THE RELATIONSHIP BETWEEN THE CONCEPTS OF «HUMAN RIGHT» AND «HUMAN FREEDOM»

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The article notes that the terminological differences between the concepts of «human right» and «human freedom» have been formed since the time of the French Declaration of the Rights of Man and Citizen in 1789. Subsequently, these differences were leveled by the national legislation of the states - these two concepts were used as synonyms. In a number of international acts on human rights, «human right» is used as a synonym for «human freedom», and a number of human freedoms are designated as human rights. Such leveling of the terminological difference between two concepts - «human freedom» and «human rights» is not justified.

In the doctrine of international public law, «freedom» is defined in broad and narrow meanings. In a broad sense, freedom is the natural state of both the people and the individual, and this natural state is characterized by the ability of these subjects to act at their own discretion. In a narrow sense, «freedom» means the subjective ability of a person to either do or not to do specific legally defined actions. It is in this narrow sense that the term «human freedom» should be considered in the system of international protection of human rights.

Attention is drawn to the fact that absolute personal freedom did not exist, does not exist and cannot exist because there is something that limits it (principles of morality and morality, rights and freedoms of other persons, interests of general well-being); only the written source of law can determine what is the measure of freedom and what are the limits of freedom; no set of structural elements of freedom, which is fixed in a normative legal act or in a set of normative legal acts, does not exhaust the content of freedom because social relations are developing; the restriction of freedom must be prescribed by law, pursue a legitimate goal and be proportionate.

It is noted that in the conditions of martial law, the international mechanism of protection, which, unlike the national one, is subsidiary, is used more and more to protect human freedoms. It is noted that such a situation needs to be changed, because the international mechanism for the protection of human rights should not take over the functions of the main, national mechanism for the protection of human rights.

Keywords: human rights, human freedoms, protection of human rights, international human rights protection mechanism, national human rights protection mechanism, means of legal protection, subsidiarity.

Formulation of the problem

Today, in the conditions of Russia's aggression against Ukraine, a number of human rights and fundamental freedoms are restricted, and a number are violated by the aggressor state. When limiting human freedoms, more and more practitioners are raising questions about how not to violate proportionality when limiting one or another freedom.

This article is devoted to the concept of human freedom and the correlation of this concept with the concept of «human right».

State of problem research

In legal science, the concepts of «human right» and «human freedom» were studied in

the works of Yu. Bysaga, L. Deshko, O. Vasylchenko, O. Lotyuk and other scientists [1-6]. With the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine «On Indigenous Peoples of Ukraine» [7], the rights and freedoms of the indigenous peoples of Ukraine were investigated in a scientific article by L. Deshko, O. Vasylchenko, and L. Lotiuk [8].

The purpose of this article is to clarify the characteristics of «human freedom» by which human freedoms differ from human rights.

Presenting main material

Both at the level of international agreements and in the constitutional legislation of many states of the world, the terms «human right» and «human freedom» are used. These concepts should be distinguished. Their terminological differences were formed historically from the time of the French Declaration of the Rights of Man and Citizen of 1789, but were largely leveled by later, both national and international legal acts on human rights, in particular the Universal Declaration of Human Rights of 1948.

Today, as is well known, in science, the concept of «law» is interpreted from two fundamental principles. First, it is a set of universally binding rules (norms) of behavior established or sanctioned and protected by the state that regulate the relations of people in society. Secondly, it is the perspective of a certain person or social group conditioned by certain circumstances, the basis, ability, opportunity to act, to do, to do something, to use something, to satisfy one's needs based on the law, religious postulates, ancient customs and so on [9].

The first mentioned definition of the category «law» in the legal literature is outlined as an objective law and in this sense is interpreted as a system (set) of universally binding social rules (norms) of behavior that express the will of the state, which is ensured and protected by its purposeful activity . The second mentioned definition of the category «right» is distinguished in jurisprudence as a subjective right, which represents the type and measure of possible behavior of a person, people, state or other subject [9].

In legal doctrine, there are two approaches to judging the concept of «freedom». First, it is a gift, which is designed to separate one person from another, giving the first certain advantages, thereby placing it in a special privileged position in relation to the rest. Second, it is a person's understanding of his or her own significance through awareness of equality and kinship with others to achieve common goals.

In relation to jurisprudence, «freedom» is defined in a broad sense, as the natural state of a people and an individual person, characterized by the ability to act at their own discretion. In a narrow sense, «freedom» means the subjective ability of a person to do or not to do specific legally defined actions. It is in this sense that the term «human freedom» should be considered in the system of international protection of human rights.

The Constitution of Ukraine distinguishes between human rights and freedoms: human freedom, in general, is a primary concept in the system of human and citizen rights [10]. Human freedom is characterized by the following main features:

- people are free from their birth, and no one has the right to violate their natural rights, moreover, the state in a democratic society is the main guarantor of human freedom;
- a person is free to do everything, with the exception of what is expressly prohibited by the current legislation;
- people have equal opportunities established by law [10].

The category «right» is close to the concept of «freedom» in a subjective sense. There are no sharp differences between them - both rights and freedoms outline certain possibilities of a person in various areas of his life, which are guaranteed by the state. However, a distinction can be made between them based on the degree of certainty of possible behavior and the mechanism of state guarantee. The term «human right» is used when it comes to specific possibilities of behavior (the right to life, the right to free movement, the right to recognition of legal personality, the right to participate in the conduct of state affairs, the right to work, the right to social security, the right to education, etc.) [10].

When it is necessary to emphasize the greater space of choosing a variant of behavior at one's own discretion and under one's own

responsibility, the term «freedom» is used (freedom to choose a place of residence, freedom of thought, conscience and religion, freedom of speech, freedom of assembly, freedom of association, etc.) [11].

The understanding of human rights as certain of its possibilities is given in the works of many theoreticians and social scientists [12]. As for other interpretations of this concept in modern scientific literature, N. Fendyna notes that «they can be summarized as follows: human rights are a certain way of normalized freedom; human rights are certain human needs or interests; human rights are his demands for the provision of certain benefits, addressed to society, the state, legislation; human rights are conditions and benefits (material, spiritual) necessary for the normal functioning of an individual; human rights are a certain type, part (form of existence, way of expression) of morality» [12].

Yarmol L. and S. Wandyo note: «Generally agreeing with O. Punda's understanding of freedom, namely that «freedom is an opportunity manifestation of the subject's will based on awareness of the laws of development of nature and society;....freedom is the ability of a person to act in accordance with his own goals and interests, based on knowledge of objective necessity (reality)» ..., we also want to emphasize that freedom can also manifest itself in inaction. Also, in our opinion, freedom is not only knowledge objective reality, but also subjective. So, freedom is the natural state of a person, for which he performs certain actions (action or inactivity) in accordance with one's will, desire and inner conviction» [13].

Conclusions

Absolute personal freedom did not exist, does not exist, and cannot exist because there is something that limits it (principles of morality and morality, rights and freedoms of other persons, interests of general well-being); only the written source of law can determine what is the measure of freedom and what are the limits of freedom; no set of structural elements of freedom, which is fixed in a normative legal act or in a set of normative legal acts, does not exhaust the content of freedom because social relations are developing; the restriction of freedom must be prescribed by law, pursue a legitimate goal and be proportionate.

In the conditions of martial law, the international mechanism of protection, which, unlike the national one, is subsidiary, is used more and more to protect human freedoms. It is noted that such a situation needs to be changed, because the international mechanism for the protection of human rights should not take over the functions of the main, national mechanism for the protection of human rights.

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СПІВВІДНОШЕННЯ ПОНЯТЬ «ПРАВО ЛЮДИНИ» ТА «СВОБОДА ЛЮДИНИ»

У статті зазначається, що термінологічні відмінності понять «право людини» та «свобода людини» сформувалися з часів Французької Декларації прав людини та громадянина 1789 р. Згодом національним законодавством держав ці відмінності були нівельовані – ці два поняття використовувались як синоніми. У низці міжнародних актів з прав людини також не поодиноко як синонім «свобода людини» використовується «право людини», а низка свобод людини позначена як права людини. Таке нівелювання термінологічної різниці між двома поняттями – «свобода людини» та «права людини» є не виправданим.

У доктрині міжнародного публічного права «свобода» визначається в широкому та вузькому значеннях. У широкому значенні свобода є природним станом і народу, і окремої людини та цей природний стан характеризується можливістю цих суб'єктів діяти на свій власний розсуд. У вузькому значенні «свобода» означає суб'єктивну можливість особи або робити, або не робити конкретні юридично визначені дії. Саме в такому вузькому значенні термін «свобода людини» має розглядатися в системі міжнародного захисту прав людини.

Звертається увага на те, що не існувало, не існує і не може існувати абсолютної свободи особи, тому що є те, що її обмежує (принципи моралі та моральності, права і свободи інших осіб, інтереси загального добробуту); лише писане джерело права може визначити, що є мірою свободи і які межі свободи; жоден набір структурних елементів свободи, що закріплений у нормативно-правому акті чи в сукупності нормативно-правових актів не вичерпує змісту свободи, адже суспільні відносини розвиваються; обмеження свободи має бути передбачене законом, переслідувати легітимну мету та бути пропорційним.

Зазначається, що в умовах воєнного стану при захисті свобод людини все більше і більше використовується міжнародний механізм захисту, який, на відміну від національного, є субсидіарним. Зазначається, що така ситуація потребує зміни, адже міжнародний механізм захисту прав людини не має перебирати на себе функції основного, національного механізму захисту прав людини.

Ключові слова: права людини, свободи людини, захист прав людини, міжнародний механізм захисту прав людини, національний механізм захисту прав людини, засоби юридичного захисту, субсидіарність.