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**IMPLEMENTATION OF THE UN HUMAN RIGHTS COMMITTEE ACTS BY  
KAZAKHSTAN**

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As international human rights mechanisms, United Nations mechanisms are of paramount importance. All UN mechanisms are divided into statutory and contractual. Statutory are mechanisms that operate on the basis of the UN Charter. These include the Human Rights Council, Special Procedures (usually referred to as Special Rapporteurs for Human Rights) and the Universal Periodic Review (UPR). The treaty bodies operate on the basis of international human rights instruments within the UN. International documents provide for the establishment of special bodies to monitor the implementation of these documents - UN Committees. There are nine at the moment.

Kazakhstan is a party to seven out of nine documents, however, only four Human Rights Committees have the opportunity to submit individual communications, including the UN Human Rights Committee, in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights.

During the period of the UN Human Rights Commission, a significant array of legal acts has been accumulated, including several hundred Views.

Currently, the issue of insufficient regulation of the legal status of acts adopted by the Committee is relevant. In this regard, it should be noted that the name “Considerations” itself reproduces the absence of legal obligations for decisions taken by the Committee regarding individual communications.

According to S.S. Alekseev, a legal act has basic characteristics, such as: severity in a verbal-documentary form. Regardless of the nature and legal significance of the will contained in the act-document, it is always outwardly objective, actually separate written material - legal documents, which are the tangible reality of the law; volitional nature of a legal act. It is in acts and through them that the will is manifested and exists in law, in legal relations; consolidation in the act of the substantive elements of the legal system - legal norms, legal practice, individual prescriptions, autonomous decisions of persons. [1]

It follows that, in the form under consideration, a legal act is a formal form of the existence of substantial legal phenomena.

Usually, the Committee, recognizing a violation of the rights provided for by the Covenant, makes three types of recommendations:

- eliminate the violations of the rights stipulated by the Covenant and provide effective legal protection mechanisms;
- in the event that a law contrary to the articles of the Covenant has been applied to the victim, the Committee recommends amending its national legislation to prevent further violations;
- provide compensation commensurate with the violated right. The Human Rights Committee does not determine the specific amount of compensation and assigns the solution of this issue to the state. The only requirement is the adequacy and proportionality of the compensation paid.

As you know, the legal force of decisions made by one or another body depends on the document regulating its activities. The decisions of such bodies are both binding and advisory. T. Neshataeva notes that the regulation of international relations with the help of recommendatory norms has caused a wide and serious discussion in Western international legal literature. As part of the discussion of this issue, a concept was developed for dividing international public law into “soft law” - soft law standards and “hard law” - mandatory norms. [2]

Thus, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Optional Protocols, as well as the Rules of Procedure of the Committee do not directly define the legal nature of legal acts. In this connection, a question arises regarding the legal nature of the Committee's Views. The opinions of scientists on this issue are divided, some believe that the Views are only advisory in nature, in contrast to the opinion of the candidate of legal sciences of the Russian Federation, Golubok S., the decisions of the Committee are legally binding, as they are further practice in the application of the Covenant. [3]

M. Shaw points out that “soft law” is not a right, but represents non-binding documents and agreements of a recommendatory nature, he also notes that the norms of “soft law” are not legal, therefore, are not binding. D. Gold emphasizes that soft law can also be found in decisions of international organizations, including decisions of their bodies. [4]

Taking into account the above opinions of scientists, it can be concluded that the decisions taken by the Committee should also be referred to as “soft law”. However, based on the fact that the *Pacta sunt servanda* principle, positively enshrined in the Vienna Convention on the Law of Treaties, the UN Charter, as a fundamental principle of modern international law, allows us to put forward the assumption that obligations are imposed on states arising from obligations under the Covenant and the Optional Protocol to him. [5] General Comment No. 33 also states that the Committee's Views are similar to judicial decisions, as they are taken in the spirit of the inherent litigation, including the impartiality and independence of Committee members, a balanced interpretation of the language of the Covenant and the final nature of the decisions taken.

According to the authors, the judgment is incorrect, according to which the Committee's Views are only of a recommendatory nature. Thus, the Views are a quasi-judicial international body document established by States parties whose purpose is to interpret the provisions of the Covenant and monitor their compliance. The refusal of states to implement the decisions of the Committee seems illogical due to the fact that countries have voluntarily acceded to and ratified the Optional Protocol.

In addition, it is important to note that the binding nature of the Views and their meaning derive from the goals under the Covenant and the Optional Protocol, otherwise it will not be possible to achieve such goals.

Despite the fact that the recommendations of the Committee do not have their regulation as a legally binding document, they testify to the development of law at the international and national levels by reference to them by subjects of international law.

On the other hand, the lack of a coercive mechanism to implement the decisions of the UN Human Rights Committee, as well as other UN treaty bodies, is still at the stage of unresolved problems and remains a gap in the system for the effective implementation of the decisions made.

Analysis of statistical data shows that since the recognition of the competence of the UN treaty bodies, 84 individual communications have been filed against the Republic of Kazakhstan. So, in 2010, 5 messages were received, and in 2015, 38. On the data presented, it is clear that the vast majority of complaints are sent to the UN Human Rights Committee or 84.5%, as opposed to 14.2% to the Committee against Torture and only 1.1% to the Committee on the Elimination of Discrimination against Women.

It should be noted that a comparison of statistics on the number of messages sent for the entire period of acceptance of communications by the Committee in relation to Kazakhstan reflects the following situation: out of 71 received messages, the Committee examined 15, 46 are under consideration, and 10 were decided. [6]

According to the latest data, in 2014 alone, out of 1,100 individual complaints against Kazakhstan, the Committee sent 22 communications, 18 of which are under consideration, one by one, the Committee decided on inadmissibility, two already revealed a violation of rights under the Covenant.

The main task of the state has always been and will be ensuring law and order, protecting the rights and freedoms of man and citizen, in this regard, the state should take care of effective means to introduce an advanced mechanism, in particular, to implement the Committee's Views with the aim of accelerating the development of legal thought of Kazakhstani society.

When developing specific methods for improving Kazakhstani society, the authors proceed from the following statement that the modernization of society occurs as a reaction to the modernization of the state apparatus.

As can be seen from the materials on individual communications, often the Committee's wording does not indicate that "the state violated", but that "the state did not provide evidence that there was no violation of rights". In this case, a proposal to improve the qualifications of officials of authorized bodies is seen as convincing in order to avoid certain negative decisions regarding Kazakhstan.

Effective modernization depends more on careful coordination between executive bodies.

The above information identifies several countries with best practices, the study and adoption of which will make it possible to implement a mechanism for implementing the decisions of the Committee effective, which will allow Kazakhstani society to feel the process of not only ensuring, but also observing the rights and fundamental freedoms of man and citizen. Thus creating a favorable environment for the formation of the legal culture of Kazakhstani society.

It seems necessary to apply foreign practice of execution of decisions in the Republic of Kazakhstan, in addition, it seems possible, after making the Views, to hold a meeting on the issue of execution at the Ministry of Foreign Affairs, to which representatives of other ministries interested in execution are invited. So, it is recommended not to create new bodies in order to avoid budgetary costs, but to give additional functions to the Ministry of Foreign Affairs, which oversees the decisions of the Committees for the distribution of government bulletins that describe judicial practice in relation to Kazakhstan.

The next proposal put forward by the authors is the possibility of issuing a normative legal act, according to which responsibility for control over all the Views of the Committee would be assigned to the Ministry of Justice of the Republic of Kazakhstan, the General Prosecutor's Office and the Ministry of Foreign Affairs.

Kazakhstan, being in a situation of searching for a model of legal development that would allow it to successfully complete modernization and take its rightful place in the world community of countries, needs to introduce a well-functioning mechanism for implementing decisions of the UN treaty bodies, in particular, the UN Human Rights Committee. Of course, the quality and validity of decisions and recommendations emanating from such international treaty bodies are crucial, however, how the states fulfill these obligations, as well as the degree of involvement of various state structures, human rights associations, and the media in this process are at least the same, if not more, significance on the path of modernization of society.

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