# THE LEGAL STATUS OF MAN AS THE SUBJECT OF CONSTITUTIONAL AND INTERNATIONAL LAW

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**Summary**

This article is dedicated to the research of legal status of man as the subject of constitutional and international law. It is noted that the period after World War II is characterized by active development of international human rights law and there is a close relationship and mutual influence of constitutional and international law on human rights in modern society due to the coincidence in the subject of legal regulation. A conclusion that the majority of international instruments on human rights become nowadays the part of constitutional law is made.

**Key words:** human rights, legal status of man, constitutional law, international law, subject of legal regulation, source of constitutional law.

**Аннотация**

В данной статье проводится анализ правового статуса человека как предмета конституционного и международного права. Отмечается, что период после Второй мировой войны характеризуется активным развитием международного права, прав человека. На современном этапе развития общества происходит тесная взаимосвязь и взаимовлияние конституционного и международного права в области прав человека, что обусловлено частичным совпадением в предмете правового регулирования. Делается вывод о том, что большинство международных документов по правам человека являются частью конституционного права.

**Ключевые слова:** права человека, правовой статус человека, конституционное право, международное право, предмет правового регулирования, источник конституционного права.

**Problem definition and topicality of the research.** One of the current trends is the more and more increased strengthening of the role of international law in the modern world and its relationship with constitutional law. V. Shapoval believes that central part of constitutional law in the national legal system is stipulated from its relationship with the system of public international law, as in the rules of constitutional law are reflected provisions on sovereignty, national territory, citizenship, human rights, and others which have important international significance [1, p. 8]. As P. Stetsyuk says, period of constitutional development after World War II is characterized by the further development of human rights and freedoms [2]. In our opinion, the understanding of man and its rights as a core value determines the vector according to which the law is developing nowadays, and as the legal status of man is one of the central issues of constitutional law, this is the sphere which is to be considered in most matters of legal theory. As international instruments have the key role in this sphere, the research of international acts, modern concept of human rights and their impact on the Constitutional development in the world as well as recognition of international acts in the human rights sphere as the source of constitutional law is significantly topical.

**Present state of research.** Currently, the issue of legal status of man both in constitutional and international law is considered quite extensively in the works of V. Shapoval, P. Stetsyuk, S. Dobrianskyy, B. Malyshev, I. Lukashuk, I. Konyukhova, U. Johnson, C. Black, G. Drori, J. Mayer and others. However, most of the works are focused on the analysis of legal status of man only in constitutional or international legal sphere, without linking in-depth analysis on convergence in the subject of legal regulation. Some of these ideas may be partly found in works of V. Shapoval, I. Konyukhova, which provides a need for a deeper analysis of these issues.

So, the main **aim** of this article is the analysis of legal status of man as the subject of international and constitutional law, identification of interference of constitutional and international law in this area of public relations.

**Main provisions.** After World War II the movement for the codification of international human rights has begun, and if we can point out a key moment, the formation of International Military Tribunal in Nurnberg by France, Soviet Union, Great Britain and the United States on which the German Leadership was tried for crimes committed during World War II, is to be considered [3, p. 295]. It is very important that since the Nurnberg Tribunal creation, a big amount of international human rights treaties has been created and the opportunity to protect the individuals from their own state is becoming nowadays more and more important. So, *the emphasis is shifted to the rights of each person, regardless of their legal relationship with a certain state.*

It is noted that with the end of World War II the United Nations (UN) have a crucial role in the establishment of internationally agreed human rights standards, and as Urban Johnson says, the UN Charter identifies four basic organizational goals: peace, human rights, justice and freedom [4]. Since its creation, the UN promotes human rights, and it is demonstrated by the following words of the Preamble to the Charter – «We, *the peoples of the United Nations* determined… to regain faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and..» [5]. According to the Preamble, we see that the formulation was made as «we, the peoples» rather than «states», which emphasized that the organization was

established on the will of the people, and not particular states or governments. Therefore, the priority vector for the UN was the development of human rights. The first international act which actually secured these rights became the Universal Declaration of Human Rights, which was adopted in 1948 [6]. As B. Malyshev says, the UN in its Charter for the first time in the world fixed in legal sphere the phenomenon of human rights, including natural rights [7]. As the author says, from this moment has begun the countdown to a fundamentally new stage in the development of legal systems: the idea of natural rights has moved from the level of speculative philosophical constructions to the level provided by the government and international community with legal norms. For the first time all the states in the world were offered on the globally-legal level to recognize the system of basic human rights, implement it into the national legal systems and ensure their safety and security, and with the help of Universal Declaration of Human Rights moral categories of «justice», «equality», «freedom», «humanism» which are the goals of moral and legal systems of social controls received the universal legal recognition and specification. In our opinion, this statement of the author is quite reasonable, since after World War II there has been a gradual transition to the understanding of law as not only the set of legal rules, but some ideals and values, such as natural rights, as their source. According to S. Dobryanskiyy, analysis of scientific literature provides a possibility to allocate such system of initial principles of Human Rights Institute: Universality of Human Rights, formal equality of opportunities, which constitute the Institute of Human Rights on all subjects, naturalness of fundamental rights, indivisibility, interdependence, interconnectedness, a fair balance between the rights and freedoms of human with the general public interests [8]. In our opinion, especially important is the universality of these rights. As the author says, all rights and freedoms are universal from their content, as universally recognized human rights, including the rights to life, freedom of conscience, equality before the law, the right to free movement, the right to a citizenship, to freedom of opinion are general rights and freedoms of men irrespective of national and religious particularities and various historical, cultural and religious backgrounds. The universality of human rights is stated in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels where is said, that «We reaffirm the solemn commitment of our States to fulfill their obligations to promote universal respect for, and the observance and protection of, all human rights and fundamental freedoms for all. The universal nature of these rights and freedoms is beyond question. We emphasize the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind»[9]. Thus, the Universal Declaration of Human Rights, in fact, is the revolutionary document of its time, and with the creation of the UN could be argued that the «era of human rights began» [10]. In general, it is now referred to the existence of international human rights law as a branch of public international law that regulates the cooperation of the states in respect and observance of human rights, and main task of this group of norms is to establish standards of international human rights protection instruments and the provisions of appropriate guarantees of their compliance through international cooperation [11, p. 178]. In addition to the Universal Declaration of Human Rights, the key international instruments in this field are the International Covenant on Civil and Political rights and the International Covenant on Economic, Social and Cultural rights of 1966 [12; 13]. It is important, that the International Covenant on Civil and Political Rights is ratified by 165 countries, and the International Covenant on Economic, Social and Cultural Rights – in 160 countries [14; 15]. Thus, in most states of the world, these Covenants are recognized as international treaties. However, as of March 2012, 25 states, including, for example, China, some Arab states (Saudi Arabia, Qatar, Oman, UAE and others) have not signed the Covenant, or signed but not ratified. Similar situation is with the Covenant on Economic, Social and Cultural Rights which as of June 2012 was not signed of ratified by 33 states. So, despite the universality of human rights and increasing sphere of international treaties in the sphere of human rights protection, we can't say that all states of the world support and embody in their legal practice this concept. However, it is argued, that if before the World War II we didn't have the opportunity to tell about the existence of international human rights law, and most of these rights were secured in national legislation, mostly in the Constitutions, now we have around 200 international legal mechanisms of human rights protection, including regional international treaties, and 65 of this treaties recognized the Universal Declaration of Human Rights as its source [10, p. 27].

Also one of the characteristic features of the human rights international protection instruments is the developed system of human rights protection mechanisms that are based on regional Conventions [11, p. 181]. The legal basis of the European system of human rights protection is the European Convention on Human Rights and Fundamental Freedoms [16], in the Americas the legal basis of intergovernmental cooperation in this area is based on American Convention on Human Rights in 1969 [17] and in the African Region – Africa Charter on Human and Peoples [18].

Thus, in the period after World War II there has been a significant increase in the number of international legal acts on human rights and the concept of human rights becomes the backbone for further development of both international and national law. As was already noted, the constitutional development after World War II is characterized by further growth of human rights and freedoms , and this trend can be linked with recognition of the priority of international law over national and fixing it in the Constitutions as the principle, as well as a number of human rights instruments provided by international acts.

It is also important, that there is impact of national legal systems on the international law principles development and formation, as well as the impact of international law on the domestic law of particular states – so, we can tell about the interaction of these two systems [19, p. 80]. Under this impact we must understand the fact, that international law appears later that the national and, to some extent, on its basis. For example, the idea of the enhancement of human rights at the international level that appeared in

the twentieth century is to some extent the result of constitutional provisions of the eighteenth century, which were realized in the first Constitutions of United States and France. In the Declaration of Independence in 1776, which as G. Billias said, is the best and concise statement of the constitutional ideals of USA [20], contains a provision that «that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness» [21], and in 1789 there were proposed 12 amendments to the Constitution, ten of which were first Amendments, the so-called «Bill of Rights». In France in the same period, namely in 1789 was adopted a Declaration of rights of man and citizen, which included basic human and civil rights. Thus, there is no objection to the fact, that since international law has been established on the basis of national, it has undergone a significant influence of the ideas that were developed at the national level, among them the catalog of human rights that is one of the cores of modern international law. There is also the reverse effect – under the influence of international law the domestic law of the states is formed. This is predetermined by the requirements of consistency of international and national law, as any international treaty in force is binding, so there is a need to eliminate collisions that may appear.

A number of interesting ideas, while analyzing the relationship and interaction between constitutional and international law is proposed by V. Shapoval [22, p. 88-89]. He argues that *both constitutional and international law are interrelated in their origin and development* and gives the idea, that it must be considered axiomatic that the system of national law, including national constitutional law is subject to broad influence of international law, and it may be proven by the fact, *that the norms of most advanced Constitutions, which set the basics of legal status of man are taken from key international instruments on human rights*. He also notes that specific convergence of international law and new Constitutions, among others, *is stipulated by similarity and even coincidence of the subject of legal regulation,* and as I. Khonukhova mentions, «nowadays both international and constitutional law have the subject of legal regulation of public relations on the exercise of state power and its interaction with the person in national and international perspective» [22, p. 88; 23, p. 16]. In our opinion, this statement illustrates the relationship of constitutional and international law. Constitutional law, which serves as the foundation for the law of every state has as its subject the most important group of social relations that exist. There relations have public character and a large array of them consists of legal status of man. As noted above, man becomes the center and that value, according to which international law is developed. Thus, the legal status of human and citizen, his rights and duties, the mechanism of protection of these rights is the core group of social relations in which there is convergence of legal regulation of constitutional and international law, but not the only one. And if the question of state power organization (which is the second group of social relations that are classically the subject of legal regulation of constitutional law), forms of such organization, are the free choice of each state, the rights and freedoms are universal.

In addition, as mentioned before, the concept of human rights is very actively developed in international law after World War II. As most of the Constitutions regulate only the most important social relations, they contain provisions regarding the fixation and guarantee of human rights. As it is stated in the detailed study of «World Influences on Human Rights Language in Constitutions», a reference to human rights, which was previously absent in almost all Constitutions, now appears in most of them [24].The authors point out that the enhancement of human rights in the Constitutions is caused by the degree of their development on international level (during the development of the Constitution or amendment), and most often they are found in the new Constitutions. National Constitutions are greatly influenced by global social conditions that now emphasize the importance of human rights. Recently, the Constitutions came under the influence of supranational statements about the existence of universal human rights and values inherent to all persons, regardless of their nationality. Thus*, the national legal system is nothing more than a reflection of global international heritage, according to which the focus on the concept of human rights is displaced in twentieth century from the rights of citizens, which are strictly associated with the state, to human rights, which are considered universal in their nature.* However, after reviewing all of the Constitutions in the world as of 2005, the authors make the interesting conclusion, that the later Constitution is, the more it mentions human rights as opposed to «older» Constitutions, which exist for a long period of time and are less subject to change. It is associated with their persistency of being into force and higher stability. However, it is unlikely to have negative effect, given that international treaties, which provide human rights protection, become the part of national legal system. Besides, we are talking about the mention of human rights, and not just the rights (without «human» mention), which are well defined in the Constitutions that have been in force for a long time. It is interested, that according to this research, the Constitution of Ukraine is in the 8-th place in the world by number of human rights mentions – 0.4 mentions per page.

As already mentioned, the subject of constitutional law consists of relations arising in the field of state power (and government) organization, as well as the legal status of man and citizen. It becomes obvious that second group of relations is a large part of international law, because there are now about 200 international legal mechanisms of human rights protection. In our view, as human rights are fixed now both in Constitutions of the states and international law, which priority is now recognized, these mechanisms simultaneously are the source of constitutional law, due to the coincidence of the subject of legal regulation. Constitutional law regulates most important social relations, Constitutions contain provisions (in different forms) about the priority of international law, and the close relationship of these legal areas is becoming more apparent. International acts that are ratified by the state become rules of its national law. Thus, the international instruments have the relations, which were traditionally considered as constitutional as the subject of legal regulation, and in fact become the norms of constitutional law.

In **conclusion**, we can state that the period after World War II is characterized by the growing role of international law and human rights concept. In this time the process of international agreements conclusion and international organizations creation is activated, and the awareness of the role of international law that helps to ensure peace and security in the world becomes obvious. International law, although it is generally accepted that it is formed later that national law, is becoming increasingly important. International instruments are an integral part of the national law of the states in the world and Constitutions reflect in their texts its priority and significance. In addition, international law is developed with the need to guarantee human rights protection, and those rights become a universal phenomenon, and this is also reflected in the Constitutions of the states, which fix a number of rights and freedoms. There is also an overlap in the subject of legal regulation of international and constitutional law (in particular the legal status of man, which is the central part of legal regulation of both constitutional and international law), which causes the necessity to recognize international acts in this sphere as the source of constitutional law.

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