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PRINCIPLES OF IMPLEMENTATION OF INTERNATIONAL STANDARDS IN THE FIELD OF HUMAN RIGHTS

Abstract. Purpose. The purpose of the article is to establish the scope and cover the content of the principles of implementation of international standards in the field of human rights. **Results.** The article, relying on the analysis of scientific views of scholars and provisions of legislation in force, establishes the scope and reveals the content of the key principles of implementation of international standards in the field of human rights. The author proves the necessity of legislating the principles of implementation of international standards in the field of human rights, which will make this activity more efficient and effective. It is established that the implementation of international human rights standards is a rather narrow and specific area of state legal influence, since it has its own regulatory framework, implementers, etc. Accordingly, its governing principles are a special set of initial ideas, a symbiosis of fundamental principles of both general and special legal nature. **Conclusions.** It is concluded that the topic of principles of law is relevant in the modern legal literature, and scholars are constantly engaged in a debate with each other over the content, types and place of the latter in legal reality. Moreover, when projecting the results obtained to the area of implementation of international standards in the field of human rights, we have sufficient grounds to assume that within this area, the principles form the idea of regulating proceedings and improving processes related to human rights. That is, the principles in this case are an abstract legal "foundation" of state influence through legal instruments on social relations arising from activities aimed at implementing international standards in the field of human rights. Allowing for this theoretical approach, as well as the scientific views of representatives of legal science, we conclude that the principles of implementation of international standards in the field of human rights are the guiding ideas, fundamental rules, and initial provisions expressed in the rules of legal regulations, which form the regulatory mechanism for social relations in the field of human rights, and the adoption and implementation of international standards in this area.

Key words: principles, implementation, international standards, ensuring, protection of human rights.

1. Introduction

Legal reality is similar to a living organism. In its most advanced form, it is a holistic phenomenon that lives, performs certain functions and interacts with other objects. However, like any organism, law is a collection of "molecules", parts of a single whole. The smallest elements are rules, which are the basis for the ideological and abstract level of national legal reality, which reflects the public perception of law in general and is expressed in principles. It should be noted that the principles are inherent in both law in general and any regulatory mechanism in particular, such as the process of implementing international standards in the field of human rights, and therefore this issue requires a comprehensive and in-depth study in the context

of implementing international standards in the field of human rights. Principles embody the idea of law. They actually permeate the national legal reality, show the fundamental principles on which it is built, and set the vector for further development. In addition, although the principles of law are an abstract category, they are considered in the practical application of law in the "field" in the course of regulating social relations. Principles are in a dialectical relationship with the rules of law, in which they actually dissolve.

Some problematic issues related to the implementation of international standards in the field of human rights have been repeatedly highlighted by a large number of scholars. For example, the topic is under focus by: N. Bur-

kivska, I. Vakulich, V. Valihura, V. Kuzmenko, K. Levchenko, I. Lytvynchuk, O. Solomatina, S. Stetsenko, E. Titov and many others. However, despite numerous scientific achievements, scholars have actually neglected the issue of the principles of implementation of international standards in the field of human rights.

Consequently, the purpose of the article is to establish the scope and reveal the content of the principles of implementation of international standards in the field of human rights.

2. International standards for human rights

Despite the general theoretical certainty of principles in law, it is difficult to specify exactly how they are transformed in a narrow field of the implementation of international human rights standards. This problem is further complicated by the lack of scientific developments in this area. However, it cannot be argued that the category of principles is a novelty in the field of ensuring, protecting and regulating human rights. For example, the importance of the principles of law in the field of ensuring and affirming human rights is further explained in works by S. P. Pohrebniak: "The principles of law help to legitimise the respective groups of human rights. Support from the principles is very important for the establishment of the human rights institution, especially in the legal consciousness of the population. It should be recalled that the principles of law are historically an older category than human rights. Moreover, it can be argued that the emergence and universal recognition of the institution of human rights was a response to the flagrant violations of justice, numerous infringements of freedom, and the apparent denial of humanism that took place in the history of mankind. Confirmation of this thesis can be found in the events and consequences of the English, American and French revolutions. But perhaps the tragedy of the Second World War demonstrates this connection most convincingly. It was the unrestricted violence of the Nazi state that overturned the established idea of humanity and led to the practical implementation of a project in which humanity was considered superfluous, where human beings were trash and played the ridiculously insignificant role of an object to be eliminated, a worthless "res extensa" devoid of soul and reason; it was not about the occasional excesses of tyranny, but about the rational project that formed the basis of the Nazi state. This led to the development of the concept of "crime against humanity", the creation of the United Nations, and the adoption of the Universal Declaration of Human Rights (which is an important step towards ensuring human rights). Thus, each

of the fundamental principles can be used to justify the need for a particular group of human rights. For example, the obligation to guarantee personal, political and social rights can be explained on the basis of the principle of justice. In particular, the idea of justice in the context of social distribution enables the most convincing justification and constitution of the idea of social human rights. It is logical that in order to ensure equal access to decision-making on the principles of fair distribution, citizens are regarded as equals with the same political rights. Justice also requires that each individual be granted the widest possible liberty compatible with a similar system of liberty for all, that is, a broad range of personal rights shall be recognised for the individual" (Pohrebniak, 2009, pp. 71–72).

However, the key drawback of this scholar's opinion is that he does not provide a list of guiding ideas in the field of ensuring and protection of human rights. In general legal theory, this perspective has been highlighted repeatedly. For example, A. M. Kolodii argues that the principles of rights in the aggregate are grouped into as follows: 1) principles of legal consciousness; 2) principles of development of law; 3) principles of law-making, including legislative drafting and rule-making; 4) principles of the system of law: a) general legal (basic); b) inter-sectoral; c) sectoral; d) principles of legal institutions; 5) principles of the structure of law: a) general social and legal; b) public and private; c) regulatory and protective; d) substantive and procedural; e) objective and subjective; 6) principles of law implementation, including the principles of law application; 7) law enforcement principles, especially the principles of justice and legal liability (Kolodii, 2012, p. 44).

A broader classification is made by A. D. Mashko. In his opinion, depending on the area of legal rules in the system of law covered by a particular principle of law, there are: general legal principles of law, i.e. those that apply to the legal system and all branches of law (for the modern Ukrainian legal system, an example is the principles of humanity, legality, etc.); sectoral principles, regulating a particular branch of law (for example, the principle of freedom of contract for civil law in Ukraine or the principle of presumption of innocence for criminal law in Ukraine, etc.); cross-branch principles, i.e. those that are fundamental ideas for several branches of law (for example, the adversarial principle in Ukraine can be considered as cross-branch, as it is enshrined in the civil procedure, economic procedure and criminal procedure laws of Ukraine) (Mashkov, 2015).

Depending on the legal force of a legal regulation that enshrines a particular principle

of law, there are: principles of law enshrined in constitutions (for example, the principle of the rule of law, which is enshrined in Article 8 of the Constitution of Ukraine); principles of law enshrined in laws, including codes (for example, the principle of freedom of contract enshrined in the Civil Code of Ukraine, Article 3, clause 3); principles of law enshrined in bylaws (e.g., Resolution of the National Bank of Ukraine No. 415 of July 21, 2009 sets out the principles for calculating the discount rate based on the projected inflation rate) (Mashkov, 2015).

T.I. Fulei has formed her own approach to the classification of legal principles and argues that the latter are divided into: 1) universal (general civilisation) principles of law which are applicable in any system of law; 2) general principles of law (for several systems of law) – principles of the same name in the main national legal systems of the world, which have certain features and possibilities of application in both domestic and international legal orders; among them are the following: a) general principles of law for several national systems; b) general principles of law for national systems and interstate entities (e.g., the European Union); 3) principles of the system of law, including: a) principles of international law; b) principles of domestic law (general legal ones) (Fulei, 2003, p. 10).

In addition, a certain range of starting ideas of law is inherent in the field of human rights itself. For example, Principles of public policy of Ukraine in the field of human rights No. 757-14, approved by the Verkhovna Rada of Ukraine on 17 June 1999, stipulate that the work of the state in this area is based on the following principles: recognition of human and civil rights and fundamental freedoms as inherent and inalienable; ensuring the supremacy of human rights and fundamental freedoms in relations with the state; ensuring equality of all people before law and courts; recognition of the rule of law, according to which the proclamation and implementation of human and civil rights and fundamental freedoms is based only on law; prevention of narrowing the content and scope of human and civil rights and fundamental freedoms proclaimed by the Constitution of Ukraine; recognition of the presumption of personal freedom in accordance with the principle that everything is permitted except for what is expressly prohibited by law; recognition of the limited freedom of the state, its bodies and officials in accordance with the principle that only what is expressly provided for by law is permitted (Resolution of the Cabinet of Ministers of Ukraine on the Principles of State Policy of Ukraine in the Field of Human Rights, 1999).

In the modern legal literature, the principles of law are a hot topic among scholars who are constantly engaged in a debate with each other about the content, types and place of the latter in legal reality. Moreover, when projecting the results obtained to the area of implementation of international standards in the field of human rights, we have sufficient grounds to assume that within this area, the principles form the idea of regulating proceedings and improvement of processes related to human rights. That is, the principles in this case are an abstract legal "foundation" of state influence through legal instruments on social relations arising from activities aimed at implementing international standards in the field of human rights. Allowing for this theoretical approach, as well as the scientific views of representatives of legal science, it seems that the principles of implementation of international standards in the field of human rights are the guiding ideas, fundamental rules, and initial provisions expressed in the provisions of legal regulations, which form the basis for the regulatory mechanism for social relations in the field of human rights, the adoption and implementation of international standards in this area.

3. Principles of ensuring international human rights enforcement

It should be noted that the implementation of international human rights standards is a rather narrow and specific area of state legal influence, since it has its own regulatory framework, implementers, etc. Accordingly, its governing principles are a special set of initial ideas, a symbiosis of fundamental principles of both general and special legal nature. In addition, the uncertainty of this issue in academic circles enables to synthesise original approach to the classification of principles of implementation of international standards in the field of human rights, according to which these principles include the following:

1. The principle of legality. Scientific literature indicates that legality is a complex political and legal phenomenon. It makes public administration, which by its nature involves coercion, acceptable in the minds of the population and legal from the point of view of law. Legality should be seen as a principle deterring violations of citizens' rights and freedoms and other arbitrariness (Solodarenko, 2005). It is noteworthy that the principle of legality is enshrined in the Constitution of Ukraine in this sense. Thus, according to Article 19, the legal order in Ukraine is based on the principles that no one can be forced to do anything that is not provided for by law. State authorities and local self-government bodies and their officials are obliged to act only on the basis, within the lim-

its of their powers and in the manner provided for by the Constitution and laws of Ukraine (The Constitution of Ukraine, 1996). Therefore, the implementation of international standards in the field of human rights, the principle of legality reveals that activities related to the implementation of these standards shall first of all comply with the letter of the law, be legal and based on the provisions of the legislation in force. The actors of this process may not go beyond the scope of their statutory competence and take actions that contradict national legal standards.

2. The principle of the priority of national interests. It should be noted that, according to scholars, such as F. Zelikov, the national interest is a "non-operational goal", a system of preferences that underlies politics. V. Kovalskiy, O. Manachynskiy and Y. Pronkin define national interests as the real reason for the actions of the nation and the state aimed at their survival, functioning and development, a set of national goals and basic values that are of importance in the strategy and tactics in the field of national security (Pocheptsov, 1996; Kovalskiy, 1994; Lipkan, 2008). In other words, the national interest is the key goals of the country's development as a nation, expressed in political consciousness and beliefs. For example, according to the Constitution of Ukraine, the state facilitates the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine. Ukraine's foreign policy activity is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with the generally recognised principles and rules of international law (The Constitution of Ukraine, 1996). In accordance with this principle, the national interest shall be in the priority in state activities aimed at implementing international standards of any content, including those related to human rights. In other words, international standards cannot contradict the strategic and tactical goals of the Ukrainian nation's development, nor violate them in any way.

3. The principle of people's power in the process of implementing international standards in the field of human rights. The Constitution states that the people are the bearer of sovereignty and the sole source of power in Ukraine. The people exercise power directly and through state authorities and local self-government bodies (The Constitution of Ukraine, 1996). This principle stipulates that any manipulation

of human and civil rights and freedoms may be carried out exclusively by the will of the people of Ukraine, which they exercise through the representative institutions of democracy (the Verkhovna Rada of Ukraine and the President of Ukraine), delegated with broad powers, such as, the vector of implementation of the latest human rights standards into the national legal system.

4. The principle of equality. According to this principle, all people are free and equal in dignity and rights. Human rights and freedoms are inalienable and inviolable (The Constitution of Ukraine, 1996). In the field under study, this principle is expressed in the fact that the international standards introduced should not be unipolar, i.e., no new principles can be implemented that worsen the situation of any particular part of society or divide it into classes. The implementation of international human rights standards should consider the fact that the rights of all people are subject to protection without exception.

5. The principle of non-derogation of human rights enshrined in the Constitution. According to this principle, the implemented international standards cannot contradict the Constitution of Ukraine and in any way deny or narrow the human rights enshrined in its provisions.

4. Conclusions

Thus, in the modern legal literature, the topic of principles of law is relevant in the modern legal literature, and scholars are constantly engaged in a debate with each other over the content, types and place of the latter in legal reality. Moreover, when projecting the results obtained to the area of implementation of international standards in the field of human rights, we have sufficient grounds to assume that within this area, the principles form the idea of regulating proceedings and improving processes related to human rights. That is, the principles in this case are an abstract legal "foundation" of state influence through legal instruments on social relations arising from activities aimed at implementing international standards in the field of human rights. Allowing for this theoretical approach, as well as the scientific views of representatives of legal science, we conclude that the principles of implementation of international standards in the field of human rights are the guiding ideas, fundamental rules, and initial provisions expressed in the rules of legal regulations, which form the regulatory mechanism for social relations in the field of human rights, and the adoption and implementation of international standards in this area.

These principles include: the principle of legality, the principle of priority of national interests, the principle of equality, the principle

of democracy in the process of implementing rights and the principle of non-restriction international standards in the field of human rights defined by the Constitution.

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ПРИНЦИПИ ЗАПРОВАДЖЕННЯ МІЖНАРОДНИХ СТАНДАРТІВ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЗАХИСТУ ПРАВ ЛЮДИНИ

Анотація. Мета. Метою статті є встановлення кола та розкриття змісту принципів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. **Результати.** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства, встановлено коло та розкрито зміст ключових принципів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. Доведена необхідність законодавчого закріплення вказаних у статті принципів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини, що зробить вказану діяльність більш дієвою та ефективною. З'ясовано, що галузь запровадження міжнародних стандартів із забезпечення прав людини – це досить вузька та специфічна сфера державно-правового впливу, адже вона має власну нормативну основу, суб'єктів реалізації тощо. Відповідно до цього принципи, на яких вона ґрунтується, являють собою особливу сукупність вихідних ідей, певним чином симбіоз основоположних начал як загально-, так і спеціально-правового характеру. **Висновки.** Зроблено висновок, що у сучасній юридичній літературі тема принципів права є актуальною, а науковці постійно вступають у полеміку один з одним із приводу змісту, видів та місця останніх у юридичній реальності. При цьому, проєктуючи отримані результати на сферу запровадження міжнародних стандартів у сфері забезпечення захисту прав людини, маємо досить підстав припустити, що в межах цієї галузі принципи формують ідею правового регулювання провадження та вдосконалення процесів, пов'язаних із захистом прав людини. Тобто принципи в цьому випадку є абстрактним правовим «фундаментом» державного впливу за допомогою правових інструментів

на суспільні відносини, що виникають за фактом діяльності, спрямованої на запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. Ураховуючи цей теоретичний підхід, а також наукові погляди представників юридичної науки, ми дійшли висновку, що принципи запровадження міжнародних стандартів у сфері забезпечення захисту прав людини – це керівні ідеї, основоположні правила, вихідні положення, виражені в нормах юридичних актів, у відповідності до яких сформовано механізм правового регулювання суспільних відносин у галузі захисту прав людини, перейняття та імплементації світових стандартів за цим напрямом.

Ключові слова: принципи, запровадження, міжнародні стандарти, забезпечення, захист прав людини.

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