THE HISTORY OF THE CONCEPT OF HUMAN RIGHTS

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Abstract: *The thesis is devoted to the analysis of the formation of the concept of human rights and also, the emergence of domestic and international systems for the protection from any violation of human rights. Besides, the article also discusses opinions of scholars from Europe, the USA, Russia and other post-Soviet Union countries. The study provided by the thesis covers the periods from the initial periods of the formation of the concept of human rights to the establishment of the United Nations Organization and its Bodies for provision of global human rights.*

Key words: *human rights, protection systems, formation, violations, control mechanisms, procedures, international law.*

The international system for the protection of human rights has gone through a long and difficult path in its formation and development. Having historically evolved into an independent legal category, it began to represent not only a certain set of principles and norms, but also include such necessary components as appropriate control mechanisms and procedures. Over time, the international system for the protection of human rights began to be used (or understood) in a broad, correlative sense: that is, it consists not only of a specific object of the rights of individuals, but also of fundamental freedoms inalienable from them (in this sense, this concept is also used in our dissertation research). A feature of the system under consideration is, undoubtedly, the so-called "international human rights standards" that have developed within its framework, which are interpreted in two ways: as strict legal obligations and as external forms of securing rights and freedoms in the form of sources or a "code of international regulation of human rights". The main purpose of such sources - "treaties and other international legal acts - is to establish clear common standards for the behavior of states, to ensure their universal recognition and uniform application. Thus, they (standards) are "a sample, model, standard of legal norm, established by agreement between states" and, on which, in turn, control mechanisms and procedures are guided.

Thus, the international system for the protection of human rights, consistently assuming the creation, first of all, of legal guarantees, which are the creation of opportunities for regulating the exercise of rights and fundamental freedoms, provides for the assignment of appropriate tasks to specialized bodies for the protection of these rights and freedoms. The latter are most often considered "within the framework of the so-called instrumental concept, the main idea of which is that one of the essential natural properties of positive law and its individual elements is their ability to be a means (instrument) to achieve certain goals" . The foregoing means that "the key theoretical and practical problem of implementing standards in the field of protecting human rights and freedoms is to

provide (create) sufficient opportunities for their protection by various subjects of legal relations by creating an appropriate institutional system" . The foregoing, in turn, contributed to the formation within the framework of the international system of understanding the rights and fundamental freedoms of a person, both in an objective and subjective sense. An objective definition of human rights and fundamental freedoms began to proceed from the fact that they are enshrined not so much in international treaties as in domestic acts, adopted in their execution and corresponding to them and establishing as a result the legal status of a citizen as a person. subjective meaning rights and fundamental freedoms of a person began to take shape as an opportunity belonging to a particular individual, provided for by one or another legal norm. From the point of view of the legal nature of human rights and fundamental freedoms, they did not differ from each other, and most often, for the sake of brevity and convenience, both began to be denoted by the single term “human rights”.

What we have said above quite clearly emphasizes and all the more proves that both human rights themselves and the entire system of their protection are genetically and inextricably linked with international law. At the same time, as D.I. Nurumov, the point of view that "human rights are alien to international law, in essence, does not have any strong argumentation" . He, speaking about the fact that "... the process of introducing human rights into the body of international law ... proceeded indirectly, through the fabric of international law", nevertheless, notes that "he was demotivated by it". “On the one hand, the ideas of human rights penetrated from the sphere of domestic law, on the other hand, they were the product of direct relations between states” . This can be clearly seen, for example, when analyzing the content of various philosophical and legal ideas and regarding them when considering the institution of the protection of foreigners, the formation of the law of national minorities, precedents for humanitarian intervention, etc. In other words, “the degree and nature of the development of human rights were determined by the “level of development of law in the corresponding society” .

The origin of the ideas of human rights and freedoms, namely the so-called "civil idea", that is, the idea of a citizen endowed with certain rights and opportunities, as well as duties, took place in the 6th-5th centuries BC. in ancient policies (city-states). This idea, as O.V. Mosin, “was associated with the region of the world where the highest spiritual culture was formed - philosophical, legal and political thought, science, art, literature, etc.” . In this case, we are talking about “ancient city-states, in particular about Athens and Rome”.

Ideas about the rights of man and citizen were organically included in other concepts of the representatives of ancient Athens. Among them, Aristotle, Pericles, Demosthenes, Democritus, Heraclitus and others should be noted. Most of them also put forward the ideas of equality of individuals, while defending the high value of law and legality within the framework of the political and philosophical doctrines of the rule of law, and, therefore, considering the rights and freedoms man is inseparable from these scientific ideas.

Roman jurists made a great contribution to the development of natural law, and in essence legal ideas about human rights. As is well known, the provisions developed by them on the subject of law, on the legal status of people, on the freedom of people by natural law, on the division of law into private and public, on fair and unfair law, etc., had significant significance . A bright example of this is, in particular, the so-called "Codification of Justinian" - a systematic presentation of Byzantine law of the VI century, developed by order of Emperor Justinian, known as Corpus juris civilis (Code of civil law) and published in 1583. Consisting in its internal structure of three parts - institutions, digest and Justinian's code, this Codification took into account some legal institutions that appeared in the process of its further development. For example, the Code of Justinian, which included all imperial orders (constitutions) issued from Emperor Hadrian (II century AD) to Justinian himself and consisting of 12 books, regulated in detail the relationship between the church and civil servants, within private law - property and related (or unrelated) other, non-property relations, issues related to the commission of crimes, etc. in the context of criminal law, the role and status of individuals in administrative and financial relations .

Later, the processes of progression of social system, the formation of a medieval feudal society and the system of economic relations and spiritual culture characteristic of it were reflected in other ideas (concepts) of human rights. The most famous representatives of that era were Marsilius of Padua, Anselm, Henry Brakton, Thomas Aquinas and others, who advocated the freedom and equality of all before the law. “Typical in this regard is the anti-serf position of the famous French lawyer of the 13th century, Beaumanoir, who claimed that "every person is free" and sought to concretize this idea in his legal constructions" .

During this period, calls for freedom and equality also begin to bear fruit. This is confirmed by a significant document for the English feudal society - the Magna Carta of 1215. Its significance can be characterized, in particular, by the fact that Article 39 enshrined the following important norm from the point of view of protecting human rights: “no free person can be arrested, or imprisoned, or deprived of possession, or outlawed, or in any way destitute, and we will not go to him, and we will not send to him except by the legal verdict of his equals and by the law of the land” .

Medieval views on human rights were further developed in the works of modern thinkers, among whom should be mentioned G. Grotius, B. Spinoza, D. Locke, C. Montesquieu, I. Kant, T. Jefferson, J.-J. Rousseau, G. Greece, A. Smith, D. Ricardo, O. Comte, Hegel and many others. They are supporters of the new rationalist theory of human rights. They not only criticized the feudal system, but also put forward their own views on the need for the rule of law in relations between the individual and the state, and also developed ideas of individual freedom, formed provisions on natural, inalienable human rights. At the same time, for all the above-mentioned representatives of the early bourgeois and subsequent philosophical and legal concepts, the inseparability of human rights from the principles of building a legal state was very characteristic. A special place in their views was occupied by the development of the concept of natural human rights. So, for example, the founder of the subject of international law, the Dutch legal scholar G. Grotius believed

that all people are endowed with natural rights and based on this, in his famous work “On the Rights of War and Peace”, published in three books in 1625, he justified called "just wars" for the sake of protecting other people's subjects, if "obvious lawlessness" is being perpetrated on them . Another scholar, B. Spinoza, as well as G. Grotius, developing natural law views and, moreover, and not least, the contractual concept of the state, according to which the state should be based on law, argued that “the goal of the state is in fact freedom”. He emphasized that “the natural right of everyone in the civil state does not stop, since both in the natural and in the civil state a person acts according to the law of his nature, is prompted by fear or hope” . Another follower of the social contract theory, which assumes the natural rights of a person to conclude such a contract and, accordingly, shares the views formed within the framework of the liberal doctrine of inalienable human rights and freedoms, D. Locke wrote that “despite all kinds of false interpretations, the purpose of the law is not to destroy or limit but the preservation and expansion of freedom... Where there are no laws, there is no freedom” . In his opinion, “the freedom of people under the authority of the government consists in having a permanent rule for life, common to everyone in this society and established by the legislative power created in it”. C. Montesquieu, a well-known author of the theory of “checks and balances”, was also a supporter of the legal organization of state life, however, as his theory, he believed that “government through laws is based on the separation of powers, recognized to restrain and limit each other”, since “with the separation of powers, “a state system is possible, in which no one will be forced to do what the law does not oblige him to do, and not to do what the law allows him” .

The development of special ideas of law, which cover the freedom of a person from his birth and rights in general, as a result of a voluntary departure for a foreign mission by the state, has found its continuation in the work of I. Kant. As it is known, the concept of a free autonomous person belongs to him. He, speaking of primary human rights, convincingly proved that “the only innate human right is the right to freedom and equality, which expresses the dignity of a person” . No wonder the idea of I. Kant, as loaded by O.V. Mosin, "acquired a powerful humanistic orientation", was highly appreciated by Hegel. The German philosopher and author of the famous work "Philosophy of Communication" wrote in his letter: recognizes no authority, and insignificance, in which his freedom is not respected, he is not obligated - the exposure of this defeat is a big step forward ” .

The human rights and freedoms proclaimed in the above-mentioned acts, as well as the experience accumulated in the practice of their application, taking into account the Anglo-Saxon traditions, had a significant impact on the appearance in 1789 in the system of international law of a document known as the Declaration of the Rights of Man and Citizen. We can see positive impacts in the field of human and civil rights, legal statehood, the rule of law, one way or another, it has also experienced and continues to experience the positive effect of this historical document” . “We must firmly grasp,” wrote the French professor A. Rambaud, “that the Great French Revolution consisted in the declaration of rights, edited in 1789 and supplemented in 1793, and in all the attempts made to implement

this declaration". The National Assembly first "worked out the Declaration of the Rights of Man and Citizen - a short set of principles of the revolution, which has since become the political and social gospel of the new France" . This document rightfully stands on a par with all the most important political and legal acts. Its not only historical, but also legal significance lies in the fact that it was the first to systematize the rights of an individual and a citizen, as well as the principles that formed the basis of the modern legal status of an individual: equality, natural character and inalienability of human rights, popular sovereignty, the rule of law, the human right to personal freedom, inviolability, freedom of conscience and expression of thoughts and opinions, the presumption of innocence, etc. (Articles 1,2,3,5,7,11,9) .Today, in accordance with the preamble of the Constitution of France (V of the French Republic) of October 4, 1958, it is in the broadest sense its integral part , or, as the well-known Soviet/Russian lawyer and scientist A.A. Mishin said, although "the text of the Constitution of the French Republic of 1958 says nothing about the rights of the individual, but only confirms the Declaration of Man and Citizen of 1789 and the preamble of the previous Constitution of 1946.", "behind this modest reference norm there are documents with the richest constitutional and legal content" . At the same time, he suggested quoting Art. 16 of the Declaration: "any society in which the enjoyment of rights is not ensured and the separation of powers is not carried out is unconstitutional". However, the most significant significance of this document lies in the fact that "human rights and freedoms proclaimed in it have acquired global significance and have become imperatives for the renewal and humanization of "social and state orders".

The period of the 19th century and its subsequent periods simultaneously have such a feature as the consolidation in the fundamental laws of individual states of the norms governing cooperation in the field of protection of human rights and provisions that determine the scope of the rights and freedoms of a particular citizen (individual), issues of extradition and asylum rights. They, for example, are reflected in the Portuguese Constitutional Charter of 1826, the Basic Statute of Italy in 1848, the Danish Constitution of 1866, the Japanese Constitution of 1889.

At the end of the 19th - beginning of the 20th centuries, the concept of a legal state, a special form of organization and functioning of public political power, received a new legal sound, comprehension and distribution in the world. During this period, it "acquires those features, properties and characteristics without which a civilized society cannot exist: humanism (the priority of human rights in relation to power); democracy (overcoming the alienation of the individual from the state, the creation of a mass social base); morality (equality and justice); limitation of his omnipotence (separation of powers, creation of checks and balances)" .

At the beginning, or rather in the first decade of the twentieth century, or after the end of the First World War and the collapse of the Ottoman, Russian and German empires, as well as the formation of new sovereign states, and, importantly, the creation of the League of Nations, within the framework of international law, mainly between European states, treaties providing for measures to protect the rights of ethnic, religious and

linguistic minorities. The need for such agreements, as the leading powers of that time believed, was not only “to help maintain political stability in a world in which national consciousness had finally supplanted religious consciousness” , but was also due to the fact that timely fixing the status of ethnic minorities helped to avoid a pretext for intervention by the state, where this ethnic group was in power or made up the majority of the population and was not indifferent to the fate of its fellow tribesmen.

In such treaties, the participants of which were Austria, Albania, Hungary, Iraq, Greece, Poland, Romania, Turkey, Lithuania, Latvia, Estonia, Finland, Czechoslovakia and Yugoslavia, mainly such civil and political rights and freedoms as “equality of treatment And non-discrimination, the right to citizenship, the right to use one’s native language, rights in the cultural sphere, including the creation of an appropriate infrastructure, including schools where instruction was to take place in the language of minorities densely residing in a given territory, equal state financial support for such schools, etc.” , which together created a special legal regime for minorities. For example, according to Art. 2 of the Small Treaty of Versailles dated June 28, 1919 with Poland, the Polish government undertook "to provide all the inhabitants of Poland with full and complete protection of their lives and their freedom without distinction of origin, nationality, language, race or religion" . Article 8 of the Treaty stated that “Polish citizens belonging to ethnic minorities, by religion or language, will enjoy the same regime and the same legal and factual guarantees as other Polish citizens”. It is noteworthy that the obligations of states under this treaty, as well as by analogy with other international acts for the protection of certain minority groups, were placed under the guarantee of the League of Nations.

As a result, all these negative aspects, assessments and reproaches led to such a consequence that "the member states of the League of Nations did not even set themselves the task of developing a universal international document that would contain provisions on respect and observance of at least elementary human rights and freedoms"32. In this regard, the system of national law was no exception. For example, attempts at the beginning of the 20th century “to grant the population an unshakable foundation of civil freedom on the basis of real inviolability of the individual, freedom of conscience, speech, assembly and unions” in the Manifesto of October 17, 1905 could not change the situation in Russia, “give her new legal guidelines - human rights and individual freedom” . True, with the establishment of the “dictatorship of the proletariat” in 1917, the situation with human rights, due to ideological and classical approaches, improved slightly in Russia. In particular, “the right of nations to self-determination was proclaimed (Declaration of the rights of the peoples of Russia), the Declaration of the rights of the working and exploited people was adopted, the Appeal to all Muslim workers of Russia and the East was published” . In addition, the church was "separated from the state, the Code of Laws on Marriage was adopted"34. But at the same time, such a system had a downside: in pursuit of the goal of immediately creating a new, communist society, in Russia, as J.N. Hazard, “lawyers were treated with distrust - a suspicious class: the old judges and judicial procedure were eliminated” . In the future, the situation did not change significantly: with

the formation of the USSR and the holding from 1921 to 1928. the so-called "new economic policy" "private persons were prohibited from engaging in commerce, and violation of the ban was punished by criminal law as speculation" . This collective opinion of M. Chambray, H. Vronsky and G. Lazzerl is confirmed in their joint scientific work by other Western experts R. David and C. Joffre-Spinosi, who note that private property in Russia/USSR "was rebaptized into" personal property; this emphasized that, to the extent that it is allowed, personal property should serve to satisfy one's own needs and cannot be a source of labor income” .

With the adoption of the Constitutions of 1936 and 1977. and until the end of the existence of the USSR, the status quo is preserved, however, the “dictatorship of the proletariat” disappears, “but the state, far from withering away, is stronger and more powerful than ever; it became nationwide”. At the same time, “Soviet law has not died out either, it is more extensive and imperative than ever” . Based on the ideas and principles of socialism, as for the opinion of E.A. Lukashev, is “an effective means of influencing the consciousness and behavior of the individual, contributing to overcoming negative phenomena that contradict the norms and principles of the socialist system”. Therefore, it would have to “be internally consistent, exactly correspond to the achieved stage of development of society, be freed from outdated and contradictory norms and institutions” .

Academician S.N. Sabikenov emphasizes that “in the modern world, human rights and freedoms have ceased to be only an internal matter of the state, now it is the object of attention of the entire international community”, and, at the same time, according to him, “the protection of human rights cannot be considered as a task that contradicts other main tasks that are important for a modern democratic society” . Accordingly, “compliance with the principles in the field of human rights can actually be achieved earlier than with tasks that are more dependent on structural changes in society”40. Such an axiological dimension of human rights and freedoms in modern legal literature has received its adequate recognition. For example, the statement is known: “Human rights are a universal value that allows you to “measure” all the most important phenomena and events taking place in society and the world” . An equally striking example of such recognition is the title of Chapter III "Human Rights as the Highest Constitutional Value" in a fundamental comparative legal study on constitutional development in the 21st century. According to A.Kh. Abashidze and A.O. Goltyaev in the norms and standards in the field of human rights "... The complex of traditional values of mankind is reflected - categories that were embodied in religious teachings, philosophical discourses, social foundations, customs, and simply in the everyday life of various societies, peoples and civilizations. These values are so strong and rooted that they represent a moral imperative for many, many people” .

On the basis of the foregoing, it can be concluded that the provision and protection of human rights and fundamental freedoms, including various categories of minorities, having not so much an international legal nature as a domestic nature, in case of improper regulation, actually turns into a serious problem, and, therefore, it can threaten not only interests within the framework of national security, but also the state and stability of

international peace and security. V.Y. Nekazakov in this context is convinced that, first of all, “without an axiological basis, the system of human rights can not only lose its stability, but also transform (“degenerate”) into its opposite, especially when the most important value is forgotten or diminished - the Man, his life and freedom” . At the same time, as can be clearly seen from the examples given, the issue under consideration, in the competent opinion of S.J. Aidarbaev, “cannot be effectively resolved without using an integrated approach, expressed in the use of ... the entire arsenal, both domestic and international legal means and methods” .

The situation with human rights in the period leading up to the end of the Second World War and the establishment of the United Nations is different than at the indicated time.