

**FREEDOM OF BELIEFS AND THEIR FREE EXPRESSION:
FOREIGN EXPERIENCE**

Paper describes the international experience of the ensurance of the freedom of convictions and their free expression. It is determined that the most effective among the bodies, created by the UN and the Council of Europe which have created some institutions for the protection of people, is the European Court of Human Rights. However, all of them are only the additional institutions for the national courts of the protection of the convention rights and freedoms.

Keywords: *freedom of belief, the UN Committee on Human Rights, Council of Europe, the EU Charter of Fundamental Rights.*

Rights and fundamental human freedoms during, at least, half a century are not only the competence of the State, but have become a matter of the whole international community from the moment when in a number of important international agreements they were enshrined as the common standards of rights and freedoms of the individual. Even after World War I the League of Nations made an attempt to create a mechanism for the protection of individual human rights, which turned out to be quite weak. The most important criterion of the degree of civility in today's society is the guaranteeing by the State authorities of the rights and fundamental freedoms in the country. Rights and fundamental freedoms, including the freedom of beliefs and their free expression, which the scientists referred to the universal rights and freedoms, i.e. such that belong to all people without an exception, regardless of their belonging to a specific ethnic, religious, linguistic, cultural or other groups (communities), guaranteed by the

constitutions of many democratic countries all around the world and are the core of a number of the international agreements.

Every country in the world that has committed to itself the realization of the norms of international agreements concerning human rights and fundamental freedoms should make them a priority in the national legislation. The norms contained in international agreements, are mandatory for lawmaking developed countries, i.e. are the international standards that are necessary to implement not only in the lawmaking process and are not less important. Sources of international law (international treaty, international custom, general principles of law, judicial decisions and doctrine of most experts, the lawmaking solution of international forums, etc.) are the basis for national legislative systems in various spheres of society, in particular in ensuring the freedom of beliefs and their free expression. Countries that not so long ago began to found a legal, democratic and social State, of course, need much an implementation of the dispositions regarding freedom of beliefs and their free expression, are recognized by the international community standards, national legislation and, accordingly, the establishment of an effective mechanism for their realization in the norms which are not only declaratory in nature, but also make a powerful influence on the governments of those States that acceded to the relevant international treaties, took over the responsibility before the world community for the implementation of international standards in the ensuring of the freedom of beliefs and their free expression in the country. According to P. Rabinovich, the content of the concept of "freedom of thought and speech" is that nobody can prohibit a person to follow their own thoughts, reflect the objective reality in their own perceptions, publicly express these materialized in the language display of both views and beliefs [1].

For the first time the right to freedom of beliefs and to freedom of their expression was fixed in the declared by the United Nations in 1948 the Universal Declaration of Human Rights (art. 19), which contains the essence of the freedom of beliefs and their free expression: "Everyone has the right to freedom of beliefs and to freedom of their expression; This right includes the freedom to adhere to

their beliefs and the freedom to seek, receive and impart information and ideas by any means and regardless of frontiers"[2]. However, as it is noted by scientists, fixed in the Declaration of Rights and Freedoms, including the freedom to beliefs and their expression are not absolute because paragraph 2 of art. 29 of the Declaration allow their limit". Everyone shall be the subject only to such restrictions established by law only for the purpose of securing due to the recognition and respect for the rights and freedoms of others and ensuring the just requirements of morality, public order and the general welfare in the democratic society" [2]. It should be noted that the Declaration, which is the resolution and therefore in accordance with the UN Charter is not obliging and advisory in nature, became the basis of the UN, because of massive violations of human rights in the period before and during World War II, formalized France's "first agreed upon at the international level the definition of human rights".

The next step of the international community for the insurance of the development of human rights and fundamental freedoms was the adoption of the Council of Europe in 1950 the Convention for the Protection of Human Rights and Fundamental Freedoms. It should be noted that for the countries that seek for the membership of the Council of Europe, prerequisite is the ratification and implementation of the disposition of the Convention in national legislation, which is a legal contract for them.

According to the dispositions of the Declaration on the freedom of expression in art. 10 of the Convention, on one hand, is stated the right of each of them to the freedom of expression. This right includes the freedom to express their views, receive and provide the information and ideas without the interference of public authorities and regardless of frontiers, and on the other, defines and specifies the warning, when has the right to intervene State: the State is entitled to take such formalities, conditions, restrictions or penalties that are set by law and are necessary for the democratic society, national security, territorial integrity or public safety for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing of the

revealing of confidential information or for maintaining the authority and impartiality of Court [3]. In such a way are specified three reasons, for which the State may take the measures provided for by law: the clause must be provided for by law; to chase one of the specified purposes, and to be deemed necessary in the democratic society.

One of the main achievements of the Convention was the establishment of the Institute of control within the Council of Europe in accordance with art. 19 – European Court of human rights (Strasbourg). Member States participating in the Council of Europe have to recognize the jurisdiction of the European Court of human rights, binding on the interpretation and application of the European Convention on human rights and the protocols to it in cases that involve violations in the country, the provisions of these agreements. Complaints to the European Court of human rights in cases, if all of the protection in the country is exhausted. The Court, considering the case of violation of the provisions of art. 10 Convention, expounded that the freedom of expression as one of the fundamental pillars of a democratic society, includes not only identifying the views through the language, and also by drawings, print media, television and radio broadcasting, performances, films, electronic systems, advertising actions, committed with the intention to express a position or submit information. In their decisions, the European Court of human rights may require a specific State is a member of the Council of Europe's view of certain court decisions, recommend to change the norms of national legislation which violated the rights of specific individuals.

Subsequently, the countries while the implementation of the Art. 19 of the Universal Declaration have certain misunderstandings: some countries blamed the other in ban for its citizens to freely receive and disseminate information received from them in response to the ground of the legitimacy of the protection of its citizens from the propaganda war, fascism, violence, pornography, that spread abroad [4, p. 29–30]. For this reason the General Assembly of the UN 1966 adopted the International Covenant on Civil and political rights (entry into force 1976), art. 19 which, while retaining the general right to stick to their own views,

the right to seek, receive and impart information and ideas of various aspects in any form (oral, written), was added to the rule that the use of these rights has on a person's special duties and special responsibility.

In addition, Art. 20 of the International Covenant on Civil and Political Rights establishes for Member States banning their laws of any form of propaganda for war and incitement to national, racial or religious hatred, if it constitutes incitement to discrimination, hostility or violence against people. For the control of the proper observance of the International Covenant on Civil and Political Rights in accordance with the art. 28 has been created UN Human Rights Committee (New York, Geneva), which has the authority to consider applications from individuals who were victims of violations of the rights enshrined in the ICCPR, in particular the rights foreseen by the art. 19. However, as in the European Court of human rights, an important aspect of the activities of the Committee lies in the fact that a person has to exhaust all remedies in his own country before sending the claim to the UN Committee on Human Rights. The Committee exercises control over the implementation by States of their commitments in the form of examination of the reports of States on the execution of the dispositions of the ICCPR, the adoption of individual complaints from citizens about the infringements of their rights. In recent years the trend study committees situations in the States, not only on the basis of reports prepared and provided by the State authorities, but also with information about the status of non-governmental human rights organizations in the country, which in many cases is an independent and often different from the vision of the situation, representatives of the public authorities. It certainly contributes to a more profound and comprehensive study of the State of affairs in the country, which reports. The committee sends messages about the observance by the States the relevant dispositions of the ICCPR for the preparation of the annual report on the State of affairs of the person in the world for the UN General Assembly. The UN system in accordance with the Optional Protocol No. 1 to the ICCPR protects human rights in the form of the acceptance from citizens. This remedy can take, directly affected by human rights abuses or his representative, if

the country of residence ratified and the ICCPR, and this Protocol. So, the citizens of Ukraine, which has ratified the ICCPR on the March, 23, 1976 and the Protocol from the October, 25, 1991, have the right to contact with individual statements on the violation of rights guaranteed by the Covenant and Protocol to the UN Committee on human rights.

In the system of organs of the UN since 1993 the bills of the Special Reporter on the promotion and protection of human rights, including the freedom of beliefs and their expression, which have important special powers, including the analysis of received messages in order to identify trends, preparation of regular reports, writing appeals and letters in order to attract the attention of the international community to individual directions of policies and practices that affect the State of affairs regarding the respect of the right to freedom of the expression of beliefs. Usually the Special Reporter examines the messages that are sent to him from various sources – Governments, international, regional, national and local non-governmental organizations, associations of all the regions of the world, to pay an attention to the Human Rights Council and the UN High Commissioner for human rights on such situations and cases regarding the right to freedom of opinion and expression, which cause particularly serious concern.

During the Summit of the Heads of the State and Government in 2005 in New York it was decided to create another body of the UN in the field of human rights, the UN Human Rights Council (HRC), within the implementation of the 60 session, 2006, United Nations General Assembly adopted resolution 60/251 [5]. According to the resolution the main goal of HRC is to promote universal respect and protection of all human rights and fundamental freedoms for all without any distinction and on a fair and equal basis (p. 2). She has seen the situation related to the violation of human rights, including gross and systematic violations, and make them their recommendations, as well as to promote the effective coordination and integration of the activities relating to human rights within the United Nations system (p. 3). The basis of this system is the principles of universality, impartiality, objectivity and selectionness, a constructive international dialogue and cooperation

in order to facilitate the promotion and protection of all human rights, including the freedom of beliefs and their free expression (p. 4), a unique feature is the immediate access of the members of HRC to information through liaising with Governments and other stakeholders, in particular, to act in the field of human rights, in close cooperation with Governments, regional organizations, national human rights institutions and civil society (p. 5 h). Moreover, within the Council on the basis of the principle of equal approaches and criteria to all countries without an exception, functioning mechanism of universal periodic review (UPR), which conducted a review of the implementation by all UN Member States of their obligations in the field of human rights, which helped to resolve a number of problems regarding human rights violations during the first cycle (2006–2011) in May, 2012, began the second cycle of the universal periodic review.

In the Treaty of the EU in accordance with changes made to the Lisbon Treaty, which came into force in 2009, have made the amendment, according to which the European Union's Charter of Fundamental Rights [5, p. 302–314] on December, 1, 2009, has become a legally fixed document for all EU countries (with certain reservations concerning individual countries – the UK, Poland, Czech Republic). In the first part of the Art. 11 of the Charter “The Freedom of the Expression of their Beliefs and Freedom of Information”, as Art. 10 of the European Convention for the protection of human rights and fundamental freedoms, affirmed: "Everyone has the right to freedom of expression. This right includes the freedom to adhere to their views, to receive and share with the information and ideas without the interference of public authorities and regardless of frontiers". For the second, in addition to its own freedom, it must be guaranteed pluralism and diversity as well: "adhere to the freedom and pluralism of the media". Thus, an important aspect of the positive obligation of States to promote the freedom of expression of beliefs is necessary for the development of pluralism and ensuring equal access to information for all.

Some scientists believe the Charter to be "the more modern instrument for the protection of human rights compared with the Convention, which was adopted

more than half a century ago, ... contains not only the rights of personal and political nature, as well as the procedural guarantees of these rights. regulates economic, social rights and certain rights of the fourth generation, taking into account scientific and technical progress and establishes rights related reproduction and biomedicine» [7]. Beyond dispute, the Charter contains a significantly extended list of rights and freedoms, given the challenges of the modern State of a civil society. However, there are reasonable doubts concerning procedural guarantees these rights, because the Charter is not a control mechanism, as, for example, the European Court, established in accordance with the European Convention.

In the world there is an extensive system of several tens of universal and regional international bodies with human rights with a varying amount of competence [8], in particular, the most famous of them: the system of protection of human rights (kvazicourt and conventional organs); Regional: European system of human rights protection, African human rights protection system, American system of human rights protection; a system of national human rights protection mechanisms, etc. The most extensive and comprehensive is the system of the protection of human rights (see diagram).

The organs of the UN of the Guaranteeing of Human Rights

The organs of the UN of the Guaranteeing of Human Rights – are various international and regional committees, commissions, courts, fixed in international (regional) treaties, agreements, conventions for the purpose of supervision, application and the development of international legal instruments

The Organs of the UN of the Guaranteeing of Human Rights

Universal Organs of the UN of the Guaranteeing of Human Rights

The General Assembly;
Economic and Social
Council;
The UN Human Rights
Commission (*thematic
groups, thematic speakers*);
The Sub-Commission on
the Prevention of the
Discrimination and
Protection of Minorities;
The Commission on the
Status of Women;
High Commissioner for
Human Rights;
The UN High
Commissioner for
refugees;
UNICEF;
UNEP

specialized Organs of the UN of the Guaranteeing of Human Rights

UNESCO;
The World Health
Organization (WHO) and
others.

conventional (control) Organs of the UN of the Guaranteeing of Human Rights

Committee on Human
Rights (*International Covenant
on Civil and Political Rights and
the optional protocols*);
The Committee on
Economic, Social and
Cultural Rights (*International
Covenant on Economic, Social
and Cultural Rights*);
The Committee on the
Elimination of Racial
Discrimination (*International
Convention on the Elimination of
all the forms of Racial
Discrimination*);
The Committee on the
Elimination of the
Discrimination against
Women (*the Convention on the
Elimination of all the Forms of
the Discrimination against
Women*); The Committee
against Torture (*Convention
against Torture and other cruel,
inhuman or degrading types of
treatment and punishment*);
The Committee on the
Rights of the Child
(*Convention on the Rights of the
Child*)

Therefore, considering the international system to ensure the freedom of beliefs and their free expression, we can state that the most effective body is the European Court of Human Rights. However, it should be noted that as the UN Human Rights Committee, the Special Rapporteur on the promotion and protection of human rights, the UN Human Rights Council, etc. is only the supplementary one to the national courts of the Institute of protection of conventional rights and freedoms, because the appeal to international bodies is possible only after having exhausted all the means in their country. Thus, in accordance with the urgent challenges regarding the freedom of beliefs and their free expression in the States needs to devise a comprehensive approach that would contain the following elements: implementation of international standards in national legislation; the creation of an effective mechanism for their support; reforming of State executive bodies, the judiciary, the public prosecutor and law enforcement, based on such democratic principles: rule of law, separation of powers, legality, openness, the principle of selectivity of main organs of the State power, pluralism, the inviolability of citizens' rights.

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