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**The implementation of the
principle of respect of human
and citizen rights and freedoms**

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**Адам мен азаматтың
құқықтары мен
бостандықтарын құрметтеу
қағидасын жүзеге асыру**

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**Реализация принципа
уважения прав и свобод
человека и гражданина**

The article deals with the problem of the protection of the natural and integral human rights as enshrined in the Universal Declaration of Human Rights and other international legal instruments, which effectiveness of the organizational and legal solutions are different widely spread in many countries. Also shown are the facts of the contradictions between state and society, state institutions and civil associations because of the abuse of power and corruption in government and the infringement of political, economic and civil rights.

Emphasis is placed on the fact that due to the huge social and international significance of the problem of human rights has a century of history, philosophy, and scientific basis. In recent years in connection with the deployment of experts from many countries globalization investigate and recommend different effective system for the natural and integral rights of human and citizen in connection with the provisions of relevant international instruments.

Key words: human rights, the theory of social contract, alienate, Ombudsman, Human Rights Commissioner.

Мақалада БҰҰ Адам құқықтарының жалпыға бірдей декларациясы мен басқа да халықаралық-құқықтық құжаттарда бекітілген, сонымен қатар көптеген елдерде әртүрлі нысанда және тиімді ұйымдық-құқықтық шешімдерін тапқан адамның ажырамас және табиғи құқықтарын қорғауды қамтамасыз ету мәселелері қарастырылады. Сондай-ақ, адамның саяси, экономикалық, азаматтық құқықтарын кемсіту, мемлекеттер мен қоғам, мемлекеттік институттар мен азаматтық бірлестіктер арасында мемлекеттік құрылымдардағы билікті асыра пайдалану мен сыбайлас жемқорлық нәтижесінде туындаған қайшылықтар фактілері де көрініс тапқан.

Адам құқықтарын қамтамасыз ету мәселелерінің ауқымды әлеуметтік және халықаралық маңыздылығы ғасырлар бойы қалыптасқан тарихи, философиялық, сондай-ақ ғылыми базасының барына да көңіл бөлінген. Соңғы жылдары жаһандандудың кең өріс алуына байланысты, көптеген елдердің сарапшылары адам мен азаматтың ажырамас және табиғи құқықтарын қорғауды қамтамасыз етудің халықаралық-құқықтық актілердегі тиісті ережелерге сәйкес тиімді жүйелерін зерттеуде және ұсынуда.

Түйін сөздер: адам құқығын қорғау, қоғамдық шарт теориясы, альенация, омбудсмен, адам құқықтары бойынша уәкіл.

В статье рассматриваются проблемы обеспечения защиты неотъемлемых и естественных прав человека, закреплённых во Всеобщей декларации прав человека ООН и других международно-правовых документах, которые во многих странах находили разные по форме и эффективности организационно-правовые решения. Показаны также факты развития противоречий между государством и обществом, государственными институтами и гражданскими объединениями из-за злоупотребления властью и коррупцией в государственных структурах и ущемлением политических, экономических и гражданских прав человека.

Сделан акцент на том, что в силу огромной социальной и международной значимости проблема обеспечения прав человека имеет свою вековую историю, философию, а также научную базу. Обращается внимание, что в последние годы в связи с развёртыванием глобализации эксперты многих стран исследуют и рекомендуют разные эффективные системы обеспечения естественных и неотъемлемых прав человека и гражданина в связи с положениями соответствующих международно-правовых актов.

Ключевые слова: защита прав человека, теория общественного договора, альенация, омбудсмен, уполномоченный по правам человека.

**THE IMPLEMENTATION
OF THE PRINCIPLE OF
RESPECT OF HUMAN
AND CITIZEN RIGHTS
AND FREEDOMS**

Today, the level of respect and protection of human and civil rights in each country is a kind of indicator of readiness of the country to a civilized globalization in world space.

As it is known, the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948, is now the highest international legal instrument recognizing and fixing a number of basic requirements in the field of human rights for the world community.

It should be noted that this international legal document stresses the need to ensure the protection of the legitimate authorities of human rights in order to ensure that people were not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.

Another important international legal instrument that develops provisions of the Universal Declaration of Human Rights is the International Covenant on Civil and Political Rights and its integral part – the Optional Protocol, adopted and opened for signature, ratification and accession on 16 December 1966 a special resolution of the UN General Assembly.

Democratic European states, developing and specifying the provisions of the above-mentioned international instruments, adopted 7 December 2000 in Nice, the European Union Charter of Fundamental Rights, and before November 4, 1950 in Rome – the Convention for the Protection of Human Rights and Fundamental Freedoms [1].

After the entry of the Republic of Kazakhstan 2 March 1992 at the United Nations Universal Declaration of Human Rights and other international legal instruments began to acquire practical importance in our country.

It should be noted that the Law of the Republic of Kazakhstan dated November 28, 2005 ratified the International Covenant on Civil and Political Rights and the Law dated November 21, 2005 ratified the International Covenant on Economic, Social and Cultural Rights entered into force for the Republic of Kazakhstan April 24, 2006

However, the history of the world shows that the problem of ensuring protection of the inalienable and natural rights enshrined in the Universal Declaration of Human Rights and other international legal instruments, in many countries are different in shape and effectiveness of the organizational and legal solutions.

There were cases of conflict between the state and society, public institutions and civil associations because of the abuse of power and corruption in the state structures and the infringement of political, economic and civil rights of man.

As a basic theoretical framework for the formation of human rights protection institutions in favor of the social contract theory.

An analysis of the provisions of the social contract theory (Hobbes, B. Spinoza, P. Gassendi, D. Lокк, Rousseau et al.) the majority of human rights experts believe that the modern state and its main institutions should be formed on the basis of an open and fair agreement between nationals.

From this theory it follows that formed on the basis of a fair expression of the will of its citizens, all public institutions are obliged to create conditions for realization of natural rights of man and citizen, and if necessary – and effectively protect them.

This situation arises from the fact of the natural and basic constitutional provision that only people are the sole source of all state power in the country.

In some modern theoretical doctrines it noted that within a democratically organized society rightfully should manifest itself popular sovereignty and national sovereignty must be distributed mainly outside the country. It is emphasized that the sovereignty of the people in the country of course has to be primary, and the sovereignty of the state – the secondary.

As a theory justifying the new approach to the protection of human and civil rights now advocates the theory of forced alienation of citizens.

In this regard, at present in many countries of the world came into circulation a new term «alienation» came from the Latin language, and who translated into Russian as «alienation».

The authors of this theory point out that the alienation of citizens from participating in the affairs of state and society comes from the constant violations of human rights and due to not provide the state institutions necessary conditions for their implementation.

It should be noted that the process of alienation of citizens from the state and society affairs develops in stages – first comes the psychological alienation, and then – and political alienation.

The main motivations for the formation of different kinds of alienation of citizens are such as:

- Powerlessness citizens to the officials in defending their legitimate rights,
- The loss of citizens of faith in the fairness of government officials,
- The loss of faith in the sense of honest work because of corruption in the state apparatus,

- Continued to ignore the views of citizens in government,

- The removal of citizens from decision-making on important issues of public policy and structures,

- Removal of citizens from making important decisions that affect the immediate conditions of their life and health,

- The impossibility of citizens to change the situation in the country, in their city or region, and other evidence [2].

As one of the most effective institutions for the protection of human and civil rights in many countries it became ombudsman.

The International Bar Association has defined the term «Ombudsman» as «service provided by the Constitution or other act of the legislative power and headed by an independent public official of high rank, which is responsible to the legislature, receives from the affected treatment of persons on the actions of government agencies and employees, employers and operates on its discretion and is empowered to investigate, recommend corrective actions and report» [3].

The Ombudsman aims to express a point of view above all of civil society, in violation of the rights and freedoms of human and citizen.

It should be noted that the institution of the Ombudsman in various countries received different names, although his mission was essentially uniform. For example, in some countries it is referred to as the ombudsman and citizen rights, and in the other – body of the Parliamentary Commissioner for Human Rights, and so on.

At present the institute of the Ombudsman have been established in many of the UN member states.

Creation of the first ombudsman in the world in Sweden in 1810 as a special body – the Public Defender was a kind of civil society response to the violations of human rights by officials and citizens, and the requirements of public service ethics.

Currently, the ombudsman established and working effectively in virtually all countries of the world, in whose constitution is put the task of building software developed civil society and protection of human rights.

In recent years, along with the so-called «General Ombudsman» were created new kinds of specialized ombudsman for the protection of specific rights of citizens in many countries.

These specialized ombudsmen contribute to the qualified protection «branch» of citizens' rights and are a further development of the institute of human rights and citizen.

In particular, nowadays such types of ombudsmen established in many countries all over the world:

- Ombudsmen for consumer affairs (Finland)
- Military Ombudsman (Sweden, Israel)
- Ombudsman for Minors (Norway)
- Ombudsman for Social Affairs (Germany)
- Ombudsman for prisoners (Canada), the Commissioner for Official Languages (Canada), Prison ombudsmen (USA)
- Authorized public meetings on the rights of national and ethnic minorities (Hungary)
- The Parliamentary Ombudsman (Lithuania), Ombudsmen cities, regions and provinces (in many countries)
- University Ombudsmen (USA), the Commissioner for Health Affairs (UK) and others [4].

In the Republic of Kazakhstan Ombudsman institute was established by the Decree of the President of the Republic of Kazakhstan «On establishment of the post of Commissioner for Human Rights» dated 19 September 2002 № 947 [5].

December 6, 2004 Presidential Decree has been expanded advocacy opportunities Commissioner for Human Rights – Kazakh Ombudsman.

In particular, according to the Decree of the President of Kazakhstan to the Ombudsman the following rights have been granted:

1. To participate in the judicial proceedings.
2. Go to court and prosecutor's office with a request for verification of an enforceable decision of the court sentence, ruling or a court order.
3. As a result of complaints of citizens of Kazakhstan, foreign citizens and stateless persons, as well as in the preparation of any other way of information about violations of their rights and freedoms apply to the Houses of Parliament with proposals to spend on these matters, parliamentary hearings.
4. Apply to the authorized state bodies or officials with a request to initiate disciplinary or administrative proceedings, or criminal proceedings against an official who has violated the rights and freedoms of man and citizen, as well as the adoption

of measures to compensate the material and moral damage.

Acts of response of the Ombudsman are recommendations. The test results of the appeals Commissioner shall be entitled to send official actions which violated the rights and freedoms of the applicant, recommendations, required to restore the violated rights.

It should be noted that in 2015 the Ombudsman received 1361 oral and written appeals on the issue of human rights violations from all regions of the country on behalf 2491 person.

In addition, there were 62 appeals from abroad, including from Russia, Poland, Ukraine, Kyrgyzstan and other countries of near and far abroad [6].

An analysis of the nature of complaints shows that in the first place are complaints of pensioners. In them, they feel that their social rights were violated when indexing pensions, hereinafter – the citizens are complaints about shortcomings in the activity of law enforcement bodies on the facts on the ground of non-fulfillment of court decisions, as well as a lot of complaints received from prisons.

In 2012, the Ombudsman received the status of «B» (partial match), the International Coordinating Committee of National Human Rights Institutions. Partial, it's due to the fact that this institution is established primarily by the law.

In our view, it is appropriate on the basis of the Law «On the Ombudsman of the Republic of Kazakhstan» to expand the types of specialized Ombudsmen, particularly in the light of the facts of mass infringement of the rights of consumers, businesses and other categories of citizens as well as foreign investors on the part of officials at various levels. This process is started. Thus, the order of the Republic of Kazakhstan dated February 5, 2015 № 32 was set up as an investment ombudsman.

Such changes, in our opinion, consistent with the strategic line to build in our country democratic, legal and social state, as well as with the requirements of modern times – the development of human rights protection system in accordance with the requirements of international law.

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