of the regulation of social relations, and the increase in the number of laws is not reflected in the real state of the effectiveness of legal regulation: the shortcomings of “bad” laws are “solved” at the expense of the adoption of new, “better” laws, and then – “even better ones”.... Hence, the issue of the implementation of legislative prescriptions is outside the content of law, in any case, it is considered only in the context of its derivative, secondary character for jurisprudence. Proposals to adopt “laws on the implementation of laws” do not seem incompatible within such a paradigm, that is, to practically close the circle of formal legal concepts, isolating them from social problems [8].

In the current period, another issue arises, which concerns the protection of the most vulnerable layers of the population. Each person belongs to a certain group of people and exercises the corresponding rights together with other members of the group. We are talking about those rights of a person that are not related to his personal status but are dictated by belonging to some kind of community. Their rights create a collective value for all members of the group because goods of this type can be used only jointly by all members of the group.

Such groups include women, children, pensioners, disabled people, refugees, and representatives of racial and national minorities. They exercise rights in the field of freedom from discrimination on the basis of sex, race, nationality, or age. In connection with this, a statement may arise, because all those who are part of the relevant group are separate individuals and can independently exercise their rights. Yes, one could say about the first or second generation of human rights, but not about the third. Individuals are the bearers of such rights, but only because they belong to certain social groups [13].

Another component of modern human rights issues – cultural diversity – is an indisputable fact of life in the world. However, it has a dual character: it is celebrated as an essential aspect of human flourishing, and, at the same time, it is feared as a threat to global citizenship. This problem is so acute today that it is even included for discussions within curricula in foreign languages study in universities. In the conditions of danger for the human race, an important role should be played by intercultural dialogue, which, although it is not a solution to the problem of narrow particularism or the ecological crisis, is nevertheless the first step in the direction of human survival and prosperity. Cultural diversity should be the starting point for intercultural dialogue [7].

The approach of P. Rabinovych, who declared a movement towards “European legal understanding” is based on the interpretation of the practice of the European Court of Human Rights, which involves an in-depth study of the own content of the law, ascertaining certain “ontic” aspects of it that are unusual for domestic science properties, namely: the ability to satisfy certain interests, taking into account the biosocial characteristics of individuals and their psychological state, the feasibility of the possibility of satisfying interests, the uniqueness of the social situation and social situationally in general, the impossibility of only a formalized approach, the need to go beyond the boundaries of the legal text, a fair balance [10]. However, attempts to incorporate the proposed criteria of legal understanding, developed on the basis of the analysis of the activities of such specific legal authority as the European Court of Human Rights, into the canons of “dialectically interpreted materialist understanding” leads the author to the unexpected

context of “universal social”, i.e., not state-authority, non-legal law.

Considering all the above-mentioned rights, it is necessary to pay attention to their moral-ethical and religious component. Religion and morality are ancient and highly established forms of human spirituality. They exist throughout the history of world civilization. And although all countries are governed only by legal norms, in particular, by national legislation (laws, bylaws), the moral-ethical and religious stage is primary for the development of all existing human rights. The modern development of science and technology enters into a serious contradiction with the dogmas of religion. Society did not always accept the main provisions of religious concepts. However, there are some stable traditions that have been formed for centuries and have firmly entered people's lives. From the point of view of the general system of values, law must meet the requirements of morality [13].

Paradoxically, as the inertia of globalization grows, so does attention to individual, communal, national, and regional identity. This is what increases attention to cultural diversity. At the heart of the contradictory relations between economic and cultural globalization, lies the complex problem of “eternal ties”, which are understood as essential features that are the features of a person's existence as a unique individual. In the living world of the 21st century, such connections acquire special significance for personal identity. The most important of them are ethnicity, gender, age, language, place of birth, status, and religion. Therefore, it can be concluded that globalization caused active pluralism of cultures and cultural dialogue (including the dialogue between abstract universalism and strict particularism) [7].

However, the facts of the restriction of human rights in favor of state power (in order to protect state (national) security, etc.) already testify, we think, to the insufficiency of considering the constitutional and legal status of a person only from the point of view of the dichotomy “liberalism – communitarianism”. It seems more adequate to carry out a corresponding study in the future within the boundaries, figuratively speaking, of the triangle: “power (Potesteral (Machiavellian-Kantian) discourse) – man (liberalism) – society (communitarianism)”.

Thus, one of the urgent directions of adaptation of national jurisprudence to the challenges of today should be the socialization of law and legal knowledge, which involves consideration of legal issues in a broader context – society as a whole, and not only at the level of its political organization, mediated exclusively by relations regarding the formation and implementation of state power. After all, a person as a bearer of inalienable rights and freedoms, which are meant to determine the content and direction of the state's activities, cannot be considered today outside the boundaries of legal science, and society is also capable of certain self-organization and self-regulation through the institutionalization of the sphere of civil society [8].

Thus, the law acquires an important ability to be not only a conductor of general imperatives into the “life-world” of individuals, which sometimes manifests itself in the phenomenon of excessive “juridification”, which is quite specific for modern society, but also to perceive influence in the opposite direction - from direct participants in social relations, their rights and freedoms to the state as a carrier of public interest.

5 Conclusion

Thus, we conclude that human rights in the context of their modern interpretation are characterized by several principles, such as the following: the socio-natural essence of human capabilities; formal equality and uniformity of starting opportunities, complemented by the principle of actual equality as a result of the influence of the dominant moral norms of society; inalienability of human rights; humanism as a system-forming basis of human rights arising from the dignity of a person – his self-worth as a unique generic biosocial being.

At the same time, it should be noted that the restriction of basic rights is a fundamental (basic) category of the constitutional and legal status of a person. Based on the fact that absolute, “boundless” human rights cannot exist a priori, we believe that the establishment of clear and understandable criteria for limiting such rights at the highest (international legal and constitutional) levels is an important guarantee against possible actions of the state and its bodies about the arbitrary reduction of the scope of legal enforcement. It is about ensuring one of the important aspects of the rule of law, namely, a mutually agreed existence and mutually agreed realization of the fundamental (natural) rights and duties of a person, social communities, associations, and the whole society.

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