

МІЖНАРОДНИЙ ПАКТ ООН ПРО ГРОМАДЯНСЬКІ ТА ПОЛІТИЧНІ ПРАВА: МЕХАНІЗМИ ВІДСТУПУ ВІД ЗОБОВ'ЯЗАНЬ

Анотація. Стаття досліджує нормативний та сутнісний зміст відступу (дерогації) держав від зобов'язань згідно з нормами Міжнародного пакту ООН про громадянські та політичні права. Проаналізовано норми Міжнародного пакту ООН про громадянські та політичні права та інших міжнародних договірних актів, які містять гуманітарні та правозахисні зобов'язання щодо фізичних осіб. Досліджено відповідну практику Ради ООН з прав людини, Комісії ООН з прав людини, її підкомісії, Комітету ООН з прав людини, доктринальних джерел. Показано формування специфічного інституту відступу держав від власних зобов'язань у сфері громадянських та політичних прав. Доведено фактичні відмінності між відступом від зобов'язань та механізмами обмежень прав. Зроблено висновок, що відступ від зобов'язань є юридично можливим тільки у повній відповідності до міжнародних стандартів, що регулюють підстави, форми та процедуру такого відступу.

Ключові слова: дерогація, гострота становища, життя нації, надзвичайний стан, права людини, обмеження прав, універсальні договори.

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THE UN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: MECHANISMS OF DEROGATION FROM COMMITMENTS

Abstract. *Article is aimed at the research of normative and substantive content of the derogation from States' obligations in compliance with norms of the International Covenant on Civil and Political Rights. Provisions of the Covenant and other universal international treaties that contains the humanitarian and human rights obligations relative to the persons was analyzed. The relevant practice of the UN Human Rights Council, of the UN Commission on Human Rights and its Sub-Commission, of the UN Human Rights Committee, as much as the doctrinal sources was researched. The formation of the specific institute of the derogation from the States' own treaty in the areas of civil and politic rights was demonstrated. The actual distinctions between the derogation and mechanisms of the limitations of rights are proved. It is concluded that derogation is legally possible only in full compliance with international standards governing the grounds, forms and procedure for derogation.*

Keywords: *derogation, exigencies of the situation, life of the nation, public emergency, human rights, limitation of rights, universal treaties.*

INTRODUCTION

Issues on states derogation from their obligations in the field of certain rights granted to individuals in the twentieth century have been embodied into several universal and regional contractual mechanisms. One of the most important and most practically developed procedures in this field is states derogation from their obligations under the norms of the UN International Covenant on Civil and Political Rights, 1966 (hereinafter – the “ICCPR”). The issues mentioned are still poorly studied in the modern doctrine of the international law, and not only in the domestic law. It is possible to point out that the relevant issue was mentioned in the works of A. Kh. Abashidze, M. M. Antonovych, O. S. Hondarenko, M. Y. Hrenza, A. De Zaias, A. Yu. Zamula, A. Ye. Zubareva, V. V. Mytsyk, G. J. Galdi, T. Opsal, T. L. Syroyid, Kh. J. Stainer, J. A. Walkate, V. Y. Ukhov, N. Y. Faiada, D. D. Fisher, M. G. Schmidt, I. D. Yahofarova and others [1, p. 24]. Until now, no generalization of the relevant derogation mechanisms was made, therefore the relevant analysis is deemed to be relevant.

The main subject of the UN International Covenant on Civil and Political Rights is human rights and freedoms protection. Human rights are an integral part of the international law, and international observance control is conducted [2; 3; 4]. In each country, international control depends on the state of fundamental human rights observance.

The means of international control, which depend on their observance of the fundamental human rights, include: a) international law acts containing the rules for activities formulate the rights and obligations of the relevant subjects (conventions, covenants, agreements, contracts), as well as international documents, which do not usually contain the norms and rules of conduct, do not directly formulate the rights and obligations (declarations, statements, memorandums); b) international bodies for monitoring, control over fundamental human rights observance (commissions, committees) and protecting these rights (courts, tribunals). Human rights recognition by the state by consolidating them in the constitution and other legislative acts shall be considered only as a first step towards their adoption and implementation. The scope of human rights consolidated in the international human rights documents serves as an example to which all peoples and nations shall strive [5; 6]. International human rights standards are the ground for intergovernmental cooperation on the issues of their provision, and for activities of special international bodies involved in monitoring of human rights observance and protection

Therefore, the goal of this article is to systematically characterize the regulatory and substantive content of derogation mechanism as states derogation from their own obligations under the norms of the ICCPR. This goal settlement should be based both on analysis of the norms, institutions and mechanisms of the ICCPR and other international treaties that contain humanitarian and human rights obligations for individuals, studied and correlated practices of the UN Human Rights Council, the UN

Commission on Human Rights, its sub-commission, the UN Committee on Human Rights (hereinafter - the CPL), and doctrinal sources.

1. MATERIALS AND METHODS

In the course of the study, a number of general theoretical and special-scientific methods of cognition and approaches to study of the international legal status of the UN Committee on Human Rights were applied. The systemic-functional method used in the work allowed to determine specific features of the Syracuse principles that define understanding of the terms “public order” and “national security”.

The method of analysis revealed that the normative basis of the thesis research is multilateral international treaties, the subject of which is human rights protection, in particular, the International Covenant on Civil and Political Rights dated 1966 and its Optional Protocols, the decisions of the UN Committee on Human Rights, bodies of international justice and acts of international organizations in this regard, as well as the Constitution and legislation of Ukraine, which determine the basic principles and specific features of the state's participation in the international cooperation targeted at human rights protection, in particular, in activities of the Committee.

General theoretical methods allowed to determine that each state participating in the International Covenant on Civil and Political Rights is committed to:

- provide an effective remedy to any person, even if this violation was committed by the persons acting as official persons;
- ensure that the right to legal protection for any person was established by the competent judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the state and develop the possibilities of judicial protection.

The comparative method allowed to assess Committee`s effectiveness by comparing existing human rights bodies. Special legal method contributed to the definition of the Committee legal nature and the study of its law enforcement practice. Its essence is to describe the phenomena of state-legal reality through legal terminology and to clarify activities of social subjects in terms of legal behavioural models, from legal or illegal standpoint, mandatory or possible. The description allows to reconstruct the facts and phenomena of legal validity, their legal assessment, to identify tendencies and regularities of legal practice and to improve legal terminology.

2. RESULTS AND DISCUSSION

2.1. Features of the UN international covenant on civil and political rights in Ukraine

According to art. 4 of the ICCPR during a state of emergency in the state during which the life of the nation is threatened and the occurrence of which is officially announced, the State-Members of the ICCPR may take measures to derogate from their obligations under the ICCPR only to the extent dictated by the severity of the situation, provided that such measures are not incompatible with their other obliga-

tions under the international law and do not cause discrimination solely on the basis of race, colour, skin, sex, language, religion or social origin.

The specified clause of part 1 of art. 4 of the ICCPR cannot be the ground for any derogations from articles 6, 7, 8 (clauses 1 and 2), 11, 15, 16 and 18, where any state participating in the ICCPR and using the right of derogation shall immediately inform the other States participating in the ICCPR, through the Secretary-General of the United Nations, of the situation from which it has derogated and of the reasons that led to such a decision. The state shall also notify by the same way the date when the state terminates such derogation [7; 8]. Based on this norm, modern researchers distribute the rights protected by the Covenant into two groups. This applies to the rights “for which no restrictions are possible” and rights that may be subject to restrictions [1, p. 37, 38]. However, this approach has some goals that highlight the difference between state derogation from its contractual obligations and the possibility to limit rights guaranteed by the ICCPR in certain circumstances.

So, for example, the ICCPR indeed prohibits derogation from freedom of thought, conscience and religion under extraordinary circumstances, but these rights can objectively be the subject of legislative restrictions, according to part 3 of art. 18 of the ICCPR. On the contrary, propaganda of the war and speeches in favour of national, racial or religious hatred, incitement to discrimination, hostility or violence are absolutely prohibited by art. 20 of the ICCPR, but at the same time art. 4 allows state derogation from these human rights obligations.

It should be added that the General Remarks, in order to interpret norms of art. 4 of the ICCPR, have been discussed at the meetings of the CPL for a long time. In this context, it is worth studying discussion on their project at the 1797th meeting of the UN CPL on October 27, 1999, as reflected in the UN CPL document CCPR/C/66/R.8. This discussion was moderated by S. M. Kwigora, a lawyer from Chile who had previously headed the Inter-American Court of Human Rights, was based on the report submitted by the Special Rapporteur, Martin Scheinin (Finland). According to M. Scheinin, the relevant project had to solve the issue of the “grey zone” that appeared between the ICCPR norms application and requirements of international humanitarian law. The Special Rapporteur called on the UN CPL to be more active in analysing the fact of derogation and analysed the situations where derogation from the obligations is not permissible in particular and not stipulated in art. 4 of the ICCPR. The Special Rapporteur raised the issue of the need to develop model national emergency legislation and to analyse the role of non-state structures in the context of derogation [9].

It is important to note ideas of Abdelfattah Amor, member of UN CPL from Tunisia, who pointed to the dual purpose of art. 4 of the ICCPR: to protect fundamental human rights and, at the same time, to protect the life of the nation. He pointed out that analysis of the legal form of emergency in the states is not sufficient to understand this dual purpose, since in many countries such a situation has been a form to legalize systemic human rights violations for decades. He pointed out that in many

countries of Asia and Africa, “the existence of the nation is more theoretical than real” and in these countries “the life of the nation” is a form of not fully voluntary coexistence of communities with vivid differences in economy, ethnic and religious traits; moreover, very often the nation formation is hindered by external forces. Under such conditions A. Amor suggested an idea of inadmissibility to introduce foreign domination or anarchy on human rights issues, the inadmissibility to abuse derogation mechanisms to restrict the right of peoples to self-determination [9].

Similar ideas were also suggested by the representative from India in the UN CLP P. N. Bhagwati when evaluating political life in post-colonial countries; in addition, he pointed out to the need to clear understand derogation category, as used in art. 4 of the ICCPR term, but at the same time noted the flexibility of the category of threats to the life of the nation, and these theses were also shared by the member of the UN CLP from Poland R. Verushevski. Expert from Argentina to the UN CLP I. S. Yri-goyen, by agreeing with the most opinions on the draft Final Remarks, recognized the importance of inadmissibility of derogation under art. 4 of the ICCPR from the obligations under the rights recognized as absolute by other universal and regional international agreements [9].

General Comment No. 29, significant among the UN CLP acts relevant today in terms of states derogation from their obligations, was reviewed on the basis of above studied discussion concerning deviations from Covenant during the state of emergency (article 4), approved at the 1950th meeting of the Committee on July 24, 2001, document HRI/GEN/1/Rev.5/Add.1 (hereinafter - the Comment No. 29). This Comment was approved replacing similar General Comment No. 5 approved at the thirteenth session of the UN CLP in 1981. [9].

Comment No. 29 notes that the measures taken by the countries to derogate from the norms adopted in the ICCPR should be of an exceptional and temporary nature, and two key conditions must be met by the state before their application. They include the very fact of the situation equivalent to the state of emergency under which “the life of the nation is under threat”, and the fact of official announcement by the member state of the state of emergency with exceptional meaning “to maintain the principles of the rule of law and dominion in a period when most required”. After all, as stated in the Comment No. 29, by announcing the state of emergency with consequences of derogation, the states shall comply with the frameworks of their own constitutional and other legislative requirements regarding the state of emergency. At the same time, the UN CLP should control these national acts observance as provided in art. 4 of the ICCPR, and their application in its development; to this end, the states should include relevant situations into national reports to the UN CLP in accordance with art. 40 of the ICCPR in the form of “sufficient and accurate information on ... legislation and practice” [10].

It is interesting art. 3 of the Comment No. 29 which states the key character of the criterion “the threat to the life of the nation” during any disturbances or disasters

by their qualification under part 1 of art. 4 of the ICCPR. The role of the international humanitarian law regulations to be applied under armed conflict of an international or non-international nature in addition to provisions of art. 4 and cl. 1 of art. 5 of the ICCPR to prevent abuse of extraordinary powers, refers to the application of art. 4 only under conditions of “a threat to the life of the nation”, even in the armed conflict. Moreover, it appears from art. 3 of the Comment No. 29 that, in the armed conflict, to prove the situation to the UN CLP of the possibility to apply art. 4 of the ICCPR is easier for the state than with the absence of such conflict [10].

Comment No. 29 refers to a number of individual Final Comments on the State Reports to the UN CLP, in which the UN CLP has expressed its concern over the state of affairs in a number of states that have made derogation from the ICCPR norms without complying with art. 4 in the abovementioned context or applying legislation that does not comply with art. 4 of the ICCPR [10].

Article 4 of the Comment No. 29 specifies that measures under art. 4 of the ICCPR should only be applied if it was “stipulated by the severity of the situation”, in particular in terms of duration, territorial coverage and material scope of the state of emergency and measures within derogation. It specifically states the difference between the derogation under art. 4 and rights restrictions that are allowed even under normal conditions by a number of ICCPR provisions, but the importance of proportionality and coherence of both derogation and rights restrictions is stated, as amongst others it was stated in the Final Comments of the UN CLP to Israel in 1998 CCPR/C/79/Add.93. In addition, art. 5 of the Comment No. 29 states that the “severity of the situation” should be conditioned not only by the fact of the state of emergency announced, but also by the adoption of specific measures under “natural disaster, mass disorder with expressions of violence or a major industrial accident”. After all, for example, it is added that the possibility of some rights restriction defined in ICCPR, such as freedom of movement or assembly in such situations is “generally sufficient” and does not require derogation of the states under art. 4 of the Covenant [10].

In addition, art. 6 of the Comment No. 29 states that the list of the regulations in part 2 of art. 4 of the ICCPR, not covered by the possibility of derogation, “does not mean that it is permitted to arbitrarily derogate from other articles of the Covenant, even if the life of the nation is under threat”, at the same time it is added in art. 7 of this document by the UN CLP that “the qualification of any provision of the Covenant which does not provide for a derogation does not mean the impossibility of any reasonable restrictions”, with the reference to art. 18 of the ICCPR, from the regulations of which one cannot derogate under art. 4, but the rights guaranteed are subject to restrictions, with the reference to thirteen examples specified by the UN CLP in the Final Comments on the National Reports [10].

In addition, art. 8 of the Comment No. 29 investigated the issues of correlation of the possibility to derogate from the norms of art. 2, art. 3, part 1 of art. 14, part 4 of article 23, part 1 of article 24 of art. 25 of art. 26 of the ICCPR prohibiting dis-

crimination, and non-discriminatory application of the norms of part 1 of art. 4 of the Covenant. Moreover, art. 9 and art. 10 of these Comments specifically note the inadmissibility to derogate through the application of art. 4 of the ICCPR from the obligations under international humanitarian law or from other international contractual obligations. As examples in the notes to Comment No. 29, the United Nations Convention on the Rights of Child dated November 20, 1989 was provided, which does not contain any clause on derogation, and more, contains the norm on its application in emergencies (art. 38) [11]. Also above examples specify also doctrinal sources and resolutions of the international structures [10].

Among other things these are the reports on the minimum humanitarian standards to the Commission on Human Rights E/CN.4/1999/92, E/CN.4/2000/94 and E/CN.4/2001/91, the Paris Minimum Human Rights Standards during the state of emergency (1984), the report of the Special Rapporteur, Mr Leandro Despoué, on the issue of human rights and emergency situations E/CN.4/Sub.2/1996/19, E/CN.4/Sub.2/1997/19, the Turku Declaration on the Minimum Humanitarian Standards included in the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities E/CN.4/1995/116 [12] and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights concerning restrictions and derogations [10].

It should be noted that the list of the ICCPR regulations in its art. 4, from which derogation is impossible, art. 11 of the Comment No. 29 interprete, among other things, as “the recognition of imperative nature of some of the fundamental rights enshrined in the Covenant in a contractual form”, and in art. 12 of the Comment it correlates with the crimes against humanity. Moreover, in art. 13 of the Comment No. 29 it is specifically stated the inadmissibility of derogation on human behaviour and respect for human dignity (in spite of no relevant art. 10 of the ICCPR in the list of the regulations from which derogation is impossible), holding of hostages, kidnapping or secret detention, human rights protection of the persons belonging to minorities, deportation or forced displacement of the population (with the reference to the Rome Statute of the International Criminal Court) and war propaganda [10]

Also it is stated in art. 14-17 of the Comment No. 29 about the right protection guarantees by applying art. 4 of the ICCPR, stressing on impossibility to deviate during the derogation from the remedies, which is a “contractual obligation that follows from the Covenant as a whole”, with the statement that it is impossible to cancel, in the framework of derogation of judicial rights protection, from which derogation is impossible, and recognizing the need to comply with the international notification regime during derogation [10].

The theses provided in the Comment No. 29 are supported by the provisions of the issues submitted by the UN CLP to the states according to the results of their reports. IT is supported by the List of Issues of the UN CLP on the third regular report of Syria dated April 28, 2005. CCPR/C/SYR/2004/3 (art. 6 “Emergency situation

under art. 4”) [13], in the List of Issues of the UN CLP on August 13, 2004 CCPR/C/82/L/ALB on the initial report of Albania on “Derogation and counteraction to terrorism, art. 4” [14], in the List of Issues of the UN CLP on September 20, 2001 CCPR/C/73/L/UK on the fifth regular report of Great Britain in the part “Derogation, art. 4” [15].

It should be added that the relevant activities of the UN CLP on checking the state of compliance with the derogation conditions are reflected, among other things, in Consolidated Guideline on State Reports under the ICCPR, approved by the UN Human Rights Council at its 70th session on February 26, 2001 CCPR/C/66/GUI/Rev.2, according to part C.3 of which the period, grounds, consequences and procedures for derogation state introduction and termination under art. 4 of the ICCPR should be investigated by the UN CLP in full for each article of the Covenant from which the derogation was made. Similar provision was also in part C.3 of the previous Consolidated Guideline dated September 29, 1999. CCPR/C/66/GUI [16].

It is also worth pointing out to the separate provisions of the General Comment No. 31 of the UN CLP on the nature of general contractual obligations imposed on the member states by the ICCPR dated March 29, 2004. In particular, they state that attention of the states to a possible violation of the ICCPR regulations “should be treated as a reflection of the general legitimate interest, but not as a hostile act” [17], which can be presumed also in the situation of derogation.

2.2. Specific features of Siracusa Principles

Siracusa Principles interpreting limitations and derogations is a doctrinal act significant among the issues highlighted above from provisions of the ICCPR approved at the conference of human rights scientists and experts held from April 30 to May 4, 1984 under the auspices of the International Commission of Lawyers, the International Penal Law Association, the Urban Morgan Institute for Human Rights, etc. The Siracusa Principles were submitted to the United Nations Commission on Human Rights in the Netherlands (UN document E/CN.4/1985/4) and are widely used by international law doctrine and practice [18].

The title – Siracusa Principles - can evidence that they cover situations both limitations and derogations from the regulations of the ICCPR, clarifying the relevant provisions of the Covenant [18]. The issue of derogation from the human rights in connection with the state of emergency is highlighted in Part II of the Siracusa Principles. So, according to art. 39 of this document, the Member State of the ICCPR may take measures derogating from its obligations only in cases of exceptional and real or imminent threat to the life of the nation. In this regulation of Siracusa Principles, the threat to the life of the nation is interpreted as the threat affecting the entire population and all or part of the state, and also constitutes threat to the physical health of the population, political independence or territorial integrity of the state, or, for sufficient functioning of the institutions, required to ensure and protect the rights

recognized by the ICCPR. Moreover, in art. 40 and 41 of the Siracusa Principles it is added that international conflicts or disorder that do not cause a serious and inevitable threat to the life of the nation cannot be the ground for derogation from provisions of art. 4 of the ICCPR, and that “economic complexities cannot be the ground for derogation from the rights” in general [18].

According to the regulations of art. 42-50 of the Siracusa Rules the procedure for derogation and termination is thoroughly regulated. In particular, it is emphasized that the Member State of the ICCPR, which derogates from provisions of the ICCPR, shall officially declare the state of emergency due to the threat to the life of the nation, under which procedures for the state of emergency declaration should be provided for in advance [18]. It is interesting, that although the ICCPR, the General Comment No. 29 and the Siracusa Principles consistently specify the possibility of derogation not in any state of emergency, but solely in case of threat to the life of the nation, the description of such threat (threats), its classification or definition in the legislation on the state of emergency is not required from the states by the specified sources.

In the regulations of articles 51-57 of the Siracusa Principles the requirement to proportionality in derogation, introduced in art. 4 of the ICCPR, is thoroughly interpreted, namely, the possibility of derogation from the obligations “only to the extent where it is required due to exigencies of the situation”. Such “exigencies of the situation” are explained in the Principles dated 1984 by the fact that all derogation measures should be taken solely due to severe need to eliminate the threat to the life of the nation, should be introduced for the term and in the territory where it is severely needed; these measures should be proportionate to the nature and extent of the threat to the life of the nation. Moreover, the competent public authorities have to determine the need for each derogation proposed or accepted to eliminate a particular threat posed by the state of emergency [18].

Regulation to article 53 of the Siracusa Rules is also significant, according to which derogation does not correspond to the “exigencies of the situation”, if “usual restriction of rights” is sufficient to eliminate the threat to the life of the nation as provided for in certain provisions of the ICCPR. In this case, both objective assessment of exigencies of the situation and derogation direction to eliminate urgent, obvious, actual or inevitable threat are needed; so derogation cannot be applied only due to potential events expectation. “The possibility of quick and periodic, independent provisions review by the legislators on the need for derogation”, and no state power monopoly for the state of “exigencies of the situation” determination should be ensured at the constitutional and legislative levels. In addition, for the persons who consider themselves victims of derogation, which was not allegedly caused by the “exigencies of the situation”, the state should provide for effective remedies [18].

In addition to above regulations, which were clearly concluded by the authors of the Siracusa Principles from provisions of the ICCPR and practical experience avail-

able as of 1984 in terms of the Covenant application, provisions of articles 61-70 of these Principles are based on the broader principles, since derogation “occurs not in legal vacuum” and “several general principles of law are applied” to it. In particular, this refers to the requirement for objective and fair analysis of the situation, the need for a restrictive interpretation of the ICCPR regulations, allowing derogation, and the need to maximum preserve the rule of law during the state of emergency with a legitimate deviation from it only in extremely limited cases. It is stated that the assessment of the legitimate nature of derogation shall be made taking into account part 2 of art. 29 of the Universal Declaration of Human Rights, the Geneva Conventions, 1949 and the ILO Conventions [18].

The author focuses on the rules of law of Geneva concerning the rights of the individual for a fair trial and freedom of assembly, the right for equal working conditions, the right for trade unions and workers, the prohibition of the slave trade, and the limitation of forced labor consolidated in the ILO core conventions, the derogation from which is unacceptable within the period of any state of emergency. Also, based on the international customary law, the authors of the Siracusa Principles indicate that under no circumstances no state, even that one which is a party to the ICCPR, shall suspend or violate such fundamental rights as: the right to life, the right to in-admissibility of the criminal law retroactivity, the right to freedom from torture, cruel or inhuman treatment or punishment, medical or scientific experiments without free consent; the right to freedom from slavery or slave trade and servitude [18].

Siracusa Principles, 1984 describe in details aspects of derogation from the guaranteed by art. 9 and art. 14 of the ICCPR right to freedom from arbitrary detention and arrest and the right to fair and public hearing of a criminal case in court. This is substantiated by the fact that it is “practically impossible to imagine the state of emergency during which there was a strict need to refuse any individual in the right to respect for dignity inherent to the human personality”. Separately, the Siracusa Principles emphasize the importance of presumption of innocence and other guarantees for any defendant under derogation, such as clear language when informing about the content of verdict, sufficient time and possibility to prepare for defence, interaction with freely chosen defence lawyer, the right to a free defence lawyer, court in the presence of defence lawyer, freedom to testify against themselves, the right to challenge and question the witnesses, the right to appeal, the right to publicity of the case in all and any cases, where possible, and inadmissibility of repeated punishment [18].

It is also necessary to analyse and make recommendations to CLP and other bodies of the United Nations that are contained in articles 71-76 of the Siracusa Principles. In particular, it is stated that UN CLP in exercising its powers for review, reporting and comments on the report of States “may and is obliged to supervise over the law and practice of the Member States for compliance with article 4” of the ICCPR, and

to determine this issue “when considering communications from the States and individuals within its competence”. In order to determine whether the state performing derogation has complied with provisions of art. 4, members of the UN CLP can and are obliged to consider reliable in their opinion information from other intergovernmental bodies, non-governmental organizations and individuals. Moreover, the UN CLP received recommendation to develop a special procedure for additional reports for the states that reported on the derogation, as well as to develop the procedures for communications review from the individuals, which would allow to hear the authors and witnesses orally, and to accept the practice of visits to the states that are accused of violating ICCPR provisions [18]. It should be added that these proposals of Siracusa Principles made by the UN CLP were not taken into account in the following, which affects the analysis of the Comment No. 29 and the practice of UN CLP at the end of the twentieth and early twenty-first centuries.

CONCLUSIONS

So, it can be concluded about special mechanism formed in the international law for derogation of the states from their own commitments in the field of civil and political human rights, established by the ICCPR and developed in the decisions and comments of the UN CLP, in the recommendation acts of the UN structures and in doctrinal documents. The main features of this mechanism lay in the difference, together with the mutual dependence from the mechanism of limitation of the relevant rights, its association with collective rights through the use of the “life of the nation” category, activity taking into account the institutions of imperative norms of the international law, and mechanisms of international humanitarian and international labor law. The application of such mechanism by the states is possible but taking into account the relevant universal international standards concerning the grounds, forms and procedures for derogation and communications about it and its use imposes additional positive obligations on the state. The correlation between derogation according to the ICCPR and the procedures for the states derogation from commitments under other universal human rights treaties and regional human rights treaties should be subject to additional scientific research.

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