

Cultural rights as an integral part of the human rights

The article analyzes the place of cultural rights in the system of basic human rights and freedoms. The interpretation of cultural rights in various international legal acts and the Constitution of the Republic of Kazakhstan is considered. The authors consider the concept, essence, features of the structural elements of this law and the specifics of its legal regulation. The article highlights the scientific methodology of research of cultural rights and freedoms of citizens. Based on the results of the analysis, the main approaches to their study are summarized. Particular attention is paid to the issue of directions for the development of cultural rights and freedoms of man and citizen in the context of globalization. The main features distinguishing cultural rights from other constitutional rights and freedoms of citizens are outlined. The areas of cultural rights of citizens' implementation, basic problems and their possible solutions are considered in detail. Some key moments of the international adjusting of sphere of culture are examined.

Keywords: human rights, cultural rights and freedoms, the right to access to cultural values, cultural values, freedom of creativity, multiculturalism, the right to education.

Man is a being originally free, which enters into society in this capacity. This, in my opinion, is his dignity. Moreover, the man retains and develops his ability.

Following the general accepted principles and norms of the international law, art. 20 of the Constitution, the Kazakhstan sets the most important rights and freedom of Kazakh citizens — freedom right in all creative spheres. It means, that the state accepts the duty to ensure its citizens with effective means of the legal protection of these rights and freedoms [1].

«Freedom of conscience, freedom of thought is the divine fire inherent in man, that is the source of all spiritual power, every vital movement, every reasonable arrangement, that's what gives man endless knowledge». All the human dignity is based on freedom; human rights are based on it. «The topic of human rights is closely linked with the theory of personality, developed in the political philosophy of the XVIII century. The most significant feature of this theory was to assume the possibility of a harmonious correlation of the interests of the individual and the state [2; 54].

In Soviet journalism, the very idea of human rights was not first in line when mentioned in various social sciences. Human rights were in the shadow of collective interests.

The relationship between the individual and the state determines the state of society as a whole and determines the tendencies of its development.

Once the first ideas of human rights and freedoms were perceived as a social utopia. For the modern man it is difficult to imagine. The ideas of the great thinkers of the past, who were far ahead of their time and had a huge impact on all subsequent political events, were very slow and difficult to take root in the minds of people and society as a whole. However, up to the tremendous social upheavals of the 20th century — the First World War, the October Revolution of 1917, the Second World War — even states with long-standing republican and democratic traditions did not actually recognize not only the equality of all people but also the possibility of protecting a person for whom individuality and full respect for him, regardless of views, level of culture, education, place in society, well-being, race, ethnicity and color should be recognized.

But already in Brezhnev's «stagnation» years, Soviet lawyers began developing new approaches to the foundations of the constitutional system, where the citizen, not the state, was in the central place: «legal guarantees of the rights and freedoms of the individual», «legal position of the individual», «personal dignity» — these concepts allowed to transfer problems from the «state and individual» plane into the «rights and freedoms of man and citizen» plane. The process of such transformations culminated in the adoption on September 5, 1991, of the Declaration of Human Rights and Freedoms. This document proclaimed «The supreme value of our society — human freedom, its honor and dignity» (Preamble), «Everyone has natural, inalienable, inviolable rights and freedoms» (art. 1) [3; 15].

Thus, the adoption of the Declaration of Human Rights in the Russian version by the Supreme Soviet of the RSFSR on November 22, 1991 and the introduction of numerous amendments to the Constitution of the

RSFSR of 1978 marked the beginning of a new era in the development of the legal status of the individual in post-Soviet Russia.

The legal status of a person means the totality of his rights, freedoms and duties. Indeed, in all spheres of relations governed by law, a person acts as the subject of the corresponding rights, freedoms and duties. Different branches of law provide for certain conditions for the participation of a person as a subject of certain legal relationships, which are determined by the norms of a particular branch of law when they exercise their legal capacity. In other words, the legal status of a person and a citizen is fully characterized by a set of rights, freedoms and duties, which he is endowed as a subject of legal relations arising in the process of implementing the norms of all branches of law

The rights of the individual as the rights of a particular state's citizen (as well as freedoms and duties) are part of the objective right, i.e. a certain variety of legal norms within the framework of the existing law system, and at the same time these are subjective rights because they belong to individual citizens as subjects of law. Subjective rights of the individual are those specific powers that arise in a person as an individual-specific subject of law based on the norms of objective law. In other words, these are the legal possibilities of a particular person, which directly follow from the general, abstract rules of conduct established by the legislator. Again, the question arises here about the possibility of realizing the rights of a person, since any legal norm is objectively not identical with the actual social opportunity it provides.

For example, the legislative declaration in Russia of the right of all citizens to a healthy and favorable natural environment does not mean, unfortunately, that every citizen already has the actual opportunity to live and work in a healthy environment. However, the existence of this legal norm allows interested citizens and organizations demanding from the state its security, and the last is obliged to take in every specific case, within the available possibilities, all measures to protect the rights of citizens, which practically can lead to the desired result. In particular, in accordance with this right, citizens can demand in administrative or judicial order the cancellation of decisions on the placement, design, construction, reconstruction, operation of environmentally hazardous facilities, may raise the issue of bringing guilty legal persons and citizens to responsibility, bring an action on compensation for harm caused to health and property of citizens by environmental violations [4; 306].

Speaking about normatively fixed human freedoms, the state places emphasis on the free, that is, the maximum independent self-determination of a person in various spheres of life. Thus, the state seeks to minimize the regulation of human behavior precisely through non-interference in its life both on its part and on the part of others.

The optimal is to divide all the rights and freedoms into 4 large groups of rights in accordance with the allocation of the most important spheres of human life: personal, political, socio-economic, cultural.

Political rights and personal freedoms are man's opportunities in the state and socio-political life, ensuring his political self-determination and freedom, participation in the governance of the state and society.

Personal rights and freedoms are human capabilities, protecting from illegal and undesirable interference in his personal life and inner peace, intended to ensure the existence, identity and autonomy of the individual.

Socio-economic rights and freedoms are the capabilities of the individual in the production and distribution of material goods, intended to ensure the satisfaction of economic and closely related spiritual needs and interests of a man.

Cultural rights and freedoms are man's opportunities to use spiritual, cultural goods and achievements, to participate in their creation in accordance with their inclinations and abilities.

The scope of human rights and freedoms, their implementation depends on the state of society, the level of its development and the nature of the organization, on the extent to which the human right is mastered by the public consciousness.

The real scope of the rights and freedoms of citizens in each country is always a compromise that can be achieved in this community.

The problem that remains relevant today is the clear division of all existing human rights and freedoms according to various criteria. It should be noted that the effectiveness of a person's realization of his rights and freedoms depends on their correct theoretical understanding, normative consolidation, inclusion in one form or another (the rule of law, morality, customs) into the system of the society statutory regulation, fixing in international acts [5; 66].

The Constitution of the Kazakhstan has enshrined a fairly wide range of human and citizen rights and freedoms.

In the theory of state and law, it is accepted to single out the following groups of rights and freedoms:

- civil personal rights and freedoms;
- political rights and freedoms;
- economic, social and cultural rights and freedoms.

At the same time, the group of cultural rights and freedoms is unjustly united with a group of economic and social rights.

Among all the diversity of rights and freedoms, of course, the fundamental human rights, such as the right to life, the right to freedom, the right to equality, are highlighted.

It so happened that the greatest attention of scientists (theoreticians) and lawyers-practitioners is drawn to economic and social rights and freedom.

Speaking about the cultural rights and freedoms enshrined in the Constitution of the Kazakhstan, it should be said that the list of these rights and freedoms is still not exhaustive and concretized, and therefore collisions in their legal regulation are possible.

The problem of distinguishing social rights, on the one hand, and economic and cultural rights, on the other, is more complex because of the tradition of a common understanding of these groups of rights that has taken root in national jurisprudence.

According to Part 2 of Article 44 of the Constitution, everyone's right to participate in cultural life is largely ensured by the accessibility of cultural institutions. Everyone has the right to accede to cultural values, for access to state library, museum, archival funds, and other collections in all areas of cultural activities.

If Parts 1 and 2 of Art. 20 of the Constitution refers to rights, the Part 3 describes the duty of every citizen to care for the preservation of historical and cultural heritage, to preserve monuments of history and culture.

The sphere of cultural rights and freedoms lies in a special plane and abounds with terms not quite common for law theorists.

The basic terms are «culture» and «creativity». Culture (from the Latin *cultūra* means «cultivation», «upbringing», «education», «development», «honoring») is a historically determined level of development of society and man, expressed in the types and forms of organization of life and activity of people; as well as in the material and spiritual that they create.

Creative freedom is one of the most important spiritual freedoms. Creative freedom is not absolute, as there are some limitations in this area (as in all others). No matter how creative a person is, he lives in a society that obeys certain norms and observes the necessary rules of behavior.

In the current legislation there is no legal definition of the concept of «creativity» [6; 34]. One of the definitions of the concept of «creativity» means «the process of creative activity» and «the result of creative activity, translated in a specific objective form» [6; 36].

Creative activity is the creation of cultural values and their interpretation. Creativity is an activity that generates something qualitatively new, never before existed. Any type of activity may act as creativity in any field: scientific, production-technological, artistic, political, etc. — where something new is being created, opened or invented.

In addition to the Constitution of the Kazakhstan, cultural rights and freedoms are fully described in the Law of the Kazakhstan 2010 «Fundamentals of the Kazakhstan Legislation on Culture», No. 280-IV, dated May 27 (as amended and supplemented) [7].

This includes the right to creativity, the right to personal, cultural identity, the right to adhere to cultural values, the right to humanitarian and artistic education and freedom of teaching, the right to property in the field of culture, the right to create organizations, institutions and enterprises in the field of culture, the right to create public associations in the field of culture, the right to export abroad the results of own creative activity, the right to cultural activities in foreign countries, the rights of foreign citizens and persons without citizenship in the sphere of culture.

Thus, the issue of isolating cultural rights and freedoms from social (social and economic) in the system of rights and freedoms of a man and citizen as an opportunity for the emergence of a new institution of cultural rights is quite acute.

In connection with the vagueness and uncertainty of the concept «cultural human rights» both in international legal documents and in national legislation, the interpretation and clarification of the content of the above concept is more significant.

Cultural rights require a special legal regulation of the specification of specific parameters of their content. So the theory of state and law distinguishes three generations of human rights, and the distribution of cultural rights and freedoms is different: in one approach, cultural rights and freedoms are (along with economic and social) to the second generation, and, in the other, to the third generation (there with cultural rights are included in the social) [8].

There is also a completely different definition of cultural rights according to which they not only represent an independent set of rights, but also include social rights and freedoms. However, it is impossible to underestimate the interrelationship of cultural rights with the economic situation in the country and with the state policy. Cultural human rights are a special complex of human rights and freedoms, which represented person's opportunities in the field of cultural and scientific life guaranteed by the constitution or law.

Cultural rights include the right to education, freedom of teaching (academic freedom), freedom of creativity, the right to participate in cultural life and the use of cultural institutions, the right to access to cultural values. Thus, cultural rights include both social (right to education) and personal (freedom of creativity) rights and freedoms. In Kazakhstan, cultural human rights are enshrined in Articles 19, 20 and 30 of the Constitution the Republic of Kazakhstan [1].

Thus, from all the diversity of definitions and references, it should be concluded that at present the status definition of the complex of cultural rights has not yet been completed and is to be further studied. Arguing about «multiculturalism» and multinationality in the Republic of Kazakhstan, one should think about a clearer, broader and more specific legal regulation of cultural rights and freedoms of man and citizen, since the concrete claims of a person in the field of culture, art, science, as other, should have objective character and mean for a person the possibility of its full, comprehensive and free development.

Man, as a biological, emotional, psychic and socio-cultural being at once, acts as an individual, as a member of a status group in the collective and in the community as a whole. The concept of individual rights will gain some contours, if includes in its justification and proof the essence of basic human needs, clarifies the content of human and citizen rights and justifies the reality of the scope of personal human rights in the new historical conditions.

At present, in my opinion, there is a «blurring» of the boundaries between social and cultural rights and freedoms. In the legal literature there is no analysis of this kind of rights and freedoms, as cultural rights and freedoms of the person, therefore, a correct perception of them is not possible. At the same time, the separation of cultural rights from the general block of socio-economic rights and the study of their features has, in addition to the theoretical, a practical aspect. Social human rights, which are legally recognized, consolidated and expanded, are constitutionally guaranteed, legally enforced, protected, and there is no a universally recognized or agreed list of them. This is especially true of cultural rights and freedoms, since this is another concept.

Thus, is necessary to conduct a research in order to determine the place of cultural rights and freedoms in the overall system of human rights and freedoms, and in particular in the construction of related rights and freedoms (social and economic). Cultural rights are rights that contribute to the development of the spiritual world of man, which allow a person to master culture. Consideration should be given to the possibility of allocating cultural rights and freedoms from a set of social (social and economic) rights and freedoms, giving greater rights to independence and autonomy for cultural rights and freedoms, and resolving the problem of their clear definition and legislative consolidation in separate norms of law. Moreover, at present there is no certainty as to the place of cultural rights among all other rights and freedoms [9].

Practical experience shows that there is a unity and interconnection of all types of rights and freedoms. In this sense, the hierarchical construction of rights and freedoms, emphasizing the priority of some rights over others, are unproductive. It is also difficult to agree with the concepts that substantiate the absolute advantage of political and personal (civil) rights, up to the complete denial of socio-economic rights and freedoms. After all, without a certain minimum of cultural and socio-economic rights, the existence of many political and personal rights and freedoms is called into question. This circumstance takes into account the most important international legal documents on human rights, approved by the absolute majority of the countries of the world, treating cultural rights on an equal basis with other human rights and freedoms.

The purpose of this work is not to give the block of cultural rights and freedoms a special status, higher in comparison with other rights and freedoms of the situation, but to give this category exactly equal status along with personal, political and socio-economic. Political, economic, social and cultural rights reveal an important facet of the social state governed by the rule of law. It cannot and should not give all citizens legal, material and spiritual benefits, but must provide them with the opportunity to protect their right to a decent

life. However, to do this, it is reasonable to limit the freedom of others. If the state does not do this, then society will be constantly torn by acute social contradictions and eventually cease to exist.

Since the adoption of the first international acts on human rights in the UN, the importance, interconnection and complementarity of all human rights and freedoms is constantly underlined: civil, political, economic, social and cultural. Thus, in the Universal Declaration of Human Rights of 1948, the whole complex of human rights and freedoms was reflected. The Universal Declaration of Human Rights proclaims their «common standards of achievement». Its progressive nature is obvious. It is the first international act that recognizes the ethical and legal value of economic, social and cultural human rights and confirms their equal status and interrelated nature with civil and political human rights [10].

Some civil society initiatives, such as the 2007 Friborg Declaration on Cultural Rights [10], in which eight cultural rights pertaining to identity and cultural heritage, the freedom of identification with one or more communities, and the right to change such identification, access to and participation in cultural life, education and training, information and communication, and cultural cooperation (Article 2 (a) of the Friborg Declaration).

The fact of the adoption of two international covenants on human rights in 1966 is due to the ideological contradictions of that time. At the same time, everyone understood the indivisibility of these rights conceptually, which was reflected in the final act of the international conference on human rights, which was held under the auspices of the UN on April 22-May 13, 1968 in Tehran. The appeal of the Tehran Conference notes that, since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights is impossible without the exercise of economic, social and cultural rights. Despite the recognition of this fact, in practice there is an underestimation of many rights, especially cultural ones.

Cultural rights, unfortunately, are often characterized as insufficiently developed compared to other human rights. However, insufficient attention to these rights leads to the fact that they are regarded as rights of less priority. In many respects, cultural rights are fundamental when it comes to recognizing and respecting human dignity, as they protect the formation and expression of different perceptions of the world — individual and collective — and include human freedoms related to identity issues. If cultural rights are fully understood as part of a broader human rights system and are therefore based on existing norms and principles of international human rights law, they allow a deep understanding of the principle of the universality of human rights, taking into account cultural diversity.

However, in practice, there is a need to distinguish which rights can be considered cultural. The task is not simple, it can be solved only in a trial order. When investigating this issue, one should keep in mind that existing treaties are living instruments, which presuppose the preservation of sufficient space to take into account new phenomena and interpretations caused by the emergence of «new situations, demands or elements of oppression» [11; 96].

In addition, cultural rights are essential means of development, peacekeeping, poverty eradication [12] and the strengthening of social cohesion, as well as mutual respect and understanding between individuals and groups of people, with all their diversity (Article 2 of the UNESCO Convention on the Protection and Promotion of Diversity and Cultural Expressions of 2005 [13]).

It should be emphasized that despite the existence of a number of international legal acts on human rights, including cultural rights, there is no officially defined cultural right (as there are no official definitions of «civil», «political», «economic» and «social» «Rights»). Cultural rights can be defined through an understanding of «cultural rights», the development and improvement of existing working definitions. Such working definitions can be found in particular in the preamble to the Universal Declaration on Cultural Diversity (Paris, 2 November 2001) and general comment No. 21 (2009) on the right to take part in cultural life adopted by the Committee on Economic, Social and Cultural Rights cultural rights.

In particular, the Committee in its general comment No. 21 indicated that: culture encompasses, inter alia, the lifestyles, language, oral and written literature, musical and song writing, non-linguistic communication, a system of religions or beliefs, rituals and ceremonies, sports and games, methods of production or technology, natural and artificial environments, traditional cuisine, clothing and homes, as well as art, customs and traditions through which individuals, groups and communities express their human qualities and the meaning they attach to them its existence, and form their perception of the world, reflecting their response to the external forces that affect their lives. This definition corresponds to a doctrinal definition, according to which culture can be understood as a product, as a process and way of life [12], and they mean that culture involves going beyond ethnicity, language and religion.

However, it should be remembered that «nations and ethnic groups and cultural communities are pluralistic from an ideological point of view, even if they share common cultural customs» [11; 98]. In addition, inequality of opportunity must be taken into account, as they affect the ability of individuals and groups to effectively promote the identification, development and interpretation of what should be considered a common «culture» or a shared cultural heritage.

In this context, the 2001 Universal Declaration on Cultural Diversity is unique in that it lists rights that are directly related to the cultural category. In accordance with Art. 5 Declaration as a prerequisite for the development of creative diversity is the full realization of cultural rights, as defined in Art. 27 of the Universal Declaration of Human Rights of 1948 and in Art. 13 and 15 of the International Covenant on Economic, Social and Cultural Rights.

Accordingly, every person should have the opportunity for self-expression, creativity and distribution of their works in any language of their choice, in particular in their native language; Everyone has the right to a quality education and vocational training in full respect of his cultural identity; Everyone should have the opportunity to participate in the cultural life of their choice and to adhere to their cultural traditions, subject to respect for human rights and fundamental freedoms.

Some experts also compiled lists of cultural rights or normative elements of cultural rights, indicating, for example, that they cover non-discrimination and equality, freedom from interference in the conduct of cultural life (freedom of creativity and the promotion of culture); freedom to choose culture and change the choice of culture (cultures) and cultural life for participation (freedom to express one's own culture); freedom of information dissemination; freedom of international cooperation; the right to participate in the definition, preparation and implementation of cultural strategies; and other elements related to the right to participate in cultural life and resulting from the interdependence of cultural rights [13].

Cultural rights are associated with a wide range of issues such as self-expression and creativity, including various tangible and intangible arts; information and communication; language, identity and belonging to different communities; the formation of special ideas about the measure and the maintenance of a certain way of life; education and training; Access, promotion and participation in cultural life; implementation of cultural strategies and access to tangible and intangible cultural heritage.

Cultural rights protect the right of every person taken separately and in community with other people, as well as groups of people to develop and express their human qualities, their vision of the world and the meaning that they attach to their existence and development, through, inter alia, values, views, beliefs, languages, knowledge and arts, institutions and ways of life. They can also be seen as protecting access to cultural heritage and resources that enable such identification and development processes.

In this respect, several points should be noted:

First, the collective aspect of cultural rights is recognized in such documents as the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, where in paragraph 1 of Art. 3 states: «Persons belonging to minorities can exercise their rights ... individually and jointly with other members of their group without any discrimination».

Secondly, the existence of collective cultural rights is the reality of today's international human rights law, in particular, they are enshrined in the 2007 UN Declaration on the Rights of Indigenous Peoples.

Thirdly, this does not imply the denial of individual cultural rights: individuals always exercise their right, in particular, to participate or not to participate in the life of one or more communities; the free development of their diverse aspects of identity; access to their cultural heritage, as well as to the cultural heritage of others; and promoting the creation of culture, including through challenging the prevailing norms and values in societies to which they belong at their choice, as well as in other societies.

It should be emphasized that cultural rights are so closely linked to other human rights that it is sometimes difficult to draw a line between cultural and other rights. Special mention should be made of the general obligation of States to respect, protect and ensure the cultural rights of all people, without discrimination based on their specific identity, as enshrined in international law. As with other human rights, such responsibilities involve taking into account the concepts of availability, accessibility, acceptability, adaptability and conformity that were developed, inter alia, by the Committee on Economic, Social and Cultural Rights [14].

New in international law is the issue of the responsibility of non-state actors for the exercise of cultural rights. In particular, changes in the «protection, respect and provision of legal assistance» regarding the roles and responsibilities of corporate actors with regard to human rights, with particular attention to cultural rights, can be noted in this respect.

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Мәдени құқық адам құқықтарының ажырамас бөлігі ретінде

Мақалада адамның негізгі құқықтары мен бостандықтары жүйесіндегі мәдени құқықтың орны талданды. Қазақстан Республикасы Конституциясындағы және әртүрлі халықаралық-құқықтық актілердегі мәдени құқықтың түсіндірмелері қарастырылды. Авторлар осы құқықтың түсінігі, мәні, құрылымдық элементтерінің ерекшеліктері мен оны құқықтық реттеудің құндылықтарын қарастырған. Мақалада адамның мәдени құқықтары мен бостандықтарын ғылыми зерттеудің әдістемесі баяндалған. Талдау нәтижелері бойынша оны зерделеудің басты тәсілдері қорытындыланды. Жаһандану жағдайындағы адам және азаматтардың мәдени құқықтары мен бостандықтарын дамыту бағыттарының мәселелеріне ерекше назар аударылды. Азаматтардың басқа конституциялық құқықтар мен бостандықтардан ажырататын мәдени құқықтардың негізгі белгілері ұсынылады. Азаматтардың мәдени құқықтарын жүзеге асырудың бағыттары, олардың шешу жолдарын көрсететін негізгі мәселелері егжей-тегжейлі зерттелді. Мәдениет саласының кейбір негізгі сәттерін халықаралық құқықтық реттеу мәселелері қарастырылды.

Кілт сөздер: адам құқығы, мәдени құқықтар мен бостандықтар, мәдени құндылықтарға қолжеткізу құқығы, мәдени құндылықтар, шығармашылық еркіндігі, мультикультуризм, білім алу құқығы.

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Культурные права как неотъемлемая часть прав человека

В статье анализируется место культурных прав в системе основных прав и свобод человека. Рассматривается трактовка культурных прав в различных международно-правовых актах и Конституции Республики Казахстан. Авторами показаны понятие, сущность, особенности структурных элементов данного права и специфика его правовой регламентации. В статье освещается научная методология

исследования культурных прав и свобод граждан. По результатам анализа обобщены главные подходы к их изучению. Особое внимание уделено вопросу направлений развития культурных прав и свобод человека и гражданина в условиях глобализации. Выделены основные признаки, отличающие культурные права от других конституционных прав и свобод граждан. Подробно рассмотрены направления реализации культурных прав граждан, выделены основные проблемы и возможные пути их решения. Рассмотрены некоторые ключевые моменты международного регулирования сферы культуры.

Ключевые слова: права человека, культурные права и свободы, право на доступ к культурным ценностям, культурные ценности, свобода творчества, мультикультуризм, право на образование.

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