

## MINIMIZATION OF HUMAN RIGHTS RISKS: THE CONSTITUTIONAL LEGAL EXPERIENCE OF POST-SOVIET STATES

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### ABSTRACT

The article presents the author's analysis of CIS constitutions for the purpose of their norms determination aimed at human rights risks reduction. The obtained results are systematized, and also recommendations are given in the direction of studied constitutional parameters improvement.

**Keywords:** human rights, duty, guarantees, security, human rights risks, judicial protection, ombudsman

### INTRODUCTION

In the modern period the phenomenon of risk refers to those categories that, first of all, accompany the life of a man immanently; Secondly, they are connected with practically all spheres of life; Thirdly, they are studied by different fields of knowledge; Fourthly, they expand their scales quite actively. The risks of different nature can help neutralize or intensify the consequences of each other [1, p. 19].

Such a "comprehensive" presence of risks was the reason for the author's reasoning and the proposal to introduce the term "human rights risks" into the scientific circulation [2, pp. 54-56]. At the same time, human rights risk, like the risk in the traditional sense, expresses the likelihood of an accidental occurrence concerning an undesirable, an unfavorable event related to the violation of human and civil rights and freedoms and entailing a corresponding damage in this regard [3, pp. 151-157; 4, pp. 74-77].

Taking into account the starting points, it is advisable to analyze the foreign experience of constitutional and legal consolidation of provisions aimed at human rights risks reduction. In view of the common historical development, the states of the post-Soviet space that are the members of the Commonwealth of Independent States can be a representative group [5]. We propose to consider the following parameters as the constitutional parameters-provisions aimed at human rights risks reduction [6, pp. 16-21]:

- the axiological preference of a person, his rights and freedoms in a state;
- the imperatives on a state duty and the guarantees for a person protection, the protection of his rights and freedoms;
- the judicial form of subjective right protection (it deserves a special accentuation because of its high popularity among population).

### METHODOLOGY

In order to achieve the goal of norm record constitutional experience aimed at human rights risks reduction in the post-Soviet space, they use the modern methods of cognition, identified and developed by legal science and tested by practice. Within the framework of this work, they apply both general scientific (dialectical, system) and private methods (formal-legal, structural-functional, comparative-legal one).

### DISCUSSION AND RESULTS

An appeal to the constituent acts of a declared group of states on the formalization of a person axiological preference, his rights and freedoms in a state gave grounds for the following speculations.

In the first chapter "Fundamental Rights and Freedoms" of the Republic of Kyrgyzstan Constitution, the Article 16 recorded the rule that human rights and freedoms are the highest value.

A similar provision is also placed in Article 5 of the Constitution of Tajikistan.

The Constitution of the Republic of Belarus in Article 2 declared a person, his rights, freedoms and the guarantees of their realization as the supreme value and purpose for society and a state. Thus, the "list" of axiological preferences in a state was expanded. The guarantees of human rights and freedoms realization were added to the typical composition. We believe that for modern conditions, when practically all constitutions reflect a wide range of subjective rights, a mechanism which ensures their implementation is important. Therefore, this norm, in our opinion, has a promising constitutional character. We consider it is positive to indicate here that a person, his rights and freedoms are also the highest value and goal not only for a state, but also for society. Undoubtedly, the activities of civil society institutions must comply with the constitutionally defined subjective rights.

Two more reviewed constitutions (of Ukraine and Uzbekistan) indicated numerous axiological preferences in a state.

Thus, in the Article 3 of the Constitution of Ukraine a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. However, we believe that there are grounds to attribute this norm to an imperfect one from the substantive point of view. So, the absence in the number of declared values of human rights and freedoms is regarded as a negative one, as well as the fact that the priority of a person is indicated only in a separate sphere - a social one. At that, it turns out that other areas are not taken into account.

Here one should also mention the Article 3 of the Constitution of Ukraine, which establishes that human rights and freedoms and their guarantees determine the content and the trend of state activities. It seems that the content of this rule can be regarded as the identical one with the priority of human rights and freedoms.

The Constitution of the Republic of Uzbekistan is regarded as unconventional in comparison with the already mentioned formulations. Its article 13 determined that democracy in the country is based on universal principles, according to which a person, his life, freedom, honor, dignity and other inalienable rights are regarded as the highest values. Thus, a person and his inalienable rights are singled out here as one of democracy principles.

On the contrary, in Article 3 of the Constitution of Turkmenistan only a person is indicated as a supreme value of society and the state. We believe that the presented statement is imperfect, since it lacks the indication of human rights and freedoms as the highest value. At the same time, one should recognize such a positive moment here as the reference to the fact that a person has a priority not only in the state, but also in society. Consequently, an individual is a guide in the activities of not only public authorities, but also of civil society institutions.

The norm of Part 1 Article 4 in the constituent act of the Republic of Moldova deserves an attention. It indicates that constitutional provisions on human rights and freedoms are interpreted and applied in accordance with the Universal Declaration of Human Rights, covenants and other agreements where the Republic of Moldova act as one of the parties. Let us note that the norms of international law specified in the article are the recognized standards in the considered sphere, and, of course, such, among other things, determine the axiological preference for the benefit of a man, his rights and freedoms. Hence, based on the combined interpretation of the indicated rule with the provisions of the Universal Declaration of Human Rights, as well as the international

covenants of 1966 [7, 8, 9], there is reason to assert the priority importance of a person, his rights and freedoms in the Republic of Moldova.

When they referred to the identification of constitutional provisions on the state duty and guarantees of a person, his rights and freedoms protection, the following results were obtained.

The Article 5 of the Constitution of Tajikistan established the duty of the state to recognize, respect and protect the rights and freedoms of a man and a citizen. However, there are no provisions on relevant state guarantees.

On the contrary the thing is solely about state guarantees in Art. 12 of the Republic of Kazakhstan Constitution. In Section II "Man and citizen" they localized the provision that the state recognizes and guarantees human rights and freedoms in accordance with the Constitution.

The Constitution of the Republic of Moldova formalized the primary duty of the state to respect and protect an individual (art. 16). Thus, this norm is a universal one from the position of human rights potential, as, first of all, the very fact of the term "protection" use is a positive one. Secondly, this duty is separated from others. Thirdly, the use of the category "personality" gives grounds to extend the rule to different subjects of human rights relations.

However, Part 2 of Article 18 emphasized that only Moldovan citizens enjoy the protection of the state both within the country and outside it.

You should pay attention to Art. 4 of the Armenian Constitution, which determined that the state ensures the protection of human rights and freedoms on the basis of the Constitution and laws in accordance with the principles and norms of international law. The use of the verb "provides" in this position allows to consider that the state guarantees the protection of human rights and freedoms on the basis of its meaningful meaning. In our opinion, a constitutional reference to the principles and norms of international law only emphasizes the importance of these legal relations.

The provisions of Part 2, Article 16 of the Constitution of Kyrgyzstan are similar ones. They determine that the state respects and ensures human rights and freedoms to all persons within its territory and under its jurisdiction. It is necessary to make a positive remark about the establishment of the so-called principle of respect for human and civil rights and freedoms (this is also noted in Moldova - Article 16). Let's recall that this principle is absent in the Russian Constitution.

In Article 12 of the Azerbaijan Constitution the required wording is also found through the term "security". The special significance of this norm is emphasized by its location in the article titled as "The Highest Goal of the State". It defines that the supreme goal of the state is the provision of a man and a citizen rights and freedoms. The interpretation of the term "security" as a "pledge, guarantee, bail, covenant" [10], allows to judge about the provisional activity of the state with respect to the rights and freedoms of a man and a citizen. It should be noted here that citizens are also normally separated with a proper set of rights and freedoms.

The author's attention should be emphasized on the fact that the Constitution of Azerbaijan contains two articles with an identical title - "Protection of human and civil rights and freedoms" (Articles 26 and 71). The first of them records the right of everyone to be protected with the means not prohibited by law and the means of their rights and freedoms (self-defense). In paragraph II of the same article, a state is defined as an entity that guarantees the protection of rights and freedoms for everyone.

Article 71 of the Azerbaijan Constitution clarifies state protection guarantees through the wording "the observance and the protection of human and citizen rights and freedoms recorded in the Constitution is the duty of legislative, executive and judicial authorities".

We believe, the presented constitutional provisions are imperfect from the point of view of legal technique. Their content would be more convincing and unconditional if Article 26 "State guarantees for the protection of human rights" reflected the provisions of paragraph II and the article 71. And in article 71 it would be more appropriate to place the current wording of paragraph I, Article 26 under the title "Self-defense".

The constitutional approach through the use of the term "security" was also found in the constituent instrument of Ukraine. Its article 3 has the assertion and the provision of human rights and freedoms as the main duty of the state.

If we turn to the consideration of the rules on judicial protection, specified in the constitutions, then we can present the following results.

This provision is typical for almost all constitutions of the declared group of countries (except for Moldova). Thus, in Article 60 "The judicial guarantee of rights and freedoms" of the Constitution of Azerbaijan, the protection of the rights and freedoms of each person in court is guaranteed; The right of everyone to appeal to the court decisions and actions (or omissions) of state bodies, political parties, trade unions, other public associations and officials is stated.

We believe that the legal and technical means used in the constitution, which indicates the title of the act articles, facilitates the perception of law provisions. However, such names must clearly correspond to the content of the norm itself.

Article 44 of the Constitution of Uzbekistan is similar to the abovementioned definition.

The Constitution of Armenia recorded everyone's right to judicial protection of their rights and freedoms defined by the Constitution and laws (part 2, Article 38) in a less detailed formulation.

Identification of part 1, Article 40 of the Constitution of Kyrgyzstan is identical. It only provides the deciphering of protected rights and freedoms stipulated by the Constitution, laws, international agreements, universally recognized principles and the norms of international law.

The Constitution of Belarus also has a rule on the judicial protection of human and civil rights and freedoms. In accordance with it, everyone has guarantees concerning the protection of his rights and freedoms by a competent, independent and impartial court within the time limits established by law (art. 60). In continuation of this provision, Article 61 recorded the right of everyone to apply to international organizations in order to protect their rights and freedoms if all available domestic legal remedies have been exhausted on the basis of international legal instruments ratified by the Republic of Belarus.

Articles 8 and 55 of the Constitution of Ukraine, as well as in the Belarusian constitutional norms, guarantee the judicial protection of human and civil rights and freedoms, as well as the right of everyone, after the use of all domestic legal remedies, to seek protection of their rights and freedoms in relevant international judicial institutions or relevant bodies of international organizations where Ukraine is a member or a participant.

The right of everyone to judicial protection of their rights and freedoms is established by the part of article 13 of the Constitution of Kazakhstan, and article 76 specifies that the judicial power is exercised on behalf of the Republic and is aimed to protect the rights, freedoms and legitimate interests of citizens and organizations, ensure the implementation of the constitution, other normative legal acts and international treaties of the Republic.

In the Constitution of Tajikistan, Article 84 is devoted to the judicial power and its implementation, including its human rights purpose in relation to human and civil rights and freedoms, the interests of a state, organizations, institutions, legality and justice.

The analysis of the constitutional norms of Turkmenistan gave grounds to assert that only its citizens can use the judicial protection in the state (Article 40). And in Article 99 emphasized that the judicial power is intended to protect the rights and freedoms of citizens, state and public interests protected by law.

## CONCLUSIONS

The constitutions of the Commonwealth of Independent States countries set a different set of parameters-provisions, which are aimed at human rights risks reduction. For the most part, such provisions are fragmentary, of course, in relation to the aggregate that we have isolated as an ideal model. Of course, the absence of such important provisions on the constitutional level that relate to state guarantees and obligations for the protection of human rights or judicial assistance, etc. can be considered a negative practice. However, in our opinion, numerous provisions in constitutions which correspond to typical requirements of a democratic rule-of-law state are not a panacea in the development of modern human rights space. We believe that only the maximum balance between an actual and a legal constitution can become a pledge for the achievement of positive human rights results, which require not only constitutional consolidation, but also real law enforcement.

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