



STRUCTURAL ELEMENTS OF INTERNATIONAL LEGAL MECHANISMS FOR ENSURING THE EVERYONE'S RIGHT TO SEEK RIGHTS PROTECTION IN INTERNATIONAL JUDICIAL INSTITUTIONS OR IN THE RELEVANT BODIES OF INTERNATIONAL ORGANIZATIONS

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Summary

The article clarifies the concept and identifies the structural elements of the international legal mechanisms for ensuring the everyone's right to seek rights protection in international judicial institutions or in the relevant bodies of international organizations. The structural elements of the international legal mechanisms for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant bodies of international organizations that constitute its contents are: a mechanism for exercising the right to appeal; the mechanism of the right to appeal; a protection mechanism of the right to appeal.

Key words: human rights and fundamental freedoms, international judicial institutions, international organizations, the everyone's right to appeal, the everyone's right to appeal to international judicial bodies, the right of everyone to appeal to the relevant bodies of international organizations, the international legal framework of human rights and fundamental freedoms.

Аннотация

В статье уточнено понятие и выявлены структурные элементы международно-правовых механизмов обеспечения права каждого обращаться за защитой своих прав в международные судебные учреждения или в соответствующие органы международных организаций: механизм реализации права каждого обращаться за защитой своих прав в международные судебные учреждения или в соответствующие органы международных организаций; механизм охраны права каждого обращаться за защитой своих прав в международные судебные учреждения или в соответствующие органы международных организаций; механизм защиты права каждого обращаться за защитой своих прав в международные судебные учреждения или в соответствующие органы международных организаций.

Ключевые слова: права человека и основные свободы, международное судебное учреждение, международная организация, право каждого на обращение, право каждого на обращение в международные судебные органы, право каждого на обращение в соответствующие органы международных организаций, международно-правовой механизм обеспечения прав человека и основных свобод.

Proclamation by the international treaties and constitutions the everyone's right to seek rights protection before international judicial institutions or relevant international organizations does not indicate the possibility of its unimpeded implementation. This right ensuring occurs by the implementation of sophisticated legal complex – mechanisms that ensure the rights and freedoms in general. Due to the international and legal provision the everyone's right to seek rights protection before international judicial institutions or relevant international organizations becomes a certainty. In this case, the right to appeal to international bodies for the protection of the rights and freedoms if exhausted all available domestic remedies, acts a component that, on the one hand, within the abilities of a person to defend one's rights and freedoms characterizes the in-system relationship between international and national legal means in a single legal model – the constitutional right

to a legal protection. On the other hand – allows to identify the direction of adjustment and improvement of national mechanisms for the rights and freedoms protection of human and citizen (administrative jurisdiction, the ability of each to receive professional legal assistance, etc.) [1, p. 23].

However, there was not given attention to international legal institution ensuring the right to appeal and its mechanism in legal science. The Soviet legal science, in general, was characterized by a negative bearing on the individual's right to appeal to international bodies (works by B.G. Manov, N.V. Vitruk, G.I. Tunkina, S.V. Chernichenko). Changes in the socio-political life of post-Soviet countries in the early 90s of the twentieth century led to the emergence of new approaches to the protection of human rights and freedoms. Scientists began to notice that the practice was indicative for relatively high, in comparison to many national authorities, effectiveness of inter-state bodies that protect rights and freedoms of individuals and their

direct impact on the development of national legislation in the sphere of human rights protection. However, such contemporary researchers as K.K. Hasanov [2], A.M. Kolodiy [3], A.Y. Oleinik [4], O.V. Skrypnyuk [5] and others have addressed only to the common understanding of the mechanism of human's and citizen's rights and freedoms.

Thus, the study of international legal mechanism for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant bodies of international organizations is important and necessary.

The aim of this article is to clarify concepts and to identify structural elements of international legal mechanisms of ensuring the everyone's right to seek the rights protection before international judicial institutions or relevant international organizations.

Currently there are no established definition of mechanism for ensuring the human and citizen rights and



freedoms. For example, «Encyclopedia of Law» does not define the rights and freedoms of the individual, it only explains the terms «ensuring fulfillment of obligations», «provide evidence» and «Injunctive Relief» [6, p. 444-445]; the «Collegiate Dictionary of Law» defines this concept in general [7].

K. Stepanenko says that «the human and citizen rights and freedoms is a system of guarantees by government and international institutions, functioning in the legal mode and that includes elements such as competence, security, protection, and creating the necessary conditions for the actual implementation of their human rights and freedoms» [8, p. 166-167]. Another scientist, A. Oleinik, acknowledges that «the providing of constitutional freedoms and integrity of human and citizen in Ukraine is the creation of favorable conditions for their implementation, security, protection of subjective freedom from offense, remedy by the competent authorities or local governments, restoration of the right by the competent authorities or local governments, their officers or officials and citizens' associations by providing substantive and procedural legal means» [4, p. 153]. According to O. O. Lukashova the most common category is the category of «mechanism for ensuring» the rights and freedoms that should be divided into three subsystems: the mechanism of realization, protection and security [9, p. 186]. In support of this thesis, the following generally accepted definition, according to which «the rights and freedoms» are direct their implementation, «protection of the rights and freedoms» is a prevention interventions for the prevention of violations, «the protection of the rights and freedoms» is the measures designed to restore the violated rights. The mechanism for ensuring of the rights and freedoms summarizes these concepts. Therefore, they are its constituent elements.

Therefore, scientists are unanimous in the opinion that the role of government in ensuring the everyone's rights and freedoms is important. The key role of the state in ensuring human rights and freedoms is

indicated, also the rules contained in many international acts. Thus, in Part 2 of Art. 2 of the International Covenant on Civil and Political Rights of 16 December 1966, ratified by Ukraine October 19, 1973, states: «Each State Party to the present Covenant undertakes to respect and to ensure to all persons who are within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without any distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status» [10, p. 123-128.].

However, the researchers provided definition of the mechanism of ensuring the rights and freedoms does not solve completely the problem of determining its content. So, firstly, the scientists do not consider international legal mechanism for ensuring human and citizen rights as the single system of interacting international legal means by which the state provides legal impact on the relationship between economic rights to recognition, observance and implementation of fundamental human and citizen rights. Secondly, they do not reveal the constituent elements of mechanism studied.

To understand the mechanism for ensuring of the everyone's right to seek rights protection before international judicial institutions or the relevant international organizations, it is necessary to determine the nature of its structural elements, such as mechanisms of implementation, security and protection of everyone's right to appeal.

Protection, implementation and guarantee of the right to appeal are the subject of many scientific and theoretical studies. However, it is a new consideration of these issues in the context of the study in terms of the functioning of a unified and integrated mechanism to ensure the human right to appeal, especially internationally.

Thus, the mechanism for implementing human rights includes measures that able to create conditions for the exercise of the human and citizen rights and freedoms. This is the actual implementation of rights in social and public relations. This

mechanism operates in the form of use, performance, compliance and application of rights and freedoms. The mechanism of individual's rights protection is the activity of the competent authorities based on the legal provisions, aimed at removing barriers to persons of their rights and freedoms against failure to perform obligations and abuse of the law to ensure proper implementation of human rights and freedoms. This mechanism takes the form of prophylaxis and prevention of possible rights violations. The action of mechanism for protection of individual rights occurs in the case of violation. It includes activities that lead to restoration of violated rights, unlawful actions and the responsibility of the person who committed the offense. Without the ability to defense the human rights protection is incomplete. Defence is the most effective protection, its another level.

Thus, there are two types of mechanisms to ensure the right of everyone to seek rights protection before international judicial institutions or the relevant international organizations. These are conventional and institutional ones.

Regulatory framework of mechanism for ensuring everyone's right to appeal consists of conventional principles and norms specifying constitutional rules and norms of the current legislation, whereby the securing of general formally defined rules of conduct that are designed to provide a single order and stability of social relations in the field of human rights through creation, change or cancellation of law, the definition of their scope and range of participants. The essence of the normative basis of mechanism for ensuring human and citizen rights determined by the fact that it gives the legal life to this mechanism of giving him own legal forms.

The institutional framework the aforementioned mechanism involves the activities of international institutional bodies, public bodies, local authorities and other state institutions that are using their powers provide realization, security and protection of the rights of persons.



According to O.Pushkina the regulatory and institutional framework of mechanism for ensuring of human and citizen rights and freedoms may be called a kind of legal guarantees of the human and citizen rights and freedoms, that could be understood as the state of formal (legal) order of general conditions, which are imposed by the Constitution and rules of international instruments that are necessary to ensure that every person can exercise their rights and freedoms. Their real purpose is to provide legal means – the norms and activities of the state – the maximal exercise, security and protection of the individuals' rights and freedoms of [11, p. 30-31].

The mechanism for ensuring the rights and guarantee of the rights is equated in many scientific studies. Such identification is incorrect. The main purpose of human rights guarantee is an implementation of human rights, their protection and restoration. That whole human rights guarantees are subordinated to purposes of those rights. With this in mind we should agree with the opinion of L.D.Vojvodina as to guarantees' appointment «is that they need not in themselves, but perhaps for the full realization of the rights, freedoms and duties of the individual. In this regard, their nature, system and types have to meet certain forms of human rights and freedoms, and implementation of duties and bringing to responsibility». Fully corresponds to the content of the totality of legal guarantees point of view according to which, an activity of state bodies, public associations, officials and citizens to implement their functions, competencies, duties in order to create optimal conditions for the lawful exercise rights and Freedoms [12, p. 60-61].

Thus, the structural elements of international legal mechanisms for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant bodies of international organizations, that make up its contents are: a mechanism for ensuring the right to appeal (legal facts that are the basis of the right to appeal; subjects: individuals and legal entities, the rules

of law, the functional purpose of which is to regulate social relations associated with the implementation of the right to appeal), the mechanism of the right to appeal (subjects – international institutional bodies and state institutions, international instruments); mechanism for protecting the right to appeal (institutional bodies (judicial) and international regulations).

The mechanism for insuring and mechanism of guarantees are phenomena of various qualities: they pursue relatively isolated and, in this sense, independent goals. According to A.V.Stremouhova, the core process ensuring human rights is the creation of the guarantees of their implementation, and this is directly related to the improvement of legislative technique [13, p. 32].

It is known that guarantees regarding the implementation process of the rights and freedoms serve as conditions of realization and remedies that promote the actual implementation of human rights and freedoms.

Category of ensuring (mechanism of ensuring) is wider than the mechanism of guarantees. In legal science has long been a thesis that the problem of the rights and freedoms can not be considered» in a purely formal-legal aspect». This aspect involves the recognition at it also economic, political, moral and legal component (ie the system of legal guarantees).

Thus, in contrast to the mechanism of ensuring the category of guarantee mechanism in the implementation of human rights main focus concentrates on the substantive and procedural content of (equipment of) realization of human rights and on the specifics of their organizational and legal support.

Scientists are unanimous that this is the feature of subject matter guarantee mechanism as compared to the implementation and maintenance: using this mechanism (in the law practice) there is no dissolution of legal content of rights in social and natural conditions of existence of the individual and, for this reason, the subject the blurring of boundaries ensuring human rights.

The above analysis shows that today is difficult to separate the

implementation of human rights as an object of ensuring from the means and conditions to ensure it since they both include the effects of a legal nature. The value of the separation mechanism of legal guarantees is precisely to define the substantive content of the remedies necessitated due to the realization of human rights objectives – legality and the actual implementation of the legal rights of the human rights subjects [14, p. 30-32].

According to the general rule the legal guarantees mechanism is seen as a system of legal remedies (guarantees), which encompasses the totality of organizational, regulatory, institutional, procedural, regulatory, ideological and other items that have a functional purpose and in accordance with their intended use are included in the actual process for ensuring of persons rights. In general we can agree with this concept, but there is no clearly delineated structure of the phenomena considered by us [15, p. 30].

The structure of this mechanism as a complex entity can be divided into several clearly defined subsystems (levels): legislative (the whole system of law, taken in static and dynamic), aimed at regulation and specification of human rights and its guarantees; law (legal system as a set of legal phenomena); institutional (system of legal institutions authorized to exercise rights protection, oversight, law enforcement and other activities, including regional and local structures); information and ideological (including humanities enlightenment, education and bring up).

To each of these subsystems also corresponds a function, which is designed to perform legal guarantees by acting together. The structure of the mechanism of legal guarantees (and its contents) depending on what tasks facing society at this particular historical juncture, and these items may vary. Human rights are heterogeneous, and hence their practical implementation, their organizational and legal support may not be homogeneous.

Analysis of viewpoints allows scientists to conclude that elements of the guarantees mechanism structure



are the following: 1) the level of state bodies competence, resulting not only in securing legislative powers, but in the ability to actually deal with the issues related to the implementation of the rights and freedoms, 2) establishing institute of responsibility for officials and citizens, and 3) procedural form of realization, protection and restoration of impaired and violated rights and freedoms, and 4) the legal mode of law (rule of law and constitution, etc.) [16, p. 30].

The above analysis allows to reach the following conclusions:

1. The concept of international legal mechanism for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant bodies of international organizations: it is mutually interconnected system of tools, based on the norms of international law, by which, under the appropriate conditions, is the realization of everyone's right to appeal to the international judicial institutions or to the relevant international organizations, and its protection by relevant subjects, and in case of violation – its protection and restoration.

2. At the functioning of an international legal mechanism for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant international organizations the mechanism of legal guarantees plays an important role.

3. The structural elements of the international legal mechanisms for ensuring the everyone's right to seek rights protection before international judicial institutions or the relevant bodies of international organizations that constitute its contents are: a mechanism for exercising the right to appeal (legal facts that are the basis of the right to appeal; subjects: physical and legal entities; the law, the functional purpose of which is to regulate social relations associated with the implementation of the right to appeal); the mechanism of the right to appeal (subjects – international institutional bodies and state institutions, international instruments);

a protection mechanism of the right to appeal (institutional bodies (judicial) and international legal regulations).

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