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Human Rights in The Context of Globalization

Derechos humanos en el contexto de la globalización

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Summary

Globalization as a phenomenon, being universal by its nature and character, covers not only the global economy, finance, and mass media, where it manifests itself in the most developed form, but also in other spheres of social life, including law. At the same time, the impact of global factors significantly affects the essential and substantive aspects of the state's legal system. The article deals with such concepts as globalization, unification, and universalization in the context of human rights theory. The universal culture of human rights is based on the universalization of the idea of human rights and the universal recognition of such values as human dignity, freedom, and responsibility. The development of human rights is considered as a social phenomenon included in the general dynamics of social processes. First of all, the influence of globalization on human rights in the context of intensively developing states and the rights and methods of intercultural dialogue are studied. The formation of a universal culture of human rights depends on the extent to which the idea of human rights and its values, enshrined in international standards and implemented in the national legislation of states, are perceived and reinterpreted in local cultures. An important feature of the modern system of human rights protection is the fact that, at the early stages, the formation of protective mechanisms occurred under the influence of national (domestic) characteristics of a state. However, since the middle of the 20th century, global factors have had a significant impact on this process. A study on the problem of methodological substantiation of the human rights concept in modern conditions of social development is presented in the article.

Keywords: Human Rights; Globalization; Global Problems; International Law.

Resumen

La globalización como fenómeno, siendo universal por su naturaleza y carácter, cubre no solo la economía global, las finanzas y los medios de comunicación, donde se manifiesta en la forma más desarrollada, sino también en otras esferas de la vida social, incluida la ley. Al mismo tiempo, el impacto de los factores globales afecta significativamente los aspectos esenciales y sustantivos del sistema legal del estado. El artículo aborda conceptos como la globalización, la unificación y la universalización en el contexto de la teoría de los derechos humanos. La cultura universal de los derechos humanos se basa en la universalización de la idea de los derechos humanos y el reconocimiento universal de valores como la dignidad humana, la libertad y la responsabilidad. El desarrollo de los derechos humanos se considera un fenómeno social incluido en la dinámica general de los procesos sociales. En primer lugar, se estudia la influencia de la globalización en los derechos humanos en el contexto de los estados en desarrollo intensivo y los derechos y métodos de diálogo intercultural. La formación de una cultura universal de los derechos humanos depende de la medida en que la idea de los derechos humanos y sus valores, consagrados en los estándares internacionales e implementados en la legislación nacional de los estados, sean percibidos y reinterpretados en las culturas locales. Una característica importante del sistema moderno de protección de los derechos humanos es el hecho de que, en las primeras etapas, la formación de mecanismos de protección se produjo bajo la influencia de las características nacionales (nacionales) de un estado. Sin embargo, desde mediados del siglo XX, los factores globales han tenido un impacto significativo en este proceso. En el artículo se presenta un estudio sobre el problema de la justificación metodológica del concepto de derechos humanos en las condiciones modernas del desarrollo social.

Palabras clave: Derechos humanos; Globalización; Problemas globales; Derecho internacional.

Introduction

Globalization has long been regarded as an objective process, whose occurrence is predetermined by several other processes: the development of engineering and technology, particularly, communications, information systems, transport, and others. All of this is reflected in the

interconnection of national economies, political systems, and cultures. In this regard, some authors write that "national and state forms of human existence are gradually losing their self-sufficiency. We are imperceptibly drawn into a new social order. Globalization is a system of open cultural exchange, borrowing patterns of behavior, and adaptation of cultural stereotypes" (Rimashevskaya, 2001) and in this sense, it is an essential factor of standardization and legal life. In the field of legislation, this is the dissemination of global standards. In general, the modern development of human rights is expressed in the intertwining of two processes ― universalization ― the development of a common approach and unification ― the introduction of uniform norms into legal systems. Many researchers, primarily representatives of non-European countries, note that most international documents contain exclusively Western ideas, which allow for the mixing of law and politics (Sloane, 2001). There are several approaches to resolving the question of human rights universalization. Some authors believe that universal rights are a real fact of modern time. "Human rights are among the most active global regulatory legal systems of modern time" (Glukhareva, 2003). Others assume that the reality of universal human rights can be discussed only when they, like all other rights, are not only formally declared, but also actually ensured (Kalamkaryan, 2000). There is also an approach based on regional and civilizational values, diversity and uniqueness of culture, life, their historical, religious, ethnic, and other features existing within individual regions and civilizations (Campbell, Miller, 2004).

Methods

According to researchers, the problem of effective protection of human rights and freedoms in the light of the multilateral globalization of modern life is becoming increasingly important. The reasons for this attention include active economic integration, migration, and related processes that lead to the emergence of a variety of legal collisions related to both differences in the legal regulation of cross-border private law relations and the necessity to respect rights and freedoms enshrined at the national and international levels.

The research methodology is based on general scientific methods of theoretical knowledge, methods of system analysis, comparison, and generalization of Russian and foreign studies on the problem of the human rights concept in the context of globalization. The method of system analysis helps to reveal the integrity of the studied object and makes it possible to consider, for example, such concepts as globalization and international law in the field of human rights protection. The formal legal method allows defining legal concepts ― universalization, unification of legal norms, and standardization. The comparison method is used in the study of various legal systems (macro-comparison) or individual elements of legal systems (micro-comparison).

Results

It has been revealed that globalization, on the one hand, is an objective phenomenon existing in the world reality and, on the other hand, it is disclosed as a set of processes such as universalization, standardization, and unification. At the same time, these processes have not emerged now but were prepared by the whole course of the previous development of mankind and man, because globalization is a centuries-old naturally unfolding process of connections and relations. The issues of scientific reflection on the processes of elaboration and recognition of universal human values, including the universal concept of human rights, are becoming more and more relevant. The issues of preserving diversity and identity of cultures of individual countries and peoples, the formation of socio-cultural models of human rights and their specific features, the issues of national identity and sovereignty of states, moral and humanistic principles of human rights, the dialogue of cultures and civilizations, etc. are becoming a matter of priority and discussion in the scientific community.

It has been determined that the content of the concept of the realization and fulfilment of human rights includes the obligations of the state to respect, protect, and fulfil human rights. In many cases, realization means that states and their authorities must respect the adopted rights, such as the right to privacy or the right to freedom of expression. This is particularly relevant to civil and political rights, while in the case of economic, social, and cultural rights, realization means the actual activities of the state, i.e. the provision of certain services, such as education, health care, and the provision of certain minimum standards. In this situation, the capacity of each state is considered. As western researchers have argued for some reason, it is a paradox that human rights are now declared to be universal, while responsibility for their non-observance remains with the nation-state and is limited only to the territory and citizens under its jurisdiction.

It has been established that, in the context of globalization, the processes of internationalization of human rights, their interaction and reciprocal influence are intensifying. Globalization processes have shown that the status of human rights in a particular state cannot be considered an internal affair and that the resolution of human rights protection issues is not limited to the activities of one particular state. Progressive and democratic forces cannot but respond to violations of human rights and freedoms and, therefore, stand up for them wherever they are violated. Only joint efforts of the world community can stop genocide, torture, cruelty, persecution of dissidents, and any other form of violation of human rights and civil freedoms, mass hunger in a particular country, and environmental disasters. This is an unconditional benefit for the citizens of a non-legal, closed, authoritarian state, to which the principle of non-interference must step aside. Human rights have become an instrument for solving many global problems. Globalization leads to the formation of a complex set of agreed national and civilizational human rights standards.

Discussion

The primary element in the global system of democratic rights and freedoms in the conditions of democratic trends is declared, first of all, the rights of the individual. The modern concept of human rights defines and confirms this. Thus, an individual with characteristic features such as their own opinion, special character of perception of the surrounding reality, the necessity to protect fundamental rights from encroachments and infringements comes to the foreground. As a result, the consolidation of primary, inalienable rights and freedoms within a single person reflects the level of democracy that has formed at the stage of development of the global concept of human rights protection.

The legal system that existed in ancient Rome and the Byzantine Empire from the 8th century B.C. to the 6th century A.D., called Roman law, laid a solid foundation for the further development of law. "However, if we turn to the analysis of the legal structures of Roman law, we will easily find that human rights as such were never the supreme value of the existing system. The concept of a slave or a foreigner is nowhere associated with the notion of "dignitas", defined as a dignity belonging to a Roman citizen. Roman honor is inextricably linked to citizenship; it can only belong to someone who is civisromanus, and the latter is only recognized as having the honor as long as they perform acts worthy of the citizen; doing the opposite leads to complete deprivation of their honor" (Dukhovskoi, 1873). If we look at the modern Italian legislation, we will see that 54 of the 139 articles of the 1947 Italian Constitution are devoted to the rights, freedoms, and obligations of citizens: "Article 2. The republic recognizes and guarantees the inalienable human rights, both of the individual and of the social entities in which that individuals manifest themselves, and requires the fulfilment of the inalienable obligations arising from political, economic, and social solidarity" (Marchenko, 2007; Italian Constitution, n.d.). This illustrative example makes it clear that the formation of human and civil rights and freedoms is the result of a long historical development of society.

Since the emergence of a new generation of rights and freedoms, there has been an objective necessity and a natural need for their in-depth study and reflection and, most

importantly, the correlation with world legal standards at every stage of society's development. Such standards appeared rather recently, about 60-70 years ago. It is certainly worth mentioning the UN as an organization designed to prevent the violation of natural human rights. The first generation of human rights and freedoms emerged as a result of several bourgeois revolutions in Europe, which mainly covered the personal and political rights of citizens. Among them were the right to vote, the freedom of speech, conscience and religion, the equality of all before the law, etc.

The second generation of rights and freedoms, whose existence is limited chronologically to the end of the 19th century and the first half of the 20th century, is formed in a concept with a more humane system of values. It is based mainly on the values and postulates developed in the framework of autocracy with the primary foundations of democracy. Namely, it is based on neoliberal views on the state and legal life of the state in general and the citizen in particular. At the same time, the second generation of rights and freedoms showed a tendency not to oppose the state with the possibility of its active and versatile participation in ensuring rights and freedoms but to actively interact with the state.

In the second half of the 20th century, the third generation of rights and freedoms called collective was formed. During this period a new world order of regulation and guarantees of human rights and freedoms began to be formed. As a result, such rights as the right of nations and peoples to self-determination, the right to peace, the right to economic development, the right to a healthy environment, etc., were formed. In the third generation of rights and freedoms, the most important is the fact that states, despite having sovereignty, were obliged to regulate and protect these rights on the entire territory. The development of international norms is the result of joint, consolidated activities of all countries of the inter-city community. The formation of these interests began with the expansion of global connections, philosophical reflection, and rethinking of human rights and freedoms to the modern, "globalist" stage of their development.

Thus, the third generation of rights is a testimony to the awareness of both humanity as a whole and individual communities of shared interests. The beginning of the formation of these interests was the expansion of global connections, philosophical reflection and rethinking of human rights and freedoms to the modern, "globalist" stage of their development.

In the era of globalization, unlike previous stages of society, freedom is the ability of individuals to act according to their desires, and equality presupposes the position of individuals in society, expressed in the same attitude towards the means of production and the ability to realize political and civil rights. "At this stage of development of the concept of human rights, as the processes of globalization develop, there is an influence on the law-making activity of states not only by the national state, social, economic, and other factors but also by supranational institutions and processes" (Torkunov, 2004).

It is important to note that the reality of the modern world is the diversity of civilizations, cultures, religions, and, of course, their confrontation. Researchers distinguish European, Islamic, African, Chinese, and other civilizations, which adhere to values that do not always coincide with each other. Thus, Professor L.H. Mingazov in one of his works refers to the conducted research — the analysis of 100 value paradigms in different societies of Western and Eastern type of civilizations, which clearly showed that the West is characterized by individualism and the protection of the private sector. The East, on the contrary, is characterized by collectivism and the protection of common interest (Mingazov, 2008). "It is impossible to fuse under one, even the biggest "block", say, such very different important community parameters, as European or American, on the one hand, and traditional communities of African or Muslim countries, on the other" (Marchenko, 2007).

By universalization of culture, modern Russian philosophers and culturologists understand the processes of openness of cultures to each other, interpenetration and complementarity of cultural strategies. For example, V.M. Dianova writes: "Universality in the globalization is understood as a result of the increasing complexity of intercivilizational connections. It implies the equality of partners of civilizational development and the possibility of conducting "equal dialogue". From the perspective of this understanding of universalist thinking, specific global problems can be solved" (Dianova, 2005).

Many researchers, primarily representatives of non-European countries, note that most international documents contain exclusively Western ideas, which allow for the mixing of law and politics. Some states use their historical, religious, and cultural characteristics to justify claims that human rights cannot be applied to them in the same way as to other states. The so-called "non-liberal countries" believe that human rights reflect only a Western approach to their assessment and do not consider national traditions and cultural characteristics. This raises doubts as to the existence of universally accepted notions of human rights. The "civilization aspirations" of the Christian West cause the opposite effect, for example, of the Muslim East, as well as of other regional, civilization, national, ethnic, and other communities. Thus, the American political scientist S. Huntington and his colleagues complain that in the last years after the end of the Cold War "the world has become much more destructive and confusing than it was before" and predict that the 21st century does not exclude the clash of civilizations and religious wars (Trundle, 1996). Globalization is a complex process, which has its negative aspects as well. "For many people, globalization means destroying traditional livelihoods and local communities and threatening environmental preservation and cultural diversity. As the ongoing process of cross-border interaction and interconnectedness gathers pace, there is a growing debate not only about inequalities among countries, but also about inequalities within countries and their impact on people, families, and society" (Spravedlivaya globalizatsiya: sozdanie vozmozhnostey dlya vsekh, 2004). The contradictory nature of globalization is manifested primarily in the realization of proclaimed rights. This relates to social policies in the field of human rights. Economic rules dominate social ones (Loshkarev, Lavrentyeva, Chinaryan, 2018). The economy is becoming increasingly global and this certainly leads to increased employment, however, transnational corporations sometimes actively violate civil rights in pursuit of profit. This primarily concerns labor rights, discrimination based on gender, age, nationality, etc. Violations of the rights of an individual or group of people are becoming a global threat and must be addressed together.

Serious problems with human rights violations now arise in the area of information technology, where the rights to privacy, freedom of movement, peaceful assembly, participation in the conduct of public affairs, and so on, are violated. The personal database is now the subject on which some companies build their business. They pursue their own goals and interests and do not focus on the observance of human rights.

A major problem is an imbalance between the distribution of revenues from globalizing processes in the economy between countries. Economic globalization can lead to better living conditions for people in developing countries but can also cause economic exploitation, oppression, and violation of economic rights in many countries. "The most vulnerable in terms of rights and freedoms remain indigenous peoples, women, and the working poor without skills and means of production. According to data of 2015, over 250 million children in the world are employed: 153 million underage children work in Asia, 80 million in Africa, and 17 million in South America" (Garcheva, 2018).

Generally, the modern development of human rights is expressed in the intertwining of two processes — universalization — the development of a common approach and unification — the introduction of uniform norms into legal systems (Rimashevskaya, 2001). There are two approaches to the universalization of human rights. Firstly, universal rights are a real fact fixed in international documents. They express the universal, permanent, and necessary for man and mankind's development. The main problem is that today, there is no universal mechanism for

ensuring these universal rights. Human rights are declared as "universal, and the responsibility for their realization remains local, i.e., they are imposed on a particular state and are limited to the territory and citizens under its jurisdiction" (Gibney, Tomasevski, Vedsted-Hansen, 1999). Secondly, the concepts of human rights and human values are closely linked in the minds of people to the features of civilization to which they belong and which have determined their living conditions for many hundreds of years. Based on the diversity of the world, one cannot reduce all rights and freedoms to their mechanical uniformity in the form of universal rights and freedoms. There are about 5,000 culturally distinct ethnic groups and over 60 linguistic groups in the world. Therefore, it is important that "universal human rights would not be based on the universal concept of human rights, but on the universal concept of interstate cooperation in the field of human rights. Thus, trends in the development of human rights in the globalization context should include the expansion of the concept and notion of human rights based on the contradictions between universalization and regionalization" (Ivantsova, 2018).

Conclusion

In the process of solving the "universalism-regionalism" problem, it should be assumed that if it is possible to create nowadays, on the wave of globalization, "universal" standards that consider the characteristics of all regions of the world without exception, they will inevitably be overly general and abstract, and that along with universal human rights standards, there should be regional and national standards that detail and "justify" them. The development of a unified, global, embracing, and incorporating the characteristics of all countries and regions of human rights standardization is not possible. Rights that have emerged as universal rights are very common rules in the modern world, and in reality — the principles of relations between individuals, formed communities, and various state and supranational institutions. The more globalization is being implemented, the more growing the trend of contradiction between these common universal rules and the rules of a particular state becomes. It establishes responsibility and builds its laws in accordance with the features of civilization, which have determined their living conditions for many hundreds of years.

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