

**THE BASIC THEORETICAL ASPECTS OF NEW CONCEPT
REALIZATION OF RIGHTS AND FREEDOM OF THE PERSON AND THE
CITIZEN IN RUSSIA (BY THE EXAMPLE OF REPUBLIC
BASHKORTOSTAN)**

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The given scientific article is devoted to research of an actual problem for Russian Federation showing the new concept of the rights and freedom of the person and the citizen. The authors of the article examine the basic theoretical aspects of realization of new concept of person's and citizen's rights and freedom in Russia in the view of realization of the given concept in Republic Bashkortostan as one of subjects of the Russian Federation.

The person in the system of the right, the legal person is, first of all, the subject, the carrier of certain actions. In the concept of Russian philosopher of right (the beginning of XX century) N.Alekseev, the subject was allocated a role of "the deepest element of legal structure" (See: Alekseev N.N. The basic of philosophy of right. Prague, 1924.-C. 76). E.Pashukanis defines the person as the subject of the right - "as an atom of legal theory, the elementary, further an indecomposable element" (See: Pashukanis E.B. Selected works on general theory of the right and the state. - M., 1980.-C.102). Russian philosopher I.A.Iljin distinguished, that "right regulations are based upon mutual recognition of people" (See: Iljin. About essence of sense of justice // volume 2. - M., 1993. - 256 p.). **P.Ricœur** defines concept of the subject of the right as follows: "The subject of the right is anyone. I am anyone to the attitude to all. We enter into legal space when we consider ourselves as "anyone" of all other "anyothers" (See: **Ricœur P.** Triumph of language above violence. Hermeneutic approach to philosophy of the right // Questions of philosophy. - 1996. - №. 4, 30 p.). Russian philosopher B.P.Vysheslavitsev writes: "Ideal of the right is a free subject, homo sui iuris, the independent person, which itself argues, itself estimates, itself chooses the direction of actions » (See: Vysheslavitsev B.P. Crisis of industrial culture. Marxism: Neo-socialism. Neo-liberalism. - New York, 1953, 229 p.).

Hence, the legal subject is a person, being as unity of the attitude to another (to anyothers)

has the direct attitude to the right, to realization of the rights and freedom of the person and the citizen. But the real personal freedom becomes possible in the society of genuine democracy. Transition to such society is historically long process which is connected to formation of a civil society. The category "civil society" reflects a new qualitative status of society which, first of all, is based on the advanced forms of its self-organizing, self-control, in an optimum combination of state, public, individual and personal interests. Freedom and human rights, his private interests should be considered not from the position of "economic person" for whom freedom is the property, but differently. Further it is necessary to define precisely, that the personal freedom and a legal status of the citizen does not mean identity. Freedom possesses normative.

Therefore, the person finds freedom as a result of the ability to submit to its normative requirements. Externally the form of person's life freedom are the social norms determining the measure, allowable borders of freedom. It is not only legal norms, but also traditions, customs, moral, religious norms. Laws, if they have legal character, are, by words of K. Marx "the Bible of freedom". The main legal means of fastening, recognition of personal freedom by the state is the Constitution. Basic novelty of the Constitution of Russian Federation in 1993 is the fact that the personal right has never been a practical state priority in our domestic history before.

The initial principles of the constitutional status of the person are:

1) personal freedoms; 2) belonging to the person of fundamental laws and freedom from birth and not their estrangement; 3) conformity of the status of the person in Russian State to requirements and the standards developed in the world community; 4) a combination of individual interests of the person to interests of other persons, societies, states; 5) universality of fundamental laws, freedom and duties; 6) legal equality, that is equality of citizens, including equality of all before the law and court; equal rights and freedom for men and women; 7) Direct action of the rights and freedom of the person and the citizen, conformity to the constitutional bases of the status of the person of his fastening in the current legislation and practical realization; 8) guarantee for constitutional status of the person, his rights and freedom. (Constitution of Russian Federation. (1993) - an items 2, 6 part 2, 15, 4, 17, 18, 19, 55, 64; Avakyan S.A. Constitutional Law of Russia. M.: the Moscow State University, 1996., 34 p.).

The sense of the new concept of the rights and freedom of the person and the citizen is that the person began to be considered first of all as the person with his interests and rights, instead of "screw" of state machinery, the person is proclaimed as the supreme value. If to address to the retrospective analysis it is necessary to note that there were three concepts of the rights and freedom of the person in Russia (USSR) which were typical for three historical periods: 1917 - the middle of 30th; the middle of 30th - the end of 80th; the end of 80th - present time. The feature of after revolution concepts of the rights and freedom of the person is the class approach. The class approach of 1917-1936 was replaced with civil in 30 - the end of 80th. Difference of modern concept (the end of 80th - our days) from the concept of 30 - 80th is the following: the Person is declared as the value (the state exists in the name of the person, instead of the person for the state); The person is considered as the person with the ideas, problems, interests and then as the subject of the state; Interests of the state and the person should be harmoniously interconnected, instead of

suppressing each another; Human rights are inalienable

and belong to him from a birth but not granted by the state; the Constitution adjusts only fundamental laws and freedom of the person while the number of them is much more, than listed in the Basic Law; Human rights can be limited only by the federal law strictly specified in the Constitution.

Legislative registration of system of human rights concerns to number of the basic characteristics of development of society and acts as one of manifestation of insttutalization of its more general characteristic – humanization of social and law attitudes. Presently the idea of humanization has found reflection in a number of international documents where Russia takes its part.

First of all it is General declaration of human rights (1948), International pact about the economic, social and cultural rights (1966). (See: Kartashkin V.A., Lukasheva E.A. International acts about human rights: the Collection of documents. M., 2002. - 44 p.). The ideas of humanization of social and legal relations find their place in modern Russian legislation. Leadership of the law is the Constitution of Russian Federation which proclaims, that the person, his rights and freedom are the supreme value; recognition of observance and protection of the rights and freedom of the citizen to be the first duty of the states (item 2). The axiological aspect of constitutionalism of Russian Federation is defined by its ability to satisfy the corresponding purposes (for example: the creation of the conditions providing a worthy life and free development of the person (item 1, chapter 7 of the Constitution of Russian Federation) one of characteristic manifestation of humanization of societies is recognition of human rights for the non-property blessings, that in particular is reflected in the legislation of Russia.

In scientific researches and development of the legislation addressed to the rights and freedoms of the person a special place is devoted to the following: the right to individualization of the person, protection of honour, dignity, business reputation; the right providing the inviolability of person, corporal

inviolability, protection of life and health; the right to inviolability and secret of private life. The following works were devoted to these problems: S.A. Aleksandrov, B.T. Bezlepkin, A.B. Belyavsky, A.M. Beljakova, A.G. Berezhnov, Z.S. Gladuv, V.V. Gljantsev, S.E. London, N.S. Malein, M.N. Maleina, M.F. Malikov, M.G. Stojakin, V.L. Suhoverov, I.E. Farber, E.P. Chernovol, N.A. Shajkenov, A.E. Sherstobitov, M.J. Shiminova, K.B. Jaroshenko.

In January, 2005 the State Assembly (Kurultai) - Republics of Bashkortostan, in connection with expiry of the term of powers of former Representative, the second Representative of Republic Bashkortostan on human rights was appointed. The tasks facing to the first Representative of Republic of Bashkortostan on human rights for realization of law protection institute of the republic basically have been successfully fulfilled. Keeping continuity on the basic directions of activity in the conditions of dynamically developing Russian and republican socially - political and legal system, the Representative of Republic of Bashkortostan on human rights should lift efficiency of the constitutional institute of protection of the rights of citizens on qualitatively new level.

Scientists - jurists developing the general-theoretical problems anyhow connected to selected subject of research: V.M. Baranov, B.T. Bezlepkin, A.V. Belyavsky, A.G. Berezhnov, V.V. Glyantsev, M.F. Malikov, N.S. Malein, M.N. Maleina, F.M. Rudinsky and many others. Still the given problem remains not to be resolved.

In essence, the Representative of Republic of Bashkortostan on human rights is called to be the arbitrator between authority and society. The Representative's independence from any state bodies and officials, the principle of non-interference to his work is an indispensable condition of his effective law protection activity, the guarantee of objectivity and impartiality.

The Representative's effective work is impossible if separated from all event both in Republic and outside without detailed studying an operational experience of regional and foreign representatives of law protection institute of Europe.

With the beginning of work of newly appointed Representative of Republic of Bashkortostan on human rights the structure of Advisory is expanded up to 12 persons. Under the recommendation of the heads the highly skilled lawyers of corresponding departments specializing in various areas of the right have been included in structure of Advisory council. At the sessions conducted by the Representative, members of Advisory council accepted active participation, stated critical remarks, made offers on discussed questions.

The carried out work of the Representative of Republic of Bashkortostan on human rights and his services on consideration of citizens' appeals, interaction with authorities of all levels and law-enforcement departments, the analysis of official analytical documents, information of mass-media allow to draw a conclusion that in 2005 in Republic of Bashkortostan as a whole all interested parties carried out purposeful work on the further expansion of conditions for realization of constitutional laws of citizens, the further dynamical development of economic potential of republic, political institutes first of all is provided, the preparatory stage to transition to local self-management is completed.

The constitution of Russian Federation puts the right to life, health, honour and advantage in a rank of the natural and inalienable rights of the person that assumes effective protection and protection of these rights. Providing the most fair and effective restoration of the broken right and compensation of caused harm is the main task of judicial authority.

The international community has developed not only universal standards of human rights, but also the mechanism of legal protection of the given rights and freedom.

Protection of the rights and freedom at the international level carry out: the United Nations Organization (corresponding committees); European Court on Human Rights; other establishments.

The given rights are protected in Russian Federation by: constitutional-judicial bodies (the Constitutional Court of Russian Federation); judicial bodies (Courts of General Jurisdiction); enforcement authorities (administratively); diplomatic, consular

establishments abroad; by lawful self-defense of person's rights.

Thus modern conditions in Russia as in a lawful state, protection of human rights and the citizen obviously becomes more and more one of bases of public progress which includes universal interest, a priority of universal values.

The true progress is impossible without certain providing of the rights and freedom of the person, including the right to honour, dignity and business reputation (See: Shergeng N.A., Egorov N.P. Moral harm: social - legal aspect of concept. - Ufa: Bashkortostan State University, 2005. - 208 p.).