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Cultural rights in the human rights system: issues of theory

The article reveals the question of the essence, classification, concept and significance of the cultural rights of man and citizen. The author highlighted the main problems and possible ways of their solution. Attempts to disclose theoretical issues that determine the specific features of cultural human rights, their place in the system of human rights and their inseparable connection with constitutional fundamental rights. The author notes that the formation of a high level of human rights culture is of particular importance among the spiritual guarantees of this group of rights. The essence of this right is examined through the analysis of doctrinal sources and international acts. Cultural rights and their implementation contribute to the increase in citizens and the level of legal culture, and, consequently, the level of political and legal activity of citizens. The article is devoted to the development of a new category of «human rights culture» for the legal science, its content and problems of formation in the societies of the modern world within the international community as a whole under the influence of the ideas of cultural relativism and universality. The author comes to the conclusion that at the moment the legal nature of cultural human rights is recognized internationally, which has previously raised doubts in the scientific community.

Keywords: cultural human rights, features of cultural rights, cultural values, elements of the system of cultural rights, the universality of human rights, cultural relativism, human rights.

The problem of cultural human rights nowadays is discussed in many works of domestic and foreign authors. However, there is little special research devoted to cultural human rights in the modern era of globalization.

It is well-known that it, as well as rest and leisure. Social rights guarantee a decent level of material security and life. Cultural rights provide for the development of man's creative powers and abilities, his participation in the creation of material and spiritual values, access to use them to meet his spiritual needs.

Unlike economic and social rights, cultural human rights in a narrower sense are the sphere of a person's spiritual life. This sphere includes the results of people's activity in the creation of material and cultural values, the results of art works knowledge, the norms of morality and law, human abilities realized in the course of his activities (knowledge, skills, intelligence, moral and aesthetic development, ways and forms of people's communication).

The concept of «culture» and the notion of «cultural human rights» are multifaceted phenomena that integrate behavioral actions in a person and determine the meaning of his life aspirations. Features of cultural human rights in comparison with its other basic rights are shown on this methodological matrix. In our opinion, these features are as follows.

Cultural human rights are connected with numerous ties with the political and socio-economic situation in society. Actually, culture develops not only due to the creative energy of peoples, but also states based on their social and economic potential. Due to the existence of cultural rights, a person finds his personal essence only on the basis of the cultural experience of his environment (family, clan, nation). And the meaning of one's life can not be achieved without the aesthetic and ethical meanings of culture as a social and public phenomenon. Therefore, it would be appropriate to say that elements of the political, economic and social activities of human, the totality of people and society as a whole manifest themselves in the basis of cultural human rights.

Cultural rights as a set of behavior norms and as a value-semantic orientation presuppose the consent of a society certain part to co-existence under certain rules. They are based on the limitation of self-will. So, if a person «accepts the proposed social life style based on following rules and norms, one can talk about the readiness for self-restriction of the personality and its inclusion in a certain cultural paradigm» [1; 52].

Cultural rights are beneficially influenced the manifestation of freedom, which turns into permissiveness in the absence of a behavior culture. It is impossible not to agree with T.V. Glazkova in the fact that culture as a whole, and, consequently, cultural rights act as a «tamer of freedom, preventing its transformation into permissiveness» [1; 54].

Understanding the cultural rights as a special group in the social sphere was formed in the world practice by the end of the twentieth century. The importance of cultural rights is growing. The role of cultural policy in the international arena is also growing, cultural interaction is one of the most important elements in the implementation of diplomacy. A «social quality of life» can not be achieved without access to culture, without enhancing the cultural potential of both man and society. Achieving the «quality of life» is a target humanitarian attitude. It is impossible to master the culture, embracing both the new technogenic possibilities, and the moral dimension of the development of modern society without this attitude. Historical experience shows the need to pay special attention to cultural human rights. Thus in the course of time there are significant changes in society that require legal registration.

By the end of the XX century the cultural rights regulated in the Universal Declaration of Human Rights and developed in international agreements and other human rights instruments acquire a new and important importance. Today they are «permitting rights». So dignity can not be guaranteed without their recognition and observance, without the exercise of the right to cultural identity, education or information, human. And other human rights can not be fully realized also.

Cultural rights are scattered over many and many documents, both global and regional, adopted by the UN and its specialized agencies. This, in the absence of any codifying treaty or declaration, opens the way for their various connections and groupings. In some cases, cultural rights are presented as a totality - as one right - the right to culture or the right to participate in cultural life. They can also be arranged in a more complex way.

The boundaries of cultural rights also depend on understanding the very term «culture». In the absence of any coherent definition, «culture» can be understood in different ways: in the narrow sense, as creative, artistic or scientific activity, or more broadly as a totality of human activity, values, knowledge and practice. The adoption of a broader definition of culture means that cultural rights also include the right for education and the right for information.

Cultural rights organically enter the system of human rights - political, civil, economic and social. As it was repeatedly noted, there is no hierarchy in this system. All rights are equivalent, interrelated and mutually complementary. And if any of the rights included in their common system «does not work», it invariably distorts social relations, causes an imbalance in the social system.

Cultural human rights are inextricably linked to common rights (the right to life, the right to a dignified existence) and personal rights (the right to a worldview, the right to freedom of conscience and other rights closely related to the notion of human society culture and the person himself). So, the basis of human rights, recognized by humanity as absolute values, is the concept of human dignity as the highest no comparable value [2; 68].

The case is also complicated by the uncertainty of the concept «cultural human rights» both in legal doctrine and in national laws. Based on the analysis of relevant international legal acts and legal doctrine, it is possible to distinguish conditionally the main constituent elements of the system of cultural rights:

- the right of every person to participate in cultural life;
- the right to enjoy the results of scientific progress and their practical application;
- the right of every person to protection of moral and material interests arising in connection with any scientific, literary or artistic work of which he is the author;
- the right to freedom, necessary for scientific research and creative activity.

The culture of human rights is a relatively new category for legal science. There is an inextricable link between cultural rights and the culture of human rights. Both the first and the second are an integral part of the spiritual culture. It is a «system of knowledge, value orientations and views, psychological feelings based on the recognition and respect for the dignity of a person, his rights and freedoms, as well as practical skills in their implementation and protection» [3; 21]. Both cultural rights and the culture of human rights are formed on a common basis of the relevant activities of state bodies and, of course, education (in schools, secondary and higher educational institutions, in the system of continuing education). Cultural rights are an integral part of the universal concept of human rights. In the International Bill of Rights, the essence of this concept for human rights is defined as follows: «the recognition of human dignity and human rights as the highest absolute values; non-production of human rights from the dictates of the state and inalienability of them; equality of people in dignity and human rights; the incompatibility of human rights with tyranny and oppression, fear and want, arbitrariness and crime; recognition of the values of democracy, justice; ensuring the system of international and domestic guarantees of human rights» [4; 102].

Cultural rights are usually listed along with economic and social ones. They are given much less attention and quite often completely forget about them.

This can be seen not only in doctrine, but also in state practice. Thus, it is difficult to find a constitution of the state in which, along with the enumeration of economic and social rights, there would be a chapter devoted directly to cultural rights. In most cases, constitutions are limited to mentioning the right to education.

Each year, the Commission on Human Rights discusses the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and the International Agreement on Economic, Social and Cultural Rights. An analysis of the reports on this issue during the debate once again shows an interesting fact. While cultural rights are mentioned along with economic and social rights, in fact, attention is limited to economic and social rights, whereas cultural ones are not discussed.

Like other rights, cultural human rights are traditionally defined through the category of opportunity. They are represented as a measure of the individual's ability to choose the form and type of his behavior in various spheres as established by constitutions, international and national laws. Cultural human rights as the most broad and capacious in its content category constitute the content of human behavior, thereby determining the overall behavioral cultural level in society. Precisely on this issue expresses N.S. Bondar: Human rights are the ability to use the most elementary and most important goods and conditions of person existence, ensuring security and freedom in a civil society that is objectively formed as a result of the natural development of human civilization and arising from the very nature of human [5; 212]. Thus, judging by the list factors that characterize the universalism of human rights, cultural rights occupy the same important place as political, economic and social rights.

But the question arises — do basic human rights, in addition to their obvious humanistic value, have any practical meaning. Of course, they have, since they have their practical impact on the formation of the concept of people social structure, society and the state. Such an impact goes in two directions. «From its subjective side, the basic rights are given to the subject of law, the ability to directly present their claims to be realized». On the objective side, «guarantees of fundamental rights provided by the Constitution are, first of all, guarantees of the citizen in relation to the state. They provide a direct function of protecting the citizen only against encroachments of the state, that is in the sphere of public law» [6; 33]. This is, for example, the right to use the native language and culture, to choose the language of communication, education, training and creativity freely (Part 2, Article 19 of the Constitution of the Republic of Kazakhstan), the right to receive and disseminate information in any way not prohibited by law freely (p. 2, Article 20 of the Constitution of the Republic of Kazakhstan) and others [7].

Cultural rights allow a deep understanding of the principle of the human rights universality, taking into account cultural diversity if they are fully understood as part of a broader human rights system. And they are therefore based on existing norms and principles of international human rights law. The Universal Declaration on Cultural Diversity of 2001 is unique in that it lists rights that are directly related to the cultural category. In accordance with Art. 5 of Declaration: the necessary condition 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 [8].

Some civil society initiatives, such as the 2007 Friborg Declaration on Cultural Rights [9], can be useful. They describes eight cultural rights concerning identity and cultural heritage, 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).

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. It also protect 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.

The question that constantly arises in international human rights law, especially when it affects cultural rights, refers to the collective aspect of rights. It refers to the collective exercise of individual rights, on the one hand, and the existence of collective rights as such, understood as group rights - on the other. Indeed, the very concept of «cultural life» points to the collective, and in art.278 of the Universal Declaration of Human Rights of 1948 directly speaks about cultural life of «society», which today must be understood in the plural as «societies» [10].

Given the increasing role and significance of the sphere of culture in the life of society, the further development and legislative consolidation of cultural rights is extremely relevant. The cultural rights of man and citizen are an inalienable component of human rights and freedoms. So respectively, the fundamental document fixing international standards in this field is the Universal Declaration of Human Rights adopted by UN General Assembly Resolution 217A (III) of December 10, 1948. These provisions of the Declaration of 1948 are a set of those basic standards in the field of human rights protection. In particular they are in the field of the protection of cultural rights, which determined the further direction of development of international and domestic legislation in this field. Subsequently, the UN General Assembly Resolution of 16 December 1966 adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The importance of this category of rights in the system of human rights and freedoms is evidenced by the fact that they are among the basic and inalienable rights of the individual, along with personal (civil), political, economic and social rights. However, they have a number of specific characteristics. For example, D.V. Semenova, analyzing the legal nature of cultural human rights, notes as a specific feature the close and inextricable link between individual and collective cultural rights and freedoms. She believes that the realization of a person's cultural identity is inseparable from recognizing the cultural identity of a particular group [11; 13].

The official recognition and consolidation of cultural rights and freedoms falls on the middle of the 20th century. They are traditionally referred to as «second generation» rights, but their appearance is historically inextricably linked with the emergence of cultural relations in society, with the emergence of creativity. The most important feature is their natural inalienable character. They belong to everyone from birth, and their realization does not depend on the citizenship of the person. At the same time, they can be individual and collective. Human rights and citizen's rights in the field of culture are aimed at the cultural socialization of the individual as noticed Y.V. Kurakina [12; 140]. It is necessary to pay attention to the non-absolute nature of cultural rights and freedoms. These rights can be limited by the state in order to ensure the necessary recognition and respect for the rights and freedoms of others, morality, order and welfare in society.

Culture is inextricably linked with a separate person, with its activities, actions, and creativity. Relations arising between subjects in the field of cultural life of the Kazakh society, the state, are regulated, first of all, by the Constitution of the Republic of Kazakhstan. In our opinion, the consolidation of the cultural rights of a person and citizen in the Basic Law of the country testifies to the importance and significance of this institution of individual rights. And this is due, above all, both to the growing interest in culture in general, and to various cultural aspects, including the socio-cultural and creative aspects of the individual.

The conceptual series «cultural rights and freedoms of man and citizen», «cultural life», «cultural values», «cultural goods», are interrelated categories that require deep reflection. In our opinion, the constitutional and legal aspect of cultural life should be understood a specific, regulated by the Constitution of the Republic of Kazakhstan and the current legislation activities of a person, society, the state for the creation and preservation of cultural values and traditions of the peoples of the Republic of Kazakhstan. Hence it is the tangible and intangible heritage of the culture of Kazakhstan, access of all social levels to the values of the national and world culture, their security and protection, aimed at supporting and progress of national culture, to maintain the high prestige of the Kazakh culture abroad, the expansion of international cultural cooperation, as well as spiritual development and perfection of man and nation.

In the domestic legal doctrine, there are practically no studies devoted exclusively to cultural rights. Such a state is a consequence of the tradition of a common understanding of economic, social and cultural rights that has taken root in national jurisprudence. There is an objective need for the theoretical and practi-

cal isolation of cultural rights and freedoms from social and economic rights. This group of rights has a special significance both for a specific person, and for society and the state as a whole. That is why it is aimed to ensure the all-round spiritual development of the individual and various social levels and groups in society.

For obvious reasons, cultural rights are closely related to other individual rights and fundamental freedoms, such as freedom of expression, freedom of religion and belief, freedom of association and the right to education. If cultural rights mean any individual right to culture, then in the ideal case there should be no doubt about the meaning of this term. The systematic consideration of cultural rights as human rights will require a somewhat clearer conceptual definition of the terminology of culture [13; 17].

The right to life in the theoretical development of human rights is also recognized. When we talk about cultural rights, we also mean the right of groups within a country to be able to preserve their own cultural identity and develop their own culture, even (and in particular) if it differs from the basic or dominant model of cultural development created so called «ethnocratic state» [13; 30]. Thus, cultural rights as human rights were proclaimed both at the global and regional levels.

In this respect, it is appropriate to emphasize the importance of constructive interfaith dialogue, encouraged by the Assembly of the people. The Assembly, created in 1995, received constitutional status in 2007, and it consists of nine members of parliament representing all ethnic minorities. Through the Assembly pass any legislative acts concerning ethnic issues. The Assembly plays a vital role in promoting mutual understanding and respect for the richness of linguistic and cultural diversity. Kazakhstan is a multi-ethnic society, and its unique cultural diversity is one of its strengths. To preserve and develop this valuable asset, it is essential to ensure the provision of education in various languages. One of the most important tasks facing Kazakhstan is to preserve and enrich the multicultural and multilingual diversity, while ensuring respect for the culture of the main population of the country. In this regard, education can play a key role. Interfaith and intercultural dialogue, stimulated through the Assembly of the people, can provide more space for the dissemination of universal values of human rights and democratic citizenship [14].

Today in any discussion on cultural rights, two factors must be taken into account in the context of any dialogue on human rights as Lindel Prot points out. The first factor is the huge success of the notion of human rights as a political idea and a powerful stimulus for the development of more perfect social relations beneficial to humanity. The second is the consequence of the first: the penetration of terminology relating to «rights» in many areas of analysis. Also the use of the terminology inherent in the concept of «rights», based on often unconscious assumptions and meanings. This leads to a loss of mutual understanding between the participants in the dialogue, and between them and those who listen to them [15; 241]. Since the word «cultural» defines the word «rights» in the phrase «cultural rights». In this regard, it will be appropriate to try again to clarify the understanding of the various elements of these concepts, even at the risk of recurring, in order to contribute more effectively to their implementation through discussion in the field of cultural rights.

Although economic, social and cultural rights have for years been the subject of international debate, this category of cultural rights remains the least developed in terms of legal content and enforcement. An additional obstacle hindering accelerated progress in the development of these rights stems from the fact that cultural rights are cultural rights. A difficulty arises when trying to determine which rights are cultural rights and which are not, but include cultural aspects. Another factor exacerbating the difficulties in ensuring the accuracy of determining the content of many cultural rights is the contradiction between the universality of cultural rights and the concept of cultural relativism. However, the problem of the relationship between cultural relativism and universal human rights and the related contradictions still exist, and this issue deserves an open discussion, which should not be overshadowed by political pressure.

Cultural rights include: the right to participate in the cultural life of the community, the right to use cultural institutions, the right to access to cultural values, the right to use their own language, the right to education, freedom of teaching (academic freedom), freedom of artistic, literary and scientific creativity, the right to access to progress, the right to preserve the cultural identity of minorities and the preservation of the cultural identity of peoples.

The cultural rights of man and citizen ensure the spiritual development of man, stimulate the individual to become a useful participant in political, spiritual, social and cultural progress. The main category of research is the category of cultural rights that organically enter the system of human rights — political, civil, economic, social. Cultural human rights is the participation of a person in the creation of a material and spiritual environment, the dissemination and reproduction of norms and values that contribute to the humaniza-

tion of society and mutual respect for people. Increased interest in this issue from the world community is expressed through discussion, holding various meetings, forums and events on the issue under consideration

Cultural rights are the realization of the human right to development, not only physical, but also spiritual, intellectual, social. Democratic societies can not fully function, in fact, without the recognition of cultural rights, cultural pluralism and diversity.

Thus, we can make the following conclusions:

1. Cultural rights and freedoms of man and citizen create conditions and opportunities for increasing the educational, cultural level of a person, contribute to its comprehensive and harmonious development. As already noted, culture has a leading role in shaping human capital. That is why the culture and cultural rights of the individual deserve special attention from the state and society;

2. Cultural rights and freedoms with their real provision become social value. Therefore, it is urgent to resolve the problem of creating a modern legal framework that promotes the preservation and development of a single cultural space of Kazakhstan. We should ensure the protection of human rights and freedoms of citizens, ethnic, socio-demographic and other communities of the Republic of Kazakhstan in the field of culture in order to enhance the positive impact of cultural heritage on the cultural life of modern society and future generations.

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Адам құқығы жүйесіндегі мәдени құқық: теориялық сұрақтар

Мақалада адам және азаматтардың мәдени құқықтарының түсінігі, мәні, жіктелуі мен маңыздылығы жайлы мәселелер ашылған. Адамның мәдени құқығының айрықша ерекшеліктерін, олардың адам құқығы жүйесіндегі орнымен, оның конституциялық негізгі құқықтармен тығыз байланысын анықтайтын теориялық сұрақтарды ашу әрекеті жүзеге асырылды. Автор атап өткендей, адам

құқығының мәдениетінің жоғары деңгейін қалыптастыруда, рухани кепілдіктер осы топ құқықтарының арасында ерекше мәнге ие болады. Осы құқықтың мәні халықаралық актілердің және доктриналды қайнар көздерді талдау арқылы қаралды. Мәдени құқықтар және оларды жүзеге асыру азаматтардың құқықтық мәдениетінің деңгейін жоғарылатуға, ал артынша азаматтардың саяси және құқықтық белсенділік деңгейін арттыруға ықпал етеді. Мақала заң ғылымында «адам құқығының мәдениеті» деп аталатын жаңа санатты әзірлеу үшін, заманауи әлемде және халықаралық қауымдастық шеңберінде мәдени релятивизм және әмбебаптылық идеясының жалпы әсерін тұтастай қоғамда қалыптастыру проблемалары мен оның мазмұнының ерекшеліктеріне арналған. Автор адамның мәдени құқықтарының заңды табиғаты бұрын-соңды ғылыми ортада күмән тудырған болса, ал қазіргі таңда халықаралық деңгейде танылған құқық деген тұжырымға келді.

Кілт сөздер: адамның мәдени құқықтары, мәдени құқықтардың ерекшеліктері, мәдени құндылықтар, мәдени құқықтар жүйесінің элементтері, адам құқығының әмбебаптығы, мәдени релятивизм, адам құқығы.

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Культурные права в системе прав человека: вопросы теории

В статье раскрывается вопрос о сущности, классификации, понятии и значении культурных прав человека и гражданина. Осуществлена попытка раскрыть теоретические вопросы, определяющие специфические особенности культурных прав человека, их место в системе прав человека и их неразрывную связь с конституционными основными правами. Автор отмечает, что особое значение среди духовных гарантий данной группы прав имеет формирование высокого уровня культуры прав человека. Рассматривается сущность данного права через анализ доктринальных источников и международных актов. Культурные права и их реализация способствуют повышению у граждан уровня правовой культуры, а следовательно, и уровня политической и правовой активности граждан. Статья посвящена разработке новой для юридической науки категории «культура прав человека», особенностям её содержания и проблемам формирования в обществах современного мира и в рамках международного сообщества в целом под воздействием идей культурного релятивизма и универсальности. Автор приходит к выводу, что в настоящий момент юридическая природа культурных прав человека, прежде вызывавшая сомнения в научных кругах, признана на международном уровне.

Ключевые слова: культурные права человека, особенности культурных прав, культурные ценности, элементы системы культурных прав, универсальность прав человека, культурный релятивизм, права человека.

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