

Improving the institution of human rights and freedoms in constitutional law in Russia

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Abstract. This article discusses the prospects for further constitutional and legal reform in order to maximize the full enjoyment of human rights and freedoms in the Russian Federation. The article attempts to analyze from new positions the most problematic issues of implementing the principles of Russian constitutional law, which traditionally are the rights and freedoms of man and citizen. The authors pay special attention to the analysis of the categorical framework and methodological approaches to the problem under study. The main theoretical and methodological approaches are studied, which include: dialectical, structural-functional, comparative legal and other methods. A comparative analysis of the terms “rights” and “freedoms” of man is of considerable interest, during which similar features and differences are revealed. The authors analyzed the views of leading Russian scientists. In the course of the study, the authors revealed the mechanisms and guarantees ensuring individual freedoms (economic, political, ideological and legal ones). In conclusion, the authors come to the logical conclusion that individual rights and freedoms are the most important factor characterizing modern Russian society.

Keywords: Constitution of the Russian Federation, human rights and freedoms, constitutional law, constitutional and legal regulation

1 Introduction

The general theory of law indicates that a subjective right is a measure of a probable personal behavioral pattern. In the authors’ opinion, this definition can be applied to freedom. In many cases that fall under a subjective right, there is a subject that bears the burden of responsibility according to this right. In the context of consideration of freedom, a ban on the denial of this phenomenon or violation by any subject of law is implied. The indicated difference between law and freedom is rather conditional [1].

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In addition, the rules of international law, just like Russian legislation, contain a different concept – “human rights and freedoms”. From a legal point of view, both legal terms have an identical meaning and can be mutually replaced. The phenomenon of “freedom” often characterizes human rights in the field of creativity, spiritual enrichment and respect for personal integrity.

2 Materials and methods

Both general philosophical and special general scientific and particular scientific methods are applicable to the study of the indicated problem. The development of such a topical issue involves the use of structural and functional analysis, which reveals the structure and functions of objects in the system. To identify the dynamics and historical prospects for the development of a particular phenomenon in the history of the formation of human rights and freedoms, the principle of historicism is also important, which makes it possible to understand the current state of an object [2].

3 Results

Numerous articles of the Constitution of the Russian Federation have been developed with the use of the category of freedom (in particular, articles 27-30, 34, 37, 44) [3]. In accordance with the listed legal provisions, freedom of movement, conscience, speech, labor and other freedoms are guaranteed for each person in the country. However, most of the rights of individuals and citizens of the Russian Federation contain the definition of “right”. The way of wording is borrowed by the responsible legislator from the Universal Declaration of Human Rights [4, 5]. It contains covenants on the rights of man and citizen in exactly the same way as in the Constitution of the Russian Federation [6].

The concept of “freedom” is used in positive law to indicate legal principles. They reflect the recognition of conditional subjective rights. An example is the principle of “freedom of contract” specified in the civil law of the Russian Federation [7]. Freedom of contract, along with numerous basic principles, is included in accordance with Article 1 of the Civil Code in the list of main categories of civil legislation [8]. The principle of freedom is specified in many international legal acts, in particular the freedom of the high seas (according to Article 87 of the 1982 United Nations Convention on the Law of the Sea) [9].

The term “freedom” is actively used in positive law, while acquiring a special legal meaning.

Initially, the concept under consideration was used in positive law, where it indicated a personal legal status. The term gradually acquired a new meaning, as a result of which it began to be perceived as a synonym for a subjective right.

Constitutional law understands freedom as a complex category, which includes several basic meanings. Among them are as follows:

1. Freedom forms the basis of constitutional order. The above definition of freedom is given in the provisions of the Constitution of the Russian Federation, for example, in Article 7 on freedom of personal development, Article 8 on the unhindered movement of goods and services, etc.

2. Freedom is the basis of legal regulation. Regulatory legal acts that establish the boundaries of freedom allow for the regulation of constitutional and legal relations.

3. Freedom establishes the powers of a subject of constitutional law. For every person in any civilized country, there are several rights based on the category of freedom. An

example is the independence of an individual from the state, the availability of state-territorial entities that exercise freedom through elected or appointed officials, etc.

4 Discussion

In order to understand the manifestations of the category “freedom” in detail, one should compare a number of terms, in particular “human rights” and “citizen’s rights”.

According to E.A. Lukasheva, when comparing “human rights” with “citizen’s rights”, the differences between the terms lie in the rules of society and the state. Human rights function in the area of relations established between the individual and the state. The main function of the state is the protection of individual rights from [10].

The provisions of Article 2 of the Constitution of the Russian Federation indicate the highest value of human rights and freedoms. It is noteworthy that, in accordance with the information given in the article, the differences between the terms “right” and “freedom” are minimal and are more formal in nature. The fact is that the above terms indicate the opportunity of any person, based on his preferences, to choose a certain behavioral pattern. However, the concept of “freedom” does not cast doubt upon the fact that an individual has integral components of the category under consideration, such as freedom of conscience, belief, thinking, etc. Freedom components are part of the inalienable human rights.

These freedoms are among the natural ones and are given to an individual by virtue of his birth, by nature. The concept of “right” in the above context implies the granting of certain powers to an individual, which are guaranteed by the state in various spheres of life. The wording “right to freedom” is used once in Article 22 of the Constitution.

When comparing the terms “rights” and “freedoms”, it is necessary to indicate their similar and distinctive features. The similarity of concepts lies in their identification through the category of “legal opportunity”, i.e. within the framework of the choice of a certain personal behavioral pattern, the use of freedoms and social benefits prescribed at the legislative level (in this case, the focus of use – in one’s own or public interests – does not matter). The difference between fundamental rights and fundamental freedoms lies in the fact that the rights provide an opportunity to receive any social benefits (“the right to ...”), and freedom indicates the lack of any influence or restrictions on the part of public authorities (“freedom from ...”).

The text of the Constitution of the Russian Federation does not distinguish between the concepts of “right” and “freedom”.

In modern legislation, the concepts of “rights” and “freedoms” do not have significant differences. In addition, when establishing legal guarantees, these terms acquire an almost identical meaning. Simply put, the concept of “personal freedom” becomes equal in meaning to the phrase “rights and freedoms of man and citizen”.

Modern Russian legislation is a list of regulatory legal acts, which allow for the regulation of constitutional and legal relations. Within the framework of these relations, special attention is paid to the term “personal freedom”. As a result, in order to understand the essence of the category under consideration, one should become more familiar with the content of constitutional and legal regulation, through which human rights and freedoms are enshrined and protected in Russia. Initially, it is worth studying the topic of constitutional and legal regulation of relations in society. In terms of the science of constitutional law, this type of legal regulation is characterized by many designations. Among the most common terms for this process, the following should be noted: “legal regulation in political science”, “constitutional regulation”, etc.

S.A. Avakyan [11] assumes that the above term is best used to designate a special type of state activity, the specificity of which is the adoption of regulatory legal acts on the basis of law, as a result of which a certain legal status is given to a person (subject). In the

authors' opinion, this definition is incomplete, since it reflects only the law-making aspect, which is inherent in the authorized bodies forming the law-making base for the effective functioning of state institutions. In this definition, not a word is said about the influence of the rules of law on the ability of citizens to exercise their rights and freedoms.

S.A. Avakyan further recognized that constitutional law covers a wider sphere of regulation of political relations, and not only forms the basis for the socio-political activities of state institutions. The legal regulation under consideration is characterized by several circumstances. First of all, it has a certain benefit for all participants in legal relations, as it prescribes specific guarantees for the implementation of their activities. Moreover, legal regulation is the basis of social security, prevents violence in society, sets the vector of its development by determining the limits of the functioning of public and political institutions. Legal rules ensure that the mutual interests of an individual and society are taken into account; and legal opportunities are established for the interaction of socio-political institutions with mechanisms for the exercise of power [12]. In his works, S.A. Avakyan uses two synonymous concepts – “constitutional regulation” and “constitutional and legal regulation” and uses them in the same meaning.

According to O.O. Mironov, the term “constitutional regulation” should be considered as a diverse impact of constitutional and legal provisions on relations within society. The constitutional law ensures the activity of the state as a whole, a legal system is formed, which completely establishes the order of social relations [13]. In the authors' opinion, this definition does not fully reflect the essence and specifics of the constitutional and legal regulation of social relations.

According to L.A. Morozova, constitutional and legal regulation is the provision by the state through the forms and methods of influence on social relations enshrined in regulatory legal acts, forming the socio-economic and political structure, personal status. It regulating and setting the vector of social relations, giving them a special political and legal regime that fully meets the interests of an individual, society and the state [14].

In the authors' opinion, the most complete definition of constitutional and legal regulation was provided by Yu.V. Vershinina. She considers the phenomenon as an activity carried out by subjects of constitutional and legal relations. This activity is implemented in two aspects: 1. purposeful influence of public authorities on personal behavioral patterns and the system of social relations that form the subject-matter of constitutional law. This influence is exerted through legal means available to public authorities (the so-called objective aspect). However, through constitutional and legal regulation, an individual exercises his legal rights and interests (the so-called subjective aspect) [15].

The constitutional and legal regulation of social relations in the field of the legal status of an individual is implemented in three ways. The first of them provides for the formation of unconditional rights and freedoms of an individual, enshrined in the Constitution of the Russian Federation, as a result of which they are applicable to every person. For example, in accordance with Article 29 of the Constitution of the Russian Federation, freedom of thought and speech is assigned to each individual. The second option involves fixing specific rights and freedoms for an individual, however, they provide for conditions under which the state (represented by competent departments) is endowed with the option of ignoring or depriving these individual rights and freedoms (for example, Article 56 of the Constitution of the Russian Federation). Under the third option of constitutional and legal regulation, individual rights and freedoms prescribed in the Constitution can be eliminated in specific cases provided for at the legislative level. As a result, the legislator has the opportunity to amend constitutional provisions affecting individual rights and freedoms to a certain extent, but without adjusting the main law of the state (which was implemented during the all-Russian Vote to Amend the Current Constitution of Russia on July 01, 2020).

5 Conclusion

For the purpose of enforcement of individual freedom, the state establishes guarantees. The state and law have great opportunities to ensure individual freedom both on the scale of the whole society and at the level of an individual. On the other hand, the state and law may restrict individual freedom. The state, having real power, independently makes a choice either in favor of proclaiming freedom as an inalienable individual property or completely ignoring it or turning it into a formality.

At the current stage of society development, the following types of guarantees for the implementation of constitutional and legal regulation as a way to ensure individual freedom should be distinguished:

- economic guarantees, including freedom of labor and choice of professions, ensuring the same degree of protection for all forms of property, freedom of entrepreneurship;
- political guarantees, which include the form of government, the form of state structure, forms of direct democracy, the organization and operation of the state machinery, the principle of separation of powers, the legal system of society, lawfulness, etc.;
- ideological guarantees, which include a high level of legal consciousness and legal culture of an individual, an increase in the level of development of science and culture, an expansion of worldview and morality. Ideological guarantees are valuable, since they create the necessary prerequisites for a more conscious use by an individual of his rights and freedoms;
- legal guarantees are designed to create a legal system of society aimed at protecting individual rights and freedoms, creating conditions under which an individual will fully exercise his rights and freedoms, establishing legal responsibility and creating an effective mechanism for its use in violation of individual rights and freedoms.

Constitutional and legal regulation is also a means of limiting the abuse of rights and freedom both by an individual and with other individuals and state bodies. However, restrictions on individual rights and freedoms imposed by the state should not be considered as violence against a person or the imposition of a certain behavioral pattern on him, since they can be introduced in pursuance of Part 3 of Article 17 of the Constitution of the Russian Federation. According to this provision, individual rights and freedoms must be exercised without violating similar rights and freedoms of other persons. Also, these restrictions apply to all individuals equally.

The mechanism of constitutional and legal regulation includes the following elements (legal means), due to which individual freedom is ensured:

1. Constitutional and legal rules, characterized by its compulsory nature for all citizens, formal certainty, having a special content, sources of their record, constituent nature and a special implementation mechanism.
2. Regulatory legal acts, which collectively form constitutional legislation as a measure of freedom of choice, subject to which individual freedom is achieved.

The level of individual freedom testifies to the maturity of the legal system, the degree of independence of society, the embodiment of democratic and humanistic ideas. Individual freedom is a primary criterion for characterizing society. All other categories, such as the level of democracy development, the effectiveness of state institutions and other factors are considered secondary.

Individual freedom forms the basis for constitutional and legal regulation. In accordance with Article 18 of the Constitution of the Russian Federation, individual rights and freedoms determine the essence of the legislative framework, the activities of state institutions, judicial authorities and local governments.

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