

between men and women. For example, statistics are separated by sex. The term "gender" is used to analyze the roles, responsibilities, constraints, opportunities and needs of men and women in all spheres and any social context provided.

The peculiarity of the formation of state gender policy in Ukraine is that it is based on international legal acts ratified by Ukraine, and is governed by national laws and regulations on equality between women and men. A significant step was the adoption by the Verkhovna Rada of Ukraine on September 8, 2005 the Law of Ukraine "On equal rights and opportunities for women and men" whose goal is achieving equality of women and men in all spheres of society through legal equal rights and opportunities for women and men elimination of gender discrimination and the use of temporary special measures aimed at addressing the imbalance between women and men to exercise equal rights provided by the Constitution and laws of Ukraine.

The implementation of a gender perspective in forming the legislation Ukraine is a question of social justice, the solution of which is vital for ensuring equitable and sustainable human development by applying the most efficient and effective methods of government intervention.

**Keywords:** *gender, gender equality, gender politics, equality of rights, equality of opportunity.*

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## **SOME PROBLEMS OF UNDERSTANDING THE CONTENT OF COLLECTIVE RIGHTS**

**Самотуга А. В. Проблеми розуміння змісту колективних прав.** Висвітлено особливості сучасних наукових поглядів на поняття та зміст колективних прав, що належать до прав людини третього покоління. Наголошено на необхідності їх відмежування від колективного способу реалізації деяких категорій прав людини й громадянина, як, наприклад, політичних та соціально-економічних.

**Ключові слова:** *колективні права, покоління прав людини, класифікація прав людини, відмежування.*

**Statement of the problem.** The modern political world is very colorful. Its members belong to the state, which historically living group of people who are different from other groups in their language, descent, national and racial, religious beliefs, traditions and cultural heritage. So, are entitled to the opportunities and benefits that the representatives of the titular nation. In addition, there are people who have been leading the sacrificial struggle for the creation of their own state. On the agenda - the implementation of this important category of human rights as

collective rights. Meanwhile, this practice is not supported by adequate theory on the matter, that their improvement requires its own concept and content of collective rights in view of the current realities and trends of international relations.

**Analysis of publications which discuss the solution to this problem.** The problem of collective rights as a part of the third generation of human rights has been the topic of research of many modern and post-Soviet Ukrainian scholars dealing with problems of human rights in general, including theoretical-legal and constitutional aspects (O.V. Lukasheva, P.M. Rabinovych, O.V. Pushkina, A.Yu. Oliynyk and others). But there is no special study concerning the correlation of collective rights with the collective way of realization of some categories of human rights.

So, the **purpose** of this article is to find out peculiarities of modern understanding the content of collective rights in national and foreign legal studies and to give the authors' view at ways of solving such problems.

**Basic content.** As it is well known, the classification of human rights carried out by many criteria, one of which is the period of their appearance, such as their division into so-called generation of human rights, a term proposed in the 1970s. by Czech lawyer Karel Vasak, the first General Secretary of the International Institute of Human Rights at Strasbourg. In his view, there are three generations of human rights relate to the three ideals of the French Revolution: liberty, equality and fraternity. The first generation of human rights presented at the International Pact on Civil and Political Rights of 16 December 1966, the second - the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, and the third form such rights as the right to development, right to a healthy environment and the right to peace, which are just beginning to receive international legal recognition. K. Vasak called them "human solidarity". [1]

Although since then initiated a discussion about the "peoples' rights" including among the western international lawyers, it must be admitted that at present both in Ukrainian and Russian (then we can call it "post-Soviet") legal literature on the theory of the state and law in general, and constitutional law and general theory of human rights, in particular, today almost no monographs dealt with the study of contemporary nature of collective rights in the context of their individual and collective belonging, except that the thesis by R.I. Akhmetshyn (Moscow, 1999). In this work the author mainly focused on the historical aspects of the analysis and scholars' opinions on this issue [2]. While on this subject we should be somewhat agree with the authors of the textbook, edited by V.S. Nersesyants who claim that the content of human rights should be approached historically specific, as the current catalog of human rights recorded in international legal documents is the result of a long historical development of standards that have become the norm of modern society [3, c. 217].

But in western jurisprudence issues of collective rights has not received adequate scientific development (and the term is used quite rarely, including in legislative acts), which the article's aim to explain that gap and try to eliminate some confusion in terms of understanding content of collective rights, based

primarily on its subject (subjects) and forms of implementation (individually and collectively).

In addition to historical we consider necessary to claim about the existence of a political approach to the study of this subject. As A.Yu. Oliynyk analyzes, in the theory of rights of the man and the citizen modern scholars distinguished by, along with specially-legal and functional, also even socio-economic and *class struggle* (hereinafter - emphasis added) aspects of this problem [4, c. 70].

Hence, let's pay special attention to the class and political overtones of emergence of the concept of collective rights in the structure of generations of human rights. As we know, the author of the concept K. Vasak - representative of the socialist state, Czechoslovakia, which belonged to the Soviet bloc, which could affect and further development over the decades the theory and practice of international consolidation and classification of the rights of the man and the citizen.

Given the fact that the same rights and freedoms may simultaneously belong to two or more classification groups, and the grounds on which the rights and freedoms are grouped to be quite diverse, so also is the interpenetration of human rights for all three generations and their relationship with human rights, classified by content (area of their implementation), including political, social and economic.

With regard to socio-economic rights, on this occasion, M.I. Kozyubra notes that such international instruments as the Universal Declaration of Human Rights of 1948, International Covenant on Economic, Social and Cultural Rights of 1966, etc., have been adopted, not without ideological and diplomatic influence of the Soviet Union, the governing authority which sought to "enrich" human rights "socialist achievements". Although the researcher argues that this explanation seems simplistic [5, p. 59]. In contrast with the latter author's thesis let's beg for several reasons.

First, in the writings of the former Soviet authors (V.S. Nersesyants, M.V. Tsvik, O. O. Petryshyn, O.A. Lukasheva, M.S. Kelman, O.G. Murashyn) even the position of K. Vasak is being reproduced superficially. They believe that the category of "Generation of human rights" is associated *with the time of their emergence* [3, p. 223; 6, 452; 7, pp. 151; 8, pp. 137]. And when they emerge they are not connected nor with the birth of the appropriate political and legal thought, nor of the statutory and more. This gap was trying to be eliminated by V.V. Kravchenko, who argues that the division of human rights in the generation is explained *with the sequence to be included in constitutions and international legal acts* [9, p. 142].

Secondly, the above mentioned authors have different definitions of actors of collective rights: collectives (M.V. Tsvik and O.O. Petrishin); groups, communities, associations (V.S. Nersesyants, O.A. Lukasheva); nations, humanity (Yu.M. Todyka, O.Yu. Todyka) [10, p. 59]. Although almost identical in these works is a set of objects of collective rights: the right to development, peace, health, environment, and whether the common heritage of mankind, adequate standard of living, education, communication, self-determination, local

government). There is, therefore, a logical question: whether some of these rights belong not only to communities but also to individuals? Even more reason for debate around the issue of collective rights are making some of these authors, in addition calling them "solidarity".

Thus, some authors, separating collective rights from individual ones, indicate that there is a relationship between them, based on the principle according to which the realization of collective rights should not harm the individual's rights and freedoms [3, с. 224]. Authors such as O.A. Lukasheva, Yu. M. Todyka and O.Yu. Todyka, setting out their vision of the nature of collective rights, then talk about forms of realization of human rights – individual and collective. That thus the term "collective rights" refers to a category of rights held by the community, and a way to implement certain groups of rights of the man and the citizen. So, rightfully, some of the citizens' political rights can be realized individually (participation in elections and referenda through personal secret ballot) and in a collective way (participation in political parties, the right to assemble for the expression of their political views and conscience). A large number of labor rights are implemented in a collective way: the right to strike, concluding collective agreements and contracts and so on.

So, we need a clear differentiation in the issue of terminology on collective rights. On this occasion a possible clarity makes the research of V.I. Kozlov regarding collective political rights and freedoms of Ukrainian citizens. In this paper, the author didn't hold any parallels between investigated by him categories of rights and freedoms of a term such as "generation of human rights" [11].

Regarding the aforementioned symptoms such collective rights as their solidarity on this issue is the Charter of Fundamental Rights of the European Union, which we believe is still a model of legislative classification of human rights [12], in Section IV «Solidarity" refers to the solidarity of human right of workers to information and consultation within the enterprise, the right to collective bargaining and collective action, including strike, to just and proper working conditions, social security and social assistance. That relationship is observed the rights of third generation of socio-economic rights. On the other hand the Charter, unlike other international instruments on human rights, does not contain a clear allocation category of collective rights in terms of the third weeding human rights limited to regulations on prohibition of collective deportations.

Finally, it is necessary to present the views of some American experts on the issue of collective rights. For example, Dan Sullivan, founder, Geolibertarian Society, and past chair, Libertarian Party of Allegheny County (Pittsburgh), Pennsylvania in the article "Common Rights vs. Collective Rights" notes that one of the great tragedies of socialism has been the confounding of common rights (natural rights common to each individual) with collective rights (those that have been delegated to the community or its government). Common rights are inalienable, individual rights – the very opposite of collective rights. Classical liberalism was based on the idea of common rights. Therefore, from the standpoint of common law the author to common rights attributes such as freedom of speech, the right to

property (the dichotomy of "common property - collective ownership") [13].

In view of Russian researchers, "Generation of human rights" – is, of course, a metaphor, and a metaphor that illuminates the situation in the same way as misleading. Indeed, proponents of this classification argue that second-generation rights are necessary for full realization of the rights of the first generation, and the international legal protection of rights of third generation creates the conditions without which the rights of the first and second generations can not be adequately guaranteed. However, successive generations and the future generations, contributing to the realization and protection of previous generations, not replace them. Finally, the new generation does not foresee the emergence of offspring of another species, they are the same in nature as their parents. Supporters of classification of human rights for three generations say that they are in fact different types of rights.

Thus, the metaphor of "generation human rights" can not be considered successful. However, the selection of three human rights groups, which have fundamentally different legal nature and are in hierarchical subordination in the sense orientation of each subsequent generation to ensure implementation of the first, and the recognition of the primacy of personal and political rights (right of first generation) expressing the initial requirement to respect human in his/her freedom – the clear advantages of this classification.

K. Vasak called third generation of human rights solidarity. In his view, the right of the first and second generations express excessive individualism and selfishness even that involves contrasting individual and society. The right of first generation designed to protect the individual against ill-treatment state, and the second law provides him the opportunity to ask the state of implementation of special government programs to provide social support and help. However, it does not take into account that human well-being is impossible without participation in community life for people in need of a decent life not only of liberty, equality, but also fraternity. Rights of third generation seeks to overcome the autonomy of individuals competing with each other, and to ensure social solidarity, which will allow people to reach their full potential through a joint participation in the social life of the various communities to which they belong. [1]

**Conclusion.** This focus provided by the rights of third generation, let us talk about them only as moral categories (which generally corresponds to the classical natural law tradition), not even the moral "right" (harassment), and the moral responsibilities. Hence, this type of legal non-fixing these rights, but their existence is largely declarative. Moreover, the degree of elaboration of scientific (or rather, non-elaboration) of categories of generations of human rights in general and collective rights, in particular, indicates, in our opinion, the global ideological and political changes, such as the collapse of the socialist system at the turn of 1980-90-xx's.

The above requires further research of collective rights in terms of clarifying their structure (corresponding to the presence of their duties and legal liability) and implementation mechanism in the present conditions of world political and economic processes.

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**Самотуга А. В. Проблемы понимания содержания коллективных прав.** Освещены особенности современных научных взглядов на понятие и содержание коллективных прав, принадлежащих к правам человека третьего поколения. Акцентируется внимание на необходимости их разграничения от коллективного способа реализации некоторых категорий прав человека и гражданина, в частности, политических и социально-экономических.

**Ключевые слова:** коллективные права, поколения прав человека, классификация прав человека, разграничение.

**Samotuga A. V. Some problems of understanding the content of collective rights.** The article deals with peculiarities of modern scholars' views at definition and content of collective rights belong to human rights of the third generation. The attention is paid to the need of their separation from collective way of realization of some categories of the right of the man and the citizen especially from political and socio-economic ones.

**Keywords:** collective rights, generation of human rights, classification of human rights, separation.

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