

## **RIGHTS OF A PERSON AND A CITIZEN AS THE MAIN ASPECT OF ANTHROPOLOGICAL PARADIGM OF LAW**

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### **ABSTRACT**

The article deals with the analysis of human and citizen's rights, which became apparent in human culture, because just with culture is bound together everything directed to self-preservation, reproduction and improvement of human person and is embodied both in objects of material and spiritual world and in social life norms.

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### **FORMULATION OF THE PROBLEM**

The use of social anthropological approach in modern psychological and legal researches is essentially actualized particularly because, in spite of the fact that in the 20<sup>th</sup> century the mankind has increased four times and due to the update means of communication, it becomes more tightly linked, integrated and 'globalized'.

### **ANALYSIS OF THE PROBLEM EXAMINATION**

Different aspects of man's and citizen's rights in the context of anthropological paradigm of law were examined by foreign and our scientists as: P. Jurkevich, V. Solovjov, M. Berd'ajev, K. Kavelin, M. Drahomanov, P. Novhorodtchev, M. Al'eks'ejev, B. Kist'akivs'ky, S. Maksymov, O. Danyljan, A. Kozlovsky, L. Petrova, S. Slyvka, V. Shkoda and others.

The aim of the article lies in studying the nature and essence of a human through the prism of anthropological and explorative approach.

### **PRESENTATION OF THE MAIN STATEMENTS**

Modern increase of a public person in power leads to 'decrease', 'compression' of mankind in the sense that inside it becomes more interrelated and interdependent (it was pointed out by K. Jaspers [1, p. 104-105]). Such concepts as 'a citizen of the world', 'human values' move from the category of high metaphors into routine reality [2, p. 10], and in the process of mankind identity becomes evident the awareness of its not only anthropological unity as biological type, but cultural unity as well, which provides either the way of keeping of each culture uniqueness (cultural relativism), or the way of their

worldwide standardization (cultural universalism). Such course of history of a modern human is time requirement, and the history of mankind can be given as a process of approximation of people regardless of their being 'social' in the activity or 'antisocial' [3, p. 136]. However, in the process of 'reduce to a common denominator' the main task for states and communities is not to lose their national face, spirit and mentality, without which the fair laws adequate to interests and needs of separate individuals cannot exist. J. Habermas claims that democratic way of the development of human rights concept provides universal equality in treatment of human life contexts, which depend on the preservation of human identity from. But it is possible only on the condition that cultural and social differences between people and their groups will be taken into consideration with more sensitivity to the contexts [5, p. 294], that means considering images of so called basic personalities (by the terminology of A. Kurdyner), who embody certain fundamental components of society and culture [6, p. 34]. Precisely because of such socio-cultural approach to human rights and law, it is claimed in scientific literature that history and anthropology prove impossibility of natural law existence, which was recognized by all people due to their mind [7, p. 15], so, according to mentioned above, the sources of such law should be found outside the mental activity.

The culture, in the basis of which lie philosophy, religion and art, includes a system of values, a program of active development and moral ideals that are the core of culture and feature of its evolution [8, p. 189-191]. One of the valuable ideals in the modern world is human rights – a part of the law, the prerequisites of which are put into human nature ('human universals' [9, p. 81-85]) and express one of its biosocial programs as 'appeal to law'. Their first features began to

manifest even in the community of 'social animals' [10, p. 400-401].

If we recognize that a starting point of any ideology is a division of the world on 'I' and 'not-I', so the anthropological question 'What is I?' must be considered in the context of contrasting a human ('I') to a social environment ('not-I'), namely a society, or by terminology of M. R'abov, 'social mankind' [11, p. 93]. The concept of the last one, defining the essence of social still remains unexplained. V. Petrushenko indicates that modern sociologic and philosophic researches give the opportunity to identify several basic approaches to interpretation the concept of sociality, social processes and social qualities: 1) substrate-reductive approach, due to which in the basis of sociality lie genetic, biochemical or other material substrates (F. Kris, Zh. Mono, E. Wilson); 2) interactive approach, due to which public relations are caused by mutual actions of individuals involved into a general system of activity (J. Mid, L. Khomans); 3) structural and functional approach that links sociality to some complex of institutions that function in organic relations and provide the totality of social process (R. Merton); 4) mental and transcendental approach that tries to base some non-sensitive, high or absolute values, norms, samples, senses into social phenomena (M. Veber, V. Diltei, M. Sheler) [12, p. 92].

Answering the question, we should take into account two axioms: 1) a society, social relations are the product of human activity – different 'I'; 2) the personality, being a member of the society, is formed to a great extent by this society. So, philosophical analysis of a society aimed to search the answer to the anthropological question is the analysis of a human as the image of some features of a definite society, particularly those, which are manifested in its culture, because just with culture is connected everything directed to self-preservation,

reproduction and improvement of a human and embodied either in the items of material and spiritual world, or in the norms of a social life [13, p. 93]. That's why a culture, to the mind of O. Lukasheva, can be considered as the way of human self-organization through mediation of norms and values [14, p. 29].

Besides, it is worthy the fact that philosophical analysis of a society to search the answer to the question 'What is law?' is also the analysis of a human as the image of certain features of a definite society manifested in its culture.

A specified position regarding clarification of the nature and essence of law found its confirmation in anthropology of G. Plesner, who wrote that 'having addressed to such formations as state, ménage, religion, science, law, we reveal that as simple quantities as complex ones... must be considered not simply as conglomerates of physical, mental and, maybe, something else, but as original integrity. This requirement logically brings us to that vital basis, from which culture grows to a human in its historical mobility'[15, p. 83].

To the opinion of O. Auzan, who regards rights as a result of public arrangements, actualization of 'human rights' problems in a certain period of history of mankind is determined with such factors: 1) breadth of public participation in decision-making, but rather, a form of state regime; 2) the history of a certain social community (in the light of history of law they get further importance for society, or for some reason, depreciate); nominal value of law (economic evaluation to every law can be given due to specifically-historic conditions); availability of social groups that possess necessary resources and want to revise the current system at some stage of conduct (value of such rules in the history is of the higher, the less impact on them have certain groups) [16, p. 43-64].

Addressing to the issue of human rights, F. Fukuyama notes that the world policy to a great extent is confined on the problem of human dignity and the desire of its recognition. A human constantly demands from others the recognition of his/her dignity either as a personality, or as a member of religious, ethnic, racial or other group, and fighting for such recognition has non-economic basis. 'In ancient times governors demanded the recognition of their highest value as a king, emperor or lord. Today people seek to establish their equal status as members of previously not respected or humiliated groups – women, gays, Ukrainians, the disabilities, American Indians and so on' [17, p. 212]. The same conclusion was made by J. Fromm who stated that people are born equal but different (in congenital and acquired qualities under the influence of external circumstances), and their natural development is possible only under the conditions of respect to the peculiarities of each individual and cultivation of uniqueness of each person. Under such circumstances human equality means that all of them possess common human qualities, share general tragic fate and have the similar inalienable right to freedom and happiness [18, p. 27]. Basing on this interpretation of rights inalienability, R.A. Pozner made the conclusion on primitiveness of human rights concept. He assumed that 'our feeling of having some rights that are wrong to be deprived, is a basic feature of human psychology...; moreover: it can be seen even in animals' [19, p. 324].

Nowadays all people are considered as humans. However, the concept of human at the same time implies the notion of inhuman. According to J. Baudrillard, progress of Humanity and Culture is nothing like a chain of successive discrimination, which considers the 'other' as non-persons' [20, p. 207] (such a 'logic of racism' was already when human individual sacrificed divine status of animals they had in the past, separating these

creatures from themselves with a 'lower world' - the so-called animal kingdom [21, p. 191-193]). J. Maritan wrote that a human possesses inalienable rights, but is deprived with the possibility to demand realization of some rights through the presence of certain element of inhumanity in social structure of any period. So, in some periods of the history development it is useful to refuse from realization of definite rights, which we continue to possess on [22, p. 98, 99]. R.A. Pozner keeps the same idea noting that 'the content of rights changes with social surrounding, but the feeling of rights possession remains unchangeable' [19, p. 324].

For primitive people humans were only members of their tribe, other were something different. But for us humans mean all of us, and others (in particular, nature) are nothing [20, p. 207-208]. Although clear criteria for differentiation of human from inhuman never existed, it is possible to reveal the historical tendency of rational search of differences between people and their division into groups. Mankind always used such a search by color of the skin, ethnic data, sex, social status, creed, Sexual orientation, and on this basis – to the division of people into humans and inhumans, normal and abnormal, full and defective, which often caused and causes confrontation and opposition between them, even death-feud. From this point of view, history of human development can be regarded as a history of discrimination of people by people, fighting with such discrimination. One of the effective means of its overcoming in the modern world is the concept of human natural rights.

M. Rizebrodt thinks that violation of rights (either as a form of discrimination of their carrier, or as a feature of imperfection of right limitative violence of the state in the sense appointed by us above) is not authentic 'part' of a certain civilization [23, p. 28].

However, such violations are spread in all societies that recognize (sometimes formally) human rights. In this sense violation of human rights is the phenomenon as unique as universal is the presence of limits in them. M. Rizebrodt also writes that modern history of the West indicates that the violations of democracy and human rights were and are normal. Thus, nearly bicentennial U.S. political practice in the domestic sphere is characterized by a combination of policies of expulsion and destruction of the Indian population with slavery and apartheid policies of the African-American population, and in the external sphere it focuses on military dominance and implementation of market interests, and only in rare cases - on human rights [23, p. 31]. Summarized position on this issue was expressed by J. Mere, arguing that under modern conditions the concept of 'human rights' is an expression of ideological fiction of 'the human race'; in the whole world there are no such states that referring to human rights would consistently adhere to these rights, and actually defended them in other states – potential sources of getting by 'defenders' economic profit [24, p. 182-183].

B. Russell indicated that each human community is threatened by two opposite dangers: on the one hand, ossification from excessive discipline and respect for tradition, and, on the other hand, decay or failure from foreign invaders because of the rise of individualism and personal independence that prevent cooperation... [25, p. 13]. William Mc. Neill argues that the centers of high culture (ie civilization - in his sense), demonstrating their neighbors attractive innovations, became for them a sort of stimuli around which less developed nations have sought to master innovations and thus gain access to everything that provides the benefits of civilization to those who have them [26, p. 12]. However, basing on the observations of J. Habermas, cultures remain 'alive' when they

not only derive their strength from secession, but when a force is generated by their criticism [5, p. 311]. S. Slyvka notes that the sophistication of national culture is defined as by the degree of assimilation of her international achievements, as the ability to enrich world culture by its achievements [27, p. 9-10]. But, considering the current trends in solving the dilemma of choosing by national culture between such level and the ability, it must be noted that in each case this dilemma is usually resolved in favor of one thing. Moreover, in a situation with the interpretation of human rights in societies, which are carriers of different cultures, there is an attraction to the 'social definition' of such rights depending on the particular economic, social and cultural development of a society. This approach to human rights is explained, in part, by the fact that although all people have a common biological (and R.A Posner would add economic [28, p. 30-31]) nature, however, as to L. Stevenson, human uniqueness 'is defined to some extent by the dependence of our behavior on specific human culture in which we grow, and in part – from individual choice' [29, p. 225]. Therefore, in order to better know this relationship better, a so-called dialogue of cultures is required. It's impossible to establish it without understanding own cultural text and decoding own cultural code. After that, to have a dialogue between cultures take place, each participant has to know, what this dialogue is about, and what he as a speaker wants to say to the other party, who listens carefully and thoughtfully. In general, we should agree with V. Nersesyants, who noted that 'the history of human civilization shows its "movement from different local histories to more worldwide universal history, accompanied by a change of phases, degrees of different specific historical processes caused by general social globalization and related to them legal norms, forms, and procedures of their legal expression, streamline and consolidation' [30,

p.40]. Namely the history confirms our development towards the creation of internally different human civilization, uniting spiritual and cultural experience of different nations, eliminates the differences between them [8, p. 562] and which is based on inherent human ideals that find their generalized expression in international human rights standards [4, p. 17]. And often such a defining historical role of human ideals is explained by the fact that in the heart of all cultures (including religious) is a number of identical basic principles. Although, opposed to this thesis, there is usually put forward a different one: national and ethnic always takes precedence over universal, since all of human history is a struggle of warring ethnic groups that have the national language in the basis of their thinking and culture [31, p. 339].

## CONCLUSIONS

Summarizing all mentioned above, we can state that a legal person is a human individual, who, because of his inherent nature, has legal innate qualities (natural, inalienable, fundamental rights), which are an essential component of general social law. And a legal person is a human individual, who in the process of socialization is able to perceive, transform and implement the law as specially-social (public-willed, legal, 'positive') phenomenon, which is a part of the prevailing culture in a given society.

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