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PROBLEMS OF HUMAN RIGHTS AND THEIR DEVELOPMENT IN THE CONDITIONS OF A CHANGING SOCIETY

Abstract. *The work deals with some human rights problems and its development in Ukraine and in the world in the changing conditions. There are three generations of human rights: freedom, equality and solidarity. These rights are reflected in the Constitution of Ukraine, the Constitutions of the countries of the world, the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as other international instruments.*

At the same time, society is constantly evolving, and human rights are developing. The fourth generation of human rights has emerged with development. Some researchers also talk about the emergence of the fifth and sixth generation.

The paper argues that in modern conditions there are challenges related to ecology, gender, sexual orientation, religion, artificial intelligence etc. New forms of discrimination are justified.

In these circumstances, it was found that a balance must be struck between human rights and freedoms and the security of the state.

Introduction

The concept of the «three generations» of human rights was introduced by K. Vasak in 1977. The author identified the following three generations of human rights: the rights of liberty, the rights of equality and the rights of solidarity [15].

These rights are reflected in the Constitution of Ukraine, the Constitutions of the countries of the world, the Convention for

the Protection of Human Rights and Fundamental Freedoms, as well as other international instruments.

Constitutionalists have devoted their work to human rights issues, including: M.P. Orzikh, P.L. Rabinowicz and others. A number of domestic and foreign scientists and scientists, including M.I. Kozyubra, S.B. Buletsa, M.M. Oleinik are dealing with the latest human rights issues.

At the same time, society is constantly evolving, and human rights are developing, which determines the relevance of the research topic.

The fourth generation of human rights has emerged with development. In addition, fourth-generation researchers define global rights and include such rights as the right to nuclear and environmental security (I.D. Afanasyeva), security from international terrorism (L.S. Agibalova), cyberspace security and space rights (M.Yu. Yatsishin).

Human rights are a sensitive barometer that responds to the emergence of new and changing public relations (Yu.D. Kokambo). The development of science, rapid technological progress are the main characteristics of modern society and cannot but affect the ethical and legal foundations of the life of the latter (I.V. Goncharov). Together with a change in social morality, they have led to the emergence of fourth-generation human rights (O.O. Barabash).

Some researchers also talk about the emergence of the fifth and sixth generation (S.I. Iventiev, E.V. Ponomareva, G.Sh. Chernova).

In modern conditions, the question of the responsibility of robots arises. Questions of regulation of artificial intelligence, etc. There are challenges related to the environment, gender, sexual orientation, religion. New forms of discrimination are emerging.

In such circumstances, a balance must be struck between human rights and freedoms and the security of the state.

M.P. Orzikh stated that: "... the center around which all theoretical and applied human rights issues revolve" is the social connection "civil society – state – human" [5]. This

dependency, it seems, is the perfect harmony for the development of the state and society. However, it would be advisable to add *nature* to this chain. It is possible to achieve similar by changing the vector in the understanding of each link of these issues. It is important to strike a balance in these relationships.

The development of society has already moved beyond the boundaries of the fourth generation. And it may be appropriate to talk about the latest generations of human rights, including those related to the information society and technological development.

In addition to the latest human rights, we must also talk about the development and transformation of fundamental human rights. In particular, over time, the right to life and health has acquired and is gaining new meaning and understanding.

1. Right to life and right to development in the context of the Convention

A person, his life and health, honor and dignity, integrity and safety are recognized in Ukraine as the highest social value in accordance with Part 1 of Art. 3 of the Constitution of Ukraine. This article is one of the foundations of the social and state order, which is enshrined in the Constitution, it is the normative and legal foundation of the humanistic orientation of the development of public and state life in Ukraine, it «sets the tone» for all subsequent constitutional prescriptions that reflect the real or desirable state of a person in Ukrainian society [6].

Respect for and protection of human rights is one of the guiding directions of the European Union's activities, in accordance with the objectives and principles of that organization, as enshrined in the founding treaties. The EU Charter of Fundamental Rights of 2007 provides a list of fundamental rights and freedoms that are recognized by each person within the European Union. In particular, personal rights and freedoms (Chapters I and II of the Charter) belong to

natural rights and are inherent in any person from birth. They cover the right to human dignity, the right to life, the right to the integrity of the person, the right to liberty and security of person, the right to respect for private and family life, the right to protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and of association, Freedom of the arts and sciences, Right to education, Freedom to choose an occupation and right to engage in work, freedom of movement and choice of location, right to asylum. The main duty of the Charter is to respect and protect human dignity. The Charter also contains provisions on abuse of law (Article 54). It is to prevent the authorities or individuals from eliminating or unduly restricting the rights and freedoms of others.

Human rights and fundamental freedoms (the right to life, liberty and security of person, respect for privacy and family life, prohibition of torture, slavery, etc.), which must be protected and protected worldwide, are enshrined in the Convention. They are fundamental, but under the influence of time their interpretation may change.

Many ECtHR decisions emphasize that the Convention is a living instrument and therefore the content of stable eternal values may change depending on the economic, social and cultural situation, which also confirms the axiomatic nature of human rights as a concept. The dynamics of the Convention («living instrument») are linked to human qualities and human interaction in society, since violations of rights (mainly crimes) are not possible without social interaction.

Each appeal to the ECtHR can dramatically change the approach to the interpretation of a particular right or freedom for the world and Ukraine in particular.

In the event of a violation of the rights enshrined in the Convention, and subject to the passage of all national courts, the person may apply to the ECtHR for the protection of his or her violated right. The specificity is that the complaint is filed not

against a certain person, but against a state that did not ensure the realization of human rights and freedoms at the national level.

Based on Part 1 of Art. 2 of the Convention, no one shall be deprived of his life. Before the adoption of the Protocols number 6 and 13 of the Convention, deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

In view of the provisions of Art. 1, 2 of the Protocol No. 6 to the Convention on the Abolition of the Death Penalty of 28 April 1983 (as amended on 11 May 1994) ETS No. 114 the death penalty shall be abolished. No one shall be condemned to such penalty or executed (art. 1). A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions (art. 2).

Until the adoption of Protocol No. 6 of the Convention, the violation of the right to life was also not considered to be the execution of a sentence prescribed by a lawful sentence of a court: "no one shall be intentionally deprived of life other than the execution of a death sentence given by a court for which such a penalty is provided by law". However, following the adoption of Protocol No. 6, the use of such a sentence (death penalty) was declared inadmissible, except in martial law. Protocol No. 13 of the Convention on the Abolition of the Death Penalty in All Circumstances (Vilnius, 3 May 2002) states that Protocol No. 6 to the Convention concerning the abolition of the death penalty does not preclude the use of the death penalty for acts committed during war or the imminent threat of war. In other cases, the death penalty is abolished. No one shall be sentenced to death or executed without any warning.

The right to life as one of the highest humanistic human rights is protected and protected by the Criminal Code of

Ukraine through the existence in it of punishment for intentional or negligent deprivation of the life of another person (Articles 115-118 of the Criminal Code).

However, this prohibition is a retreat consistent with the principles of law, in particular humanism.

A person shall not be held criminally liable for the deprivation of another person's life if he or she was killed in the process of necessary defense, if a person was assaulted by a group of persons, when they were assaulted at the person's home and using a weapon (Article 36 of the Criminal Code of Ukraine). Violation of the right to life, in the sense of the Convention, also implies an encroachment on the freedom to directly fulfill the natural needs necessary for human life and development. Each article of the Criminal Code of Ukraine provides for the protection of humanistic rights and freedoms provided for in the Convention or certain aspects of such rights.

Under the influence of a number of factors, the view and the level of tolerance for violations of the right to life have changed, as well as the understanding of the right to life, not only as enshrined in domestic law and international legal instruments, the possibility of certain human behavior aimed at ensuring the integrity of one's life and freedom to dispose of it (narrow understanding), but also as a human freedom to directly realize the opportunities that it has as a result of belonging to the species Homo Sapience, and to satisfy the necessary biological, social, spiritual, economic and other needs are inseparable from man, objectively driven by the attainment of human development (broad understanding) [7].

Accordingly, in the sense of the Convention, the violation of the right to life also implies an encroachment on the freedom to directly fulfill the natural needs necessary for human life and development. In particular, it is important for both the security and freedom of human.

In order to ensure the right to life in the broadest sense, the current Criminal Code of Ukraine provides for criminal liability for bringing a person to suicide (Article 120 of the Criminal Code), which is the result of ill-treatment, blackmail, systematic

humiliation of his human dignity or systematic unlawful coercion to acts that they contradict her will, suicide inclination, and other acts that promote suicide. In accordance with paragraph 28 of the Plenum of the Supreme Court of Ukraine «On the case-law on crimes against the life and health of the person» No. 2 of February 7, 2003, cruel treatment should be understood as ruthless, gross acts that cause physical or mental harm to the victim (torture, systematic injury or beating, deprivation of food, water, clothing, housing, etc.). The systematic humiliation of human dignity is the long humiliating attitude towards the victim (constant insults, mockery of him, etc.).

In this context, the individual should be responsible for the freely chosen undesirable behavior, but in the manner prescribed by law.

However, it should be noted that, in the event of a state of emergency, there may be some deviations from the convention (**derogation**). Some countries in the world are moving away from certain provisions of the Convention. Due to the Coronavirus pandemic, in 2020 six states have already declared derogation [9]. In view of the restrictive measures taken to combat COVID-19, member states of the Council of Europe have begun to notify the Secretary-General of the CoE of a derogation from certain provisions of the European Convention on Human Rights, as provided for in Article 15 of the Convention. According to Part 1 of Art. 15 ECHR «In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision». As of today, applications for derogation through COVID-19 measures have been made by Latvia; Romania; Moldova; Armenia; Estonia; Georgia.

2. Challenges regarding development of human rights

2.1. Human rights and biomedicine

Human rights challenges are posed by scientific and technological developments as well as by the evolution of established practices in the biomedical field.

New technologies are emerging, for instance in the field of genetics, and some technologies, such as those involving artificial intelligence and big data, are being combined to produce new applications. The application of emerging and converging technologies in biomedicine results in a blurring of boundaries, between the physical and the biological sciences, between treatment and research, and between medical and non-medical purposes. Although they offer significant opportunities within and beyond the field of biomedicine, they also raise new ethical challenges related to inter alia identity, autonomy, privacy, and non-discrimination. The Committee on Bioethics has been discussing these emerging and converging technologies for some time and has developed considerable expertise in addressing the human rights challenges posed by them.

Important human rights challenges are also emerging through established practices in the field of biomedicine. Changes in the perception of the decision-making capacity in children, persons with mental health difficulties, and vulnerable older persons, are prompting reconsideration of the balance between protection and respect for autonomy. In addition, important demographic changes, such as migration and ageing populations, coupled with budgetary restrictions in healthcare, are resulting in new or increasing barriers to accessing healthcare services. At the same time, there is unprecedented scientific progress, which results in innovative therapies that are not always available or affordable to disadvantaged individuals and groups [19]. There are also some deviations from the concept of human rights in organ transplantation, cloning, and trafficking in human beings.

2.2. Risks and dangers of human rights in postmodernity

The dangers of postmodernity are that it lacks boundaries, templates and standards. The individual proceeds from his own

experience, the experience of a close environment, not centuries-old norms of social morality and morality. The content of human rights and freedoms is spread and blurred or replaced by interests, comfort, benefits, etc. [12] without taking into account the responsibilities, and also encroaching on the freedom of others. Criminal law is also changing, largely driven by changes in the vector of anthropocentric tendencies (in particular, modern criminal law protects human life, honor and dignity, sexual freedom and integrity regardless of social status, demographic characteristics of the individual, etc.). Gradually blurring the boundaries of natural rights, begin to safeguard the virtual, the superhuman, and the intrinsic of humanity, such as the right to access personal data, which leads to the “twilight” of the original concept of human rights and does not contribute to the balance of freedom and security [10].

Eric Posner (USA) has published a book “Twilight of Human Rights”. And he said that “human rights are ineffective or less effective when there are too many rights. When there are many rights, the state can justify its inability to respect one right, insisting that it has exhausted its financial and political resources while trying to secure other rights”.

Postmodern ideas are further transformed in the conditions of post-truth, cyberspace, the interpenetration of sciences under the influence of socio-cultural, economic and other features of the information society. In post-truth circumstances, facts become less important in shaping public opinion than emotional subjective perception; the concept of rights, freedoms, duties, responsibilities and more are being blurred. Post-truth is the word of the year of the Oxford Dictionary for 2016, as this year is best characterized by a word that questions the concept of the facts themselves. Truth is defined as the circumstances in which objective facts lose their influence on society, they are replaced by appeals to emotional perception and personal faith.

Modernity is characterized by the great ability of individuals to freely transmit and receive information. The spread of the concept of post-truth is facilitated by the peculiarities of the

information society, in particular the enhancement of the role of information and knowledge in society, the creation of a global information space, and people's access to world information resources, among which are false. Therefore, the information society is also characterized by manipulation of information.

It is now very dangerous that human rights do not contradict the idea of social naturalism (O.M. Kostenko). Often, modern human rights violate environmental security. In addition, the danger is to replace human rights with the needs of others. The Convention sets out fundamental human rights that cannot be violated with some exceptions.

2.3. Transhumanism

Companies today are strategizing about future investments and technologies such as artificial intelligence, the internet of things, or growth around new business models.

Visionary Innovation Group looked at three fundamental pillars of humanity and how they will evolve over the coming 10-15 years: bodies, thought, and behavior. After identifying the driving forces that will transform these fundamental pillars, we extracted key themes emerging from their convergence. Ultimately our goal was to determine the ways in which the changing nature of humanity and transhumanism would affect individuals, society, businesses, and government. A few of the trends that emerged from this study include the following trends.

Bodies will be augmented. The coming years will usher in a number of body augmentation capabilities that will enable humans to be smarter, stronger, and more capable than we are today. There are in particular exosuits that increase physical strength. We will also see increased use of implants ranging from brain microchips. But the most powerful body augmentation will come from biological augmentation as a result of increased insight into our genomes, advances in IVF technology that may allow us to select the most intelligent embryos [16]. These body augmentation capabilities will give rise to humans that are more resilient, optimized and

continually monitored. They will also lead to implications around which job opportunities are available to those with and without augmented abilities. At the same time, augmented bodies will usher in risks such as espionage potential via contact lens camera hacks, or even more worryingly, risk of a stratified human race based on those who can afford augmentations and those who cannot.

Thought processes will be faster and more transferable. Both wearable and implantable brain-machine interfaces (BMIs) are in development from organizations that include Elon Musk's Neuralink, Facebook, and DARPA. These devices will dramatically alter the ways in which we communicate with each other, as well as digital devices [17].

Gamification and behavioral science will increase human productivity. Early innovators such as UBER are already harnessing the incredible combined power of behavioral science, gamification, and AI. Gamification techniques used by the company include a graphical interface that brings a video-game like quality to the drive, as well as prompting goals that are always just out of reach to encourage continued pursuit [22]. Even governments have taken up these tactics with behavioral science units in both the UK and US.

Human will be more empathetic. The adoption of virtual reality can play an influential role in our ability to understand perspectives other than our own [14]. BMIs may advance our ability to empathize if we are able to understand someone else's full perspective straight from their own brain, rather than if they are trying to communicate it and misspeak or their intention is misinterpreted by the listener.

The extreme personalization and customization. Marketers may be able to use emotional filters based on our activity to change the tone of their message on the spot in response to our current mood. Eventually, we may see AI personalization affect our career trajectory, playing a guiding role in the positions we are offered based on our personal strengths. Personalisation will eventually give way to customisation at mass scale where

products and services will be completely configured to personal needs and preferences.

Changes in business practices. We will see the rise of AI in our career settings as described in much work focused on smart factories, industrial IOT, and related topics. Most employees will have an AI counterpart with which they collaborate or through which their work is amplified [23]. Integration of BMI into workplaces will usher in heightened cybersecurity concerns, and we may see eventual scenarios in which companies are sponsoring nootropic supplements and neurostimulation devices to improve employee focus and increase the speed of new skills acquisition [20]. However, such innovations can violate the health, privacy of the employee and risks of increasing unemployment.

3. Threats and benefits of the human rights innovation

All of the human rights innovation and new opportunities can be useful in the development of mankind. At the same time, all these innovations blur human identity and contradict some fundamental rights and freedoms.

In today's context, it is truly impossible for a person to analyze such a large amount of information, or not to be able to do so in the short term in which it is necessary. The use of Big Data (decision-making based on too much information) [4] and Internet of Things [2] technologies could help a person.

For example, processing declarations in the short term and taking into account many factors for analysis while simultaneously correlating this information with other sources would facilitate timely detection of corruption, corruption risks and accordingly contribute to counteracting and preventing corruption. That is, the Internet of Things would help the state fulfill its function of ensuring its own security and that of the society as a whole.

The state is now ready to provide the fundamental humanistic rights, freedom and security of its citizens, morality for the sake of security against certain crimes, in particular

particularly grave crimes with a cross-border dimension. These include, for example, terrorism, trafficking in human beings, sexual exploitation of women and children, drug and arms trafficking, money laundering and counterfeiting, corruption, computer and organized crime.

To prevent crime, the state at the level of the law allows to derogate from the absolute prohibition of encroachment on property, health and even human life, as well as privacy. The state justifies such steps by the absence of other means to counteract crime. However, it should be remembered that such retreats are for the purpose of protecting human rights and freedoms, and not vice versa.

Although the latest *Taricco II*, *Ecj 2017*, *Tsezar and others v. Ukraine*, *ECHR 2018*, demonstrate the collective priority of the individual (European and national values) and the authority to punish their citizens [21].

However, other issues related to the security of the individual and his or her private information arise due to the processing and availability of big data, including «big private data».

Victimology scientists and scientists recommend that you do not post private information on social networks, or do it as little as possible (V.O. Tuliakov) for the sake of your own safety in order to prevent victimization.

Discrimination. Due to the emergence of new technologies and capabilities, there is a risk not only of development but also of the disappearance of the concept of human rights. In particular, not all people will have the financial capacity to improve their functions. Such transformations are contrary to human nature.

In addition, the latest technologies can be used to **manipulate** consciousness (N.A. Savinova). The right to be forgotten has recently been discussed in the context of ECtHR practices because innovative technologies make it impossible to forget anything. Information from the past person can be used at any time. And in fact, a person has no right to error and

change. Any glimpses of the past will affect the reputation in the information society.

The right to education and privacy in quarantine. In quarantine, most Ukrainian educational institutions have implemented distance learning using the ZOOM service. However, such a service violates privacy. Recordings of conferences, participants' screenshots can be saved and used.

The price of human rights, freedom, and security in the face of globalization. In addition, the latest opportunities are a threat to human identity, human nature and privacy. In his futuristic novel *Equilibrium*, D. Orwell demonstrates a model of a world without wars, cruelty and no emotion. The ability to feel in any way emotionally responding to reality qualifies as an «emotional crime» and is put to death. To suppress emotions people use the drug «Prozium». For his non-use, the person also undergoes a «procedure». It is believed that emotions are the cause of serious crimes, wars and more. In this novel, the rejection of emotions is the price of security. In essence, it is a rejection of the human essence, because a person is inherent in sensuality. The meaning of human existence is to freely choose the right behavior, thus exercising its freedom.

Equally frightening is the total observation and control of the man in Orwell's 1984 novel. This novel describes a totalitarian regime with its rewriting of history, zombification of people by the party's patriotic slogans. There are no laws and punishments in such a world. The party detains people for thoughts – «thought-crimes». In such a state there are Ministries of Truth (which deals with lies), Love (deals with torture), Thoughts (similar to police), Peace (deals with war). People should feel nothing but love for the party and hatred for enemies.

Unfortunately, these novels are not fantastic. Although hyperbolized, they show real events in the history of Ukraine and the world.

For example, in modern China, there is a system of disclosure of private information in public access, according to which the «rating of the person» is formed and taken into

account when hiring, which is a form of control of private information. In response to the Coronavirus counteraction, a real-name registration requirement for public transport trips has been introduced in China since February 24, 2020, which also facilitates citizen travel control.

In Ukraine (though not officially), individual posts are verified, including through social networks and the media (for example, working in the Anti-Corruption Court). Regular users of the Internet are already actively using programs to identify a person's location using a mobile phone, applications that allow you to view contacts in another's mobile phone, etc. All this violates the privacy and rejection of the needs of others. But how much we are ready to give in to our freedom and privacy in the future for the sake of the security of the state and to simplify the performance of its functions through total control. In the future, as already noted, there will also be an opportunity to access emotional reactions and thoughts of a person as if to improve service and understanding of a person by a person. However, it is an incredible threat to privacy and security.

A person feels safe, including when he or she is in control of his or her own life, when he or she is less aware of what is going on in his / her life, when he / she is financially able to provide himself / herself with food, shelter, development opportunities, etc. Criminal liability now consists of mutual rights and obligations between the state (law and justice), the offender (punishment), victims (fair treatment), and third parties (cognitive control). Mutual rights mean that criminal rules need to be built towards effectively changing the treatment of a person, taking into account the needs of all parties involved [21]. This is possible through mediation and dialogue practices.

Pope Francis II spoke to the lawyers on November 15, 2019 at the 20th Congress of the International Criminal Law Association in the Vatican [18], stating that global financial capital is the source of serious crimes not only against property but also against people and the environment. It is organized crime that is responsible, among other things, for the over-indebtedness of states and the plundering of the natural resources of our planet. Criminal law

must not remain unconnected with conduct in which, by taking advantage of asymmetrical situations, a dominant position is exploited to the detriment of collective welfare. This is the case, for example, when the prices of public debt securities are artificially reduced through speculation, without worrying that this will affect or aggravate the economic situation of entire nations. These are crimes that have the seriousness of crimes against humanity, when they lead to hunger, misery, forced migration and death from avoidable diseases, environmental disaster and ethnocide of indigenous peoples. *Need protection of the environment by criminal law.* «Ecocide» it is the massive contamination of air, land and water resources, the large-scale destruction of flora and fauna, and any action capable of producing an ecological disaster or destroying an ecosystem. We must introduce – we are thinking about it – in the Catechism of the Catholic Church the sin against ecology, the ecological sin against the common home, because it is a duty. It is a sin against future generations and is manifested in acts and habits of pollution and destruction of the harmony of the environment, in transgressions against the principles of interdependence and in the breaking of networks of solidarity between creatures (cf. Catechism of the Catholic Church, 340-344). As has been pointed out in your work, «ecocide» is to be understood as the loss, damage or destruction of the ecosystems of a given territory, so that its utilization by inhabitants has been or can be seen as severely compromised. This is a fifth category of crimes against peace, which should be recognised as such by the international community [18].

That is, a balance must be struck between the freedom and security of the state, as well as the security of the environment. After all, securing fundamental rights (life and health) is impossible without a safe environment.

Conclusions

The Convention on Human Rights enshrines fundamental human rights that cannot be violated in a rule of law and democracy. However, there are also some exceptions to these

rights. Such exceptions can be attributed to the state of emergency, war, etc.

The development of society has already moved beyond the boundaries of the fourth generation. And it may be appropriate to talk about the latest generations of human rights, including those related to the information society and technological development.

In addition to the latest human rights, need to talk about the development and transformation of fundamental human rights. In particular, over time, the right to life and health has acquired and is gaining new meaning and understanding.

The information society has given a new impetus to the development of human rights. At the same time, opportunities to increase and improve the body, use of microchips to increase memory, the ability of marketers to customize the service not only personal preferences, but also through emotional perception. Such opportunities develop, but are also a threat to, human rights. Such opportunities are a threat to the identity of human, an understanding of his natural essence and the continued existence of the genus.

In today's context, it is important that human rights do not contradict the idea of social naturalism (O.M. Kostenko). Often, modern human rights violate environmental security.

In addition, it is important that human rights are not replaced by the needs of others. The Convention sets out fundamental human rights that cannot be violated with some exceptions.

In ensuring human rights, it is important to strike a balance between human, society, the state and the environment.

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