

USC 341.231.14:342.727

CORRELATION INDIVIDUAL AND COLLECTIVE HUMAN RIGHTS IN THE CONTEXT OF PROMOTION AND PROTECTION OF FREEDOM OF EXPRESSION

Andriy Melnyk

*Ivan Franko National University of Lviv,
Universytetska str., 1, Lviv, 79000, Ukraine,
e-mail: melnyk@gmail.com*

Outlined the recent growth trend as a collective human rights and in particular in the field of freedom of expression. The analysis of the international legal understanding of individual and collective human rights and the implementation of these rights in the context of freedom of expression in this article. New subjects of collective rights in the contemporary globalized society are determined. It has been analyzed the nature of the contradictions that arise between individual and collective rights in the process of ensuring and protecting freedom of expression and the possible ways of expression.

Keywords: individual rights, collective rights, human rights, freedom of expression.

The right to freedom of expression enshrined in the main international declarations, conventions of the UN, the European Union and is based on modern individualistic conceptions of man and society. However, a trend of transition to a collective existence, which is dictated by the strategy of human survival itself, influenced by the emergence of globalization and the information revolution communicative new collective subjects of international law (ethno-national, corporate, networked community, humanity as an integral integrity) leads to increased content rights to freedom of expression through the inclusion of the so-called communicative collective goods [4, p. 352], users who have a collective actors. These rights of certain ethno-national and cultural communities affirm freedom of thought and belief through their culture, language and religious identity. So, Y. Tishchenko noted that the reference to the issue of collective rights of national minorities and ethnic groups in the constitutions of European states began after the Second World War [14].

The relationship between individual and collective rights of a number of studies devoted to Ukrainian and foreign scientists: P. Rabinovich, Y. Tishchenko, T. Kovalevska, S. Rymarenko, N. Kovalko, A. Hofe, A. Carty, T. Modud et al.

First of all you must submit definitions of individual and collective rights. Thus, T. Kovalevska said that “those rights which a person can use independently of other persons belonging to the individual, and those whose implementation is possible only group of people, not individuals, are in accordance with the collective” [9, p. 83]. Instead, N. Kovalko says: “Individual rights are natural, inalienable and inviolable, inherent in the individual from birth and can be implemented,

individually and collectively. However, collective rights are not natural in origin, since acquired as community awareness of their specific interests and sold exclusively by a group" [8, p. 211].

Differentiating the collective and individual rights, O. Hofe observes: "Cpravdi individual rights regarding their benefits, such as life or property. Everyone can enjoy these benefits on their own, so it their can take away and that is to kill or rob her. In contrast, collective rights, for example, the right to their own language can be realized only in the community: learn and use the language within the linguistic community, based on their wealth, created a common practice" [4, p. 352].

Several authors refer to the collective subjects of international law above all humanity in its integral integrity [13, c. 572], the consolidated group diasporas and minorities within the European Union, formed under the influence of strong migration, ie the so-called network community. Also, some studies violated international legal problem multinationals and administrative units.

Addition of subject of the international law legal personality separate communities is quite natural. Human rights as tribal creatures without considering its integral connection with the collective entity can not themselves embody the idea of absolute justice. As the evidence developments in the Middle East, absolutisation to protecting human rights in their isolation from the sovereign rights of ethnic communities actually halvanizuvaly dramatic events in Iraq, Libya and Syria. So we can agree with A. Carty, who "put human rights at the center of international law means completely away from the very essence of the problem, which has come into international law – namely, how and why people relate to the collective international community. All the modern building of international law, the trend toward so-called global konstytutsializmu verhovenstva and individual human rights are based on the demonization of collective life and society in favor of the absolute autonomy of the individual whose sacred character lies in the fact that it is fully protected from scrutiny. In this way, international law does not correctly understand yourself, so now alienated from itself" [15, p. 552].

Clash of individual rights and freedoms of the collective rights that are cultivated in non-European societies were perhaps the biggest challenge for the European system of human rights protection and pravozabezpechennya. We know that the last time the European system of relations between the individual and the community with the moral and legal point of view was based basically on the concept of individual freedom and responsibility, which eliminates the concept of collective conscience, collective responsibility.

But as already mentioned, the growth in today's globalized world primacy "of a general" collective over the individual is an obvious fact which must be considered. Generalizing facts, information communications researcher M. Delyagin states that human development came to an abandonment of personal autonomy has been achieved Enlightenment, through repetition stereotype disaster, mankind returns to a collective existence [5, p. 22].

Therefore, before human rights institutions face very serious legal and regulatory problem - how harmoniously skorelyuvaty individual rights with the rights of groups such as minority in terms of immigration? As practice shows, often the projects on implementation of group rights and interests lead to the infringement of the rights of persons in this group do not apply excessive ethnicizing social consciousness and social segregation. What's more the case that under the protection of collective human rights violations are justified by the individual, including his right to be otherwise, the right to open other communities and values. Specifically recorded numerous cases of murder of German Turkish minority parents for their daughters attempt self-expression, self-identification as a member of the European community.

Particularly strong group solidarity and the associated reluctance to correction collective intentions towards intercultural tolerance observed in marginalized Muslim communities of the European Union. Clash of the Muslim customary law with norms of individual and public rights continental EU has repeatedly led to dramatic conflicts of law, especially in collision freedom of speech, freedom of expression, which is the norm for long Alaskan European countries with collective rights of the Muslim community “crazy” to “freedom of worship”. This was said with concern in his report of the collective group of leading experts from the Council of Europe.

“After all, freedom - including the freedom of expression of views – threatens another group of people, or rather, the sensitivity of people who need to curb this freedom with respect to their own religious beliefs, or cherished symbols. For the first time this important issue emerged in Europe during the «case Rudy» 1989 ... Much rezonansnishoyu event in 2005-2006 was the publication in a Danish newspaper of cartoons and irreverent comic book depicting the Prophet of Allah. Thus, there is a danger that the basic freedom – that freedom of expression - can become blurred concepts through fervent desire of certain elite forces Europe to prevent further alienation of a large minority or because of their fear to provoke violence. The apparent conflict between freedom of expression and freedom of religion, and lack of agreement on the limits of freedom of expression does threaten some of the most cherished European values” [7, p. 34–36].

In the world there are different approaches to security and protection of the collective rights of national minorities. If they generalize, one of them – a detailed regulation of their rights, including freedom of expression, freedom of religion, with painted implementation mechanisms. It's such countries as Austria, Italy, Hungary. The second – the other extreme, when the collective rights are not defined at all, and are provided as part of universal human rights. The reasons for the reluctance of many countries to provide collective rights to minorities came from fear to block the growth of their national, legal consciousness towards the requirements of their sovereignty, the reluctance to encourage minorities as active subjects of international law.

However, past experience shows that giving minorities the right to strengthening their cultural and linguistic expression, their identity obtained under the domestic laws generally do not threaten national sovereignty.

Therefore, in Art. 1 of the UN Declaration on the rights of persons belonging to national minorities or ethnic, religious and linguistic minorities says: «The State protects in their respective territories the existence and identity of national or ethnic, cultural, religious and linguistic minorities, encourage conditions for the promotion of that identity» [3]. The article points to the right by the recognition of collective rights of minorities to the existence and identity.

The right to self-expression, cultural identity, given the new declaration on the rights of persons belonging to national minorities in full proimplementovano current legislation of Ukraine. According to art. 6 Law “On national minorities in Ukraine” (2003), the state guarantees to all national minorities the rights to national cultural autonomy [2]. These rights include use in teaching their native language or learn their mother tongue in public schools through national cultural societies develop national cultural traditions, the use of national symbols, celebration of national holidays; profess their religion; meet the needs of literature, art, media creation of national cultural and educational institutions, and any other activity that complies with the legislation.

In addition, the Constitution of Ukraine guarantees the protection of the rights and freedoms of expression, language and national cultural aspects of collective rights. In particular, art. 10 provides the right of the Ukrainian nation, indigenous peoples and ethnic minorities; art. 12

protected national cultural aspects diaspora; art. 53 guarantees the right to learn their mother tongue minority.

In other words, the concept of collective rights declared at the highest level. But then there is the problem of how to find a fair measure of empowerment groups special rights. The principle of solving this problem, a collective minority rights can not subdue individual rights, whatever the traditions of particular communities.

Another problem lies in the fact that he understands the entity under the concept of collective rights. Demanding recognition of collective rights it must proceed from the fact that such rights are not the sum of individual rights, and make high-quality level of protection. In terms of contemporary social epistemology characteristic of communities is their collective intentionality compatible, which is embodied in the «collective» community “interpersonalnosti” group character of mental states [11, p. 4].

The intension of the right to collective subjects of joint activities, common values are of emergent nature, that is not a derivative of the personal property of individuals, acting, express, manifest their views. To explain this aspect of joint action and expression epistemology and attract the notion of common belief and collective intention, common goals, obligations, rights and collective advantages.

The corporate nature of the global and regional communities, based on the adoption of a common commitment involves mutual responsibility of the participants interaction and intentions of each other, that focus on certain socio-cultural values is a collective, and therefore responsible for implementing the actions and commitments their implementation coincide [11, p. 7].

Some researchers differentiate corporate rights and collective rights. If corporate law – a law group that protect all persons within its structure, the collective rights – the right people who can spread and defend the whole group that they are, the first example might be the right of peoples to identity, ethnic national demonstration, linguistic and cultural identity.

For example, verbal declarations, statements, statements by the Arab minority in the EU are characterized *vzayemozobovnyazan* applicant's religious community minds. Dogmatic directive religious community provides a social obligation to who listens, makes way requires someone who speaks. This type of solidarism its excessive suggestibility determines the extreme fanaticism and courage antisocial behavior of Islamic extremism in Europe.

From the above *vysnovuyetsya* that overcoming conflicts between human rights, individual and collective (solidaristic) rights of various ranks communities is only possible on the basis of such an international legal system that would combine social and legal mechanism for protection of human rights (“protection mechanism”, “recovery mechanism affected rights”, “training gear”) with a system of legal requirements in socio-designed solution oriented programs, and most importantly prevent social conflicts in that particular, in terms of legal protection of freedom of expression.

Resolution of the conflict between human rights and the collective rights of minorities on the territory of the European Union, the United States obviously lies primarily in line with the socio-economic, socio-cultural policy, particularly in relation to immigration.

It turned out false globalization expansion or construction of general civilization European Union, through uncontrolled and mechanical mixing of different cultures, attitudes, principles of life and death in the same space without proper evidence-based expertise, including legal and training. This is to a certain extent and concerns of authorities in Ukraine that preventive until they started to build a pre-social, legal, cultural strategy naturalization flows of migrants who are not necessarily MKO and Ukraine.

To be a legitimate nation must be constituted so that both minorities, individuals who make it and other groups could hear each other. This requires a relationship, *vzayemosynnerhiyi*. Therefore, any legislative and legal acts with respect to collective and individual rights must be avoided preferences one way or the other identity: ethnic, regional, religious, providing sufficient space for spiritual and creative expression of the individual, guaranteeing the right of its identity and *transkulturnist*.

According to the European liberal-democratic tradition collective rights of different communities, ethnic minorities can not subdue individual rights, whatever the tradition of this or that community. "If you prefer to give individual rights, we are soluble in law of nations: the right to self-determination, state ... If we decide that the right of peoples above, you will certainly come to discrimination" [16, p. 85]. However, this can only be in cases where the collective (group) goals and means can easily be transformed into individual. However, in reality there are areas in society actions to the goals and interests of social institutions, the community as a whole that are not according to individual goals members of society.

Let's explore this phenomenon by identifying correlative correlation between the right of the individual to freedom of expression and their representation in major collective rights of ethnic communities such as the right to use their own language, the right to establish and develop their national mass culture, the right to its own national history, historical memory, national identity.

Regarding the choice of language and communication behavior in Ukraine, after the adoption of the Law "On the regional languages" (Law of Ukraine "On the Principles of State Language Policy" № 5029 – VI) increased the risk of discrimination on the basis of linguistic competence. Language competence and behavior in terms of the law became more acutely perceived as a manifestation of loyalty to the members of national minorities. And of ignorance, such as Russian or Hungarian evaluated locally "mankurtyzm" and "rahulizm". As a result, in the light of collective rejection increases the risk *vidtishennya* privileged positions and incompleteness in social growth of the people in the titular nation of discrimination in national education, speech, conduct proceedings.

The need for the discovery of Ukrainian school or high school in the eastern regions under these conditions often becomes an insurmountable legal and administrative legal problem created a paradoxical situation that the most discriminated against in their rights to education are just representatives of the titular nation. It is opportune to the imperfection-politicized nature of the Law "On the regional language", the necessity of its substantial correction noted in the analytical conclusion of the Venice Commission.

With regard to the freedom to choose the language of communication and behavior in the creation and protection of new Ukrainian identity, this is a strategic issue in the construction of Ukraine as a democratic and legal state, and here it is possible to agree with E. Ostrovsky: "What in the world today the resources of language and culture is more important than the resources of the territory" [12]. Not surprisingly, as powerful countries like the UK, France, Germany, not only to protect their own language, in particular through the legal and law in their territory, they are promoting it in other countries. This makes it more necessary in itself. The official language – is a model of its own sovereign of the world that is invisible until it was trying to stop. When collapsing the language component of national identity are destroyed and other components. Due to changing linguistic picture mentality in favor of the language of a neighboring state, we gradually immerse ourselves in other people's system of meanings, alien identity.

Moreover, it is under pressure after the adoption of a neighboring country and deal opportune narrow regional interests extremely stupid law on regional languages has increased not only discrimination on the basis of linguistic competence, but creates potential conditions for separatist sentiments, threats of regionalization and federalization. Further involvement with the improvement of said Act will only deepen the theoretical and practical legal and regulatory conflict with art. 14 of the Law on Prohibition of Discrimination ECHR. According to this article: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds which - sex, race, color, language, religion, political or other opinion national or social origin, association with a national minority, property, birth or other status" [1].

It should be noted that positive discrimination is justified not only for actual equality in the language of community, but under certain historical circumstances is necessary and in the implementation of cultural rights. Providing a unified cultural space in Ukraine by creating and maintaining a national version of mass culture requires not just discrimination, formal equality, but special measures to support positive cultural communities in this regard. And when we speak of a dominant popular culture, we mean that the set of cultural values and orientations, which country counts its dominant majority.

When we understand the dominant majority is not statistically most people, and that part of the population that actually has a serious advantage in the cultural life of the country. Such an advantage compared to other minorities, the titular nation for historical reasons has a Russian-speaking part of the population, it is no secret that most of the media, broadcasters, publishing, both in number and as ideological orientation focused on the service in the first place, the interests and tastes of this of the population.

But the biggest problem is that the ideological orientation imposed by the Russian-speaking and Ukrainian-speaking population of the state culture is totally alien to him by its meaning. As rightly observes Y. Ostrovsky: "Our ideology is all imported, no creativity, liberal ideology is taken from the Western Political pamphlets and newspapers, textbooks of the Communist historical materialism, modern patriots platform is descended from ancient history, and very roughly interpreted" [12]. Since then, the post-Soviet cultural environment in Ukraine, especially in the eastern regions had changed: it is no longer immersed in someone else, we live in a system alien meanings imposed externally sanctioned Humanities.

Tool that is able to bring us back to their national meanings can not be based on the expansion of the legal force of one cultural tradition by another. To do this, create a new modern political nation, national mass culture that would built on literature, art, film, television, that would be no apology for the defeat and national success in achieving global standards in the European space, nanotechnology, medicine, education, sport tourism.

That having different cultural orientation identity should not impose their identity to each other and create a new one that will stand the two identities are always interfering. Community is the only nation where it can produce approximated matrix of thought and behavior. This, according to O. Donchenko, should be the only ideological matrix of meanings of solidarity as a factor in the formation of a unified space of mass culture and identity tolerance [6, p. 298].

The only structure that can be raised and addressed in the legal field of this magnitude is the state's strategic objectives, goals other subjects spatio-temporal constraints and often confrontational. In international legal terms the government has sufficient legal regulatives programming, stimulation, formation of a new pluralist national mass culture through a

mechanism of social and legal support. In the system of this mechanism are important «protection mechanisms», “mechanisms of redress”, “training mechanisms”. Particularly important legal regulatives regulation and incentives for national teleprostranstve in part 1 of art. 10 of the Convention is the provision that the right to receive and impart information and ideas “shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises” [1].

According to the explanations of the EU on human rights, even the right to regulate national licensing system is connected at its base mainly on technical issues, but, however, it does not mean that the measures are not licensed should not be subject to the requirements of part 2 of art. 10 on limitations of sanctions in the case of television and radio communications to the detriment of health or morals, territorial integrity and public safety.

Providing conditions for realization of the right to freedom of speech, expression of ethnic communities in the former Soviet Union, which became independent states is of particular importance to defend their sovereignty, their identity. The fact that the processes of globalization, ethno-national, national renaissance wear non-linear, ie there is a different pace and depth in different regions, bumping into purposeful opposition from former parent who use the information to expand, freedom of expression of speech as the primary means of struggle against the new national identities. Special efforts fracture Ukrainian identity through media war and the construction of the basis of the new Eurasian identity shows Russia. Ukraine is trying to break away from dystresovoyi identity, which had been “coded” historical losses and failures.

But monopolized mainstream media, television, press n or pro owners indifferent national business organizations was actually programming the factor of change of national identity. It is evident from the nature of the menu, which offered major broadcasters. The main focus is directed towards the catastrophism, negative, hopelessness, inferiority, low-grade rozvazhlnist, focus on eastern variant mass ersatz culture, humiliation of national dignity. Take the book descriptions O. Buzyna with 100 thousand copies, which is an extreme degree of national contempt, blasphemy of national shrines, and may qualify as undermining national security, but not yet the official authorities are silent, as opposed to the leadership of the European Union, which announced its protest against the blatant propaganda and ideological war with respect to post-Soviet countries and Ukraine in particular.

The foregoing leads to the conclusion: because of the contradictory character of globalization, accompanied at the same time the process of growth of national renaissance, the growing role of ethnic minority communities in the network of social and cultural processes of entire regions and leads to a more balanced approach concerning the relation between individual and collective rights to freedom of expression in modern information and communication society that will avoid conflict between the individual and the collective consciousness of humanity and law-making.

Author's translation of the article

LIST OF USED LITERATURE

1. Європейська Конвенція з прав людини з Протоколами №1, 4, 6, 7, 12 та 13, з поправками, внесеними відповідно до положень Протоколів №11 та 14 // ?

An article received by the Editorial Board 20.10.2013

Accepted for publication 25.11.2013