
МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ МЕН ТАРИХЫ ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА THEORY AND HISTORY OF STATE AND LAW

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Globalization and its impact on the development of cultural rights in the Republic of Kazakhstan and the modern world

The article considers some issues of human rights development in the world of globalization on the example of human rights in the sphere of culture. For this purpose, the notion of the term “globalisation” and its influence on cultural rights have been identified. The article is devoted to theoretical and methodological analysis of cultural human rights and to the problems of their realization in the modern world under the influence of socio-economic, political, and spiritual modifications. The research is based on a materialistic understanding of the human rights system as a natural result of society's historical development. Dialectical method was used to study doctrinal and legislative sources in the field of cultural human rights as an objective social reality closely connected with social phenomena of political, economic, socio-cultural, and other nature and constantly developing under the influence of various factors in the conditions of globalization. Comparative legal analysis of the norms of constitutions, national laws and international legal acts in recognition and realization of cultural rights allowed to reveal the reform trends in the sphere of their legal regulation in the democratic states of the world. Modern trends of globalization cause changes in the substantive aspect of human rights, which requires a scientific substantiation. As a result of the study, the axiological significance of the realization of cultural human rights was proved; the objective and subjective factors hindering the protection and realization of cultural human rights were revealed.

Keywords: globalization, problems of realization of cultural rights, cultural human rights, world community, integration of cultural rights, cultural types, human values, convention.

Introduction

In today's world, globalization implies the rejection of national or ethnic peculiarities and traditions in order to spread the same standards of life and the creation based on a world-wide system of management of socio-political and cultural development of communities. The peculiarities of national mentalities, which determines the specificity of the content of cultural rights in different states of the world should not be ignored by the prospects of globalization.

Nowadays, it is a common opinion that globalization leads to the leveling of culture [1; 34]. Therefore, questions arise as to how concrete this opinion is and what interventions are needed.

The impact of globalization on cultural rights must be considered in the light of the links, substantive conditions and initiatives between culture and the right to development. In particular, the declaration on the right to development, adopted by General Assembly resolution 41/128 of 4 December 1986, addressed the cultural criterion of development. The preamble of this declaration addressed the recognition that it is a

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universal, economic, social, cultural, and political process, which aims at the constant improvement of the well-being of all peoples and all individuals. From 2016 to 2020, Kazakhstan adopted the UN Development Partnership Framework. As stated in the programme, Kazakhstan has proposed the declaration of the International Decade for the Rapprochement of Cultures 2013–2022 to promote a respect for tolerance and culture in the country. Various cultural activities are based on it [2]. This programme aims at joint processes of strengthening cooperation between the states of the world, further development of peaceful relations, preservation of our cultural rights and historical values in the context of intercultural dialogue.

UNESCO addressed this issue in the 2009 World Report. The report proposed multifaceted directions for interpreting globalization as a unidirectional and unidimensional process, driving a global market economy, averse to the standardization of transnational, rational and cultural diversity, dominated by Western countries. Accordingly, globalization can be referred to the values of modern life: people, capital, commodities, education, information, thoughts, attitudes, etc. They are viewed mainly through the media, trade and communication networks, especially with a further increase in language, educational components, services and communications, cultural goods.

The impact of globalization on the realisation of all human rights is highlighted at the global level. Going forward, the global community must recognise, respect and preserve the rich diversity of each culture, and each culture must have dignity and value. The interaction of all cultures with each other is part of the common heritage of all humanity and continues to follow the concept that globalization is a great threat to them.

Based on the above the purpose of the scientific work is to carry out a comprehensive characterisation of the problems of implementation of cultural rights and to form a holistic view of their further development in the context of contemporary globalization processes. In accordance with this aim, the following main questions have been formulated: 1) consideration of the legal basis for regulation of the implementation of cultural rights at the international and national levels; 2) analysis of the modern transformation of cultural rights in global development and highlighting the main problems of their implementation in the context of globalization; 3) finding the ways to solve problems of implementation of cultural rights.

Experimental

The conceptual scientific and methodological bases of the research were significantly influenced by the theoretical and practical works of such scientists as Z. Bauman, V.A. Kartashkin, M.S. Kemali, E. Stamatopolu, K. Omae, and others, defining the place and role of cultural rights in the system of human rights. Assessing the theoretical and practical significance of the mentioned scientific heritage, it is necessary to note that the implementation of cultural rights in the conditions of globalization processes requires further study.

The versatility, variability, and diversity of cultural human rights determine the application of a set of general scientific and special scientific methods of cognition of state-legal phenomena and processes. When considering doctrinal and legislative sources in the sphere of cultural human rights, the dialectical method was used. The logical method, which makes possible the parallel application of analysis and synthesis, induction and deduction, is the basis of a substantive analysis of the legal structure of the norms of cultural law enshrined at the international and national levels.

Results

In a globalized world, one of the ways to improve the morality of humanity is to ensure cultural rights, the sphere of education, the problem of preserving culture and raising the intellectual level.

The concept of understanding globalization at the international legal level was developed in the UN General Assembly resolution 67/165 of 20.12.2012 «globalization and its impact on the full realization of human rights». It enshrines that globalization is recognized as a complex process of restructuring with many interdisciplinary aspects affecting the realization of civil, political, economic, social and cultural rights [3].

V.A. Kartashkin's work shows that globalization has embraced all aspects of modern society, has not remained outside of it in the UN [4; 277]. Consequently, globalization covers all the countries of the globe and the peoples of the world. Under the influence of globalization arose the need for a modern transformation of national spiritual values. In this context, it is necessary to avoid culture alien to our national values, differentiating the benefits and harms of globalization occurring in the world.

According to M.C. Kemali, the territory of Kazakhstan is a space for the development of culture of all national groups living in it, suggesting three possible sources of cultural development of each national group:

- 1) the experience of cultural development accumulated by representatives of nationalities who have arrived on Kazakh soil during their life in this space;
- 2) the influence of the distinctive culture of the population;
- 3) the conclusion of interstate agreements ensuring national cultural achievements and political stability [5; 94].

The development of civilization generates new phenomena that have a significant impact on the existence of states, their structures, nations, people and the world as a whole. One of such large-scale phenomena is globalization. This relies on the peculiarities of the development of the nation-state and changes in worldview paradigms. The modern stage of the historical formation of the world community takes place under the influence of these trends, characterized by significant socio-values changes in the political and economic spheres, changes in the national foundations of cultural life [6; 10–11]. The mentioned foundations actualize the issues of humanization of society, equating the essence of national spirituality with universal rules containing norms and principles that guide humanity.

The influence of global trends reflects the ambivalent (two-faced) nature of cultural rights. On the one hand, the dominance of world culture creates a transnational threat, which is the main reason for the loss of identity and cultural autonomy. On the other hand, the most important positive results of the transformation of the modern world optimize the wide dissemination of cultural patterns among the population, achieving the values and achievements of other cultures. One can refer to the constant renewal and innovative nature of modern culture [7; 88–89].

Nowadays, the understanding of freedom of access to cultural goods through the use of modern methods is expanded by considering it on the global level. In today's world, globalization refuses national or ethnic particularities and traditions to have the same life standard all across the world. On this basis the creation of a worldwide system of management of socio-political and cultural development of communities is implied. At the same time, the future of universal globalization in the name of the common good should not ignore the peculiarities of national mentalities, which in turn determines the specificity of the content of cultural rights in different states of the world.

Transformation of cultural rights on the European continent as a prerequisite for the crisis of culture indicates the imbalance between the material and spiritual side of development. Science, technology, material achievements over time changed the overall concept of culture. Combined with the ideas of power, control, achievement, transformation, it gained more weight and importance than the spiritual values of mankind. Therefore, one of the civilizational characteristics of cultural human rights is their adaptation to the changing conditions of the development of culture as a whole. Gradual integrated innovative development of all mankind, as well as scientific and technological progress contribute to the diversification of cultural rights, qualitative modification of their content. However, the world community ignores the urgent challenges of modernity and globalization. Untimely introduction of changes in normative-legal acts regulating cultural human rights demonstrates the unwillingness of states to fulfill their obligations in the sphere of realization of cultural rights [8; 1594].

The above-mentioned unity of all human rights is confirmed by the case law of the European Court of Human Rights and the Convention “On the Protection of Rights and Fundamental Freedoms” dated on 04.11.1950. The Convention does not divide cultural rights into separate groups, but interprets and protects them in the context of other rights proclaimed by an international legal act. They include the following cultural rights: participation in cultural life; creative expression; access to culture; cultural identity; education; protection of cultural heritage, etc. The importance of the protection of cultural rights is explained by the increasing claims of individuals and communities belonging to national or ethnic minorities seeking to protect their traditions, values and customs. Through the European Court of Human Rights, the basis for the protection of elements of cultural law is being formed. In the jurisprudence of the European Court of Human Rights, it can be seen that the right to participate in cultural life is a separate criterion. For example, in *Chapman v. United Kingdom*, No. 27238/95 of 18.01.2001, in a case concerning the nomadic way of life of Roma and the difficulty of staging their caravans, the court defended the right of ethnic minorities to the cultural heritage based on respect for their private and family life, as well as respect for their homes. The Court pointed out that “the applicant's use of the cart is an integral part of the ethnic identity of the Roma culture, reflecting the long-standing traditions of nomadic life inherent in that minority” [9]. Such precedents are numerous, which, in turn, confirm the growing importance and necessity of developing a global mechanism to ensure the implementation and protection of cultural rights. The judicial practice of recent years demonstrates the increase of such events. Its significance lies not only in lawsuits filed by individuals,

but also in the reflection of the rights of national, religious, and ethnic minorities. The need to preserve the cultural identity of various groups is of particular importance in the integration of the community.

Transformational processes and the study of related problems in science have qualitatively new characteristics and approaches, so their theoretical understanding and conceptual analysis is required. Scholars designate that cultural human rights, their essence and content have undergone significant changes through the active influence of global trends.

Nevertheless, cultural rights are widely considered in terms of constitutional law; they are enshrined in all democratically developed countries as constitutional principles and general foundations of the constitutional order, guaranteeing freedom of literary, scientific, technical, and other types of creativity, participation in cultural life and use of cultural achievements, and protection of intellectual property.

Over time, it has been considerably adjusted by special laws at the national level and today, it has acquired a qualitative content. Thus, the development of the world civilization recognizes the importance of a number of problems related to the preservation of cultural diversity and identity in the context of the spread global mass culture. Such culture–vector states face the challenge of preserving the distinctiveness of cultural identity and maintaining appropriate cultural diversity.

It should be noted that analysis of contemporary modifications of cultural rights and the problem of human rights development and protection are closely connected. They are investigated by the development of human civilization, the improvement of social ties in society, and the intensification of scientific and technological progress. They are undergoing a substantial qualitative transformation as a result of the impact of the aforementioned trends.

The impact of globalization on the realization of all human rights is addressed in resolution 71/197 adopted by the UN General Assembly on 19 December 2016. The world community must further recognize, respect and preserve the diversity of culture. Every culture must have dignity and value. Globalization has two different effects on culture: on the one hand, it contributes to the mutual rapprochement of world culture, recognizing the common heritage of all humanity; on the other, it threatens the integrity of national culture [10].

The growing importance of cultural rights leads to a strengthening of the concept of human dignity and multilateral social interaction in today's multicultural world. In addition to the economic, political and legal space, there is also the cultural-spatial space in the state. Sociocultural space reigns in the areas where social communities and individuals are concentrated.

Based on the formation of such sociocultural space, the cultures, customs, and traditions of different geographical units within the state converge, and their respective rights are effectively exercised. Under these conditions, the state enters the channel of civilized development and the system of economic, political and cultural relations of the world community.

Taking all of the above into account, it can be said that, at the present stage of society's development, the content and mechanism for implementing cultural rights are at an extremely low level. This situation depends on a plenty of the factors. In this context, the development of a unified cross–border international legal instrument for individuals, states and the world community as a whole is of particular relevance and significance.

Discussions

There is an opinion that cultural rights are one of the most destructive manifestations of the interdependence of human rights and the state [11]. We agree with this opinion since the effective implementation of rights is associated with an effective mechanism of legislative enshrining and ensuring legal guarantees of human and civil rights and freedom. Their effectiveness creates appropriate conditions for the modernization of the legal system of the state as a whole, increasing the importance of cultural rights.

Objective reasons for negative phenomena denying the importance of cultural rights as follows:

- 1) discussion of cultural rights raises the issue of cultural relativism, which causes panic in society;
- 2) constant changes in the legal nature of the concept of “culture”, which is an integral part of the definition of cultural rights;
- 3) political difficulties arising as a consequence of the analysis and confirmation of the failure of states to secure cultural rights;
- 4) cultural rights legalize the identity of cultural groups, the idea of “nation–state” causes resentment, can generate fear related to the threat of common values;

5) the emergence of institutional weaknesses due to the lack of compromise between the Committee on Economic, Social and Cultural Rights and UNESCO [12; 4].

Therefore, it would be advisable to develop and adopt an “international plan of action for the development of effective mechanisms for the realization of cultural human rights in the context of globalization”, which would be universal and binding for all states of the world. In our opinion, the conceptual foundations of this document should include:

1) formation and coordination of the mechanism for the implementation of cultural rights, taking into account the modern challenges of globalization;

2) reforming the relevant international and national legislation;

3) establishment of responsibility of states for failure to comply with obligations stipulated in the normative legal act;

4) establishment of a single international control and supervisory body to monitor the implementation of the provisions of this document.

Differentiated inter-state cooperation and multilateral mechanisms for the realization and protection of rights at the present stage of human development have a unique role to play in responding to the challenges of globalization and harnessing its opportunities for good. At present, it is possible to talk about a change in the subjects of control in the sphere of cultural human rights. This trend has two components. First, there is a decrease in the activity of the authorized bodies of both states and individual countries in the field of ensuring and legal regulation of the whole territory of human rights. Scholars define this phenomenon as an aspect of a country's independence crisis. Second, the state is losing its position in the international arena due to the emergence of atypical systems of governance.

Today, the power of the global marketplace is greater than the political power of individual states. This leads to a reduction of state methods effectiveness on the road to development, and power is gradually transferred to modernised institutions and associations, local and regional bodies. The qualitative transformation of the world governance system today leads to a situation where states in sovereign crisis are unable to fully control, protect and enforce human rights.

According to hyperglobalists (K. Omaye), the antiquity and complexity of today's traditional methods of supporting cultural rights are pronounced, and the authority and legitimacy of states are often questioned [13; 79]. The failure of national governments to control intra-state processes has been confirmed in the course of the self-fulfillment of citizens' cultural claims.

As Professor John-Stuart Gordon notes, many people fear the loss of a unique and valuable national-cultural identity, replaced by an abstract, unfamiliar uniqueness. For example, countries in the East fear joining Western culture; some Europeans feel that European culture may be suppressed by the migration of peoples from North Africa and the Middle East. The trend of globalization seeks to preserve cultural features of civilizations. Major cultural centres (Western world, Eastern world, Islamic world, India, China and Japan) contain basic values that are incompatible with the fundamental values of other cultures, so there will certainly be a global conflict of civilizations. This is due to the fact that there are large differences in cultural inequality and individualism between Islamic and non-Muslim countries with different cultural heritages. It concludes that in the core social values of the cultural identity of nation-states, significant similarities can also be identified across all cultures [14; 118].

The integration of cultural rights suffers from a limited understanding of the concepts of cultural rights in cultural politics and sustainable development strategies and the uncertainty of their political implications. The globalized society recognizes the autonomous essence of human cultural rights only in a partial form, which is essentially a delusion.

One of the ambitious projects proposed by the Head of State N. Nazarbayev in the program article “A look into the future: modernization of public consciousness” is “Modern Kazakh culture in the global world” [15]. When carrying out modernization, it is important to preserve national traditions and customs, language and music, literature. This is a difficult and time-consuming work, which includes a number of features outdated and inimical to the global world, such as the regional division of a single nation.

Today, Kazakhstan refers to multinational and developing social institutions in the process of cultural, economic, political modernization. Therefore, in the conditions of modern globalization and integration processes, the culture of Kazakhstan as a part of the world culture should be considered as its policy, socio-economic structure, creative and artistic heritage, and potential.

As the experience of the European states indicates, the problems of cultural identification are becoming more and more modern social and democratic progress of ensuring the cultural rights and freedoms of man and citizen.

The above discussion points to the fact that the change in the mechanism of implementation of cultural rights presented in the article and the problems caused by this trend is an additional argument about the relevance of authorial unification. Moreover, representatives of different countries (state bodies, cultural organizations, scientific schools, etc.) should be involved in the development of such an international legal act in order to form a larger, more concrete and relevant set of globalized rules and state obligations.

Conclusions

In a globalizing world, control over the protection of cultural human rights must move to active structures and bodies with an important and qualitative managerial capacity. The essence of the new approach to the formation and justification of the concept of global responsibility is reflected in the comprehension of its nature. It is also paramount to develop a legitimate principle of distribution of responsibility for the observance of cultural rights between the states and other participants of the corresponding transboundary legal relations. The unification of norms and problems caused by this process is relevant in the transformation of the mechanism for the realization of cultural rights. In addition, we consider it significant that representatives of different countries (state bodies, cultural organizations, scientific schools, etc.) participate in the development of an international legal act in the sphere of cultural law in order to form a larger, more specific and universal set of globalized rules and state obligations. High interest in this problem is observed on the part of the world community, through various meetings, forums and discussions of events. Thus, cultural law in globalization, with the new pace of development of interstate relations facilitates to unite cultural values, to ensure the effective sharing of data, to preserve the authenticity of culture, to protect works and pass them on to the next generations. The world community substantiates the necessity of renewal of the approach to the concept, essence, and significance of cultural human rights, so they determine the spiritual enlightenment, self-determination of an individual and his social and legal status in general.

During the study we have come to the following conclusions: 1. When considering the impact of globalization in the modern world and Kazakhstan on the development of cultural rights, we have identified two different effects of it on culture. Globalization is beneficial to the mutual rapprochement of world culture, the sharing of the common heritage of humanity, the adoption of best practices, and the achievement of science and technology. Nevertheless, some Kazakhs can see a negative picture of anti-human behavior, negatively affecting our national identity, pointing to the reverence for national values, threatening cultural well-being; 2. The world community is invited to adopt an “international plan of action for developing effective mechanisms of implementation of human cultural rights in a globalized world”, which will be universal and binding, while maintaining the cultural identity, identity of all states. In our opinion, this document should define the basis of formation and harmonization of the mechanism of realization of cultural rights taking into account the modern challenges of globalization.

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Жаһандану және оның Қазақстан Республикасы мен қазіргі әлемдегі мәдени құқықтардың дамуына әсері

Мақалада жаһандану әлеміндегі адам құқықтарын дамытудың кейбір мәселелері мәдениет саласындағы адам құқықтары мысалында қарастырылған. Осы мақсатта «жаһандану» терминінің ұғымы және оның мәдени құқықтарға әсері ашылды. Сонымен қатар, мақала адамның мәдени құқықтарын теориялық-әдіснамалық талдауға, сондай-ақ әлеуметтік-экономикалық, саяси және рухани модификациялардың әсерінен оларды қазіргі әлемде жүзеге асыру мәселелеріне арналған. Авторлар жүргізген зерттеу қоғамның тарихи дамуының табиғи нәтижесі ретінде адам құқықтары жүйесін материалистік түсінуге негізделген. Диалектикалық әдіс адамның мәдени құқықтары саласындағы доктриналық және заңнамалық дереккөздерді саяси, экономикалық, әлеуметтік-мәдени және басқа сипаттағы әлеуметтік құбылыстармен тығыз байланысты және жаһандану жағдайында әртүрлі факторлардың әсерінен үнемі дамып келе жатқан объективті әлеуметтік шындық ретінде зерттеу үшін қолданылды. Мәдени құқықтарды тану және іске асыру саласындағы конституциялардың, ұлттық заңдардың және халықаралық-құқықтық актілердің нормаларына салыстырмалы-құқықтық талдау жүргізу әлемнің демократиялық мемлекеттеріндегі оларды құқықтық реттеу саласындағы реформалық үрдістерді анықтауға мүмкіндік берді. Жаһанданудың заманауи үрдістері адам құқықтарының мазмұндық аспектісінің өзгеруін анықтайды, бұл олардың ғылыми негіздемесін талап етеді. Зерттеу нәтижесінде адамның мәдени құқықтарын жүзеге асырудың аксиологиялық маңызы дәлелденген, сонымен қатар адамның мәдени құқықтарын қорғауға және іске асыруға кедергі келтіретін объективті және субъективті факторлар анықталған.

Кілт сөздер: жаһандану, мәдени құқықтарды жүзеге асыру мәселелері, адамның мәдени құқықтары, әлемдік қауымдастық, мәдени құқықтар интеграциясы, мәдени типтер, адами құндылықтар, Конвенция.

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Глобализация и ее влияние на развитие культурных прав в Республике Казахстан и современном мире

В статье рассмотрены некоторые проблемы развития прав человека в глобализирующемся мире на примере прав человека в области культуры. В этих целях раскрыто значение термина «глобализация» и показано его влияние на культурные права. Авторы опирались на материалистическое понимание системы прав человека как закономерного результата исторического развития социума. Диалектический метод был использован для изучения доктринальных и законодательных источников в сфере культурных прав человека как объективной социальной действительности, которая неразрывно взаимосвязана с иными социальными явлениями политического, экономического, социокультурного и другого характера и постоянно эволюционирует под действием различных факторов в контексте глобализации. Проведенный компаративно-правовой анализ норм Конституций, национальных законов и международно-правовых актов в сфере признания и реализации культурных прав позволил выявить реформационные тенденции в области их правового регулирования в демократических государствах мира. Современные процессы глобализации обуславливали трансформацию содержательного аспекта

прав человека, что требовало их научного обоснования. В результате исследования доказано аксиологическое значение осуществления человеком культурных прав, а также выявлены объективные и субъективные факторы, препятствующие защите и реализации культурных прав человека.

Ключевые слова: глобализация, проблемы реализации культурных прав, культурные права человека, мировое сообщество, интеграция культурных прав, культурные типы, человеческие ценности, Конвенция.

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