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THEORETICAL AND HISTORICAL ASPECTS OF UNIVERSAL DECLARATION OF HUMAN RIGHTS ADOPTION

Андрій Кучук. ТЕОРЕТИКО-ІСТОРИЧНІ АСПЕКТИ ПРИЙНЯТТЯ ЗАГАЛЬНОЇ ДЕКЛАРАЦІЇ ПРАВ ЛЮДИНИ. Висвітлено окремі аспекти прийняття Загальної декларації прав людини. Акцентується увага на різних тлумаченнях людських прав державами, що відобразилось на процесі прийняття Загальної декларації прав людини (у контексті непідтримання цього міжнародного акта низкою держав через різне сприйняття сутності та змісту людських прав). Зазначається, що хоча Комісії з людських прав, яка була створена для розробки Загальної декларації людських прав і складалася з 18 членів, що презентували різних культурні, політичні та релігійні групи, однак це не запобігло різним тлумаченням як людських прав, так і Загальної декларації прав людини, зокрема. Наголошується, що починаючи з другої половини ХХ століття було прийнято низку міжнародних актів, предметом регулювання яких є людські права. Чи не найпершим з них та найбільш вагомим у міжрегіональному аспекті є Загальна декларація прав людини, яка була прийнята у 1948 році та стала своєрідною відповіддю міжнародного співтовариства на Другу світову війну

Відзначається недостатня увага правників до проблематики прийняття Загальної декларації прав людини як такої, що дозволяє краще зрозуміти природу людських прав через такі їх властивості як універсальність та релятивізм. Одним з чинників недостатнього вивчення цього питання є належність Загальної декларації прав людини до м'якого права. Хоча міжнародні судові інституції вже неодноразово вказували на зобов'язальний характер норм цієї Декларації.

Аналізуються різні чинники неоднозначного сприйняття Загальної декларації прав людини: 1) релігійний (Загальна декларація прав людини відтворює теорію людських прав, засновану на пріоритеті людини, на праві людини на вільний розвиток своєї особистості, що включає і можливість змінювати свої переконання, релігію, а також на рівності у правах жінки та чоловіка); 2) політичний (відповідно до «духу» цього міжнародного акта soft law, основною цінністю є людина, а не держава чи колектив; несумісність Декларації з апартеїдом).

Зроблено висновок, що підготовка та прийняття Загальної декларації прав людини майже не висвітлюється у навчальній правничій літературі, що не сприяє всебічному розумінню західного концепту людських прав та релятивізму в інтерпретації людських прав як явища в межах різних правових культур.

Ключові слова: *Загальна декларація прав людини, людські права, прийняття Загальної декларації прав людини, релятивізм людських прав, універсальність людських прав.*

Relevance of the study. Human rights recognition and protection is one of the crucial directions of a democratic state at present. This provision fully applies to Ukraine as in accordance with Art. 3 of the Constitution human being rights implementation is declared to be the fundamental obligation of the state [1].

Since the second half of the twentieth century, a number of international instruments the subject of which is human rights have been adopted. Perhaps the first and the most important of them in the interregional aspect is the Universal Declaration of Human Rights that was adopted in 1948 and became a kind of response of the international community to World War II. However, the process of this international act adopting is still somewhat vague among lawyers. The preparation and adoption of the Universal Declaration of Human Rights is hardly covered in the legal literature that does not contribute to a comprehensive understanding of the Western concept of human rights and relativism in the interpretation of human rights as a phenomenon within various legal cultures.

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The term «generality» in the title of this international act and the fact of its adoption, in my opinion, is a factor in creating a kind of illusion of a common understanding of the content of this legal category by the United Nations member states. And it is the coverage of the Universal Declaration of Human Rights preparation and adoption process that allows us to understand the differences in the human rights phenomenon interpretation existing in the late first – early second half of the twentieth century in various legal cultures.

An additional factor stipulating the choice of the Universal Declaration of Human Rights adopting process is the legal nature of this international act. Thus, as it is well known, there is a conditional division of international legal norms into those that constitute hard law and those that constitute soft law in international law. Herewith, as it can be seen from the very names of the «parts» of law, the first of them is generally mandatory and provides for certain sanctions for violating the rules, the latter is not mandatory and does not contain sanctions for failure to comply with the relevant provisions, and expressed intentions. At the same time, although the Universal Declaration of Human Rights belongs to soft law, international judicial institutions have repeatedly noted the need to comply with the provisions of this international act. Thus, the binary nature of the Universal Declaration of Human Rights influences the interpretation of its provisions on the understanding of human rights and their content.

Recent publications review. The outlined issues are little-studied by legal science. Thus, some its aspects have become the subject of epistemology by S. Golovaty, who notes important terminological aspects of the Universal Declaration of Human Rights adoption. Thus, according to a domestic scientist, during the preparation of this document the world community intentionally abandoned the use of the term «the rights of man» in favor of the term «human rights»: «The authors' intention of the UN instrument of 1948 to change «the rights of man» to «*human rights*» had a clear desire to emphasize the *transcendent nature* of the rights proclaimed by the Declaration. And in this regard it is crucial that the English word *human* is exactly the same as the Ukrainian word *human* in the following sense: 1. Adj. to people // Belonging to people // inherent in man (Human being – man; Human race – humanity)» [2, p. 8].

In addition, S. Golovaty partially analyzes the fact that not all states supported the Universal Declaration's of Human Rights adoption, refraining from making a decision.

M. Hnatovsky and O. Poedynok covered some aspects of the Universal Declaration's of Human Rights adoption examining this act as part of general customary international law. The authors concluded that «the Universal Declaration should be considered as a document containing the basic universally recognized principles and norms of international human rights law in modern international law. The practice of its application by states and international judicial institutions shows that the Universal Declaration is an integral part of general customary international law and is the basis for the development of international treaty law in the field of human rights» [3, p. 23].

The Universal Declaration of Human Rights is the result of «implementation of proposals on the inclusion of a section on human rights into the draft UN Charter. However, due to the fact that the mentioned section because of its complexity jeopardized the adoption of the main part of the draft, it was decided to remove it from the Charter and replace it with a Declaration» [4] – notes T. Latkovska.

O. Sheredko's paper «Genesis of Human Rights Consolidation in International Law» elucidates individual aspects of the Universal Declaration of Human Rights adoption. The author analyzes a number of documents that prompted the adoption of the Universal Declaration of Human Rights: the Declaration of International Human Rights, the Declaration of Human Rights, the International Bill of Human Rights in her paper [5, p. 252–261].

The research paper's objective is to emphasize scientists' attention to the necessity for systematic and comprehensive coverage of historical aspects of the Universal Declaration of Human Rights development and adoption that will be the basis for a comprehensive and objective interpretation of the essence and content of human rights.

Discussion. The Second World War has become the attractor of the Universal Declaration of Human Rights adoption. Until now, human rights have been perceived purely from the standpoint of a domestic phenomenon. The outlined issues could acquire a regional character without having a precedent character only in certain cases related to international relations.

It was the Second World War that raised the issues of the relationship between the individual and the state, the individual and the collective, proving that it is a person who must have the priority: the collective (the state) cannot order a person to determine his way of life and realization of his own potentials, etc. (I do not deny the existence and the necessity of

general rules existence that should be followed by a person within the society, but these rules must have a limit, by which, in particular, human rights and human dignity are; therefore, I emphasize once again the necessity to implement the provision on the priority of a person and his rights over the interests of the state in a democratic society).

The Human Rights Commission was ingaged in the Universal Declaration of Human Rights draft preparation. On behalf of the Secretary-General of the United Nations, the task of preparing this document was entrusted to Canadian John Peters Humphrey.

The Human Rights Commission itself, according to the official portal of the United Nations, consisted of 18 members who were representatives of various political, cultural and religious groups. The editorial board was chaired by Eleanor Roosevelt, the widow of US President Franklin Roosevelt. She was accompanied by Rene Cassen of France, who drafted the Declaration, the Committee's Rapporteur, Charles Malik of Lebanon, Vice-Chairman Peng Chung Chang of China, and John Humphrey of Canada, Director of the UN Office of Human Rights, who drafted the Declaration. But it was Mrs. Roosevelt who was recognized as the driving force behind the Declaration adoption [6].

It is worth noting the desire of the authors of the Universal Declaration of Human Rights to take into account the pluralism of the human rights category interpretations, involving representatives of various social groups in the work of the Human Rights Commission, however, there were only 18 people.

In this context, S. Waltz's study of the analysis of four political myths about the Universal Declaration of Human Rights adoption deserves attention, including sponsoring the declaration developers and reproducing human rights propaganda in its content in the interpretation of Western states. Let me note that the above mentioned author came to the conclusion that each of the four political myths «contains a piece of truth, and each of them is also misleading». The author emphasizes that when the historical role of large states in human rights promoting is exaggerated, the role and contribution of small states is not noticed [7, p. 437–448].

In general, it should be noted that beginning with the Art. 1 of the Universal Declaration of Human Rights with the words «All people are born free and equal…», the developers of this document reproduced the idea of human rights universality, their global nature that is not limited to the borders of a state or even a region.

«As a common standard of achievement for all signatories, the Universal Declaration of Human Rights is an essential cornerstone of modern human rights history, relying on ancient modern philosophy, responses to the horrific crimes of World War II and various visions of human rights future standards. Despite the differences of opinion between many editorial parties and states, the Universal Declaration of Human Rights eventually went beyond the conflict, forming the basis of a moral compass for all mankind» [8] – this is how one foreign researcher assesses the significance of this international act.

At the same time, it is worth emphasizing another aspect of the Universal Declaration of Human Rights adoption, namely, the voting process revealing the existence of various interpretations of human rights that was manifested in not unanimous support for the adoption of the international document. According to the analysis of this process, the factors of human rights content various perceptions were the following:

1. Religious factor. The Universal Declaration of Human Rights reproduces the theory of human rights based on the priority of a person, on the human right to the free development of one's personality, which includes the possibility to change one's beliefs, religion, and equality of rights for women and men. In part, these provisions are reflected in Art. 16 and 18 of the Universal Declaration of Human Rights which determined the behavior of Saudi Arabia representatives: not to support the adoption of the Universal Declaration of Human Rights.

Public life in this state is determined by its theocratic nature and the status of «state of two mosques» (there are mosques on its territory that are the two largest shrines in Islam). The theocratic nature of the social system (as well as of the state's one) can not but be reflected in the perception of legal phenomena, and human rights in particular. It is Islam through which the category under study should be interpreted. At the same time, we should not forget about the slightly different perceptions of the position of men and women within the Islamic world. Therefore, neither the provisions on equality of men and women in rights, nor the freedom of choice of religion, renunciation of religion, the possibility of not practicing any religion at all are quite ambiguously perceived by a religious person, and religious society.

The non-acceptance of these provisions (regarding the equality of all people in their rights, regardless of gender, as well as freedom of belief) is largely contrary to the human rights theory that

is formally reflected in the text of the Universal Declaration of Human Rights.

2. Political factor. The abstention from voting for the adoption of the Universal Declaration of Human Rights by the Republic of South Africa was largely stipulated by the racial discrimination against African peoples policy carried out within that state.

And this state of politics was incompatible with the rights proclaimed in the Universal Declaration of Human Rights. In addition, in accordance with the «spirit» of this international soft law act, a person is the main value, not the state or the collective, which also did not correspond to the policy of the Republic of South Africa of that time. Apartheid is incompatible with the Western concept of human rights, as well as any other state of neglect of human rights through any feature, namely, race, gender, age, nationality, etc.

It should be noted that it is human rights that are the means limiting state power in this context, preventing arbitrariness of public authorities, and serving as a criterion for determining the effectiveness of the state. «According to the democratic tradition, the social purpose of authorities is defined as serving the people and is detailed in the specifics of services providing» [9, p. 13–20], said P. Petrovsky.

That is why undemocratic states deny human rights by nature, do not recognize human rights inalienable nature, their inalienability and try to convince of that that it is the state that gives rights to people, determines human rights boundaries, the order of their implementation and so on. Accordingly, the essence of the studied category is distorted, moreover, a completely different phenomenon is called as human rights, for example, benefits and privileges, and so on.

As I have repeatedly emphasized, most states have recognized the existence of inalienable (natural) human rights at present. This, in turn, necessitates the implementation of the principle of «a state is for a person» and not «a person is for a state», actualizing psychological and sociological approaches to understanding law. Law should not be seen as a formally defined rule of conduct established and protected by the state. This rudiment of the Soviet machinery system still exists in some «democratic» states.

The abovementioned allows us to understand the position of the Soviet Union and its satellites that also did not vote for the Universal Declaration of Human Rights adoption (abstained).

«We cannot be muddled from our position with demagogic cries and sobs that it is impossible, they say, to restrict human freedom, and human rights. Yes, it is possible if this freedom is used to the detriment of the public good and the interests of the people» [10], stressed A. Vyshinsky.

At the same time, it should be noted that despite miscellaneous human rights interpretations, it can be avouched that the Universal Declaration of Human Rights is not merely the result of the objectification of Western human rights theory, though this international act embodies the very universal perception of human rights. In this context, we should mention the scientific research by H. Christensen on the historical aspects of the Universal Declaration of Human Rights adoption. The author analyzes the reactions of the main participants in the process of working on the adoption of the document under study, and the contributions of the main actors in this paper. He shows that the lgislation regime of human rights was conditioned by a negotiation involving different countries from different continents, cultures and religions. The author demonstrates the importance of small states for the adoption of human rights standards as international law. He refutes the idea that the human rights regime is a Western project [11, p. 112–117].

«Along with other documents and protocols that emerged from the ashes of World War II, a concert of legal and political means aimed at promoting lasting peace was created. Thus, it gained a high level of recognition and legitimacy and became the standard basis for global human rights determining» [12].

Conclusions. Thus, creating an international act that was to enshrine human rights, to embody the ideas of equality in human rights, their universal and general nature, the Commission on Human Rights involved representatives of various groups, including distinctions in political, religious and other views. However, when the Universal Declaration of Human Rights was adopted, not all states voted in its favor. Eight states have refrained from supporting it which was stipulated by a number of religious and political factors. At the same time, various interpretations of human rights by various states do not deny their universal nature.

Covering the human rights issue it is advisable to disclose the process of preparation and adoption of the Universal Declaration of Human Rights which will allow systematically and clearly understand the nature of human rights, differences in the activities of various states concerning human rights implementation.

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ABSTRACT

The article deals with covering certain aspects of the Universal Declaration of Human Rights adoption. Emphasis is placed on different interpretations of human rights by states that was reflected in the process of adopting the Universal Declaration of Human Rights (in the context of non-support of this international act by a number of states due to different perceptions of human rights essence and content). It is noted that although the Human Rights Commission, which was set up to draft the Universal Declaration of Human Rights and consisted of 18 members representing various cultural, political and

religious groups, this did not prevent different interpretations of both the Human Rights and the Universal Declaration of Human Rights in particular. It is noted that since the second half of the twentieth century a number of international acts the subject of which is human rights have been adopted. Perhaps the Universal Declaration of Human Rights adopted in 1948, is the first and the most important of them in the interregional aspect and became a kind of response of the international community to World War II.

There is a lack of attention of lawyers to the adoption of the Universal Declaration of Human Rights as that that allows a better understanding of the human rights nature through their properties such as universality and relativism. One of the reasons for the insufficient study of this issue is the affiliation of the Universal Declaration of Human Rights to soft law. However, international judicial institutions have repeatedly pointed to the binding nature of the provisions of this Declaration.

Various factors of the Universal Declaration of Human Rights ambiguous perception are analyzed, among them are the following: 1) religious (Universal Declaration of Human Rights reproduces the theory of human rights based on human priority, the human right to free development of one's personality, including the ability to change one's beliefs, religion, and equality in the rights of women and men); 2) political (in accordance with the «spirit» of this international soft law act, the person is the main value, not the state or the collective; incompatibility of the Declaration with apartheid).

It is concluded that the Universal Declaration of Human Rights preparation and adoption is hardly covered in the legal literature that does not contribute to a comprehensive understanding of the Western concept of human rights and relativism in human rights as a phenomenon within different legal cultures interpretation.

Keywords: *Universal Declaration of Human Rights, human rights, adoption of the Universal Declaration of Human Rights, relativism of human rights, universality of human rights.*

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УНОРМУВАННЯ ФОРМ ВИКОРИСТАННЯ СПЕЦІАЛЬНИХ ЗНАНЬ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

У статті звертається увага на те, що досягнення науково-технічного прогресу використовуються не тільки для активізації суспільно-корисної діяльності. У деяких випадках вони використовуються злочинцями, що призводить до появи нових способів вчинення злочинів та удосконалення традиційних. Це потребує адекватної відповіді державних органів у боротьбі зі злочинністю, розробки та використання надійних засобів і способів роботи з джерелами доказової інформації, належного їх нормативного регулювання. Значне місце у пізнавальній діяльності з розслідування належить правильному та повному використанню спеціальних знань.

Автори розглядають дискусійні питання щодо визначення спеціальних знань, форм і суб'єктів їх використання у кримінальному провадженні, обґрунтовують пропозиції з удосконалення норм чинного кримінального процесуального законодавства, якими регулюється порядок використання спеціальних знань.

***Ключові слова**: слідчий, дізнавач, спеціальні знання, висновок спеціаліста, висновок експерта.*

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