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THE RIGHT TO EDUCATION AND THE PRINCIPLE OF EQUALITY: FROM THE IDEA IN THE WORKS OF PROFESSOR HERSCH LAUTERPACHT TO THE CONSOLIDATION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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Дешко Л.М. Право на освіту та принцип рівності: від ідеї в працях професора Херша Лаутерпахта до закріплення в Загальній декларації прав людини.

У статті досліджено науковий внесок професора Херша Лаутерпахта в розвиток ідеї письмового закріплення в Біллі права на освіту, його змістовного наповнення та принципу рівності. Зазначено, що наукові погляди сера Г. Лаутерпахта на право на освіту є актуальними й нині. Акцентується увага на тому факті, що право на освіту кожного подекуди підміняється просвітою людей. Піднімається питання забезпечення права на освіту державою-агресором на тимчасово окупованих нею територіях. Констатується, що держава є такою, що порушує свої міжнародні зобов'язання з забезпечення права кожного на освіту якщо підміняє освіту людей просвітою людей. Також підіймається питання економічного розвитку держави, економічного потенціалу держави і міжнародних і внутрішньодержавних стандартів права на освіту, їх взаємозв'язку.

Робиться висновок, що викладені в монографії професора Г. Лаутерпахта «Міжнародний білль прав людини» ідеї носили прогресивний характер аджн по суті йшлося про необхідність письмового закріплення каталогу прав людини, а також про те, що цей каталог має бути частиною структури світу. Сер Герш Лаутерпахт в своїй науковій праці застосував підхід, відповідно до якого пропонував в Біллі закріпити обов'язки держави в сфері прав людини. В Загальній декларації з прав людини застосовано підхід, відповідно до якого закріпили права людини, а щодо обов'язків держави - застосували завуальоване їх закріплення.

Встановлено, що сер Г. Лаутерпахт: 1) розглядав право на освіту кожного як обов'язок держави, який вона має сумлінно виконати; 2) пов'язав стандарт права на освіту з такими чинниками, як: 1) економічний потенціал держави; 2) економічний розвиток держави. Відповідно, в державах, які мають більш високий економічний розвиток і більший економічний

потенціал, і стандарт освіти має бути вищим, а у державах, які є менш економічно розвинутими і мають менший потенціал – має бути забезпечено мінімальний стандарт права на освіту; 3) ввів такий критерій оцінки виконання зобов'язання держави з забезпечення права на освіту як ефективність. Якщо держава – суб'єкт, який має обов'язок ефективно забезпечити право на освіту, то, відповідно, держава і має нести відповідальність вразі, якщо ефективного забезпечення цього права не здійснює.

Професор Г. Лаутерпахт запропонував письмово закріпити принцип рівності. Щодо змістовного наповнення цього принципу ним застосовано підхід, відповідно до якого на державу покладається обов'язок забезпечити повну рівність перед законом усіх і рівне поводження щодо кожної людини державної влади. Висновується, що ідея заборони дискримінації та її змістовне наповнення, які професор Герш Лаутерпахт запропонував закріпити в Біллі, заклала основу десеєграції в освіті.

Досліджено вплив монографії Герша Лаутерпахта на формулювання і закріплення права на освіту та принципу рівності в писаному акті з прав людини – Загальній декларації з прав людини.

Ключові слова: професор Херш Лаутерпахт, права людини, право на освіту, принцип рівності, дискримінація, сегрегація, обмеження прав людини, Білль, Загальна декларація прав людини, обов'язки держави, просвіта, концепція прав людини.

Deshko L.M. The right to education and the principle of equality: from an idea in the works of Professor Hersch Lauterpacht to enshrining in the Universal Declaration of Human Rights.

The article examines the scientific contribution of Professor Hersh Lauterpacht to the development of the idea of enshrining in writing the right to education in the Bill, its content and the principle of equality. It is noted that Sir H. Lauterpacht's scientific views on the right to education are still relevant today.

Attention is focused on the fact that everyone's right to education is sometimes replaced by people's enlightenment. The issue of ensuring the right to education by the aggressor state in the territories temporarily occupied by it is raised. It is stated that the state violates its international obligations to ensure everyone's right to education if it replaces people's education with people's enlightenment. The issue of the economic development of the state, the economic potential of the state, international and domestic standards of the right to education, and their interrelationship is also raised.

It is concluded that the ideas set forth in Professor G. Lauterpacht's monograph «The International Bill of Human Rights» were progressive in nature, and essentially it was about the need to establish a written catalog of human rights, as well as about the fact that this catalog should be part of the structure of the world. Sir Gersh Lauterpacht in his scientific work applied the approach according to which he proposed to enshrine the state's obligations in the field of human rights in the Bill. In the Universal Declaration of Human Rights, an approach was applied, according to which human rights were enshrined, and with respect to the duties of the state, a veiled enshrining of them was applied.

It is established that Sir G. Lauterpacht: 1) considered the right to education of everyone as a duty of the state, which it must conscientiously fulfill; 2) linked the standard of the right to education with such factors as: 1) the economic potential of the state; 2) economic development of the state. Accordingly, in states that have higher economic development and greater economic potential, the standard of education should be higher, and in states that are less economically developed and have less potential, the minimum standard of the right to education should be ensured; 3) introduced such a criterion for evaluating the fulfillment of the state's obligation to ensure the right to education as efficiency. If the state is an entity that has the duty to effectively ensure the right to education, then, accordingly, the state must bear responsibility if it does not effectively ensure this right.

Professor G. Lauterpacht proposed to enshrine the principle of equality in writing. Regarding the content of this principle, he applied an approach according to which the state is entrusted with the duty to ensure full equality before the law of all and equal treatment of every person of state power. It is established that the idea of the prohibition of discrimination and its content, which Professor Hersh Lauterpacht proposed to enshrine in the Bill, laid the foundation for desegregation in education.

The influence of Hersh Lauterpacht's monograph on the formulation and consolidation of the right to education and the principle of equality in the written

act on human rights – the Universal Declaration of Human Rights – has been revealed.

Key words: Professor Hersh Lauterpacht, human rights, the right to education, the principle of equality, discrimination, segregation, restrictions on human rights, the Bill, the Universal Declaration of Human Rights, the duties of the state, education, the concept of human rights.

Formulation of the problem. The relevance of the study of the idea of the right to education in the writings of Professor Hersh Lauterpacht and their influence on the formulation and consolidation of this fundamental right of every person in the Universal Declaration of Human Rights [1] is due to a combination of several factors. Firstly, today the international community is faced with a big problem – the ineffective provision of the right to education in many countries of the world, one of the elements of which is quality primary and secondary education. Today, in a number of states, the right to education is replaced by the right to enlightenment. At the same time, the significant development of scientific and technical progress shows that the right to education is one of the elements that allow the principles of the UN Charter to be put into practice – the principle of respect for human rights, international cooperation of states, and others. Not education, but the education of a person is the guarantee that a person realizes that the principles of the UN Charter [2] must be unquestionably observed by the state and demanded from the states. Education gives a person an understanding of his and other people's human dignity, and an awareness of his value and the value of the rights and freedoms of other people, and the need to fight for them in states that are undemocratic, in which power is usurped. The right to education gives a person freedom from need, fear, in whatever corner of the globe he is, the opportunity to ensure a decent existence for himself and his family, and the development of civilization.

Today, the world suffers from the audacity with which Russia indulges human dignity, violates the basic rights of people in the Russian-occupied parts of Ukraine. Russia does not provide effective education in the occupied territories of Ukraine, although this is its international obligation, the indigenous peoples of Ukraine in the territory of the Autonomous Republic of Crimea are not guaranteed the right to education in the language of the indigenous people. This list of violations is not exhaustive. Russia, with all its might, indulging basic human rights and norms of international law, is pushing the world into the chaos and inhumane treatment that was inherent during the Second World War and which the world community never tried to prevent again. It is impossible to allow

devaluing human life, human dignity, inflicting a moral insult on the entire world community. The value of human dignity, its basic rights, peace and security is absolute.

In legal science, the influence of the works of Sir Hersch Lauterpacht on the development of international humanitarian law (the works of V. Gutnyk [3], etc.), the concept of crime against humanity (the works of O. Sheredko [4], etc.), the concept of human rights (the works of P. Rabinovych [5] and others) etc.

The purpose of this article. This article is devoted to the idea of the right to education and other human rights in the writings of Hersch Lauterpacht and their influence on the formulation and enshrining of these rights in the written human rights act – the Universal Declaration of Human Rights.

Presenting main material. One of the most important works of Sir Hersch Lauterpacht is the monograph «The International Bill of Human Rights» [6]. As you know, during the Second World War, human rights were nullified, human life in the states where fascism reigned, where totalitarianism reigned, was worth nothing. All the achievements of philosophers - from ancient times to the Renaissance and from the Renaissance to the Second World War – were leveled by anti-democratic countries. The sovereignty of states was so absolute that undemocratic governments without court decisions applied the death penalty, arbitrarily limited human rights and indulged human dignity. Undoubtedly, the societies that were subjected to occupation, whose population was exterminated in concentration camps, were subjected to illegal experiments, were simply destroyed for the purpose of intimidation - understood that such horrors should not be repeated and demanded decisive actions from their states. The need to enshrine human rights in writing and to ensure the need for their observance in any corner of the world is ripe, and already in the Preface to the monograph «International Bill of Human Rights», Professor Hersch Lauterpacht expresses his visionary hope that «...the idea of the International Bill of Human Rights is more than vital a necessary part of the structure of the world» [6, c. 3]. This idea was progressive, because, firstly, Sir Hersch Lauterpacht speaks of the need to enshrine the catalog of human rights in writing, and secondly, he emphasizes that this catalog should be part of the structure of the world – that is, all the states of the world should accept it as inalienable part of the world's existence.

Professor Petro Rabinovych rightly emphasizes in his studies that not even two years have passed, «... as the Commission - in accordance with the relevant resolution of the General Assembly –

begins to prepare a draft of the «International Bill of Human Rights» (this UN document later received the final name «Universal Declaration of Human Rights»). And then the Secretariat of the Commission, having formed – on its instructions – «Preparatory materials» for the Committee created by it for the implementation of this task ... not only included in their composition the mentioned book by H. Lauterpacht, but also in its special recommendations offered the developers to use it directly ...» [6].

Sir Hersch Lauterpacht's monograph consisted of several chapters. So, for example, chapter VI is called "Text of the Bill", chapter VII – "Legal nature of the Bill", chapter VIII – "Basis of the Bill. Preamble", section IX – "Substance of the Bill", section X – "Substance of the second part of the Bill", section XI – "Execution of the Bill". In this work, Professor Hersch Lauterpacht expressed the idea of enshrining the right to education and guarantees of human rights in the Bill.

Thus, in the opinion of Sir Hersch Lauterpacht, it was expedient to state the right to education textually as follows: "States, within the limits of their economic potential and development, are obliged to effectively ensure the right to work, to education and to receive state assistance in case of unemployment, old age, illness, disability or in other cases (Article 13)" [6]. Thus, firstly, Professor G. Lauterpacht determined that ensuring the right to education is not the right of the state, but its duty. Secondly, Sir Hersch Lauterpacht linked the standard of the right to education with such factors as: 1) the economic potential of the state; 2) economic development of the state. Accordingly, it is logical to assume that in states that have higher economic development and greater economic potential, the standard of education should be higher, and in states that are less economically developed and have less potential, the minimum standard of the right to education should be ensured. Professor Hersch Lauterpacht also introduces such a criterion for evaluating the fulfillment of the state's obligation to ensure the right to education as efficiency. And, finally, if the state is an entity that has the duty to effectively ensure the right to education, then, accordingly, the state must bear responsibility if it does not effectively ensure this right.

In Thu. 1 Art. 7 Bill in his monograph, Sir Hersch Lauterpacht expresses the idea of enshrining in writing in an international act such a provision "All citizens of the state must be provided with full equality before the law and equal treatment of the state authorities in all respects. In particular, there should be no discrimination based on religion, race, skin color, language, religion or political beliefs" [6]. As we can see, Professor H. Lauterpacht proposed to enshrine the principle of equality in

writing. Regarding the content of this principle, he applied the approach according to which the state is the obliged subject. The state does not have the right, but it is entrusted with the duty to ensure full equality before the law of all and equal treatment of every person in state power. If we take the historical context of this provision and the right to education, then, as is known, in a number of countries at that time, for example, women did not have the right to education, in the USA, for example, there was segregation in the field of education, etc. Because with regard to the prohibition of discrimination as proposed to be enshrined in the Bill by Professor Hersh Lauterpacht – it is seen that this principle of equality laid the basis of desegregation in education.

In the Universal Declaration of Human Rights, the textual consolidation of the right to education took place in Art. 26: "Every person has the right to education. Education should be free, at least primary and general..." (Part 1, Article 26) [6]. That is, the right to education was established as a fundamental human right, and we find the establishment of the fact that the state has a certain "obligation" to ensure the right to education veiled in the phrase "Education should be free, at least primary and general" – i.e. the state must provide a person with free primary and general education. Accordingly, the international community established such a minimum standard of the right to education as the opportunity for a person to receive free primary and general education. Let's emphasize that we are talking about education, not enlightenment. Accordingly, it must meet certain quality criteria, upon analysis of which in aggregate it is possible to conclude whether the state fulfills its international obligation in good faith or not, and accordingly, any person who suffers violations of his right to education can apply for the renewal of his violated right, using the domestic mechanism of legal protection and the international one.

The principle of equality was enshrined in Art. 2 and 7 of the Universal Declaration of Human Rights. Thus, Article 7 of the Universal Declaration of Human Rights states that "All people are equal before the law and have the right, without any distinction, to equal protection by the law. All people have the right to equal protection against any discrimination that violates this Declaration and against any incitement to such discrimination (Article 7)" [1]. Therefore, the Universal Declaration of Human Rights established norms according to which people who are discriminated against, including in the field of education, have the right to protection against discrimination. Also, not only discrimination, but also incitement to it was mentioned as a violation of the principle of equality. The approach to enshrining the prohibition

of discrimination was that there is no direct phrase "discrimination is prohibited" in the text of Article 7 of the Declaration, but "the right of everyone to equal protection against discrimination and against incitement to discrimination" is enshrined. Accordingly, this human right corresponds to the duty of the state to create an effective mechanism to protect everyone from discrimination and incitement to it.

According to the 2 of the Universal Declaration of Human Rights «Everyone shall have all the rights and freedoms set forth in this Declaration, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, status or other status » [1]. It follows from this that every person has the rights enshrined in the Universal Declaration of Human Rights and cannot be deprived of them. Of course, this also applies to the right to education.

Thus, in his scientific work, Sir Hersh Lauterpacht applied the approach, according to which he proposed to enshrine the state's obligations in the field of human rights in the Bill. In the Universal Declaration of Human Rights, an approach was applied, according to which human rights were enshrined, and in relation to the duties of the state, a veiled enshrining of them was applied, not using the legal term «state duty», but using constructions that describe the implementation of one or another rights «must be».

Conclusions. Professor Hersch Lauterpacht's monograph became the fundamental basis of the Universal Declaration of Human Rights. In view of the active development of the latest technologies, which affect the economic development of countries, the economic potential of countries, it can be seen that the world community should develop new international standards for ensuring the right to education, taking into account the development of the digital economy.

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