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IDEAS BEHIND FORMATION OF THE INTERNATIONAL SYSTEM OF HUMAN RIGHTS

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The international system for the protection of human rights began to be used (or understood) in a broad, correlative sense: that is, it consists not only of a specific object of the rights of individuals, but also of fundamental freedoms inalienable from them (in this sense, this concept is also used in our dissertation research). A feature of the system under consideration is, undoubtedly, the so-called “international human rights standards”, which are interpreted in two ways: as strict legal obligations and as external forms of securing rights and freedoms in the form of sources or “code of international regulation of human rights”. The main purpose of such sources - "treaties and other international legal acts is ... to establish clear common standards for the behavior of states, to ensure their universal recognition and uniform application" [1]. Thus, they (standards) are “a sample, model, standard of a legal norm established by agreement between states” [2, p. 93] and, on which, in turn, control mechanisms and procedures are guided.

Thus, the international system for the protection of human rights, consistently assuming the creation, first of all, of legal guarantees, which are the creation of opportunities for regulating the

exercise of rights and fundamental freedoms, provides for the assignment of appropriate tasks to specialized bodies for the protection of these rights and freedoms. The latter are most often considered "within the framework of the so-called instrumental concept, the main idea of which is that one of the essential natural properties of positive law and its individual elements is their ability to be a means (instrument) to achieve certain goals" [3, p.140]. The foregoing means that "the key theoretical and practical problem of implementing standards in the field of protecting human rights and freedoms is to provide (create) sufficient opportunities for their protection by various subjects of legal relations by creating an appropriate institutional system" [4, p.324]. The foregoing, in turn, contributed to the formation within the framework of the international system of understanding the rights and fundamental freedoms of a person, both in an objective and subjective sense. An objective definition of human rights and fundamental freedoms began to proceed from the fact that they are enshrined not so much in international treaties as in domestic acts, adopted in their execution and corresponding to them and establishing as a result the legal status of a person and a citizen as a person. The subjective meaning of human rights and fundamental freedoms began to take shape as an opportunity belonging to a particular individual, provided for by one or another legal norm. From the point of view of the legal nature of human rights and fundamental freedoms, they did not differ from each other, and most often, for the sake of brevity and convenience, both began to be denoted by a single term “human rights”, because, as we have already noted, we are talking about phenomena of the same order.

What we have said above quite clearly emphasizes and all the more proves that both human rights themselves and the entire system of their protection are genetically and inextricably linked with international law. At the same time, as D.I. Nurumov, the point of view that “human rights are alien to international law, in essence, does not have any strong argumentation” [5, p.11]. He, speaking about the fact that "... the process of introducing human rights into the body of international law ... proceeded indirectly, through the fabric of international law", nevertheless, notes that "he was demotivated by it" [5, p.11]. “On the one hand, the ideas of human rights penetrated from the sphere of domestic law, on the other hand, they were the product of direct relations between states” [5, p.11]. This can be clearly seen, for example, when analyzing the content of various philosophical, legal and legal ideas and regarding them when considering the institution of the protection of foreigners, the formation of the law of national minorities, precedents for humanitarian intervention, etc. However, "in different historical epochs, the concept, content and scope of human rights and freedoms were not the same" [6, p.418]. In other words,

“the degree and nature of the development of human rights were determined by the “level of development of law in the corresponding society” [7, p.36].

The origin of the ideas of human rights and freedoms, namely the so-called

The “civil idea”, that is, the idea of a citizen endowed with certain rights and opportunities, as well as duties, took place in the 6th-5th centuries BC. in ancient policies (city-states). This idea, as O.V. Mosin, “was associated with the region of the world where the highest spiritual culture was formed - philosophical, legal and political thought, science, art, literature, etc.” [eight]. In this case, we are talking about “ancient policies, in particular, Athens and Rome” [8].

Ancient Greek views on human rights were formed in the general course of mythological ideas and proceeded from the fact that the policy “... and its laws are of divine origin and are based on divine justice. Law in general and the rights of individual people - members of the polis, according to such ideas, do not ascend to power, but to the divine order of justice. Similar views were held, for example, by Homer and Epicurus. But if Homer's "divine in nature justice acted as an objective basis and legal criterion" [7, p.37], then "in the concept of Epicurus justice" was natural law with changing content” [7, p.48]. The latter advocated equality, freedom and independence of both the individual and all people. Defining a person’s freedom, he wrote that “it is his responsibility for a reasonable choice of his way of life” [10, p. » [10, p.219].

Ideas about the rights of man and citizen were organically included in other concepts of the representatives of ancient Athens. Among them, Aristotle, Pericles, Demosthenes, Democritus, Heraclitus and others should be noted. Most of them also put forward the ideas of equality of individuals, while defending the high value of law and legality within the framework of the political and philosophical doctrines of the rule of law, and, therefore, considering the rights and freedoms man is inseparable from these scientific ideas.

Roman jurists made a great contribution to the development of natural law, and in essence legal ideas about human rights. As is well known, the provisions developed by them on the subject of law, on the legal status of people, on the freedom of people by natural law, on the division of law into private and public, on fair and unfair law, etc., had significant significance. [7, p.52]. A vivid example of this is, in particular, the so-called "Codification of Justinian" - a systematic presentation of Byzantine law of the VI century, developed by order of Emperor Justinian, known as Corpus juris civilis (Code of civil law) and published in 1583. Consisting in its internal structure of three parts - institutions, digest and Justinian's code, this Codification took into account some of the legal institutions that appeared in the process of its further development. For example, the Code of Justinian, which included all imperial orders (constitutions) issued from Emperor Hadrian (II century AD) to Justinian himself and consisting of 12 books, regulated in detail the relationship between the church and civil servants, within private law - property and related (or unrelated) other, non-property relations, issues related to the commission of crimes, etc. in the context of criminal law, the role and status of individuals in administrative and financial relations [11, p.321].

Using, like the ancient Greek lawyers in interpreting human rights and freedoms, the established (current) norms in the spirit of their compliance with the requirements of justice, Roman lawyers, at the same time, unlike the first, “in the event of conflicts, changed the old norm, taking into account new ideas about justice and fair law. » [7, p.55]. In general, it can be said that “Roman jurisprudence, extending to the state (as an object of its study along with positive law) a single concept of law, interpreted the relationship between the state and the individual as a legal relationship” [7, p.57].

“It is appropriate to recall that in the same historical period in other regions of the world with a different cultural field, other philosophical and legal ideas and concepts about the relationship between man and power. For example, the philosophical views of one of the most prominent ancient Chinese legists, Shang Yang (390-338 BC), substantiated the absolutization of royal power, the establishment of total control over the individual, ways of turning subjects into blind tools of kings, means of unifying thinking and general stupidity of the people as obligatory direction of state activity” [8].

The granting of certain rights and freedoms to individuals, the emergence of the institution of citizenship in the ancient world, of course, were the first major achievements in the field of protecting human rights and freedoms. At the same time, it should be noted that in this period of time they were rather closed, class and class-limited. This was manifested especially in the fact that with the acquisition of citizenship, a certain individual first of all arose political rights: participation in the management of state affairs, in the administration of justice, vague forms of freedom, etc. At the same time, only those members of society who were not engaged in physical labor, that is, those who were not slaves, had such rights. Along with slaves, some categories of free citizens were also deprived of civil rights - Latins, peregrines, etc. This situation developed, respectively, depending on the status of the individual in the class (estate) structure of a particular society and his direct participation in the then dominant system of material production. In ancient China, it was also characterized by the fact that there was a despotic state regime. This means that “the uneven distribution of human rights between different class and estate structures, and even their complete deprivation… was inevitable for those stages of social development” [7, p.14], or rather, for the slave-owning socio-economic formation. However, despite the fact that the polarization of society, the peculiarity of civilization did not lead to the universality of human rights and freedoms in the

modern sense, and also the doctrine and legally understood concept of the "rule of law" by its very nature did not ensure human security, protection and protection of his rights and interests and often restoration of rights, the following obvious fact should be recognized: “for all ... social limitations, a person’s rights and freedoms were a legal phenomenon progressive in nature” [8] for that time. Later, the processes of decomposition of the slave-owning social system, the formation of a medieval feudal society and the system of economic relations and spiritual culture characteristic of it were reflected in other ideas (concepts) of human rights. The most famous representatives of that era were Marsilius of Padua, Anselm, Henry Brakton, Thomas Aquinas and others, who advocated the freedom and equality of all before the law.

“Typical in this regard is the anti-serf position of the famous French lawyer of the 13th century. Beaumanoir, who claimed that "every person is free" and sought to concretize this idea in his legal constructions" [12, p.35]. During this period, calls for freedom and equality also begin to bear fruit. This is confirmed by a significant document for the English feudal society - the Magna Carta of 1215. Its significance can be characterized, in particular, by the fact that Article 39 enshrined the following important norm from the point of view of protecting human rights: “no free person can be arrested, or imprisoned, or deprived of possession, or outlawed , or in any way destitute, and we will not go to him, and we will not send to him except by the legal verdict of his equals and by the law of the land ”[13]. As O.V. Mosin,

“It is impossible not to appreciate the legal progressivity of the goal itself, contained in this article, which put certain barriers to feudal arbitrariness and ruined the idea of equality, albeit in a limited class-estate interpretation” [8].

Medieval views on human rights were further developed in the works of modern thinkers, among whom should be mentioned G. Grotius, B. Spinoza, D. Locke, C. Montesquieu, I. Kant, T. Jefferson, J.-J. Rousseau, G. Greece, A. Smith, D. Ricardo, O. Comte, Hegel and many others. They are supporters of the new rationalist theory of human rights. They are not only criticized the feudal system, but also put forward their own views on the need for the rule of law in relations between the individual and the state, and also developed ideas of individual freedom, formed provisions on natural, inalienable human rights. At the same time, for all the above-mentioned representatives of the early bourgeois and subsequent philosophical and legal concepts, the inseparability of human rights from the principles of building a legal state was very characteristic. A special place in their views was occupied by the development of the concept of natural human rights. So, for example, the founder of the science of international law, the Dutch legal scholar G. Grotius believed that all people are endowed with natural rights and based on this, in his famous work “On the Rights of War and Peace”, published in three books in 1625, he justified called "just wars" for the sake of protecting other people's subjects, if "obvious lawlessness" is being perpetrated on them [14, p.562-563]. Another thinker, B. Spinoza, as well as G. Grotius, developing natural law views and, moreover, and not least, the contractual concept of the state, according to which the state should be based on law (law), argued that “the goal of the state is in fact freedom” [15, p.261]. He emphasized that “the natural right of everyone in the civil state does not stop, since both in the natural and in the civil state a person acts according to the law of his nature, is prompted by fear or hope” [15, p.261].

Another follower of the social contract theory, which assumes the natural rights of a person to conclude such a contract and, accordingly, shares the views formed within the framework of the liberal doctrine of inalienable human rights and freedoms, D. Locke wrote that “despite all kinds of false interpretations, the purpose of the law is not to destroy or limit , but the preservation and expansion of freedom ... There, where there are no laws, there is no freedom” [16, p.34]. In his opinion, “the freedom of people under the authority of the government consists in having a permanent rule for life, common to everyone in this society and established by the legislative power created in it” [8]. C. Montesquieu, the well-known author of the theory of “checks and balances”, was also a supporter of the legal organization of state life, however, as his theory, he believed that “government through laws is based on the separation of powers, recognized to restrain and limit

each other" [8], since "during the separation of powers, "a state system is possible, in which no one will be forced to do what the law does not oblige him to do, and not to do what the law allows him" [8].

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