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PROTECTION OF HUMAN RIGHTS: DOMESTIC AND INTERNATIONAL MECHANISMS TO ENSURE

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In the article, on the basis of study of international-legal acts and the domestic legislation of the Russian Federation, the authors consider organizational-legal structure, the topical issues of interaction of domestic and international mechanism for the protection of human rights, describe its components, offer ways to improve.

Keywords: human rights, guarantees, international standards of human rights, domestic legislation, international law, legal protection, legal activity, guarantees of human rights, international co-operation.

One of the most important functions of a State is the establishment of an effective mechanism to protect human rights. At the same time, in today's world, the protection of human rights has ceased to be subject to the jurisdiction only of a State of which he or she is a national or under the jurisdiction of which he or she is. So, there is a relevant issue of the correlation of domestic legislation and law-enforcement practice with international standards for legal protection of human.

Human and civil rights enunciated in chapter 2 of the Constitution of the Russian Federation can be effectively guaranteed only when national law enshrines both international and domestic guarantees of their realization and possibilities of application various statutory ways to recover and protect infringed rights. In this connection, the possibility of citizens to apply for protection of their rights in the inter-state bodies is not only a way to stop a specific violation of human rights in a state, but also allows an individual to revive confidence in its own strength, the reality of recovery of fair legal status and adequate reparation for the damage caused by the violation of the rights.

Right of recourse to inter-state bodies for the protection of human rights and freedoms is a completely new phenomenon in domestic legislation. The Constitution of the Russian Federation establishes this provision in part 3 article 46, by this we mean exactly inter-state bodies, since international non-governmental organizations can be accessed without special conditions, but also without legal consequences.

Legal protection of a man is a complex, multifaceted, polystructural formation. Legal protection of a man is not a simple addition of rights protection and rights defense. It goes beyond the both phenomena and has its own unique properties that may be shown through the differences between the legal defense of a man, on the one hand, and defense and protection, on the other. These differences are as follows:

- firstly, if the protection and defense of human rights is only a law-enforcement activity, then the legal protection is both law-enforcement and lawmaking activity. At that, the first is a specific, real legal protection, and the second is an abstract legal protection;
- secondly, legal protection is not only the protection and defense of rights, but, additionally, is a legal assistance to a man provided by the Bar, notaries, public associations, government organizations and agencies;
- thirdly, if legal protection is effective at all stages of the manifestation of a right - general status, possession and use (direct implementation), then the protection of rights is valid only at the stage of the use of the right;

- fourthly, legal protection and the protection of rights have different objectives: the first – to ensure human legal security in general, the second – to protect from violation or restore a specific subjective right;
- fifthly, the legal protection of a man and the protection of rights are different in the types of activity by which they are carried out. The first is implemented through juridical-legal activity, and the second – only through juridical activity;
- sixthly, the legal protection, as opposed to the protection and defense of rights, covers also other elements of the legal status of a man, including his duties;
- seventhly, if the protection and defense of rights apply only to a subjective right, then the legal protection – to law norms (objective right) [13, 14].

Legal protection, as well as any legal activity, is carried out in various forms, including: a) legal activity; b) legal conduct; c) legal practice; d) legal activity; e) legal work; f) legal relation; g) legal regulation.

One of the most important forms of existence of legal protection is a legal activity. It is understood as a mediated by law managerial, state-authoritative activity of competent bodies, which is aimed at creation of laws, administration of justice, specification of law and satisfaction of group and individual rights and interests [5, 8].

Forms of legal activity primarily differ in their aims [9, 14]. A distinctive feature of legal protection as a legal activity is that its goal is the prevention of human rights violations, the provision of legal aid and restoration of rights in case of their violation. Legal result shall be the consequence of legal protection as legal activity. So, its subjects can only be specially authorized by law authorities, institutions, public associations or officials acting on their behalf.

The main value of legal protection as law-enforcement activity is its property to remove existing obstacles in the implementation of human rights and in their restoration in case of violation.

The duty of human rights bodies is to provide legal protection. These include court and law enforcement bodies. The process of human rights law-enforcement activity creates a right neither in objective nor subjective sense.

According to the form of implementation, legal protection is always a legal process, both in the broadest and in narrow sense. As a legal process in the broadest sense, legal protection is a system of interrelated legal forms of activity of state bodies and public associations. As a legal process in the narrow sense, it is a system of interrelated, specially ordered, sequential operations subordinated to a common goal and leading with help of appropriate techniques and tools to a specific outcome.

Legal protection is a legal activity of a particular kind. Activity is itself an activity for human rights protection, and at the same time, the measure of this activity.

Legal activity – this is an activity which is inherent to the respect of law, genuinely free, voluntary and creative actions on the use of subjective rights and exercising of legal duties [15, 8].

Therefore, legal protection is a part of the legal work of the subjects of state power and local self-government, public servants and officials, as well as public associations, which is directly or indirectly aimed at the protection, legal aid and protection of human rights with a view to create a high level of legal security [12, 316].

Legal protection as a legal activity in any of its forms is realized only through legal relations. Thus, it can be said that legal protection is a special kind of legal relations. The legal relation is defined as a specific form of social relations, the participants of which are bound by mutual legal rights and duties. Legal protection is such a kind of social and legal relations, called as human rights protective, in which one (authorized) party is entitled to demand the avoidance of encroachments on its rights, freedoms and lawful interests, that is, their protection, and in case of such to demand their restoration (protection), and the other (obliged) must prevent violations of a right or restore it if it has been violated.

An important element of human rights' protection relations is the right to a remedy. It is neither more nor less than a statutory possibility for an entitled person to require obliged, including a perpetrator, person to avoid violation of subjective right or its restoration it in case of violation.

The human right to protect rights encompasses a number of powers: right of recourse to the courts, right to judicial protection, right to international protection, right to have his or her case in the court and by the judge, under jurisdiction of which it is referred by law, right of an accused to a trial in court with participation of jurors in the cases provided for by law, right of victims of a crime and abuse of power, right of access to justice and compensation for damage inflicted and many others.

The specificity of the powers of the right to protection in rights' protection relations is characterized: firstly, by the opportunity to claim a particular conduct from the other party; secondly, the implementation of power, usually through actions of the obligated party, that is, an legal duty is of an active nature, while a power is of passive one; thirdly, the possibility of coercion of the obliged party to actions demanded by the authorized party or the State [14, 28].

International legal protection of a man is a result of implementation in practice by the international community of states of one of the basic principles of international law – the principle of universal respect for human rights and fundamental freedoms for everybody. Its emergence in international law took place

in the modern period, and adoption – after the defeat of fascism in 1945 [11, 148]. The issue of fundamental rights turned to become international, as a result, constitutional law gradually began to fall under the influence of international standards.

By the time of the end of the Second World War, the international legal practice knew only separate cases of conclusion by a limited number of states of treaties and agreements, which, to varying degrees, dealt with the protection of certain human rights. These include treaties and conventions containing provisions on the suppression of slavery and slave trade, on the protection of the rights of prisoners of war, religious and national minorities. These agreements played a positive role in the protection of human rights, and the experience of their development and adoption was taken into account during the drafting of the Charter of the United Nations, which became the first international document declaring the need to promote universal respect for human rights. The proclaimed in the Charter of the United Nations (preamble) readiness of the peoples of the United Nations “again to reaffirm faith in fundamental human rights, in the dignity and worth of a human person, in the equal rights of men and women and of large and small nations...” and “to promote social progress and better standards of life in larger freedom...” was explained, first of all, by the demand of people to restore fundamental human rights and freedoms violated by the fascism and protect them from possible attempts of violation in the future” [1, 16].

This is why already paragraph 3 article 1 states that the purpose of the United Nations is an international cooperation “... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. Thus, the implementation by the UN of international cooperation to facilitate universal respect for human rights is both a goal and duty of this organization.

During the implementation of the objectives and duties of the United Nations in the field of respect for and observance of human rights, for a short period there was formed an effective mechanism for international legal protection of basic human rights in the world. The beginning of its establishment was in 1946, when the establishment of the United Nations Commission on human rights. Its responsibilities included the preparation of a Charter of human rights, defining the rights and freedoms proclaimed in the Charter of the United Nations. The Charter had to consist of such instruments as the Declaration of human rights, the Convention on human rights and act containing a mechanism for the implementation of the Convention.

The first part of the Charter of human rights was introduced December 10, 1948, when the General Assembly of the UN adopted the Universal Declaration of human rights. The Universal Declaration was widely supported and applied in all countries of the world. When discussing human rights issues, it is accepted to make reference to the Declaration. Excerpts from the Declaration are contained in the texts of the constitutions of many states, including Russia, they are also included in many international instruments, including regional treaties and conventions, as well as numerous United Nations resolutions, agreed by the member states.

In the course of development of the second and third documents it was decided to replace the second – take two separate documents on human rights. That is why the second and third part of the Charter of human rights include, respectively, two covenants adopted by the General Assembly of the United Nations on December 16, 1966 – International Covenant on Economic, Social and Cultural Rights [3, 24] and International Covenant on Civil and Political Rights [4, 31] that includes the first and second Optional protocols.

Long before the adoption of global universal acts establishing mechanism of international legal protection of human rights, a regional act had been adopted on November 4, 1950 – European Convention for the protection of human rights and fundamental freedoms [2, 54]. This document established the European Commission of human rights and the European Court of human rights (article 19). The Commission's competence was to consider complaints submitted by any state-participant through the Secretary-General of the Council of Europe concerning an alleged breach of the provisions of the Convention by another state (article 24), to receive and consider petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals who claimed they had become a victim of a violation by one of the parties of the rights enshrined in the Convention (article 25). The Court's jurisdiction included all cases relating to the interpretation and application of the Convention, that contracting parties or the Commission filed to the Court (article 45).

Thus, by the end of the 1960's – early 1970's, a mechanism of international legal protection of human rights had formed, which covered the majority of sovereign States and which had been preserved up to the present time with some innovations at the regional level.

The term of "international protection of rights" in regional documents has been used since November 4, 1950, since the signature by the members of the Council of Europe of the European Convention for the protection of human rights and

fundamental freedoms (article 26), and in global documents – since November 19, 1966, since the adoption by the UN General Assembly the Resolution 2200A (XXI) approving the Covenant on Civil and Political Rights (article 2). However, in the domestic scientific literature, the term of “international legal protection of a man” had become to be used most recently, since the mid-1980’s, when the democratization and the deideologization of international relations started , and in the last 15 years it has been widely used [6, 34].

For example, A. P. Movchan wrote that “the international protection of human rights” was put in the scientific literature and media from spoken language as a concise synonym of the activity of the UN and states in the field of observance human rights. That is, under the short formula “the international protection of human rights”, he believed, they had become to recognize “international cooperation of states, the UN efforts and measures to promote “universal respect for and observance of human rights and fundamental freedoms for everybody...” (paragraph “q” article 55 of the UN Charter) [1, 17].

In fact, the same, only more extensive definition is given by the authors of one of textbooks. “The international protection of human rights, they write, is a set of international concerted measures aimed at the establishing of a universal minimum of basic democratic rights and freedoms, at the prohibiting illegal encroachments on the rights and freedoms including discriminatory policy and actions recognized criminal in terms of contemporary international law. The scope of international protection of fundamental human rights includes development of international agreements and other instruments on human rights, as well as their promoting” [10, 20].

A. P. Movchan distinguishes three basic elements in the international protection of rights. They are: a) creation of recommendations addressed to all member states about what human rights and fundamental freedoms for everybody should be subject to universal respect and observance; b) elaboration of international human rights treaties (covenants, conventions, etc.), which impose legal obligations on states to recognize, provide and ensure effective protection, in accordance with their legislation, of the rights and freedoms of an individual, which are listed in such international agreements; c) establishment of a special international mechanism to verify compliance by states with their international human rights obligations [10, 23].

V. A. Kartashkin inputs in the international legal protection of human right such components as the purpose, principles, international agreements containing norms and principles concerning fundamental human rights, social, economic,

political, civil and cultural rights of a man, as well as the control mechanism of the UN [7, 81].

Yu. A. Reshetov, in his turn, notes in international legal protection such elements as obligations of states to respect human rights; states' responsibility for gross violations of human rights; legal remedies [13, 162]. V. M. Chhikvadze singled out as such: human rights protection mechanism; standards for the protection of human rights; transformation of inter-state agreements into national legislation; legal personality of individuals; mechanism for ensuring human rights at the international level [16, 117]. The scientists especially highlight in the system of international legal protection of human such its element as implementation (practical exercising) [5, 115].

The foregoing leads to the conclusion that the domestic mechanism for the protection of human rights is based on international legal standards in this field. The contemporary mechanism of international legal protection of human rights includes the following interrelated and interdependent elements: 1) goal; 2) principles; 3) international legal treaties governing the international legal protection of a man; 4) international standards of fundamental human rights; 5) implementation of the international legal protection of a man.

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