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GUARANTEES OF FREEDOM OF SCIENTIFIC CREATIVITY IN THE NORMS OF INTERNATIONAL LAW

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Abstract

The article examines the consolidation and development in the law "On Science and Scientific activity" of the internationally recognized human right to freedom of scientific research. The article analyzes the normative content of freedom of science and its reflection in legislation of Uzbekistan. Much attention is paid to the issue of the correlation of freedom of science with a number of civil, social and economic human rights, the beneficiaries of which are also scientists and scientific and technical workers. It is concluded that it is necessary to establish a balance between freedom of scientific research and human rights due to the increasing risky nature of modern scientific and technological progress.

Keywords Scientific research, license, freedom of science, UNESCO, Venice Declaration, international and national human rights.

INTRODUCTION

International universal human rights that directly affect the creative activities of scientists and inventors, scientific and technological progress, include the right to freedom of scientific research or freedom of science. Freedom of science is necessary, firstly, to achieve research goals, and secondly, for the development of science and, consequently, society as a whole. . Thus, the content of this law and the problems of its implementation are included in the generally accepted international norms of international human rights law. .

Several important documents have been issued on this issue, including the Venice Declaration on the Right to Enjoy the Results of Scientific Progress and Their Practical Application, adopted in 2009, the Universal Declaration on Bioethics and Human Rights, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in

2005, and the Recommendation on Scientific Activities and scientists (researchers), adopted by UNESCO in 2017, Report of the Special Rapporteur on cultural rights on the right to benefit from scientific progress and its practical applications (A/HRC/20/26) and the Committee's general comment No. 17 (2005) on the right of everyone to benefit from the protection of moral and material interests arising from any scientific, literary or artistic work, of which he is the author. Indeed, UNESCO, declarations adopted at international conferences and summits, the Special Rapporteur on cultural rights, as well as prominent scientific organizations and publications defend the "human right to science", referring to all rights, competencies and responsibilities related to science.

In foreign literature, this right is considered as an internationally recognized right, such as the human right to participate in scientific and technical developments and use their results, provided for in

paragraph B of part 1 of article 15 of the International Covenant on Economic, Social and Cultural Rights (which is further referred to as the ICESCR) , .

The commentary on the substance of the rights contained in article 15 of this ICESCR was originally published in General Review No. 17 in 2005 only in part 1 of Article 15 "C", i.e. "... the right of everyone to enjoy the protection of material and spiritual interests arising in connection with any scientific, literary or artistic work, of which he is the author." The specifics of this document, which, in relation to this article, defines the concepts of "author", "any scientific, literary or artistic work", "use of protection", "spiritual interests" and "material interests". The above-mentioned document, which is the initial commentary to article 15 of the ICESCR, was quoted in only one paragraph of this article.

The most important turning point for progress in understanding the normative content of the right to freedom of scientific research was an indirect analysis of this right in the 2012 lecture by the UN Human Rights Council Special Rapporteur on Cultural Diversity, "The interests of scientific development and the right to its practical application" . Paragraph 39 of the document clarifies: freedom of scientific research provides a guarantee that the beginning of scientific activity will be free from political and other interference, at the same time, the professional activity of researchers will be ensured by moral standards.

However, almost fifty-five years after the adoption of the ICESCR, in 2020, the UN Committee on Economic, Social and Cultural Rights published its general review of Part b of Article 15, Parts 2,3 and 4. Despite the adoption of a number of international instruments on the right to science, as the committee itself notes in this document, the field of science is one of the areas that receive the least attention in the Committee's reports and dialogues under the Covenant.

The Committee pays special attention to the right of the Covenant to benefit from the results of scientific progress of each person and its practical application in this document, since this right is often mentioned in connection with science.

However, the purpose of this general review is not limited to this right, but rather to describe in more detail the relationship between science and economic, social and cultural rights. The document also reveals other elements of article 15 relating to science, especially the obligations of States parties to take measures to protect, develop and disseminate scientific achievements (article 15, paragraph 2), respect the freedom absolutely necessary for scientific research (article 15, paragraph 3) and promote international relations and the essence of scientific cooperation (Article 15, paragraph 4). At the same time, the Committee also emphasizes the relevance of article 27 of the Universal Declaration of Human Rights for this analysis.

UNESCO Recommendations on Scientific Activities and Scientific Personnel (researchers) define the concept of "science", according to which "the word science refers to activities that objectively study observed phenomena, whether they are people, individuals, small or large groups, and identify and understand cause-and-effect relationships or interactions between various phenomena that confirm the truth its results through the exchange and; it is combined through systematization and conceptualization into a coordinated form of a knowledge subsystem and, thus, makes it possible to use an understanding of the processes and phenomena occurring in nature and society."

However, in the general overview, UNESCO shares this concept as follows: the term "science" as a theoretical element refers to a set of knowledge, facts and hypotheses that can be confirmed in the short or long term, and in this regard includes sciences that deal with social facts and phenomena.

Summarizing from the above definitions, science includes both natural and social sciences, at the same time refers to a process (dealing with science) that is subject to a certain methodology, as well as to the results of this process (knowledge and its practical application).

However, according to the aforementioned document, knowledge based solely on tradition, revelation, or authority (a person with authority), without comparison with reason and experience, or which does not allow for fundamental deviation

or cross-examination, cannot be considered scientific.

The right addressed in our research work is enshrined in article 15, paragraph 3, of the ICESCR, which establishes the obligation of States to respect the freedom necessary for scientific research and creative activity. The right to freedom of scientific research or freedom of science is considered one of the symbols of a "fully fledged free person", which was enshrined in the Universal Declaration of Human Rights in 1948. According to paragraph 13 of the general review, this freedom includes the following aspects: protection of researchers from undue influence on their independent decisions;

researchers themselves determine the goals and objectives of creating autonomous research institutes and research, as well as the methods used;

to question the ethical significance of specific projects for researchers and to grant the right to reject these projects if their conscience requires it.;

an opportunity for researchers to freely collaborate with other researchers at the national and international levels;

and, if possible, share scientific data and analysis with policy makers and the public. Of course, this freedom also has certain limits. The research on this issue has been published in detail in the next paragraph of my paper.

As noted in paragraph 8 of the Science Agenda — the Framework of Action, which is a system of guiding principles and means of achieving the goals of the Declaration on Science and the Use of Scientific Knowledge (Budapest, 1999) [11], scientific research should be based on the appropriate legal framework. At the same time, special emphasis is placed on the importance of freedom of expression and protection of intellectual rights.

The Parliamentary Assembly of the Council of Europe noted that freedom of research is necessary for the development of science in paragraph 2 of opinion No. 251 (2004) "on the draft additional protocol on biomedical research to the Convention on Human Rights and Biomedicine". "This is a part

of freedom of thought and speech, which, therefore, should be included in the category of human rights"

In paragraph 8 of its 1974 recommendation "On the status of scientific researchers", UNESCO recommends that Member States be guided by a national policy in the field of science based on strict observance of the autonomy and freedom of research necessary for scientific progress, creative activity of research personnel in the process of forming national policies in this field of science and technology development. Paragraph 8 of the UNESCO Venice Declaration of 2009 states that freedom of scientific research, concerning the human right to participate in scientific progress and use its results, is in a broad sense an important element of the development of science.

If we draw a conclusion from the above documents, then the basis for the development of science is "freedom", that is, the full provision of freedom of science for those who are engaged in scientific activities, which is a certain basis and driver of the development of science. It serves science and innovation not only in a particular country, but also around the world.

The importance of national legal regulation of the human right to freedom of scientific research lies in the fact that it not only creates conditions for the realization of this right by each researcher, but also complements the ideas (representations) about the normative content and structure of this right, which are reflected in international documents only in the most general sense.

The comprehensive concept of any internationally recognized human rights includes the concept of their beneficiary. According to the Committee's Comment on the content and scope of the rights provided for in paragraph 1 (a) (the right to participate in cultural life) and paragraph 1 (c) (the right to enjoy the protection of spiritual and material interests arising in connection with any scientific, literary, artistic works of which he is the author) of article 15 of the International Convention On human rights, the beneficiaries of these rights are individuals, groups of individuals and communities. Comment No. 25 of the United Nations Economic and Social Council (2020)

defines "science" as "... activities carried out by individuals, as well as large or small groups ...". Based on this, the circle of persons using the right to freedom of scientific activity should be considered in a similar way.

The Law of the Republic of Uzbekistan "On Science and scientific activity" distinguishes two categories of subjects of scientific and (or) scientific and technical activity - individuals (citizens of Uzbekistan). Such activities of foreign citizens and stateless persons are regulated by separate legislation.) and legal entities. Regardless of the specified norm, if you pay attention to article 14, the rights and obligations of persons engaged in scientific activities are defined, that is, according to the legislation of Uzbekistan, not all subjects of scientific and (or) scientific and technical activities, but only natural persons - researchers are considered beneficiaries of the right in question. As a result, we find that individuals and community groups are not designated as beneficiaries of this right. In our opinion, the beneficiaries of this right may be public associations of scientists, although not directly related to the subjects of scientific and (or) scientific and technical activities.

It is difficult to imagine modern science being carried out by researchers working alone. Thus, the most important right of beneficiaries of the right to freedom of scientific research is the right to freedom of association, including the right to form and join trade unions to protect their interests, as provided for in article 22 of the ICCPR. In accordance with article 14 of the Law "On Science and Scientific Activity", persons engaged in scientific activities have the right to carry out scientific activities individually or on a collective basis.

Each internationally recognized human right leads to the adoption by States of relevant international legal obligations, which are divided into three groups: respect, protect and fulfill. The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 25 (2020) on science and economic, social and cultural rights, sets out specific obligations (C) of States. The participating countries are obliged to respect, protect and realize (exercise) the right to

participate in scientific developments and their practical application, as well as to receive and use their results.

The obligation to respect requires the parties to refrain from direct or indirect violations in the exercise of this right. Examples of the duty to respect include: removing obstacles to high-quality academic education and academic careers; preventing the dissemination of false information, the dissemination of negative information or the deliberate destruction of information aimed at distorting the essence of science and scientific research and harming the respect of citizens; to eliminate censorship or arbitrary restrictions on Internet access that undermine the use and dissemination of scientific knowledge; to prevent or remove obstacles to international cooperation between scientists, except in cases where such restrictions may be justified in accordance with article 4 of the Covenant.

The obligation to protect requires States parties to take measures to prevent any person or organization from encroaching on the right to participate in and carry out scientific research, as well as to benefit from its results. Such individuals or organizations may include universities, schools, laboratories, cultural or scientific associations, patients in hospitals, and volunteers involved in scientific experiments. Examples of the duty to protect: ensuring that scientific associations, universities, laboratories and other non-governmental organizations do not apply discriminatory criteria; protect people from participating in research or tests that violate applicable ethical standards of responsible research and ensure their free prior consent; ensure that individuals and organizations do not spread false or misleading information. misleading scientific information; and ensuring that private investments in academic institutions are not used to unduly influence the direction of research or restrict the scientific freedom of researchers.

In some cases, States Parties may need to ensure the protection of individuals in their family, social or cultural context if this affects their right to participate in and practice scientific developments, as well as to benefit from their results. Persons who

are unable to make their own choices due to age or ability should enjoy special protection. For example, if parents decide not to vaccinate their children because of what the scientific community considers to be false, such a decision by parents poses a risk to the child, and sometimes to society due to the possibility of repeated outbreaks of infectious diseases. In such cases, the interests of the child should take precedence.

The obligation to implement requires States to take legislative, administrative, financial and other measures and create effective tools aimed at the full realization of the right to participate in scientific research, as well as its realization and use of its results. Such measures include educational policies, grants, participation and dissemination tools, providing access to the Internet and other knowledge resources, participating in international cooperation programs and ensuring adequate funding. The obligation to implement is reinforced and specified in article 15, paragraph 2, of the Covenant, in which States parties are obliged to take measures to protect, develop and disseminate scientific achievements. Participating States have an obligation not only to allow people to participate in scientific research; they are also committed to actively contributing to the development of science, especially through education and investments in science and technology.

Commitment to implementation is especially important to ensure access to the results of scientific progress and their application. States should make maximum use of their available resources to overcome the obstacles that anyone who wants to use new technologies or other forms of application of scientific achievements may face. This is especially true for disadvantaged and marginalized groups. Scientific progress and its practical application should be, as far as possible, accessible and inexpensive for people who need certain goods or services.

It is desirable for the State to reflect the above obligations in its national legislation. This ensures the right to science (freedom) of the individual.

Like all human rights enshrined in the ICESCR, the right to freedom of scientific research includes

many elements. According to M.V.Shugurov , such elements are the right to conduct scientific research, independent determination of directions and methods of scientific and scientific-technical research, free choice of the subject of research, conducting research without the intervention of government agencies and other third parties. Since any internationally recognized human rights, and in our case "freedom of science", are combined with other rights, and as a result other rights are included in the scope of a certain right, this confirms not only their interdependence, but also their inseparability.

In particular, this approach can be observed in paragraph (f) of the recommendations of the Special Rapporteur on Cultural Rights (UN) Faridi Shahid on the right to science. The document states that States must fully respect, protect and support the freedom of science, which encompasses academic freedom, the right to freely publish research results regardless of borders, the right of scientists to form and unite professional associations, as well as cooperation with other researchers in their own country and internationally, including the right to leave and return from their own country his own country. All of the above indicates that the realization of the right to freedom of scientific research not only implies the parallel realization of other human rights and freedoms that are inextricably linked to it, but also implies that these rights and freedoms are combined into a large-scale complex called "freedom of science".

Another important international document is the UNESCO Venice Declaration. According to this document, it is necessary to clarify who makes decisions about the nature, development and goals of scientific knowledge, policy, allocation of resources and possible conflicts between freedom of research and other human rights and the protection of human dignity. Moreover, while the right of individuals to enjoy and apply the benefits of scientific progress should be respected, the rights of communities to participate in these benefits should be recognized as equally important.

Another important international document is the

UNESCO Venice Declaration. According to this document, it is necessary to clarify who makes decisions about the nature, development and goals of scientific knowledge, policy, allocation of resources and possible conflicts between freedom of research and other human rights and the protection of human dignity. In addition, take advantage of scientific developments. Another important aspect of this document is that it is compatible with the obligation to carry out scientific, scientific and technical activities and (or) experimental developments without violating human rights and freedoms, without harming his life and health, as well as the environment. There is a strict rule according to which scientific and scientific-technical activities and the freedom of scientific research based on them should be aimed at the priority of human rights and freedoms. This is especially important given the potential for conflicts between freedom of research and the protection of other human rights and human dignity. From the above, we see that the issue of the relationship between science and human rights, as well as between researchers and human rights, is gradually entering the field of doctrinal analysis.

The above indicates that the growing importance of science and technology for all aspects of society indicates that the responsibility of researchers to society is becoming increasingly relevant. Despite the fact that international standards of the moral foundations of scientific research are still only at the stage of development, national legislation, including the legislation of Uzbekistan, should take active measures to implement this internationally recognized element of the human right to freedom of scientific research.

All of the above makes it clear that the right to freedom of scientific research, as well as freedom itself, which implies a high level of responsibility, is not absolute and unconditional. In international human rights law, it is considered that violations of other internationally recognized rights and freedoms cannot be allowed in the implementation of any internationally recognized human rights. In the event of a conflict, the violated rights and freedoms shall prevail. This approach is essentially contained in article 2 of the 1997 Council of Europe Convention on the Protection of Human Rights and

Dignity in the Application of Advances in Biology and Medicine: the Convention on Human Rights and Biomedicine, which states that the interests and well-being of Humanity should not be an absolute priority of society or science, emphasizing that its interests should prevail. This is reflected in the fact that the legal regulation of scientific research and scientific and technical activities may include a number of restrictions.

CONCLUSION

In summary, it should be noted that the relationship between international and national human rights law is characterized by interdependence. With regard to the human right to freedom of scientific research, this means that experience and practice are being formed at the level of national legal regulation, which is a necessary condition for the development of the content of this right at the international legal level. At the same time, the internationally recognized human right to freedom of scientific research acts as the fundamental basis of state policy in the scientific and scientific-technical sphere, since it is the creation of conditions for its strict observance and implementation that feeds a powerful source of scientific and technical creativity, which is at the heart of all changes in modern society.

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