

**THE VALUE OF THE PRINCIPLE OF UNIVERSAL RESPECT FOR HUMAN RIGHTS FOR THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW****Ayauzhan Myrzakhmetova**

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The article refers to the issues of ensuring rights and basic liberties of the human according to international law. The main aim is to explain the nature of the problem and analyze the activities of the United Nations and the Council of Europe in this field. It is dedicated to an importance for the principle of respect of human rights as a basic principle of a modern International law.

It is well known that the only reason for the restriction of human rights in international legal acts is called the law. The modern concept of human rights emerged after the end of the monstrous Second World War, when progressive mankind, at last, for the first time in the history of mankind began to look for social mechanisms to prevent such wars and generally to prevent violations.

For the sake of justice, it should be noted that already at the time when the Charter of the future international organization (the United Nations) was just being developed there were different approaches and attitudes of states towards the problem of human rights and freedoms. Initially, the proposals and recommendations received from states on the establishment of such a new organization, adopted at a specially convened conference in Dumbarton Oaks in September 1944, did not indicate human rights and freedoms as one of its main goals. Clause 3 of Chapter 1 of the preliminary agreements, which were the basis for the adoption of the UN Charter by the San Francisco Conference in 1945, the purpose of the Organization was only to "implement international cooperation in resolving international economic, social and other humanitarian problems." [16]

Later, as a result of the compromise reached, in paragraph 3 of Article 1, on the proposal of the Soviet delegation, an essential amendment was made, which laid the foundation for the formulation and further recognition of the principle of universal respect for human rights and freedoms. Thus, as the main goal of the UN, it was established: "to implement international cooperation in resolving international problems of an economic, social, cultural and humanitarian character and in promoting and developing respect for human rights and fundamental freedoms for all, without distinction of race, sex, language or religion". [16] It was then that a group of public initiators developed the Universal Declaration of Human Rights, submitting it for consideration to the United Nations.

In the Universal Declaration of Human Rights it is clearly said: «In the exercise of their rights and freedoms, each person should be subject only to such restrictions which are established by law [17]». This Convention has caused a lot of criticism from lawyers and political scientists because it is an international document that is not binding, but is a recommendation. However, this document has great moral and political power, and the way the leaders of states treat this document says a lot. Valentin Gefter, director of the Moscow Institute of Human Rights, said about the significance of this document in his commentary for Radio Liberty: «The Universal Declaration nevertheless made it central for people all over the world that they have inalienable rights that do not depend on the social or economic situation in which they are currently located, so, it gives a kind of foundation for all people».

In addition we can not forget to mention the European Convention of Human Rights. [18] Hungarian political analyst Andras Sajó speaks about the European Convention for the Protection of Human Rights and Fundamental Freedoms: «The European Convention for the Protection of Human Rights

and Fundamental Freedoms of 1950, which declares almost all protected human rights limited for reasons of national security, public safety and public order, the protection of manners and the prevention of crime, and in the case of an emergency allows further restrictions. The right to privacy can be restricted even in the name of the country's economic well-being». The question arises: how effectively does the European Court of Human Rights work and how effectively can a named convention ensure the protection of the human right to privacy? Here let me remind well-known case - L.Ostra vs Spain where an enterprise for processing liquid and solid waste of tanneries began to function near L.Ostra's house. [19]

Immediately after putting the enterprise into operation, health of many local residents became worse, as well as to serious inconveniences in their lives. In the complaint the applicant, referring to Article 8, paragraph 1 of the European Convention on Human Rights claimed that her right to housing was violated. The court considered that the state failed to establish a fair balance between the interests of the economic well-being of the city and the proper observance of the applicant's rights to the inviolability of her home, personal and family life. [20] Thus, there has been a violation of Article 8 of the Convention of Human Rights.

Analyzing the whole situation, compared to the Universal Declaration of Human Rights [21], International Covenant on Civil and Political Rights [22], International Covenant on Economic, Social and Cultural Rights [23] the objectives of restrictions on human rights are greatly expanded by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. [24]

In fine, we have some issues which must be clarified. One of them is concerning to private life which is a very multi-layered concept. There is no concretely defined definition of private life in international law; it is a term of broad interpretation and covers various spheres of human life. This is an area of personal activity, which is outside the control of the state and society. The right to privacy presupposes the possibility of living in accordance with one's desires, which, however, should not conflict with public interests, the norms of law and morality.

The right to privacy, like all human rights, is enshrined in the UN Charter, which states that people are determined to establish faith in the dignity and value of human life. The need for privacy is reflected in international instruments, including the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights. The definitions in these acts are similar and repeat the position which is in the Universal Declaration of Human Rights.

The Constitution of the Republic of Kazakhstan also has a section on the inalienable human rights of a citizen. [30] The concept of "legal state" is one of the fundamental in the modern concept of Human Rights. A legal state is a state that ensures the supremacy of the Law, which is supposed to ensure human rights. In a legal state, the relationship between the government and a person is governed by clear, stable rules - laws, adopted in writing form - by the constitution, codes, etc.

It is necessary in this connection to note that the Republic of Kazakhstan, as a full subject of international law, from the first days of its independence declared its full support for international policy in the promotion and development of human rights and freedoms implemented by the UN auspices. However, today the Republic of Kazakhstan, albeit selectively, becomes a party to some individual international acts adopted under the auspices of the Council of Europe bodies. The main aim is to confirm and strengthen obligations to the organization in the field of the protection of human rights and fundamental freedoms.

Kazakhstan, as a member of the United Nations and other international organizations fully recognized for itself the binding nature of the main international legal instruments in the field of human rights. Kazakhstan has done a lot of work to improve the legislation and bring it in line with the norms of the international human rights instruments ratified by our country. Human rights institutions such as the Commission on Human Rights under the President, the National Commission for Family Affairs and Gender Policy under the President of the Republic of Kazakhstan were held.<sup>[1]</sup>

So, the right to privacy is an inalienable human right. However, it is not absolute and may be

subject to certain restrictions. That is why there may be controversial issues in the field of human rights protection.

Another aspect to consider is that in the conditions of increasing competition between various mass media, a growing role in their activities is played by the dissemination of news and information of a scandalous nature and aimed primarily at attracting the maximum number of readers or viewers. This practice not only directly constitutes a violation of the right to respect for private life, but regularly and increasingly, it promotes the introduction in the public consciousness of the belief that private life in all its manifestations, including the most intimate aspects, is not the exclusive personal identity of everyone. There is formation in the minds of people of a behavior stereotype that allows intrusion into one's personal life and others as something common and this already carries a potential threat. These moments should not become basics of a democratic society. [25]

We see that international human rights law is directly connected and in touch with other branches of international law, such as international mass media law or international humanitarian law as an example. International humanitarian law (IHL) and human rights law (HRP) are aimed, albeit differently, at protecting human life, health and dignity. It is not surprising, therefore, that despite the differences in the concepts, some of their provisions are close or even coincide in meaning. For example, both branches of law protect human life, prohibit torture, inhuman treatment, discrimination, include provisions relating to the protection of women and children, issues related to the right to normal nutrition and medical care. [26] Certainly, the specifics of the field of international human rights law entail some difficulties associated with the international protection of rights and freedoms. The Universal Declaration of Human Rights was adopted by the UN General Assembly in the form of a resolution. This caused and raised many questions about the legal force of this document as I have mentioned above, because, as a general rule, the resolutions of the UN General Assembly are advisory in nature. Most lawyers share the opinion that the norms of the Declaration are a reflection of customary rules and therefore have the character of an international legal obligation.

According to the United Nations: "At its annual sessions human rights issues are one of the most important among other economic and social issues". [27] The central specialized UN body dealing with human rights is the Commission on Human Rights. [28] It should also be noted that the functions of the Commission are constantly expanding in connection with the development of interstate relations in the field of human rights and the emergence of many problems in this area.

Thus, we can conclude that an individual has the opportunity, independently of the state, to protect his rights. Recommendations made on individual complaints are universal and usually apply to all similar cases. In accordance with Resolution 1235 of June 6, 1967, the UN Commission on Human Rights may address the issue of the violation of human rights in any UN member state. [29]

The legislation of the Republic of Kazakhstan also establishes legal ways to protect privacy and personal data, the forms and procedure for bringing to responsibility for the violation of these rights. They are the mechanisms of administrative law, civil law, criminal law, and international legal responsibility.

In general, I would like to conclude that Modern international human rights law is distinguished by its flexibility. This is manifested in the aspect of their "reaction" to the liberal changes taking place in modern society. This is confirmed by Article 8, 12 of the ECHR, which enshrines the right to respect for private and family life, home and correspondence, the right to marry and create a family and equality of rights and responsibilities of spouses, within which not only traditional family and personal values are protected, but and the rights of children born out of wedlock and members of sexual minorities. The latter category is taken negatively in non-European states when in the Council of Europe it is taken into account liberal worldviews. This, in turn, corresponds to the concept of "discrimination." The concept of discrimination includes cases in which a person or group of people is treated less favorably than the other group without proper justification. The analysis of numerous international documents on human rights shows that in modern international law there is a universal norm according to which all states are obliged to respect human rights and fundamental freedoms for all, without distinction of race, gender, language and religion.

According to international law, neither the state, nor any group or any person has the right to

engage in any kind of activity aimed at the destruction or unlawful restriction of any internationally recognized human rights. [30]

### **Список литературы:**

1. Конституция Республики Казахстан – Алматы: Юрист, 2007.
2. Нгуен Ван Зунг, Институциональные гарантии обеспечения прав и основных свобод человека по международному праву[Text]/Нгуен Ван Зунг, Виньский университет (Вьет-нам) // Фемида.-2015.-N6(234).-С.20-24.-Библиогр.:с.24 ISSN
3. Казакеев Н. Значение принципа всеобщего уважения прав человека для прогрессивного развития международного права [Text] / Н. Казакеев//Предупреждение преступности.-2014.-N4(52).-С.73-81.-Библиогр.:с.81 ISSN 1608-8417.
4. Действующее международное право [Text] : в 2 т.: учебное пособие; МГИМО(У)МИД РФ; [сост.: Ю.М.Колосов, Э.С.Кривчикова].-Москва: Международные отношения: Юрайт-Издат, 2007.-доп. Тираж 2000 экз.
5. Букенбаев Р.М. Юридические механизмы защиты прав человека в рамках Совета Евро-пы: комплексный анализ [Text] / Р.М.Букенбаев//Вестник КазНУ им. Аль-Фараби. Серия международные отношения и международное право.-2014.-N2.-С.326-334 ISSN 1563-0285.
6. Всеобщая декларация прав человека, 10 декабря 1948 года.
7. Общая теория прав человека/Под ред. Е.А.Лукашевой.-М.: Издательство НОРМА, 1996.- 520 с.
8. Vasak K. Council of Europe // The international Dimensions of Human Rights.-Paris, 1982. Vol. 2.-755 p.
9. Лукьянцев Г.Е. Европейские стандарты в области прав человека: теория и практика функционирования Европейской конвенции о защите прав человека и основных свобод.-М.: Звенья, 2000.-279 с.
10. Право Европейского Союза: учебное пособие // С.Ю.Кашкин, А.О.Четвериков, П.А.Калиниченко [и др.]; отв.ред. С.Ю.Кашкин.-3-е изд., перераб. и доп.-М.: Проспект, 2011.-320 с.
11. Лукашук И.И. Глобализация, государство, право, XXI век. М., 2000. С. 126-127.
12. Lauterpacht H. International law and Human Rights. L., 150. P. 149.
13. Действующее международное право. Ю.М.Колосов и Э.С.Кривчикова. Том 2.- М.: Издательство Московского независимого института международного права, 1997.-832 с.
14. Понимаем права человека [Текст]: руководство по образованию в области прав человека.-362 с.-Вена, 2005
15. Карташкин В.А. Права человека в международном и внутригосударственном праве. М., 1995. С. 90;
16. Крылов С.Б. История создания Организации Объединенных Наций. 2-е изд. М., 1960. С.43.
17. <http://www.un.org/en/universal-declaration-human-rights/>
18. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

19. <http://www.echr.ru/documents/doc/2461414/2461414.htm>
20. <http://www.echr.ru/documents/doc/2461414/2461414.htm>
21. [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/)
22. <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>
23. [https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch\\_iv\\_03.pdf](https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf)
24. [https://www.echr.coe.int/Documents/Convention\\_RUS.pdf](https://www.echr.coe.int/Documents/Convention_RUS.pdf)
25. Ю.М.Колосов, Э.С.Кривчикова. Международное право: учебник/отв.ред. А.Н. Вылегжанин. – М.: Высшее образование, Юрайт-Издат. – 1012 с..
26. Международное гуманитарное право : учебник для вузов / Тиунов, Олег Иванович,- М.: НОРМА : ИНФРА-М, 1999.-315 с.—5-89123-270-7 (НОРМА), 5-86225-873-6(ИНФРА-М)
27. <http://www.un.org/ru/sections/what-we-do/protect-human-rights/>
28. <https://www.ohchr.org/en/hrbodies/chr/pages/commissiononhumanrights.aspx>
29. <https://biblioteca.iidh-jurisprudencia.ac.cr/index.php/in-english/universal-system-of-human-rights/procedural-norms/ecosoc-1/2168-resolution-1235-xlii-by-the-economic-and-social-council-1967/file>
30. [www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)
31. Байгельди Г.С. Международно-правовые основы внешней политики Республики Казахстан. Диссертация на соискание ученой степени кандидата юридических наук. Алматы, 2005. С. 27.

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<sup>[1]</sup> Байгельди Г.С. Международно-правовые основы внешней политики Республики Казахстан. Диссертация на соискание ученой степени кандидата юридических наук. Алматы, 2005.С. 27.