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Civilizational and culturological aspect of philosophical and legal studies of observance of human rights

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Abstract

The main purpose of the article was to study the key elements of the civilizational and cultural aspect of philosophical and legal research on the observance of human rights. The subject of the research was specifically the philosophy of human rights observance. Methodologically it is descriptive research developed in the domains of legal philosophy and logic. The scientific novelty lies in the fact that in modern legal discourse several approaches to the modern cross-cultural substantiation of the idea of human rights have been identified. Among them deserve attention the theories of human rights, based on the self-limitation of negative manifestations of a person, the ontology of spheres of human existence, the idea of human identity and the possibility of intercultural legal discourse. All allowed to conclude that, the further development of a theory of human rights acceptable to the majority of countries, in the opinion of the authors, is connected precisely with the otological concepts of human rights, among which the intercultural legal approach can be of great importance, in heuristic and hermeneutic terms.

Keywords: civilizational aspects; human rights; legal aspects; philosophy of law; intercultural law.

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Aspecto civilizatorio y cultural de las investigaciones filosóficas y jurídicas sobre la observancia de los derechos humanos

Resumen

El propósito principal del artículo fue estudiar los elementos clave del aspecto civilizatorio y cultural de la investigación filosófica y jurídica sobre la observancia de los derechos humanos. El tema de la investigación fue específicamente la filosofía de la observancia de los derechos humanos. Metodológicamente se trata de una investigación descriptiva desarrollada en los dominios de la filosofía jurídica y la lógica. La novedad científica radica en que en el discurso jurídico moderno se han identificado varios enfoques de la moderna fundamentación intercultural de la idea de derechos humanos. Entre ellos merecen atención las teorías de los derechos humanos, basadas en la autolimitación de las manifestaciones negativas de una persona, la ontología de las esferas de la existencia humana, la idea de identidad humana y la posibilidad del discurso jurídico intercultural. Todo permitió concluir que, el desarrollo ulterior de una teoría de los derechos humanos aceptable para la mayoría de los países, en opinión de los autores, está relacionado precisamente con los conceptos otológicos de los derechos humanos, entre los cuales el enfoque jurídico intercultural puede ser de gran importancia, en términos heurísticos y hermenéuticos.

Palabras clave: aspectos civilizatoros; derechos humanos; aspectos jurídicos; filosofía del derecho; derecho intercultural.

Introduction

In the globalization context, the problem of human rights is sharply discussed in two planes: the natural-legal understanding of the origin of fundamental human rights, that is, their universality and cultural differences (pluralism) regarding their recognition and implementation. This is due to the relevance of the institutional development of global law based on universal foundations (which are actually the principles of human rights), and the actualization of the problem of multiculturalism in a transitive society.

The theoretical discussion between the two dominant approaches is still going on today, but it is inappropriate to resort to certain extremes and reduce the right to only moral belonging or coercion. Since law, in our opinion, acts as a harmonious unity of both sides, definitely outlined in these concepts. Indeed, in their nature they have more in common than different, and their formation, genesis and modern production are largely

interdependent. It is a person who is the unifying basis, he is both an initiator and a practical element and a direct object of influence of a specific concept of human rights.

The confrontation between the positivist and natural-legal positions, as already noted, has been going on for a long time. Moreover, they are not limited to the sphere of scientific discourse, but also develop their concepts in individual constitutions of modern states. For example, the natural law (superpositivist) concept of human rights is implemented in the constitutions of Italy, Spain, France, the United States, and the positivist one is implemented in the constitution of Austria. Consequently, the disagreements of these approaches to the nature of human rights require the introduction of certain scientific adjustments.

Of great importance in shaping the idea of ensuring human rights was the theory of natural law, which was due to the reasoned concept declared by it of inalienable human rights and freedoms, regardless of the will of the state power, must be guaranteed and ensured at every historical stage in any society.

In the context of this paradigm, the position was substantiated that the phenomenon of distinguishing a special group of human rights, denoted by the definition of "inalienable rights", is due to the genesis and convincing scientific and theoretical interpretation of the doctrine of natural law. Motivating the phenomenon of law, the superpositivist theory appeals to the essence (nature) of a person, and not to certain external factors (the state, authorities, etc.), outlining its nature, which creates an opportunity, gives the potential to use such categories and "right ' and 'man'.

Note that it was Aristotle's teaching that became the source of lively philosophical discussions, since the thinker for the first time divided the right into natural and volitional, which is actively continuing between supporters of natural law and positivists today.

1. Materials and methods

Achieving the goal of the study required the solution of certain problems, which led to the use of theoretical ones: induction and deduction to collect primary legal information; analysis and synthesis for information processing; selection of factual material and data based on the processing of the regulatory framework; descriptive-statistical - to characterize the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights; the logical method is to understand the patterns of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights; retrospective - in

order to clarify the features of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights.

2. Literature review

As most scientists note, the key property of natural law is that its quintessence is universal human values. Natural legal concepts characterize human rights as a manifestation of the values of human existence and a manifestation of objective needs. However, it should not be ignored that the understanding of the genesis and essence of human rights was assessed taking into account two antithetical positions, a certain antipode of naturalism was the positivist approach to understanding human rights. Under the conditions of legalistic legal understanding, the concepts of state and law dominate over the concept of human rights, and in the second understanding, the dominants are the individual and their natural rights (Custers, 2021; Kzanchian, 2020; Kellman, 2021).

Human rights issues have always occupied a large place both in life and in the political and legal doctrine. In different periods of human history, human rights were and to a certain extent depend on the external environment, namely the public "shell" in which the individual existed and exists. Its convergence from a position without rights and completely dependent on this environment to freedom marks the evolution of both the actual rights and freedoms of a person, and their legal regulation.

Of course, the axiological approach to the analysis of the phenomenon of human rights is correct, since it allows comparing, on the one hand, the degree of freedom of the individual, and, on the other hand, the degree of readiness of the state to follow the proclaimed principles and norms. The entire modern list of fundamental ideas and principles in the field of human rights and freedoms was formulated in the era of antiquity and partly in the Middle Ages and served as the basis for the formation and approval of the relevant ideas and concepts of modern and modern times (Kryshtanovych *et al.*, 2022; Mantelero and Esposito, 2021).

According to scientists (Muller, 2019; Nersessian, 2018), human rights define the space that provides each person with the conditions for his self-realization, that is, the space of his personal autonomy. They are the moral criteria by which the legal order must be guided. According to their status, human rights act as independent standards for criticizing laws and other political and legal institutions, that is, as criteria for legitimation.

Human rights are, first of all, the moral rights that every person in the world has simply by virtue of the fact that he or he is a human being. Demanding our human rights, we morally demand, usually from the state,

not to do something, because this is an interference in our personal sphere, a violation of our personal dignity (Rodrigues, 2020; Sergeeva, 2022).

The content of human ontology is the direction of the will "to search for oneself in behavior", to realize the natural features of efficiency, to ensure that his actions are useful for nature and society. At the same time, the efforts of the will should be directed to the fulfillment by a person of that social role that is necessary to ensure the harmony of life, to maintain beauty, balance, which are a condition for the existence of everything natural.

Education is an objective phenomenon of social life, its function, has a national, historical character. It is an attributive element of human existence in the implementation of "humanity" that accompanies a person from the first steps of his historical existence. In every historical epoch, in every nation, the goal of education was certainly associated with ideas about a person, his essence and place in society (Zbigniew, 2019; Yukhno, 2012; Wong *et al.*, 2020).

Despite this, the issue of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights has not been disclosed and, therefore, is relevant.

3. Research Results and Discussions

The interpretation of human rights as natural is fundamental to national declarations and contemporary international documents, and continues to this day as the standard and degree of just solutions, the basis for assessing and resolving genocides, massacres and wars. The culturological and historiosophical basis of a high assessment of natural human rights is the principle of Eurocentrism, the spread to all countries of the world of the system of value coordinates developed by Western countries, and their dissemination as a single standard of law.

But over the course of the 20th century, the globalization of the world space is rapidly taking place. The cultural, economic and political expansion of the West into the countries of the third world caused a tangible protest of these countries, the search for ideologies that became an alternative to aggressive Eurocentrism and the political and legal paradigms associated with it. Among the complaints are accusations against Western countries not only of "cultural imperialism", of promoting their political and economic interests, but also of cultivating an idea of natural human rights that is alien and unacceptable to many non-Western countries.

The ideology of multiculturalism has become one that not only puts the culture of the world on the same level, but also equalizes their legal principles and approaches. It was under its influence that the idea arose

that the idea of human rights is purely Western, it was formed at a certain stage in the development of Europe, and it postulates an abstract, universal, rationalistic vision of man, which is not mandatory for all cultures of the world. So, the idea of human rights, self-evident for Europeans, needs a new justification in order to become acceptable to the countries of the non-European world (Vinogradova *et al.*, 2021; Sylkin, 2021).

In pre-modern times, the idea of rights and freedoms depended on the characteristics of the class society. Representatives of those social classes were considered free who freely obeyed the political and legal Law recognized by the authorities, recognized the supreme Law of God over themselves and did not belong to the disenfranchised part of the population of slaves and serfs. The rights and freedoms of people were endowed by God and the ruler of the country. God endowed with the highest freedom to make a moral choice, and the ruler, who acted on the basis of political law, imitated dynastically or blessed by the Church, gave state-political rights and freedoms.

Enlightenment doctrine of human rights comes from the idea of a single universal nature of man - a rational, moral, free and creative being. It is valuable in itself because it is the main active and conscious agent of life and social relations. And it does not matter what cultural environment a person belongs to, the main thing is that under no circumstances can he be deprived of rationality, morality, freedom (Sylkin, 2021).

In the late 19th and early 20th centuries, the classical view of a person was replaced by the non-classical ideal of cultural relativism, whose representatives argued that it was impossible to talk about a person and his rights without taking into account the cultural context. Every culture has its own «image of man».

And if we respect the right of cultures to their own way of existence, we must accept the existence of cultures for which man and his rights do not represent the highest value. This is, for example, ancient China, Egypt or Byzantium, which did not give rise to the idea of human rights, and therefore, it is not universal, which means that no one has the right to spread it, let alone impose it on other peoples.

In the philosophy of the late twentieth century, theories are becoming more and more common, in which the rejection of the enlightenment interpretation of the universalism of human nature and his rights are replaced by the concepts of the plurality of human nature. They focus on the diversity of forms and manifestations of man. So, the relativism widespread in the conditions of globalization has also touched upon the fundamental problem of human nature and his rights, which actualizes the discussion of legal anthropology alternatives to the classical theories.

At the beginning of the twentieth century, the search for alternatives took place in many directions. In particular, the position of a kind of minimalism in understanding the essence of man is promising. This approach proposes to abandon any metaphysical statements about the essence of man, to leave all the grandiose supernarratives of human existence.

Acceptable for all cultures and situations is the position that a person is a being capable of both constructive and creative activity, social peace and tranquility, and non-constructive, destructive activity. A person can potentially be both a perpetrator and a victim. If he chooses the first path, then he becomes a potential victim for others. Conversely, the role of the victim prepares her and others for the crime. Hence, the thesis arises that the only way to remain human is to give up the role of the victim and the role of the criminal.

Legal theory can be derived from the ontology of the main spheres of human existence - the body, will, communication, understanding. The existence of the body, its needs and aspirations constitute the human right to a decent life. In accordance with this, the right to a healthy life, the right to one's own emotions, and even the right to peace and pleasure are established. The desire and will to live, the need and ability to make a choice determine the right to freedom and independence of human existence.

Everyone should be able to make their own decisions and be responsible for their consequences. The reciprocal right to have another's freedom imposes certain restrictions on my freedom, but gives rise to respect for the rights of others. The existence of speech and the need for communication determines the human right to freedom of speech and discussion of any issues. Since we are confronted with the opinions of others, the right to one's freedom of speech is respect for the right to express another.

Freedom of expression implies freedom of thought and one's own understanding, and hence the right of everyone to their own opinion, its upholding and protection. A similar rationale can be applied to any culture, but only when that culture recognizes that the satisfaction of these human needs is desirable.

Recently, in substantiating the idea of rights, arguments have appeared that come from the idea of human identity. Man as a person has the right to an original and identical existence. In addition to personal identity, one can talk about cultural, social, religious, political identity. In particular, when we talk about human rights in the context of cultural identity, it should be remembered that in a certain cultural environment, rights can have a peculiarity that is not typical for the West.

This is explained by the determining influence of local traditions, which should be taken into account. So, if for European countries the practice is widespread when children give their parents of advanced age to shelters

to preserve their rights, then in Africa this situation is perceived as a violation of human rights. For example, according to individualistic ethics, monogamy is the norm, while the ethics of tribal solidarity in the East allows polygamous families. You can also give examples of the difference in the assessment of the punishment in different countries of the world or even cultural differences in relation to the death penalty. Justification of law from the standpoint of cultural identity makes sense if the diversity of cultural identities of different legal groups is recognized.

Another methodology of law, the theory of intercultural discourse, can become a deepening of the previous one. According to this approach, in a situation of the cultural diversity of the world, one should not only take into account the uniqueness of human communities and their ideas about a person, but also strive for an intercultural legal dialogue.

Intercultural discourse is based on the basic recognition of the cultural identity of the community, which does not allow the imposition of a certain model and argumentation of one community (for example, Western) on another (for example, Eastern), one's own vision of a person and his rights - to other cultures.

On the other hand, the absence of a generally accepted theory of human rights, shared by representatives of various socio-cultural and civilizational communities, requires the establishment of basic principles that are acceptable to all, since value conflicts will occur between these cultural communities. The search for common values is an important task of international intercultural discourse. Its result is the adoption of the thesis that the highest value for all cultures is the value of human life. And this maxim is true for everyone, despite the specifics of individual regions and civilizations.

Recognizing the right of our culture to identity, we must thereby recognize the similar right of another culture. And it is precisely in order for a meaningful dialogue to take place between representatives and foundations of different cultures that an intercultural discourse should be developed, the task of which is to create a language and an intellectual environment within which it would be possible to reach a certain agreement in understanding the problems of a person and his rights.

Human and collective rights are a variety of universal values and norms. They can receive proper legitimation in a free, impartial discussion, taking into account the specifics of the world's cultures. To legitimize human rights within individual cultures, intercultural legal discourse lays down the principles of tolerance, recognition of the significance and uniqueness of all legal cultures in the world.

The main model of the human rights protection mechanism is presented in Fig. 1.

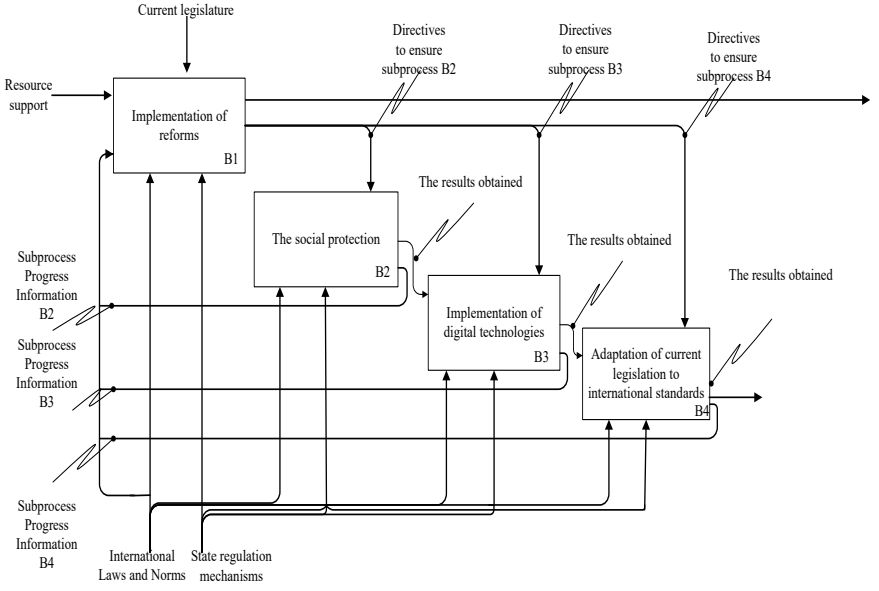

Figure 1. The main model of the human rights protection mechanism. Formed by authors.

An important part of the further development of intercultural discourse is the correspondence of universal legal norms and institutions to such an image of a person that has developed within the dominant culture. In the future, for the duration of the process of legitimation of legal norms, it is necessary to find arguments for rooting the ideological sources of this or that introduced legal phenomenon in the tradition of the host socio-cultural community. That is, the implementation of intercultural legal discourse within local cultures is a complex and multi-stage process.

Conclusions

The idea of human rights is fundamental to the development of European and world civilization. Its influence on the development of not only law, but also morality, religion, the foundations of civil society, and politics cannot be overestimated. The idea of "natural", "sacred" human rights and freedoms in one or another cultural form permeates the entire history of Europe from antiquity to the present.

To solve these problems in the philosophy of law there is no single approach. The range of views here extends from the assertion of the self-evidence of human rights to the complete denial of the possibility of substantiating human rights in general. The main paradox of the evolution of human rights lies in the contrast between the gradual withering away of their ideological roots (Christianity and classical theories of natural law) and the development of their content and jurisdiction on a worldwide level. In other words, the more the discourse of human rights spreads, the greater the uncertainty about their foundations becomes.

The scientific novelty lies in the fact that in modern legal discourse several approaches to the modern intercultural substantiation of the idea of human rights have been identified. Among them worthy of attention are theories of human rights, based on the self-restraint of negative manifestations of a person, the ontology of the spheres of human existence, the idea of human identity, the possibility of intercultural legal discourse.

In general, the results of the study implied the disclosure of the problems of analysis of the civilizational and cultural aspect of the philosophical and legal studies of the observance of human rights.

The approaches to the modern substantiation of the idea of human rights identified in the study refuse from educational approaches. At the same time, there is a search for the latest theories that substantiate the possibility of universal principles that ensure the development and implementation of universal legal norms for non-Western countries of the world. Indicative here is the theory of intercultural legal discourse, which demonstrates promising possibilities for realizing this goal. Further development of a theory of human rights acceptable to most countries, in our opinion, is connected precisely with the analyzed concepts, among which the intercultural legal approach can be of great importance.

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