
МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ МЕН ТАРИХЫ

ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА

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Cultural rights and freedoms of the individual enshrined in the Constitution abroad: a comparative analysis

In the scientific article on the basis of studying the legislation of foreign countries the comparative legal analysis of legal regulation of cultural rights is given. The article analyzes the impact of universal and regional international treaties that enshrine cultural human rights on the constitutional legislation of a number of European States. The inclusion of cultural rights in the category of constitutionally enshrined is one of the features of the development of the legislative process in many countries of the world since the second half of the XX century. The purpose of the article is to show the development of «cultural law», and the task is to reveal the concept of cultural law on the example of the analysis of the legislation of the CIS countries and some Western European countries. Attention is drawn to the fact that the constitutions of European countries do not directly provide for the right of access to cultural property as a set of legal institutions, but a number of laws contain certain elements of this right. The methodological basis of this scientific work was dialectical, systemic, comparative legal, normative and other methods of cognition. The conclusion is formulated that the task of each state is not only their detailing in the national legislation, but also practical implementation for the purpose of preservation and rational use of the cultural heritage. It is concluded that the study of foreign experience of legislative regulation of cultural rights provides ample opportunities for its use in practice.

Key words: Constitution, cultural human rights, cultural values, European countries, legal institutions, guarantees, legal documents, legislation.

Introduction

As a rule, cultural human rights are associated with the adoption of fundamental documents designed to contribute to the establishment and strengthening of the institution of human rights in the world. In 1948, The United Nations adopted the Universal Declaration of human rights, in 1966 the international Covenant on civil and political rights and the international Covenant on economic, social and cultural rights. It is well known that the international concept of human rights is still based on the universal Declaration of human rights. If you look at the set of rights enshrined in the document, it is not difficult to make sure that any community speaks about the ideal standard of human rights to which it should strive. Such an ideal standard is the values and legal institutions that meet the level of development of modern liberal democratic society. Thus, at the present stage, it is especially important to conduct constitutional and legal studies on the problems of realization of cultural rights and freedoms of man and citizen.

Interest in foreign constitutional legislation is manifested in the definition of different classifications of cultural rights and freedoms. Therefore, we decided to conduct a comparative study of the Constitution of several countries to form the correct content of this right at the international or constitutional level. Our study

was reflected on the analysis of the content of this right and determining that they are closely related to other categories of law and clarifying the existence of a category of separate constitutional law.

We are wrong to say that cultural rights are essential in the modern life of society and the nation, revealing it, forming the basis of individual and unique development of society as a whole. The study of this right recognizes the necessary human rights to cultural heritage, original culture, native language, scientific achievement, education, the phenomenon of creative life and access to cultural life.

The article helps to control the degree of security of cultural rights by analyzing the Constitution (legislation) of many foreign countries. Cultural rights have arisen, especially in the constitutions of European countries, but it is difficult to find some laws. In particular, the typology of the treatment of social and economic rights needs to be addressed in order to ensure cultural rights. In this regard, it is recommended to consider cultural rights in several constitutions, international legal instruments. Cultural rights have been discussed in many post-Soviet constitutions as a catalogue of social rights associated with over-burdening the state and the return of real socialism.

Materials and methods

The methodological basis of the study consists of analysis, synthesis and other general methods. Individual scientific methods of formal-legal, concrete-historical, comparative-legal were used during the research of the article. In particular, the formal-legal method was used in the analysis of the norms of law governing constitutional and legal relations in the field of cultural law. The comparative legal method was used in the study of the constitutional rights of foreign citizens in the field of cultural law. These methods of analysis allowed to determine the place, role and essence of cultural rights and freedoms of man and citizen.

Results

In the modern world, cultural law is a step for a person and a citizen of a decent and free life, social prerequisites for meeting spiritual needs, the basis of moral education. The significance of this category of law for the state is expressed in the fact that it characterizes it as a democratic and legal state.

In order to achieve these objectives, States aim to promote freedom of creativity, ensure the right of everyone to participate in cultural life and to use cultural institutions and access to cultural values. However, in practice, there is a decrease in the participation of the state in the support of national culture, which has a negative impact on the protection of human and civil rights and freedoms in the field of culture. In the course of the implementation of cultural rights and freedoms, there is a lack in the current legislation of the norms necessary for the study of modern social relations.

As for the world experience of constitutional regulation, the right of citizens to access to culture, the right to use cultural values are officially recognized by the basic laws of many countries of the world. In many post-Communist constitutions that emerged in the 1990s, cultural law did not have the same status. In this article, an example is the constitutional legal regulation of the Polish country. The preamble of the Constitution of the Republic of Poland assigns a great place to cultural heritage in the formation of Polish statehood and national identity and covers the organizational principles reflecting the goals and objectives of the state to achieve culture. In accordance with this, the Polish country creates conditions for access to culture and dissemination of culture, preserving the connection of the Polish people living abroad with the national cultural heritage. This regulation provides for the definition of state policy in the field of access to culture, in accordance with article 73 of the Constitution of Poland, everyone is guaranteed freedom of artistic creativity, scientific research and disclosure of their results, freedom of education, as well as freedom of use of cultural property. Polish citizens are also guaranteed the right to establish their own educational and cultural institutions for the development of their language, the preservation of morality and traditions, as well as the development and protection of their culture. Article 62 of the Polish Constitution refers to the right of access to the national cultural heritage [1].

Polish citizens have the full right to the development of national culture, the use of cultural goods for creative activities. It ensures that every citizen does not lose the roots of culture and the values of culture in the formation of a cultural way of life. Thanks to this, the culture does not become obsolete, it retains only viable elements.

Another important aspect of cultural activity is that the emphasis on Polish culture, which determines the identity of the Polish people, is a national problem. The two principles of equal access to the benefits of culture and the principle of freedom of creativity and freedom of use of cultural works occupy an important place in the Constitution. This is a rule guaranteed by the Polish state, so they are protected by generally ac-

cepted law. It should be noted that the application of constitutional principles relating to the sphere of culture cannot differ from the objective, social context.

It can be said that in European countries a standard has been formed for the financing of culture, in most of which funds set standards that determine the competitive procedures and are provided by independent expert bodies.

A. Kosinskaya noted that the average inhabitants of Europe today work with a good source of income than in 150 years, so the demand for entertainment related to cultural offerings is growing in society. Under the Polish Constitution, everyone is given the freedom to use culture. The right to participate in cultural life, the right to the development of science and the use of its achievements, as well as the protection of artistic and scientific activities are provided only by the Constitution at the level of high legal force. Culture language, customs, beliefs, way of governing, architecture, art, education system, etc. it includes such spheres of cultural life as [2; 18]. One of the tasks set by the Polish state is the involvement of society in the national culture and the formation of actions that activate the level of participation in culture.

Discussion

On the basis of the comparative analysis of guarantees of constitutional rights of citizens of the Republic of Kazakhstan and foreign countries in the field of cultural law in the national legislations of the studied States, the task of creating specific mechanisms for their protection is assigned. Norms on the tasks of creating the necessary conditions for the realization of cultural rights and freedoms of citizens abroad are contained in the Constitution (Poland, the Netherlands, the Republic of Belarus, Georgia, Ukraine, Portugal, etc.). The Constitution of the Republic of Kazakhstan contains norms declaring cultural rights and freedoms (from articles 19,20,30,37). The consolidation of state obligations to ensure this group of rights and freedoms at the level of the Constitution of the Republic of Kazakhstan will contribute to increasing the responsibility of public authorities for the creation of guarantees for their implementation.

In the Constitution of many States, the achievement of participation in cultural life is an important and necessary element in the creation of a person's identity and presupposes that for personal development and self-determination of a person it is necessary from the point of view of protecting the dignity of this right. In particular, the Finnish Constitution recognizes the right to participate in cultural life as a duty of the state. The state shall meet the cultural and social needs of each person by guaranteeing his right to use the Finnish or Swedish language, and not only guarantees the preservation and development, access of other ethnic groups to their language and culture, but also assigns a positive task to ensure access to these cultural goods (article 17) [3].

Also, the Constitution of Lithuania guarantees freedom of science, culture, research and education (article 42), the state supports culture and science, takes care of the historical heritage of Lithuania, works of art and cultural monuments (paragraph 2 of article 42). As stated in the Constitution of the Republic of Lithuania (25 October 1992), citizens belonging to national associations have the right to develop their language, culture and customs (article 37). In article 41 of the Civil code of the Republic of Kazakhstan: education of persons under the age of 16 years is mandatory; education in state (self-government) General vocational schools and higher education institutions is free; higher education is available to all in accordance with the abilities of each person. Citizens who successfully study in higher education institutions are guaranteed free education. Spiritual and material interests of the author related to scientific, technical, cultural and artistic creativity are protected by law [4]. Consequently, the Lithuanian country sets itself the task of improving cultural law and other important issues related to this law.

Article 44 of the Spanish Constitution States: «public authorities uphold the right of access to and care for all culture». In addition, article 46 prescribes the enrichment, preservation and maintenance of the historical and cultural heritage of the peoples of Spain in relation to public authorities. At the constitutional level of Spain, cultural human rights are widely recognized, as the concept of the interrelationship of all human rights in General is based on the ideology of promoting the progress of culture and the economy to ensure the proper quality of human life. The Preamble of the Spanish Constitution, adopted on 27 December 1978, protects the rights of all Spaniards and peoples, including their culture and traditions, language and institutions; it is proposed to develop culture and economy to ensure a decent standard of living for all people Article 20 (b) of literary, artistic, scientific and technical creativity; (c) Where freedom of teaching is considered, Article 27 has the right to education for all citizens. Education is the goal of the full development of the human person on the basis of respect for the principles of democracy and the realization of fundamental rights and freedoms. Public authorities guarantee the right of parents to educate their children in accordance with their

religious and moral beliefs. Primary education is compulsory and free. Public authorities will fully consider the obligation of all citizens to guarantee the right to education through the establishment of universal planning and education centres with the effective participation of all stakeholders. Also promotes the development of science, scientific and technical research in the common interest. Article 46 of this law the public authorities shall guarantee the observance and protection of the historical, cultural and artistic heritage of the peoples of Spain and the legal regimes of its constituent parts. The criminal law stated that it takes and authorizes appropriate measures to encroach on this inheritance [5]. A special place in the system of constitutional norms of the Kingdom aimed at regulating the development of cultural rights of citizens is occupied by provisions on the strategic vector for creating the necessary conditions for the free participation of young people in cultural development. It is gratifying that in this legislation there are many activities related to cultural law.

In paragraph 2 of article 26 of the Constitution of the Russian Federation (December 12, 1993) States that everyone has the right to use their native language, fluency in the language of communication, education, training and creativity. Under article 43 of the Russian Constitution, everyone has the right to education. In state or military educational institutions and enterprises, the availability and free of charge of pre-school, basic General and secondary vocational education is guaranteed. Everyone has the right to receive higher education on a competitive basis in state or municipal educational institutions and enterprises. Compulsory basic General education. Parents or persons replacing them provide basic General education. The Russian Federation establishes Federal state standards of education, supports various forms of education and education. Also, recognizing the right to participate in cultural life, article 44, paragraph 1, guarantees everyone the freedom to read literary, artistic, scientific, technical and other creative works. Answer: in accordance with this, everyone has the right to participate in cultural life and use cultural institutions, access to cultural values[6]. Thus, in accordance with the content of the Russian Constitution, the right to participate in cultural life is the right of every person and subjects in these relations. During the analysis of the Constitution of Russia, we noticed that cultural and spiritual values do not leave indifferent and especially need to preserve these rights.

The Constitution of Japan (may 3, 1947), in accordance with their abilities, gives equal right to education in the manner prescribed by law. All must ensure compulsory education of their wards in accordance with the law. Compulsory education is free of charge (article 26). Freedom of scientific activity is guaranteed (Article 23) and it is stated that everyone has the right to maintain a minimum standard of healthy and cultural life (Article 25) [7]. This is how the role of the state in ensuring this category of law is recognized.

In the Constitution of the people's Republic of China (December 4, 1982), the state develops socialist education and raises the scientific and cultural level of the entire people. In article 19, by creating various educational institutions, the state shall carry out primary General education, develop secondary, vocational and higher education, as well as develop pre-school education. In article 20, the state shall develop natural and social Sciences, promote scientific and technical knowledge, encourage achievements in research, inventions and innovations in the field of technology. In article 21, the state develops publishing Houses, radio and television, publishing houses, expands the network of libraries, museums, houses of culture and other cultural institutions that serve the people and socialism, conducts cultural events. The policy of this state does not remain without priority on cultural rights. Continuously develop and maintain cultural rights.

At the constitutional level of the analyzed countries, it is quite justified that cultural rights are aimed at ensuring the cultural and spiritual needs of the individual, as well as at the formation of a humanistically oriented society. For example, in the Constitution of the Republic of Azerbaijan, «the state promotes the development of culture, education, science, art, protects the historical, natural, material and spiritual heritage of the people» [9].

Tasks requiring analysis of cultural rights, in article 37 of the Basic law oblige citizens of the Republic, regardless of national characteristics, to take care of the preservation of historical and cultural heritage, to protect historical and cultural monuments [10]. These tasks should be clearly formulated and include people in the care of the national culture. Thus, for the education of a citizen in Patriotic communication is harmoniously combined in a broad sense with the mandatory transfer of traditions and heritage of the nation and the educational process is combined with the need to preserve the cultural heritage. Access to the benefits of culture and heritage should enhance the effectiveness of this process.

Despite the consolidation of a wide range of such rights at the international level, the mechanism of their implementation and protection gives grounds to argue that the creators of the legal regulation system in this area have been neglected, forming significant regulatory gaps. Transnational treaties, in particular, make

reference to the mechanism for the realization of cultural rights, which in turn creates a very unstable and bilateral legal framework for the effective protection of such rights at the interstate level.

According to the conclusion of the Polish lawyer am kosinska «some parts of the world on the issue of the right of all people to equal access to culture face great difficulties because of the civilized lag» [11;79].

Analyzing the main features of the legal regulation of cultural rights and freedoms, it is necessary to take into account not only the content of articles 19, 20 of the Basic law, but also the presence of the entire set of rules relating to the content and implementation of these rights and freedoms. In the process of developing norms of law, the instruments characteristic of constitutional regulation in General are used to regulate the content and implementation of cultural rights and freedoms. These are permissive tools, obligations and prohibitions. Thus, it can be concluded that many definitions and observations, currently the complex status of cultural rights is not defined, still need to be studied.

The constitutions of countries of CIS generally reflect these rights, however there is no uniformity in the approach to the list and content of the rights and their guarantees. The rights are admitted and attached to the constitutions, and their performance is, as a rule, guaranteed by laws and authority of state. However in constitutions of some states the variety of rights and freedoms are not reflected or set in declarative way, while others are just absent» [12;2083].

Conclusion

The constitutional and legal study has shown that the cultural rights and freedoms of man and citizen in the Republic of Kazakhstan are still provided with the minimum of all socio-economic rights. Studying the international experience in this area, it is recognized that the participation of citizens in ensuring cultural rights abroad is constantly evolving this category of law.

The development of ensuring the cultural rights and freedoms of citizens requires a certain sequence: first, scientific justification is necessary; secondly, an official concept; thirdly, legislative support; and fourth, organizational measures. As a result of the study, we came to the conclusion that the legal regulation of citizens' participation in cultural life involves the preparation of a conceptual justification. Its conceptual provision provides for the definition of this category of law, its justification, the solution of problematic issues of the ratio of levels of competence, the development of a system of special principles on the content. It also provides for clarification of certain rules of participation of citizens in law enforcement, permitted in cooperation with state bodies, cultural rights. This, in turn, obliges to clearly define the competence of cultural law. As can be seen from the analysis of EU laws in the field of culture, here the competence of unions is limited and cultural rights are primarily guaranteed at the national level by laws of a constitutional nature.

In conclusion, a comparative analysis of the legal norms of the Constitution of some CIS and European countries allowed to generalize the patterns of development and enforcement of cultural rights in the world community. In particular, the mechanism for the implementation of cultural rights of citizens on the European continent is more developed than the CIS countries, declarative norms proclaiming the recognition, respect and development of cultural rights are provided in detail and enshrined in the text of the Constitution and sectoral legislation. The above analysis leads to the conclusion that countries are only on the way to implementing European legal standards in the field of guarantees for the realization of cultural human rights. At the same time, the norms enshrined at the national level have a clear archaic character and require significant updating in the context of changes in the content of cultural human rights under the influence of global problems of our time.

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А.И. Бірманова, Г.У. Балғымбекова, А. Лавничак

Шетелдердегі Конституцияда бекітілген адамның мәдени құқықтары мен бостандықтары: салыстырмалы талдау

Мақалада шетелдердің заңнамасын зерттеу негізінде мәдени құқықтарды құқықтық реттеуге салыстырмалы-құқықтық талдау берілген. Адамның мәдени құқықтарын бекітетін әмбебап және өңірлік халықаралық шарттардың Еуропаның бірқатар мемлекеттерінің Конституциялық заңнамасына әсері талданды. XX ғ. екінші жартысынан бастап әлемнің көптеген елдерінде конституциялық бекітілген құқықтар тобына мәдени құқықтарды қосу заң шығару процесінің даму ерекшеліктерінің бірі болып табылады. Мақаланың мақсаты «мәдени құқықтың» дамуын көрсету, сондай-ақ ТМД елдерінің және Батыс Еуропаның кейбір мемлекеттерінің заңнамасын талдау мысалында мәдени құқық ұғымын ашу. Еуропалық елдердің Конституцияларында құқықтық институттар кешені ретінде мәдени құндылықтарға қол жеткізу құқығы тікелей қарастырылмағанына назар аударылады, алайда бірқатар заңдарда осы құқықтың жекелеген элементтері бар. Осы ғылыми жұмыстың әдіснамалық негізін диалектикалық, жүйелік, салыстырмалы-құқықтық, нормативтік және танымның өзге де әдістері құрады. Әрбір мемлекеттің міндеті ұлттық заңнамада оларды нақтылау ғана емес, сонымен қатар өзінің мәдени құқығын сақтау және ұтымды пайдалану мақсатында практикалық іске асыру болып табылады, сонымен қатар мәдени құқықтарды заңнамалық реттеудің шетелдік тәжірибесін зерттеу оны тәжірибеде пайдалануға кең мүмкіндік береді.

Кілт сөздер: Конституция, адамның мәдени құқықтары, мәдени құндылықтар, Еуропа елдері, құқықтық институттар, кепілдіктер, құқықтық құжаттар, заңдылықтар.

А.И. Бирманова, Г.У. Балгимбекова, А. Лавничак, А. Лавничак

Культурные права и свободы человека, закрепленные Конституцией за рубежом: сравнительный анализ

В статье на основе изучения законодательства зарубежных стран дан сравнительно-правовой анализ правового регулирования культурных прав. Проанализировано влияние универсальных и региональных международных договоров, закрепляющих культурные права человека, на конституционное законодательство ряда государств Европы. Включение культурных прав в разряд конституционно закрепленных является одной из особенностей развития законодательного процесса во многих странах мира, начиная со второй половины XX в. Цель статьи — показать развитие «культурного права», а также раскрыть понятие культурного права на примере анализа законодательства стран СНГ и некоторых государств Западной Европы. Обращено внимание, что в конституциях европейских стран право на доступ к культурным ценностям как комплекс правовых институтов непосредственно не предусматривается, однако в ряде законов содержатся отдельные элементы данного права. Методологическую основу данной научной работы составили диалектический, системный, сравнительно-правовой, нормативный и иные методы познания. Сформулирован вывод, что задачей каждого государства является не только их детализация в национальном законодательстве, но и практическая реализация в целях сохранения и рационального использования своего культурного наследия, кроме того, исследо-

вание зарубежного опыта законодательного регулирования культурных прав дает широкие возможности для его использования в практике.

Ключевые слова: конституция, культурные права человека, культурные ценности, страны Европы, правовые институты, гарантии, правовые документы, законодательство.

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