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INTERNATIONAL LEGAL EXPERIENCE OF PROVIDING RIGHTS, FREEDOMS AND LEGITIMATE INTERESTS OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

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In this article the author investigates and analyzes the international legal experience in protecting of the rights, freedoms and the legitimate interests of participants in the criminal proceedings. The question of international legal protection of the rights, freedoms and legitimate interests of participants in criminal proceedings is one of the most acute in the problem under investigation. Since there are legislative gaps, insufficient guarantees of human rights and freedoms, a citizen who not only complicates the work of law enforcement agencies and courts, but also negatively influences over the image of the state in the international arena.

Key words: international experience, international practice in protection of human rights, criminal proceedings, legitimate interests of participants, international standards, international legal act.

Ребезюк В. М. Міжнародно-правовий досвід забезпечення прав, свобод і законних інтересів учасників кримінального провадження / Національна академія внутрішніх справ ,Україна, Київ

В даній статті автор досліджує та аналізує міжнародно-правовий досвід щодо охорони прав і свобод та законних інтересів учасників кримінального провадження. Питання міжнародно-правового забезпечення захисту прав, свобод та законних інтересів учасників кримінального провадження є однією з найгостріших у досліджуваній проблематиці. Оскільки існують

законодавчі прогалини, недостатнє забезпечення гарантій прав та свобод людини, громадянина яке не тільки ускладнює роботу правоохоронних органів та судів, але і негативно впливає на імідж держави на міжнародній арені.

Ключові слова: міжнародний досвід, міжнародна практика з захисту прав людини, кримінальне провадження, законні інтереси учасників, міжнародні стандарти, міжнародно-правовий акт.

Ребезюк В. М. Международно-правовой опыт обеспечения прав, свобод и законных интересов участников уголовного производства/ Национальная академия внутренних дел, Украина, Киев

В данной статье автор исследует и анализирует международно-правовой опыт по охране прав и свобод и законных интересов участников уголовного производства. Вопрос международно-правового обеспечения защиты прав, свобод и законных интересов участников уголовного судопроизводства является одной из самых острых в исследуемой проблематике. Поскольку существуют законодательные пробелы, недостаточное обеспечение гарантий прав и свобод человека, гражданина которое не только усложняет работу правоохранительных органов и судов, но и негативно влияет на имидж государства на международной арене.

Ключевые слова: международный опыт, международная практика по защите прав человека, уголовное производство, законные интересы участников, международные стандарты, международно-правовой акт.

Relevance of article. The urgency and actuality of the issue of protecting the rights, freedoms and legitimate interests of participants in criminal proceedings, nowadays, is one of special importance problems of

the domestic and foreign policy of democratic states of the world community. It is the state of affairs in the area of providing with the protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, their practical implementation is the cornerstone of the assessment of the level of democratic development of any civilized state and society as a whole. Not declarative, but the effectiveness of the practical application of the protection of human rights and freedoms - is that litmus test.

Considering that in most democratic states of the world criminal proceedings are given the key place in ensuring the rights, freedoms and legitimate interests of the person to universally recognized international principles and standards, the urgency of consideration of this issue is currently overestimated and in demand in time. International experience in protecting human rights, freedoms and legitimate interests was acquired by international standards established by the community, such as treaties, acts, declarations, conventions on human rights and citizenship.

The generally accepted international standards reflect the highest achievements of the world community, thus, in the law-making process, constitute a certain example of the legislative provision of human rights, including in the field of criminal procedural activities. [4, p.90]. To date, the scientists of the international community of law have developed and launched a special term: international standards in the field of human rights - and now this term is understood as a set of existing norms in the field of human rights and citizen, which are developed with the participation of democratic states in international coexistence and contained in the relevant international legal documents or customs. These norms can be found in many international documents, resolutions, conventions [8, p. 245]. This includes the Universal Declaration of Human

Rights, which was approved and proclaimed by the General Assembly of the United Nations on December 10, 1948, [9 , p. 238].

The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights of 1966, the European Social Charter of 1961 and the Revised European Social Charter in 1996, the European Convention for the Protection of Human Rights and Fundamental Freedoms with all protocols, the International Convention on the Rights of Persons with Disabilities of 2006, and others. All this began to accumulate and to be formed from the time when the community started the rule-making process at the international level. As we see, until this time, the norms on the protection of the rights, freedoms and legitimate interests of participants in criminal proceedings appeared in national legal systems and only received international recognition, distributed among democratic states. Usually, each historical system of law has absorbed a better legal concept of protecting human rights as a subject of law, its rights - from primitive and underdeveloped forms to the present. It is no coincidence that Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 proclaimed the right to liberty and security of person: "Everyone has the right to liberty and personal integrity. No one shall be deprived of his liberty, except in such cases and in accordance with the procedure established by law "[2, p.631].

Therefore, international legal experience in protecting the rights, freedoms and legitimate interests of participants in criminal proceedings is relevant in the study, knowledge and implementation of the modern legal system of Ukraine.

The state of scientific research. The issue of international legal regulation regarding the protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, in time dimension, has a

rather significant historical stage and which, in its research, is uninterrupted in its study. For our state, this issue becomes of particular importance in the context of the transformation of the constitutional law of Ukraine with the law of the European Union. In our country, for the first time, at the level of national criminal law the Procedural Code of Ukraine provides a separate section XI on "International cooperation during criminal proceedings", which defines the procedural mechanism for its implementation [1, p.279].

The mentioned topics were investigated in the fundamental works of such scholars as V. D. Babkin, M. O. Baimuratov, M. V. Buromensky, Yu. O. Voloshin, V. N. Denisov, O. L. Kopylenko, A. R. Krujian, N. R. Nizhnik, M. P. Orzykh, V. F. Pogorilko, I. D. Slidenko, V. Ya. Tania, Yu. M. Todak, L. D. Udalov, V. L. Fedorenko, T. G. Fomina, O. F. Frytsky, O. Yu. Hablo, V. M. Shapoval S. V. Shevchuk, Yu. S. Shemshuchenko and other.

Relationship of work with scientific programs, plans, themes.

The research was carried out in accordance with the plan for conducting research and development works at the National Academy of Internal Affairs for 2018 and the plan for the research work of the National Academy of Internal Affairs for 2017-2018, aimed at implementing the provisions of the National Program for the Adaptation of Ukrainian Legislation to the Law The European Union, adopted by the Law of Ukraine of March 18, 2004, the Law of Ukraine "On Enforcement of Judgments and Application of the Practice of the European Court of Human Rights" of February 23, 2006 , Decree of the President of Ukraine No. 311/2008 On the Decision of the National Security and Defense Council of Ukraine of February 15, 2008 "On the Process of Reforming the Criminal Justice System and Law Enforcement Bodies".

The purpose and tasks of the article. The purpose of this article is a comprehensive and thorough analysis of international legal practice

regarding the protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, in order to ensure the possibility of using international standards in law-making and in practice, which will be absolutely necessary in the course of improvement. national legislation taking into account the requirements of the international community. As international practice in the field of human rights protection, in our opinion, should play a role as a guideline for the adoption of national legislation that. in its turn, will in every way contribute to the effective observance and implementation of the norms and rules adopted by the international community.

Presenting main material. Society has undergone a long and thorny way of developing law before embodying the idea of inviolability of rights, freedoms and legitimate rights of a person in the framework of the law. In quite distant myths, the idea of the inviolability and value of human life was born and transmitted. But at the legislative level, these ideas began to materialize much later. One of the first legal documents should be considered the Grand Charter of Liberty, adopted in 1215 in England. Where are the main concepts of human rights and the preconditions for further strengthening of human freedom.

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, played an important role in shaping the human rights standards that all countries now seek to follow. It is without exaggeration a document of historical importance, since in it internationally declared major civil, socio-economic, political rights.

The understanding of human freedom through Article 3 of the Universal Declaration of Human Rights, which proclaimed that everyone has the right to life, liberty and personal integrity, became fundamental. Article 5 establishes a ban on torture, cruel, inhuman or degrading treatment or punishment; Article 7 emphasizes that before the law all

people are equal and have the right to equal protection of the law. Article 12 provides for protection against interference or encroachments on private and family matters; attacks on the reputation of a person, on the integrity of the home and the mystery of correspondence. Article 29 of the Universal Declaration of Human Rights proclaimed: "In the exercise of their rights and freedoms, each person shall only be subject to such restrictions as are prescribed by law solely for the purpose of ensuring proper recognition and respect for the rights and freedoms of others, and to ensure fair requirements of morality, public order and universal welfare in a democratic society ".

Equally important is the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on November 4, 1950. This document provides an exhaustive list of basic human rights and freedoms: the right to life; the prohibition of torture and inhuman or degrading treatment or punishment; prohibition of slavery and forced labor; the right to freedom and security; the right to an independent court and democratic procedural rights; the right to respect for family and private life; the right to inviolability of the home and the secret of correspondence; the right to restore violated rights, etc. [11, p. 89].

The main in the system of international law are the rules that determine the rights and obligations of States in their relations. Such norms are contained in international agreements or are universally recognized and have customary status. As for "human rights" as an area of international law, we are dealing with such a feature as norms and their application by states in relations with people. That is, there are two aspects in the field of "human rights" here, namely: 1) the norms of "human rights" establish the rights and obligations of states in relations between them; 2) the norms of "human rights" regulate the duties and rights of states in their relations with people. The international community

seeks to ensure that national laws are in line with international human rights standards. [12, p.13-15]

I fully agree with the proper opinion of our compatriot M.O. Baymuratov, which is now international law, and this fact is recognized by the majority of representatives of the international legal doctrine, reveals some caution from the world community and its institutions in consolidating the direct formulation of some human rights, including in such an important sphere as political, where the actual mechanisms of renewal of state power are involved. This, according to scientists, is determined by the difficulties that we face with their full guarantee on the part of the states, which can turn them into practice, in essence, on a formal declaration [3, p. 16].

In the opinion of the same Russian scientist D.V. Novikova, adopted in 1948 by the General Assembly of the United Nations as "a standard to which all States must strive to achieve", the Universal Declaration of Human Rights is not merely a reference document for all countries of the world. And this is one of the main sources of international law, since most states regard it as a document containing the usual rules of international law, almost all of which are reproduced in national constitutions and domestic laws [3, p.44].

Peculiar and interesting is the study of the German scientist S. Gardbaum.

According to S. Gardbaum, the international system of human rights protection, firstly, creates twin systems of national and international constitutional law that protect fundamental rights. Thus, in each of these systems, the legal status of the protected rights is the same. Secondly, given its clear legal status, the system of human rights is characterized as a constituted regime of international law. Thirdly, the development of international human rights is a serious feature of the situation of

abandoning the traditional, horizontal paradigm of international law, based on the sovereign equality of states and replacing it with a more vertical, constitutionalist paradigm. In this, S. Gardbaum sees a parallel with the national situation in which national human rights law constitutes the entire legal system as a whole [5, p. 752].

But in the opinion of our compatriot Yu. O. Voloshin, the man's release, his rights and interests on the foreground of the interstate cooperation has caused significant changes in the legal status of a person: if earlier its legal status was determined exclusively by the norms of national law, now, thanks to development the international humanitarian law, the emergence of a large number of international bodies concerned with the protection of human rights, a person has the opportunity to act on the international scene in his own name in defense of his violated rights [6, p.414.]. International law gradually ceases to be exclusively intergovernmental, and it becomes a right of the international community, which, in its turn, represents more than just a set of states, and the community itself, has common goals, values, institutions and norms [7, p.137-138] .

It should be noted that the legal status of international standards and norms is unequal, since declarations, principles, guidelines, rules, action plans, standard agreements and recommendations are not legally binding. However, having international significance, as a product of international negotiations and as a result of the agreement reached, such documents have undeniable moral authority and play the role of practical guidance for the states. Their value lies in the recognition and acceptance of a large number of states, and even though they do not have, to a large extent, binding legal force, they are regarded as documents constituting goals, practices and strategies that are widely recognized in international the community.

Given to the fact that international human rights instruments, representing universal standards, include measures to ensure the rights and freedoms and protect them from encroachment, and provide the legal personality with the opportunity to exercise and protect the recognized rights and freedoms, it is necessary to focus on their study and detailed analysis.

If we analyze existing international documents, we can conclude that the international community first of all sought to develop standards in the most vulnerable areas of criminal-procedural relations. Moreover, if in the initial period of the formation of the rights of the individual emphasis was placed on the declaration of inalienable rights and freedoms of the individual, constituting today the basic legal categories, then at the further stage of development of the world community attention is focused mainly on the specialization of legal provisions on a particular participant in criminal justice, and, in ultimately, the process.

On the basis of the foregoing, a classification of existing international standards in the field of human rights in the field of criminal justice can be carried out, where standards that are generalized and contained in documents of universal recognition, at least recognized as such by a majority of scholars, will be put to the forefront.

The Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly resolution 217 A (III) of 10.12.1948, which, in essence, has become one of the first UN documents, as well as the common standards to which States should seek, and as noted K. F. Gutsenko and Ye. G. Lyakhov, this has become one of the first effective steps taken by the United Nations in the international legal consolidation of fundamental human rights and freedoms. The standards contained in the Declaration embody those universal values that are necessary for the decent development of each person, the provision of his rights and

legitimate interests. They express the experience gained by the international community, and determine the bar below which a state that considers themselves civilized can not be omitted.

The provisions set out in the preamble of the Declaration can not best reflect the tendency inherent in the character of international standards, namely: the process of harmonization of the laws of the states. The declaration, which had the status of a recommendation international act, due to the successful fulfillment of its task - that every person and every body of the society, always bearing in mind this Declaration, sought by education to promote respect for these rights and freedoms, and through progressive national and international measures , the general and effective recognition and implementation of them - has gained the status of a generally accepted norm of international law, in which connection we can only hope that the same fate awaits other international standards-standards in the field of human rights, since respect for human rights and freedoms is a direct responsibility of the state and all its institutions.

The International Covenant on Civil and Political Rights, as a direct development of the ideas embodied in the Declaration, should also be classified as a category of documents containing standards-principles of criminal justice. The value of this international document lies in the fact that, as compared with the declaration, the Covenant developers have tried in the most detailed way, as it was possible at this stage of the scientific development of the theory of human rights, to disclose the provisions of the standards set forth earlier in the declaration. In addition, the Covenant, in contrast to the declaration, was no longer of a recommendatory nature, but was binding on the countries party to the agreement. Being, in essence, a further step in the development of standards-based principles, the Covenant, in fact, without departing from the aforementioned design of the fundamental rights of those involved in

the criminal proceedings proposed in the Declaration, created on their basis an internal system that determines the basic parameters of proper conduct that allows Ensure the effective implementation of this standard, and not compliance with any provision, which actually means a departure from this principle.

For example, a standard indicating the prohibition of arbitrary arrest and detention was supplemented by an indication that imprisonment may only be lawful if the procedure laid down by law is required to apply such an act. In addition, the duty of the state to report at the time of arrest was an urgent reason for the arrest and any charge against the arrested allegations, as well as the possibility of a judicial appeal against the decision on immediate arrest and the right to compensation in case of unlawful arrest.

The Covenant, in contrast to the Declaration, fixed a number of articles specifically devoted to the legal status of the accused, representing a mandatory minimum list of transactions of the said participant in criminal-procedural relations.

In the modern world, the concept of human rights has fallen far beyond the limits of the national choice. To date, human rights have become the basic regulator of legal regulation of social life in most democratic countries of the world, which have chosen the rule of law. The very concept of human rights, firstly, became the basis of the practice of international relations and their legal regulation. Secondly, he acquired the status of a legal requirement of the international community for each individual state, regardless of its social system, and enshrined in a number of international legal instruments [10, p. 193].

In conclusion, I would like to point out that international experience in protecting the rights, freedoms and laws of human interests is extremely important and has a significant impact on the domestic legislation of our

state and other democratic states in general. International standards on fundamental human rights and freedoms and its laws of interests are the basis that fills the international experience in protecting the rights, freedoms and laws of human rights. These are a number of normative acts, namely: the Universal Declaration of Human Rights, the International Covenant on Political and Civic Rights, the International Covenant on Economic, Social and Cultural Rights, the European Social Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms with Protocols, and others. The basic provisions of the constitutions of the community of democratic states on the rights and freedoms of man and citizen must comply with all international standards, since the protection of rights, freedoms and legitimate interests ensures the existence of a sovereign, democratic and independent state.

Each civilized state must ensure the implementation of legal guarantees of the protection of rights, freedoms and lawful interests of its citizens, and this will be an integral part of a democratic state.

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