

## **THE ROLE OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE INTERNATIONAL MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS**

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*The article is devoted to the question of the role of the Committee on Economic, Social and Cultural Rights in the international mechanism for the protection of human rights. The article analyzes the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which was adopted by the UN General Assembly on December 10, 2008. Attention is drawn to the information sent by the Federation of Trade Unions of Ukraine to the Committee on state violations of the rights of workers and trade unions defined in Articles 7, 8, 9, 10 and 11 of the Covenant, its consideration by the Committee, as well as to the Report of the Crimean Human Rights Group, in which key issues were raised, with faced by citizens of Ukraine who were forced to leave the Autonomous Republic of Crimea and those citizens of Ukraine who live in the occupied territory of the Autonomous Republic of Crimea.*

*It is noted that the subject of a report to the Committee on Economic, Social and Cultural Rights in the international mechanism for the protection of human rights can be a natural person who has exhausted all available internal (national) legal remedies and it is established that such a remedy is judicial. However, this rule does not apply in those cases, if the use of this tool is unreasonably delayed in the state.*

*Although the Committee on Economic, Social and Cultural Rights may, if necessary, refuse to consider a communication if it does not indicate a clear limitation of the rights of its author, nevertheless in cases where the Committee considers that the communication affects a serious question of general significance, he considers it.*

*In view of Russia's violation of human rights guaranteed by the International Covenant on Economic, Social and Cultural Rights in that part of the territory of Ukraine over which it exercises illegal effective control, it is established that on the basis of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Committee of economic, social and cultural rights may receive and consider notifications from Ukraine regarding Russia's non-fulfillment of its obligations under the Covenant; to appoint one or more of its members to investigate information on serious or systematic violations by Russia of the rights enshrined in the Covenant.*

*Keywords: human rights, international mechanism for the protection of human rights, economic, social and cultural rights, protection of human rights, Committee on Economic, Social and Cultural Rights, protection of human rights, state, occupation, martial law regime.*

### **Formulation of the problem**

Russia launched a full-scale invasion of Ukraine. Part of the territory of Ukraine is occupied, part of the territory is under temporary effective illegal control of the Russian Federation. According to the norms of international public law, a state that exercises, albeit illegal, but effective control over a part of the territory of another state must also fulfill its obligations to ensure human rights in this territory.

Practice shows that Russia systematically and massively violates the economic, social and cultural rights of mostly Ukrainian

citizens who remained in the territories of Ukraine temporarily occupied by Russia. In the Autonomous Republic of Crimea, Russia systematically and massively violates the economic, social and cultural rights of indigenous peoples - Crimean Tatars, Krymchaks, Karaims. A number of them internally moved to the mainland of Ukraine, and the question of ensuring their rights by Ukraine arises.

#### **State of problem research**

In the doctrine of constitutional and international law, the work of L. Deshko, Yu. Bysaga and other scientists is devoted to the issue of international protection of human rights [1-6]. The work of O. Vasylychenko, L. Deshko, O. Lotyuk and other scientists is devoted to the issue of protection of the rights of indigenous peoples [7-10]. But the question of the role of the Committee on Economic, Social and Cultural Rights in the international mechanism for the protection of human rights was not studied in detail in them.

Therefore, **this article is devoted to** the current topic - the role of the Committee on Economic, Social and Cultural Rights in the international mechanism for the protection of human rights.

#### **Presenting main material**

Adopted by the General Assembly on December 16, 1966, the International Covenant on Economic, Social and Cultural Rights consists of a preamble and 31 articles, which are divided into 5 parts [11]. The preamble states that the rights proclaimed in this document derive from the inherent dignity of the human person, and the ideal of a human person free from fear and need can only be realized if there are conditions under which everyone can enjoy their economic, social and cultural rights.

It is worth noting that in addition to the declaration and definition of this or that right, the International Covenant on Economic, Social and Cultural Rights of 16.12.1966 provides an approximate list of those measures that must be implemented by the participating states to ensure the specified rights, namely: the development of programs vocational train-

ing, ways and methods of achieving productive employment in conditions that guarantee basic economic and social human rights [11].

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was adopted by the UN General Assembly on December 10, 2008 [12]. It consists of a preamble and 22 articles, defines the procedure for receiving and considering by the Committee on Economic, Social and Cultural Rights communications from a person, group of persons or on their behalf, who claim that they are victims of a violation of any of the economic, social and cultural rights set forth in the specified international agreement.

The subject of the notification may be a natural person who has exhausted all available domestic (national) legal remedies. However, this rule does not apply in cases where the use of such means is unreasonably delayed in a participating state.

A legal entity that is not endowed with public-authority powers can also apply. For example, in 2020, the Federation of Trade Unions of Ukraine sent the Committee information about violations by the state of Ukraine of the rights of workers and trade unions defined in Articles 7, 8, 9, 10 and 11 of the Covenant.

In turn, the Committee on Economic, Social and Cultural Rights declares a communication inadmissible when:

- it is not submitted within one year after the exhaustion of domestic legal remedies, except for cases where the author can prove that it was impossible to send the message within this period;

- the facts that are the subject of the notification took place before the entry into force of this Protocol for the relevant State Party, unless such facts continued to take place after that date;

- this very issue has already been considered by the Committee or has been considered or is being considered in accordance with another international review or settlement procedure;

- it is not compatible with the provisions of the Covenant;

- it is clearly not substantiated or insufficiently reasoned or is based solely on messages disseminated by mass media;

- it is an abuse of the right to submit a message; - it is anonymous or not submitted in writing.

The Committee on Economic, Social and Cultural Rights may, if necessary, refuse to consider a communication if it does not demonstrate a clear limitation of the rights of its author, except in cases where the Committee considers that the communication involves a serious matter of general importance.

At any time after receiving the notification and prior to any decision on the merits, the Committee on Economic, Social and Cultural Rights may refer to the State Party concerned for its immediate consideration of a request for the adoption of temporary protective measures that may be necessary to avoid possible infliction of irreparable harm to the victim or victims of the alleged violation.

As a general rule, the Committee on Economic, Social and Cultural Rights informs the relevant state party of the content of the notification in a confidential manner. In turn, that State shall, within 6 months, submit to the Committee on Economic, Social and Cultural Rights written explanations or statements clarifying the matter and the remedies that may be provided by the State party.

The Committee on Economic, Social and Cultural Rights offers its good offices to the parties concerned for the purpose of friendly settlement based on respect for the obligations set forth in the Covenant. The adoption of an agreement on friendly settlement entails the termination of consideration of the corresponding notification.

In a closed session, the Committee on Economic, Social and Cultural Rights shall consider the communications received and the relevant explanations or statements and shall formulate and forward its considerations on the communications together with its recommendations to the parties concerned. In turn, the participating state, after considering the relevant considerations and recommendations, submits a written response to the Committee on Economic, Social and Cultural Rights within 6 months, including information about the appropriate measures taken by it (articles 1-9).

On the basis of the Optional Protocol to the International Covenant on Economic, So-

cial and Cultural Rights dated 10.12.2008, the Committee on Economic, Social and Cultural Rights can:

1) receive and consider notifications from one participating state regarding the second participating state regarding the latter's failure to fulfill its obligations under the Covenant;

2) to appoint one or more of its members to investigate information on serious or systematic violations by a state party of the rights enshrined in the Covenant, including with a visit to the territory of the participating state, with its consent, and urgent submission of a report to it. At the same time, such measures are carried out in strict accordance with the established procedure and only in case of official recognition by the participating states of the appropriate competence of the Committee on Economic, Social and Cultural Rights (Articles 10-11). The relevant activity of the Committee on Economic, Social and Cultural Rights is reflected in its annual report (Article 15).

The above shows that Ukraine can and should appeal to the Committee on Economic, Social and Cultural Rights regarding violations of human rights in those territories of Ukraine over which Russia exercises illegal effective control.

The report of the Crimean human rights group talks about two main problems faced by citizens of Ukraine who live in the occupied territory of Crimea or who have been forced to leave the peninsula. The first problem concerns the Crimeans who left their homes and were forced to resettle in the territory controlled by Ukraine. The second problem concerns the residents of the occupied Crimea who come to the territory under the control of Ukraine to complete Ukrainian documents [13]. For example, issuing a passport of a citizen of Ukraine takes a certain amount of time, sometimes up to several weeks, in some cases - months. However, until the moment of obtaining a passport, the Crimean citizen is unable to return home. A father with an underage child has a similar problem. If the child crosses the border with one of the parents, and there is no way to get the permission of the other parent notarized in Ukraine, then

a court decision must be obtained, which also takes a long time [13].

### Conclusions

In view of Russia's violation of human rights guaranteed by the International Covenant on Economic, Social and Cultural Rights in that part of the territory of Ukraine over which it exercises illegal effective control, it is established that on the basis of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Committee of economic, social and cultural rights may receive and consider notifications from Ukraine regarding Russia's non-fulfillment of its obligations under the Covenant; to appoint one or more of its members to investigate information on serious or systematic violations by Russia of the rights enshrined in the Covenant.

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13. КППГ надала Комітету з економічних, соціальних і культурних прав ООН альтернативну доповідь з питань Криму. URL: <https://crimeahrg.org/uk/kpg-nadala-komitetu-z-ekonomichnih-sotsialnih-i-kulturnih-prav-oon-alternativnu-dopovid-z-pitan-krimu/>

**РОЛЬ КОМІТЕТУ З ЕКОНОМІЧНИХ,  
СОЦІАЛЬНИХ І КУЛЬТУРНИХ ПРАВ  
У МІЖНАРОДНОМУ МЕХАНІЗМІ  
ЗАХИСТУ ПРАВ ЛЮДИНИ**

Статтю присвячено питанню ролі Комітету з економічних, соціальних і культурних прав у міжнародному механізмі захисту прав людини. У статті аналізується Міжнародний пакт про економічні, соціальні і культурні права, Факультативний протокол до Міжнародного пакту про економічні, соціальні і культурні права, який було прийнято Генеральною Асамблеєю ООН 10 грудня 2008 року. Звертається увага на направлену Федерацією профспілок України інформацію до Комітету про порушення державою прав працівників та профспілок, визначених статтями 7, 8, 9, 10 і 11 Пакту, її розгляд Комітетом, а також на Доповідь Кримської правозахисної групи, у якій підняті ключові проблеми, з якими стикаються громадяни України, які вимушено залишили Автономну Республіку Крим, і ті громадяни України, котрі проживають на окупованій території Автономної Республіки Крим.

Зазначається, що суб'єктом подання повідомлення Комітету з економічних, соціальних і культурних прав у міжнародному механізмі захисту прав людини може бути фізична особа, що вичерпала всі доступні внутрішні (національні) засоби правового захисту і виосновується, що таким засобом є судовий. Але це правило не діє в тих ви-

падах, якщо застосування цього засобу невиправдано затягується у державі.

Попри те, що Комітет із економічних, соціальних і культурних прав може, за необхідності, відмовляти в розгляді повідомлення, якщо воно не свідчить про явне обмеження прав його автора, тим не менше в тих випадках, коли Комітет вважає, що повідомлення зачіпає серйозне питання загальної значущості, він його розглядає.

З огляду на порушення росією прав людини, гарантованих Міжнародним пактом про економічні, соціальні і культурні права на тій частині території України, на якій вона здійснює незаконний ефективний контроль, виосновується, що на підставі Факультативного протоколу до Міжнародного пакту про економічні, соціальні і культурні права Комітет із економічних, соціальних і культурних прав може отримувати й розглядати повідомлення від України стосовно росії щодо невиконання останньою своїх зобов'язань за Пактом; призначати одного або кількох своїх членів для проведення розслідування інформації про серйозні або систематичні порушення росією прав, закріплених у Пакті.

**Ключові слова:** права людини, міжнародний механізм захисту прав людини, про економічні, соціальні і культурні права, захист прав людини, Комітет із економічних, соціальних і культурних прав, захист прав людини, держава, окупація, режим воєнного стану.