The Impact of Law on Human Rights and Civil Liberties

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Abstract

This investigation is pertinent as it illustrates that legal norms play a dual role—safeguarding the adherence to human rights and freedoms while concurrently imposing specific constraints and, in certain instances, transgressions upon them. The objective of this article is to scrutinize the theoretical and practical dimensions surrounding the influence of law on human rights and civil liberties. It aims to analyze the legal framework and confront pertinent issues by delving into both national and international legislative practices. The focus is on regulatory and legal framework governing the impact of law on human rights and civil liberties. The utilized methodologies encompassed the historical method, structural and functional method, analytical method, comparative method, statistical method, and sociological method. The presence of a legislative rule without effective implementation or with implementation in contravention of rights and civil liberties poses a significant challenge. Resolving current issues demands concerted efforts, rendering this problem of paramount importance and warranting further research and examination. Each state is tasked with harmonizing its national legislation with internationally ratified instruments at both the regulatory and practical levels. A comprehensive exploration of the practical and theoretical dimensions of gaps in legislative processes as a pressing global issue in Ukraine is imperative to ensure the observance of rights and freedoms, and to mitigate the adverse consequences arising from the negative impact of law.

Keywords: law and Human Rights, Freedoms and Civil Liberties, Normative Legal Act and Ratification, Social Norms and International Law, European Convention

INTRODUCTION

The concept of law, as articulated in the Legal Encyclopedia, is characterized as a system of universally binding social norms, the enforcement and adherence to which are guaranteed by the state (Shemshuchenko Yu. S., 1998). Human rights, on the other hand, are typically regarded as binding rules of conduct authorized and instituted by the state. However, they are frequently conceptualized as a framework of inviolable freedoms and natural rights that find legal recognition in every civilized state. Conformance to the rule of law is articulated as a gauge of freedom within a state operating under the rule of law, with its fundamental nature being the regulation of individual freedom in society predicated on principles of equality and democracy. Legally codified constraints and prohibitions must inherently consider the safeguarding of human freedoms. Theoretical analysis is instrumental in enhancing our comprehension the influence of law on human rights and civil liberties at both legislative and practical echelons.

Examination of contemporary research and publications involves the scrutiny of sources emanating from national and international legal frameworks dedicated to investigating the influence of law on human rights and civil liberties.

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The scientific contributions of scholars such as L. Tereshchenko (Tereshchenko L., 2021), V. Hutnik (Hutnik V., 2021), H. Lauterpaht (Lauterpaht H., 2010), D. Chyzhov (Chyzhov D., 2021), Yu. Bysaha (Bysaha Yu., 2003), M. Palinchak (Palinchak M., 2003), D. Bielov (Bielov D., 2003), M. Dankanych (Dankanych M., 2003) are integral to the scholarly discourse. Additionally, the works of V. V. Ilkov (Ilkov V.V., 2020), T.V. Lysenko (Lysenko T.V., 2020), S.P. Myrnyi (Myrnyi S.P., 2020), S.S. Tuchkov (Tuchkov S.S.), Yu. O. Shekhovtsova (Shekhovtsova Yu.O., 2020), which delve into criminal and theoretical aspects, reveal insights into democratic foundations, and human rights, and propose the utilization of positive foreign experiences for implementation in Ukraine.

The works of O. Dufeniuk (Dufeniuk O., 2021), W. Burke-White (Burke-White W., 2003), N.A. Bondar (Bondar N.A., 2023), M.S. Mishchenko (Mishchenko M.S., 2023), O.P. Dzioban (Dzioban O.P., 2021), S.B. Zhdanenko (Zhdanenko S.B., 2020), which also delve into the analysis of human freedoms and rights, have undergone scrutiny.

METHODOLOGY

In the examination of the impact of law on human rights and civil liberties, a combination of legal and general scientific methodologies has been employed. The historical method is applied for the analysis of human rights legislation, while the structural-functional and systemic methods are utilized in studying the rule-making activities concerning the protection of human rights and freedoms. The comparative method is employed in the assessment of legislative endeavors in both Ukraine and foreign jurisdictions. Additionally, the work incorporates the method of legal forecasting to anticipate the development prospects of legislation on human rights and freedoms. The linguistic method is deployed to scrutinize the terminology of international law, contributing to a comprehensive analysis.

RESEARCH RESULTS

The theoretical analysis and investigation of the law's impact human rights and civil liberties enable the identification of gaps and issues within national legislation, as well as the formulation of potential solutions. The study reveals that societal functioning is governed by legal norms, which can operate both positively and negatively. Positive aspects encompass the regulatory framework facilitating the realization of human rights and freedoms at both national and international levels. Conversely, negative aspects arise in situations where civil liberties and human rights are curtailed or directly violated by specific legal acts promulgated by the legislative bodies of the state.

Following an analysis of the theoretical framework, the deduction can be drawn that, in the majority of instances, these limitations constitute compelled measures implemented in response to force majeure circumstances. Such measures may be directed towards safeguarding society, preventing the dissemination of hazardous infectious diseases, and upholding public order.

Upon scrutinizing the international and national legal framework, it becomes evident that the Ukrainian Parliament Commissioner for Human Rights assumes a pivotal role in shaping the impact of law on human rights and civil liberties, not only within Ukraine but also in foreign jurisdictions. The significance of this role is substantial, as the Commissioner is actively involved in the restoration of violated rights and channels efforts towards mitigating the adverse consequences of the impact of law on human rights.

Upon analyzing legislation, practical applications, and theoretical studies, it is judicious to highlight that, in such instances, the paramount concern for the state lies in ensuring the adequacy and proportionality of the measures implemented, which may infringe upon or curtail human freedoms and rights, vis-à-vis the prevailing public
threat. Equally vital is the need for individuals to comprehend the circumstances surrounding specific restrictions, as their primary objective is the safeguarding of individuals and their safety.

DISCUSSION

Law is acknowledged as a legal instrument of freedom and an efficacious tool for enhancing the legal awareness of society. Human rights, constituting the cornerstone of international legal regulation and protection, are duly considered by all legislators in the execution of rulemaking activities (Tereshchenko L., 2021). The Universal Declaration, adopted by the UN General Assembly on December 10, 1948 (UDHR, 1948), stands as a foundational document safeguarding rights and freedoms in numerous countries across the globe.

Tereshchenko underscores that the declaration does not function as a legally constraining document. Following an examination of agreements that impose specific prohibitions, one is compelled to acknowledge the contemporary reality of partial restrictions on rights and freedoms. In the aftermath of research, L. Tereshchenko highlights that certain human rights, inherent from birth – such as the right to life – cannot be forfeited. Nevertheless, instances arise where particular rights are curtailed or suspended by law, such as when an individual is incarcerated for committing a crime, or when the implementation of a curfew restricts freedom of movement (Tereshchenko L., 2021). This represents a theoretically significant provision warranting further investigation.

The scholar underscores that, based on classification, human rights are interconnected and form a cohesive unit. All rights hold equal pertinence and significance, exerting an influence on individuals both within our nation and abroad, thus denoting their timeless nature. Irrespective of national characteristics, a citizen of any country possesses the entitlement to avail themselves of human rights (Tereshchenko L., 2021).

D. Chyzhov aptly observes that it is the responsibility of the state to ensure the security and territorial integrity of its people. Every nation is obligated to formulate its policies at the legislative level to safeguard the rights and freedoms of its citizens (Chyzhov D., 2021).

W. Burke-White, an international legal scholar, investigated the repercussions of shifts in state power on the norms and structure of international law. His research spanned regions such as Latin America and Eastern Europe. He underscores the close correlation between law and state policy (Burke-White W., 2003).

Scholars hold the reasoned view that domestic legal statutes not only uphold rights and freedoms but also delineate that individuals may bear responsibilities and legal obligations. While everyone possesses rights and freedoms, these mustn't have a detrimental impact on society or infringe upon the law (Mishchenko M.S., 2023). Within domestic legislation, the judicial system serves as the mechanism for safeguarding people's rights and freedoms (Bondar N.A., 2023).

Chyzhov D., in his research, scrutinizes the perspectives of O. Dzioban (Dzioban O., 2021) and S. Zhdanenko (Zhdanenko, S.B., 2020), both of whom, in their scholarly works, delve into the significance of national security for the efficient operation of essential components such as effective development, human rights, and freedoms (Dzioban O., 2020).

Hence, the initial endeavor to legislatively address the matter of the rights of human on the international stage is exemplified by the UDHR, 1948, ratified on the 10 of December, 1948, at the Palais de Chaillot in Paris. However, as previously indicated, it is imperative to underscore that the Declaration is recommendatory and lacks legally binding force.

Consequently, the international community persisted in its endeavors to establish a tangible mechanism for global oversight of civil rights.

For instance, Hersch Lauterpacht, a renowned international lawyer and originator of the concept of international human rights protection, hailing from Ukrainian origins, asserted that human rights inherently wield a wide-reaching, global influence (Shestack, J., 1998). He contended that all nations worldwide are duty-bound to uphold these rights (Mushkat R., 2002), emphasizing that the establishment of law and order on the international stage is imperative (Gutnik V.V., 2021).
When discussing human rights and freedoms, specifically considering the impact of law on them, it is imperative to consider both national and regional factors (Gutnyk, V.V., 2018) and specificities (Freeman M., 1995). This consideration holds significant importance for both domestic and international legislators.

It is noteworthy that in each country, there must be state and regulatory oversight to ensure adherence to freedoms and human rights. An essential document that should be considered by all countries that have ratified it in their legislative processes is the CPHRFF, signed on November 4, 1950, in Rome (European Convention on Human Rights, 1950).

Following an examination of the development of an international document, it was observed that scientific doctrines (Lauterpacht E., 2010) and theoretical propositions by H. Lauterpacht were incorporated (Gutnik V.V., 2021).

Ukraine ratified above-mentioned European Convention and its protocols on July 17, 1997; hence, (adherence to their provisions is obligatory for all people in the country.

The initial segment of this convention delineates the freedoms and rights assured to individuals within the jurisdiction of countries that have confirmed the power of convention. These cover rights such as the right to live (Article 2), prohibition of torture (Article 3), and security and freedom (Article 5), among others.

Section 2 of the Convention is exclusively dedicated to the ECHR. The provisions of the section delineate the foundation of the ECHR, regulate the court's procedural framework, and set the requirements for judges and their powers.

For instance, Article 19 of the Convention provides that the ECHR operates permanently.

Hence, the main goal behind the establishment and operation of the ECHR is to guarantee that the countries that have confirmed the European Convention adhere to their international and national obligations in respecting these freedoms and rights (Convention for Human Rights, 1950).

Furthermore, Article 46 of the Convention underlines the obligatory nature of judgments provided by the ECHR. This article explicitly asserts that the decisions of the Court are mandatory (CPHRFF, 1950).

Consequently, ECHR judgments, including those pertinent to Ukraine, carry a binding force.

In broad terms, the ECHR supervisory process is acknowledged as an efficient legal mechanism for safeguarding human rights at both the international and national levels. This oversight and control are invoked in the utilization of the Convention's provisions by international countries to resolve disputes. When individuals seek redress from the ECHR, they implement their right to protect their freedoms and rights. The jurisprudence established by the ECHR holds significance globally and within each state, serving as a legal source that is utilized by courts in their proceedings. Rooted in the provisions of the Convention, ECHR case law references international law. Its application in the judicial practices of states that have ratified the Convention contributes to the acknowledgment of human and civil rights and freedoms as paramount values, protecting within both international and national legal frameworks (Dufeniuk O., 2021).

So, the activities of the EC plays a role in the practical adherence to fundamental international norms (Dufeniuk O., 2021).

Concerning Ukrainian national legislation, it is pertinent to emphasize that human rights are legally codified in the second part of the foundational legal document, the Constitution of Ukraine (CU, 1996).

The Commissioner of the Parliament of Ukraine for the Rights of human assumes a crucial role in influencing the influence of law on rights and civil liberties, a position which is common in numerous countries, including Ukraine. This public office is tasked with formulating procedures to mitigate the adverse consequences of the influence of law on the rights of human. The Commissioner holds the authority to inspect facilities where individuals are deprived of liberty and monitor the conditions in which convicts are held. Additionally, the UPCHR is empowered to scrutinize law enforcement agencies and institutions where orphans reside, among other responsibilities.
Ukrainian Parliament Commissioners exert a significant influence on lawmaking, governmental policy, legal awareness, and the legislative process. Following international law, Commissioners undertake a series of prompt measures upon identifying a negative impact of law on the rights of human and civil freedoms. Their practices adhere to international legal standards, ensuring alignment with European norms. In the execution of their duties, Commissioners are obligated to consider national traditions, culture, and regional characteristics (ECHR, 1950). Taking into account the precedents set by the ECHR is critical to preventing lacunae and addressing numerous issues related to the infringement of rights and civil liberties (Hrushko M. V., 2019).

It is noteworthy that numerous articles within the second part (www.socialworkers.org) of the Constitution exhibit a correlation with articles of the Convention (European Convention on HR, 1950). For instance, Article 27 of the Constitution, specifically referring to the right to life, aligns with the provisions of Article 2 of the Convention, while Article 29 of the Constitution corresponds to Article 5 of the Convention. This interrelation emphasizes Ukraine's commitment to harmonizing its domestic legal regulations regarding the advocacy of human rights and freedoms with the International law standards, particularly European law. Consequently, national law demonstrates consistency with international legal principles.

Specifically, let us examine the interaction between the Ukrainian courts and the ECHR. The Ukraine's Law "On the Execution of Judgments and Application of the Case-Law of the European Court of Human Rights" (LU "On the Execution of Judgments and Applying of the Case-Law of the European Court of Human Rights", 2012) is presently in effect. According to Article 2 of this law, the verdicts of the ECHR have legal force. It is pertinent to highlight that this aligns with the provisions outlined in Article 46 of the Convention.

Article 17 of the Law provides that the courts shall take into account the case law of the ECHR and the provisions of the Convention in their judicial proceedings (Law of Ukraine "On the Execution of Judgments and Application of the Case-Law of the European Court of Human Rights", 2012).

Therefore, Ukrainian judges, in rendering decisions, are obligated, among other considerations, to align with the prevailing case law of the European Court of Human Rights about the specifics of the court case. Based on the aforementioned, it can be inferred that the outlined legal provisions delineate and assure meticulous adherence to human rights and freedoms.

Nevertheless, there exist specific legal provisions that directly contravene human rights and civil liberties.

Article 29(2) of the UDHR, (1948) asserts that limitations on an individual's rights may be imposed, but these limitations must be regulated by law. Legislators are obligated to consider morality during the formulation of legislation (UDHR, 1948).

Essentially, the UD recognizes that certain restrictions on the rights of human and freedoms enumerated therein are permissible under special conditions.

Other international document, specifically the ICCPR, 1973, considers the issue of the death penalty, permitting its application in cases of particularly grave crimes (Article 6). It is noteworthy that some states still retain the death penalty, typically reserving such measures for the most severe offenses (Bielov D.M., 2003). However, exceptions exist, such as refraining from using the death penalty to people who are mentally ill, pregnant women, and those under 18 years of age (Palinchak M.M., 2003). Under international legislation, convicted individuals in these countries may seek the commutation of their sentence or a pardon (Dankanych M.M., 2003). The taking of a life is sanctioned in situations such as quelling a rebellion, responding to a riot, or defending against unlawful violence (Bysaha Yu.M., 2003).

As of today, still the death penalty is applied in 54 countries, including notable examples such as the USA, China, and Saudi Arabia.

Our nation operates as a democratic and lawful entity. The fundamental legal document, the Constitution of Ukraine, explicitly upholds the human right to life. This principle is also codified in the Universal Declaration of Human Rights. The alignment of our national legislation with international law signifies a significant stride in the advancement of both the state and the constructive influence of law on human rights and freedoms within it.
Upon scrutinizing the source base, it is evident that one of the most pressing and critical issues is the proliferation of counterfeit medicines. To curb this criminal activity that infringes upon people's rights, the establishment of an international program becomes imperative. A unified initiative for certified medicines should be implemented (Ilkov V., 2020). It is crucial to underscore that this is a substantial problem not only within our country but also on a global scale. Hence, immediate attention is warranted to address this issue, preventing the infringement of the right to health and life for individuals in both Ukraine and foreign nations.

Amidst the COVID-19 pandemic, Ukraine implemented restrictions on citizens' right to work. Specifically, certain professions, including civil servants, were permitted to work exclusively if they possessed a certificate of vaccination against COVID-19. Individuals who opted not to undergo vaccination faced suspension from their employment.

The legislative measures undertaken by the state generated broad public resonance and dissatisfaction, frequently becoming the subject of judicial scrutiny. These actions were perceived as contravening the human right to work, a right safeguarded by both international and national legislation. Nevertheless, the authorities of the country justified these actions by emphasizing the imperative of safeguarding the population and combating the dissemination of a perilous infectious disease.

The right to mobility for persons with disabilities is codified in international and domestic legislation. Regrettably, in our country, this right is frequently infringed in practice, as persons using wheelchairs encounter impediments to free movement in urban areas due to numerous stairs, with only selected cities featuring ramps. To protect their rights, persons with disabilities have recourse to legal action, and there exists a judicial precedent of such decisions. Following research, it was observed that, in the majority of cases, the court upheld the rights of persons with disabilities.

It is noteworthy that the influence of law on civil rights and freedoms can be subject to limitations. However, these constraints are typically necessitated measures directed towards upholding the protection of society and maintaining public order. A significant consideration is the prevention of the spread of perilous infectious diseases. In such contexts, it becomes imperative for lawmakers to exercise prudence in implementing measures that infringe upon or curtail the rights of human and freedoms during public emergencies. The citizens of our country, with an evolving legal consciousness, should approach the introduction of specific restrictions judiciously, prioritizing legal protection and the safety of the population.

It is pertinent to highlight that the right to liberty and security of person, as delineated in Article 5 of the ECHR (ECHR, 1950), incorporates exceptions that allow for the violation of this right under specific circumstances. For instance, a court may lawfully deprive a person of liberty or order their detention or arrest for the sole purpose of implementing a provision specified in a legal act. Arrest or detention may be employed to impede illegal entry into or exit from the country, to mitigate the spread of infectious diseases, or to detain individuals such as alcoholics, vagrants, mental patients, or drug addicts, among other scenarios (European Convention on Human Rights, 1950). These legal provisions bear significance and warrant further investigation.

In essence, the stipulations within the Criminal Code of Ukraine, which prescribe imprisonment as a punitive measure, are not in contravention of the provisions outlined in the Convention.

CONCLUSIONS

In light of the foregoing, it can be asserted that legal norms constitute the rules by which our society abides, exerting a direct influence on the adherence to human rights and civil liberties.

This influence may encompass both positive trends, such as the legislative consolidation of stipulations for the safeguarding of human rights and freedoms, including at the international level, and negative trends, wherein civil liberties and human rights face constraints or direct infringements due to specific legal acts promulgated by the legislative bodies of the state.
Nevertheless, it is crucial to acknowledge that, in most instances, these restrictions are compelled measures implemented in response to force majeure circumstances. Their primary objectives may include the preservation of public order, the protection of society, or the prevention of the spread of dangerous infectious diseases.

Research findings indicate that the Ukrainian Parliament Commissioner for Human Rights assumes a pivotal role in shaping legislation concerning rights and civil liberties in both Ukraine and foreign countries. The magnitude of this role is significant, as the Commissioner endeavors to mitigate adverse repercussions stemming from the impact of law on human rights and is actively involved in the restoration of violated rights.

After scrutinizing the legislation, theoretical research, and practical applications, it is pertinent to underscore that, in such instances, the primary concern for the state is to ensure the proportionality and adequacy of the measures implemented, which may restrict or infringe upon human rights and freedoms, in response to the prevailing public threat. Citizens, in turn, are encouraged to exhibit understanding towards these restrictions, acknowledging their existence as a means to protect and safeguard individuals.

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