

Yuritsin A. E., Koshelev E. V.

**HUMAN RIGHTS AND FREEDOMS: THE TOPICAL ISSUES OF
PROTECTION AND LIMITATIONS IN THE INTERNATIONAL LAW AND
DOMESTIC LEGISLATION OF THE RUSSIAN FEDERATION**

Yuritsin Andrei

Evgen'evich,

c.j.s. (PhD in law), Associate professor of the Chair of administrative law and administrative activity of internal affairs bodies at Omsk Academy of the RF MIA;

Koshelev Evgenii

Viktorovich,

c.j.s. (PhD in law), Senior lecturer of the Chair of constitutional and international law at Omsk Academy of the RF MIA.

The article deals with the topical issues of protection and restriction of human and civil rights and freedoms in terms of domestic legislation of the Russian Federation and norms of international law.

Keywords: human rights and freedoms, the principle of respect for human rights, international treaties, constitutional state, limitations on human rights and freedoms, ensuring of national security, territorial integrity, public order, international monitoring of human rights.

Human rights and freedoms is one of the highest cultural values of civilization, because they put a personality at the center of all the processes of historical social development, determine the degree of its freedom and equality. Human rights and freedoms perceived by the civilization for two and a half thousand years have gained a modern form and understanding, and the principle of respect for human rights has become one of the fundamental principles of international law.

Human rights represent a system; it is proven by the adoption at the World Conference on human rights in 1993 of the Vienna Declaration and Programme of Action, which defined: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" [4, 22].

Positive significance of human rights for both international and domestic relations is emphasized in the preamble of the Universal Declaration of human rights: "... recognition of the dignity inherent of all members of the human family and of their equal and inalienable rights is the foundation of freedom, justice and peace in the world" [9, 11].

The universal nature of human rights and freedoms is manifested in the facts that:

a) all persons, without any discrimination, have the fundamental rights and freedoms (the norms of international law and domestic legislation of truly democratic states guarantee equal rights and freedoms of individuals, regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public associations and etc., while prohibiting any form of discrimination on the specified signs);

b) human rights and freedoms are in the focus of all democratic states (the problem of ensuring human rights and freedoms is an internal affair of not just for a separate state, but also for the international community as a whole);

c) in terms of content, human rights and freedoms are generally recognized (for example, the right to life; the equality of all before the law; the right to free movement and choice of the place of stay or residence; the right to nationality; the right to freedom of opinion; freedom of religion, etc. are common to all individuals, regardless of nationality, cultural and religious peculiarities, political regime, form of government and state structure, etc.).

d) the universality of human rights and freedoms extends beyond national boundaries (wherever a man, he has got generally recognized natural rights and freedoms).

Domestic legislation and practice of legal protection of human rights and freedoms in a state as a result of implementing international-legal protection should be assessed in terms of how effectively the state provides the implementation of

international-legal standards for the protection of human rights and the principle of compulsory and faithful compliance by the state with international treaties that are relevant in this field.

International law and domestic laws allow limitations on the most of the fundamental human rights and freedoms, linking the existence of such restrictions with the need both for separate states and for the world community as a whole. The existence of such limitations is an increasingly apparent need, both for separate states and for the world community as a whole, which is particularly important, for example, in the face of increasing threat of international terrorism [6, 15].

Russian criminal legislation contains limitations, provided for in articles 275, 276, 283, 283.1 of the Criminal Code of the RF, in respect of the right to freedom of expression, which includes freedom to hold opinions and freedom to receive and disseminate information and ideas without any interference by public authorities and regardless of state boundaries. These limitations are necessary, they are aimed at ensuring national security, territorial integrity or public safety, for the prevention of disorder and crime, for the protection of health and morals, for the protection of the reputation or rights of other persons, etc. Limitations of this right are provided for in the Universal Declaration of Human Rights, 1948 [1], the provisions of which became universally recognized norms of international law, in the International Covenant on Civil and Political Rights, 1966 [2] and the International Covenant on Economic, Social and Cultural Rights, 1966 [3] adopted under the auspices of the UN, and in other international treaties of the Russian Federation.

Unlawful going of a state beyond the legal framework of established restrictions is not allowable. According to article 55 of the Constitution of the Russian Federation, laws that abolish or infringe human rights and freedoms should not be adopted in our state. In this regard, there are just words of M. V. Balgai, who believes that “a constitutional state must be based on scientifically sound theory of limitation of freedom” [5, 285], but “with the mind and sense of proportion” [5, 290].

It should be noted that at present public international law does not contain legal acts that would indicate clear criteria for restricting fundamental human rights and freedoms, international instruments contain only general provisions.

It should be born in mind that the most important natural rights (to life, to physical integrity (prohibition of torture and other forms of unlawful physical impact), inviolability of private life, etc.) must not be violated. In the practice of states (including democratic ones) this issue does not always correspond to the concept

of priority of “natural rights”, as evidenced by the preserving in national legislation of some countries of the capital punishment – death penalty. The main problem in here, in our view, is the risk of “irreversible judicial errors”, which may be repeatedly met in practice of many states.

The practice of human rights and freedoms protection at the international level shows that it is carried out through a system of standards, tools, mechanisms and procedural-legal regulations and is based on the principles of constitutional-legal and international-legal duty of a state.

The international-legal mechanism for the protection of human rights is represented by certain organizational structures (international courts of human rights, international organizations, committees, commissions, working groups, special speakers), often it implies collective bodies (committees, panels, etc.), although the institute of individual special speakers is very often found in the practice of the United Nations and the Council of Europe [8, 34].

The experience of contemporary international relations shows that the problem of international cooperation in the field of promotion and protection of human rights and freedoms is the most complex and contradictory. An example is the organization of activities of the UN Commission on human rights, which is an intergovernmental body of the United Nations system designed to contribute international cooperation in the field of promotion and protection of human rights and freedoms. In the course of the annual ordinary sessions, held at Geneva and ongoing 6 weeks, there are traditionally adopted more than 100 resolutions and decisions, of which only a part is related to the protection of human and civil rights and freedoms. For example, transportation of toxic wastes, disarmament, access to small arms and light weapons, international trade, etc. [6, 7], that, in our opinion, adversely affects the effectiveness of work of this body.

According to the shared by us opinion of V. V. Svinarev, the monitoring system over the compliance of the UN with agreements in the field of human and civil rights and freedoms is in critical condition because of the following problems: the failure of many states-participants to observe the deadlines for the submission of reports; insufficient financial resources for the effective functioning of treaty bodies; lack of staff of the Office of the High Commissioner for human rights; inadequate levels of awareness of people about the work of the treaty bodies [9, 14].

Currently, none of the international treaties in the field of human rights is truly universal in terms of the number of participating states, what, in turn, reflects a lack of universality of control mechanisms created in accordance with such treaties.

In addition, according to the majority of international treaties in this area, individual control functions of relevant mechanisms are optional. In particular, under the International Covenant on Civil and Political Rights, the powers of the Human Rights Committee to receive and consider individual petitions are regulated by the provisions of an Optional Protocol to the Covenant.

The main task of international monitoring in the field of human rights is to elaborate unified standards on the content of treaty norms in the field of human rights and freedoms. At the same time, at the current phase, it is rather hard to get commitment of all the states to general rights' protective values in the field of human rights. This is especially difficult to achieve this task in the context of multilateral relations.

Summing up, it should be noted that the content of the norm-setting activity of international organizations in the field of human rights and freedoms protection should be determined by the availability of the whole world community's really urgent needs in the management of corresponding public relations at the present stage of development of human civilization. Norms of domestic legislation of the civilized countries of the world community should conform to international standards in the field of human rights and freedoms.

Human rights and freedoms are not absolute category, their limitation is provided for both by the norms of international law and domestic legislation:

- a) in conditions of the establishment of the state of emergency (only by a constitutional law of a state);
- b) for a strictly certain period prescribed by national legislation;
- c) taking into account the proportional nature of threats to the security of a state and society;
- d) only for certain purposes (to ensure the security of citizens; protection of the foundations of the constitutional system, morality, health, rights and lawful interests of other persons; to ensure the defence of a country and the security of a state).

Nowadays, a number of problems in the field of international-legal protection of human rights and freedoms continues to be, the most important of them are: shortcomings of international monitoring (both at the global and regional levels) in the promotion and protection of human rights and freedoms; inadequate accounting for the views of all interested parties at the stage of development of appropriate protection mechanisms. These problems indicate that the improvement and strengthening of the international-legal mechanism for the protection of human rights are the most urgent task at the present stage.

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