

Література:

1. Гомьен Д., Харрис Д., Зваак Л. Европейская конвенция о правах человека и Европейская социальная хартия: право и практика. – М.: Изд-во МНИМП, 1998.
2. Де Сальвиа М. Европейская конвенция по правам человека. – СПб.: Издательство Р. Асланова «Юридический центр Пресс», 2004.
3. Зайцев Ю. Ефективність рішень Європейського суду з прав людини, або справи, розглянуті з 1959 по 1998 рік. В кн.: Європейський суд з прав людини. Базові матеріали. Застосування практики. – К.: Український Центр Правничих Студій, 2003.
4. Зайцев Ю. Потреба використання практики Європейського суду з прав людини // Практика Європейського суду з прав людини: Рішення. Коментарі. – К.: Український Центр Правничих Студій, 2002. – № 3.
5. МакБРАЙД Д. Юридична сила рішень Європейського суду і справедлива сатисфакція. В кн.: Європейська конвенція з прав людини: основні положення, практика застосування, український контекст / За ред. О. Л. Жуковської. – К.: ЗАТ «ВПОЛ», 2004.
6. Мармазов В.Є. Методи динамічного тлумачення Конвенції про захист прав людини та основних свобод в юрисдикції Європейського Суду з прав людини. Монографія. – К.: Видавничий Дім «Юридична книга», 2002.
7. Паліюк В. П. Особливості застосування судами України Конвенції про захист прав людини та основних свобод: (навчально-практичний посібник). – Миколаїв: «Атол», 2003.
8. Регламент Європейського суду з прав людини. В кн.: Європейський суд з прав людини. Базові матеріали. Застосування практики. – К.: Український Центр Правничих Студій, 2003.
9. Смирнов В. Т., Собчак А. А. Общее учение о деликтных обязательствах в советском гражданском праве. – Ленинград: Изд-во Ленинградского ун-та, 1983.
10. Сиротенко С. До питання про правові засоби компенсації моральної шкоди у контексті рішень Європейського суду з прав людини // Адвокат. – 2006. – № 5.

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THE PROSPECTIVES OF THE DEVELOPMENT OF ISLAMIC CONCEPT OF HUMAN RIGHTS

The concept and understanding of basic human rights and freedoms have been different over various historical periods. Settled in International legal instruments, human rights and freedom are now ac-

cepted as fundamental and inalienable. Laws pertaining to human rights are defined in the Universal Declaration of Human Rights, which is considered world's conscience and moral standard. This historical document establishes that all human beings are born free. It sets the right to personal security and freedom of speech and expression. The document also sets a person's right for justice regardless of race, gender, ethnicity, religion or social status. More than a dozen international covenants (each owning legal force) have been made based on the Universal Declaration, International Conventions and Protocols. These agreements include the idea of the tolerance for other people's beliefs, opinions, rights and liberties having a universal status.

Legislation within an Islamic legal system, also known as Sharia, are based on two the main sources: the Qur'an (and its commentary) and Sunnah and Hadiths. The state does not have authority to create laws that do not comply with the two pillars of the Islamic Legal system: Qur'an and Sunnah.

Sharia establishes general guidelines and rules of conduct that affect international law. However, the principles of Sharia, does not automatically transfer to the sphere of foreign policy and international regulation.

The Islamic concept of human rights is reflected in documents such as the Universal Islamic Declaration of Human Rights, 1981, the Cairo Declaration on Human Rights in Islam, 1990, the Arab Charter on Human Rights, 1994. Each of this document details all inalienable human rights based on the pillars of the Islamic legal system.

These documents include the regulation of other important aspects of public and social life, which are not covered in the Universal Declaration of Human Rights. Some examples of such aspects are human maternal health, unborn child, the protection of honor and dignity of the deceased. All the important aspects of human rights and freedoms are covered in these documents. Based on opinions of scholars, Sharia is in accordance with the needs and requirements of basic human rights applicable to any period of history and applicable to this day. Islamic civilization was ahead by 14 ages to recognize the establishment of the principles of freedom and equality of people, fundamental rights and freedoms, including those that international laws do not mention.

The conclusions regarding the specifics of the Islamic approach to the human rights and the prospects of its further development provides grounds for the formulation of an expanded concept of human rights in

Islam, the development of which was an independent direction of modern Muslim legal thought.

It is not reasonable to expect the Islamic world to accept the Universal Declaration of Human Rights. At the consideration of this document at the UN, Egypt, for example voted for acceptance, some states (Iran, Pakistan) in some scope ratified it, but some European countries criticized and rejected it. The idea of the universal acceptance of the concept of human rights is becoming more urgent. Such an idea or legal system would need to compromise aspects from both worlds, based on the interests of different cultures along with satisfying the needs of the international community. Universalism implies the existence of universal agreement as for the interpretation and application of international human rights law.

This concept according to the idea of Belyakovich N. N., that I think is very reasonable and could be effective, should include the following elements:

- at the formation of human rights a determining role of social and political aspects should be noticed;

- the consideration of human rights in a multicultural context should be based on the postulate of absolute value and equality of all types of cultures that exist in the world today;

- human rights should be united with the responsibilities of man, not only for society, but also for certain social groups, and Kovalev A. A. also adds to this list the need to consider the variety of forms of human rights in different civilizations, that I think is very important factor.

At the same time, the universal principle is required that unites all systems and governs the legal status of a person and citizen. At present the principle of respect for human rights, no matter which complex or rights applied to a particular territory.

The states of Islamic and Western civilizations have different value systems: Western civilization is characterized by a priority of individual values over social and material – over the spiritual, the change of the social environment, and as for the Eastern – the priority of community values over individual, spiritual – of the material, and not a change in the social environment, but personal cultivation.

The Western concept of human rights itself will need some amendments. Also the reason of it is the growth of Muslim population and higher Muslim representation in other Western countries. This needs more and more the development of their culture, the support of their

national traditions. So in this case, the actual experience of developed Muslim countries is useful in international policy. Ignoring this important fact could lead to serious conflicts (the clear example is Yugoslavia conflict). All this requires the development of relations between the West and the East along with mutual sharing and respect for respective values and ideas.

Continuing about this point of view it should be added that even present time, in fact it was not possible to create a complete, functioning system of universal human rights, not only globally, but also in the western world. Reason for «non–success» is this sphere was that the first orientation on the «equality» of mankind, the recognition by each person the same amount of demands for natural rights. As for me I completely agree with the idea of Belyakovich N. N., that a new, universal concept of human rights should be defined accommodating circumstances of «multi–storey» principle:

- the basis – completely inalienable principles, such as respect for human rights, the right to life and human dignity
- the next stage – is made of blocks of norms aimed on individual civilization regions
- should be based on the group of countries and individual states
- the last – on certain peoples and stable social groups.

It should be remembered that the Muslims are more than one–sixth of the world population, therefore, the Islamic understanding of the law, its main institutions, and especially the concept of human rights, should be considered throughout the process of developing a universal concept for human rights.

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ПРОБЛЕМЫ, ВОЗНИКАЮЩИЕ С РЕАЛИЗАЦИЕЙ ГРАЖДАНСКИХ ПРАВ В ОТНОШЕНИЯХ С ИНОСТРАННЫМ ЭЛЕМЕНТОМ

Международные договоры об оказании правовой помощи по гражданским делам, которые отменяют процедуру легализации документов, имеют достаточно широкое распространение. Однако, данное обстоятельство не позволяет сделать однозначный вывод