

Human Rights Risks in the Constitutions of the American Federal States

Marina V. Markhgeym^{1,*}, Alevtina E. Novikova¹, Vladimir K. Dmitriev², Ruslan M. Dzidzoev³ and Ol'ga G. Larina⁴

¹Belgorod State University, 85 Pobedy Street, Belgorod, 308015, Russia

²St. Petersburg state University of Economics, St. Petersburg, 21 Sadovaya Street, 191023, Russia

³Kuban State University, 149th Stavropol Street, Krasnodar, 350040, Russia

⁴Southwest State University, 94, 50 Years of October Street, Kursk, 305040, Russia

Abstract: The article presents the results of a comparative legal analysis of the constitutions of American federal states (Argentina, Brazil, Venezuela, Canada, Mexico, and USA) with a view to identifying the norms that minimize human rights risks. The examination depended on an argumentative way to deal with the revelation of legitimate wonders and cycles utilizing general logical (precise and consistent strategies, investigation and amalgamation) and explicit logical techniques. The declared axiological, functional, and institutional parameters are fully set only in the Constitution of Venezuela. Other constitutions that consider the objective specifics of the historical development of countries reflected the desired formulations in the framework of the axiology of individual rights and freedoms; prohibition of slavery; judicial protection of individual rights; isolation of a special human rights institution, etc. The objectives of the study led to the use of special legal methods. Thus, the comparative legal method contributed to the identification of resources and means of minimizing risks to human right advocacy in the foreign constitutions. The novelty of this research is identifying the norms that minimize human rights risks.

Keywords: Human and civil rights and freedoms, protection, risk to human rights, guarantees, court.

INTRODUCTION

The relevance of the study is due to the strategic objectives of creating a secure human rights status of the state. This implies the existence of a solidary and safe human rights space that is creatively supported by all the resources and means intended for this (Kuksin, *et al.*, 2017).

At the same time, international and state efforts do not ensure an unambiguous positive human rights outcome, and violation of individual rights and freedoms is still relevant in the aspect of prevention and restoration. Modern destruction, including humanitarian, is increasingly associated with a risk factor (Makarova, 2017; Popkova, *et al.*, 2018; Beck, 2009; Holzer 2020).

We believe that it is the axiology of man, his rights and freedoms that focuses on the search for new directions that ensure the proper state of the person in risky conditions. In our opinion, a methodological solution to the problem of the effective functioning of the national mechanism for protecting individual rights and freedoms is to develop a theory of human rights risks (Novikova, 2011; Hopson, 2020).

Interest in the constitutions of foreign countries is mediated by comparative legal results (SHvec, 2019; Gelunenko, *et al.*, 2019; Kuksin, *et al.*, 2017: 286-295), supplementing the theory of human rights risks being developed. The establishment of norms that positively or negatively affect the human rights space and minimize human rights risks is highly relevant in particular (Novikova, 2013: 16-21; Korniyushkina, *et al.*, 2017).

LITERATURE REVIEW

A.E. Novikova has justified and applied to 30 states (CIS, European and American federations, African countries) a universal matrix for assessing and comparing constitutional texts with a view to the availability of standards that help minimize human rights risks.

The specified matrix that integrates doctrinal and formal determinants is based on the certainty of human rights terminology; axiological preference of a human (Makogon, *et al.*, 2019; Belyaeva, *et al.*, 2017), his rights and freedoms; fixing obligations of the state to protect the rights and freedoms of the individual guaranteeing the protection of human and civil rights and freedoms, including special statuses and conditions (Makogon, *et al.*, 2019; Makogon, *et al.*, 2017): the imperative of judicial protection of subjective rights and freedoms; reception of specialized human

*Address correspondence to this author at the Belgorod State University, 85 Pobedy Street, Belgorod, 308015, Russia; E-mail: m.research94@yahoo.com

rights structures; human rights stabilization of constitutional norms.

According to the matrix parameters, the article presents the results of a comparative legal analysis of the constitutions of American federal states (Argentina, Brazil, Venezuela, Canada, Mexico, and USA). The work used the text of the constitutions presented on the Internet resources "Constitution of the states (countries) of the world" (<https://worldconstitutions.ru/>) and "Russian legal portal: Pashkov Library" (<https://constitutions.ru/>).

The after effects of a relative lawful investigation of the protected standards of the Commonwealth of autonomous States part States were presented so as to distinguish arrangements that give assurances of human and social liberties and opportunities (Losilkina, *et al.* 2018). The privilege to dietary consideration can be considered as a basic freedom without anyone else. Abusing the privilege to nourishing consideration may frequently weaken the delight in other basic liberties, for example, the rights to wellbeing or food and the other way around. The primary effect of this acknowledgment is gone to be at the public and worldwide strategies level (Cardenas, Bermudez, & Echeverri, 2019).

The business arrangements that Western organizations are as of now investigating to formalize artisanal small-scale mining (ASM) were analyzed (Cremer, 2019). The function of rehabilitative mediations for a truly disregarded gathering of detainees: ladies carrying out long punishments were reconsidered. Drawing on exact examination directed in a majority rule helpful network in a ladies' jail in the south of England, it thought about how far set up reactions distinguish insuperable challenges that fuel existing damages and imbalances (Genders, & Player, 2020).

METHODOLOGY

The research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. Utilizing this well-known method, we attempt to identify the norms that minimize human rights risks and can be completely applicable. The objectives of the study led to the use of special legal methods. Thus, the comparative legal method contributed to the identification of resources and means of minimizing

risks to human right advocacy in the foreign constitutions.

RESULTS AND DISCUSSION

Considering the objective specificity of the considered group of constitutions, the norms of the Constitution of the Bolivarian Republic of Venezuela dated December 30, 1999 turned out to be the most complete in the framework of the declared criteria. In addition to the minimum parameters studied, it also substantively strengthened the institutional aspect that extended the human rights potential to the security organs.

Regarding the axiological aspect in Art. 2, Venezuela is established as a democratic and social state that adopts ... generally the primacy of human rights. It is important that this Constitution is the only one of this group of constituent documents that included a kind of norm formally and meaningfully comparable with the standard constitutional norm on the priority of subjective rights.

The Brazilian Constitution of October 5, 1988, declared the dignity of the individual as its basis of values (Art. 1). It is also advisable to mention Art. 4, according to which the Republic adheres to the following principles in international relations: ... the priority of human rights; ... self-determination of peoples...

With all the positiveness of putting this norm of Art. 4 to the constitutional level, we however consider it risky because, in the literal interpretation, the priority of human rights is fundamental only to Brazil's international relations, without mentioning national legal relations.

We believe that in an axiological perspective, art. 1 of the Constitution of the United Mexican States of February 5, 1917, opening the Chapter "On Guarantees of Personal Rights". Its content is reduced to the fact that in the United Mexican States, everyone enjoys the rights granted by the Constitution. These rights cannot be limited, and their action cannot be suspended, except in cases and conditions stipulated by the Constitution. Of course, the norm on the inadmissibility of arbitrary restriction of the rights and freedoms of the individual is currently characteristic of most constitutions of modern democracies. However, in the Constitution of Mexico, such an establishment reveals the text of the main part. We believe that this

fact allows us to evaluate Art. 1 as the desired axiological preference.

The US Constitution, which was originally aimed at regulating political relations, in its main text does not contain norms on the priority of the individual, his rights and freedoms. Although in comparison with the above Art. 1 of the Mexican Constitution, in a similar sense, Amendment XIV to the US Constitution can be presented.

Among the few provisions of a humanitarian-axiological sense, Amendment IX can also be singled out, according to which the transfer of certain rights in the Constitution should not be construed as a denial or derogation of other rights reserved by the people.

Par. 26 of the 1982 Constitutional Act cited in the Amendment determines that certain rights and freedoms guaranteed by the Charter cannot be interpreted in a way that denies other rights and freedoms existing in Canada.

In terms of the specific development of countries, we believe that the rules prohibiting any manifestation of slavery are logical. Such regulations were found in the constitutions of Argentina (Art. 15), Mexico (Art. 2), and the United States (Amendment XIII).

The second component that we associate with minimizing human rights risks at the constitutional level is the obligation, the task of the state to protect individual rights (we also consider the state obligation as such, in comparison with other actions that imply guarantees or ensuring the rights of the person).

According to Art. 3 of the Constitution of Venezuela, the major task of the state is the protection and development of the individual, respect for his dignity, ensuring the prosperity and well-being of the people, guaranteeing the exercise of fundamental rights and freedoms enshrined in this Constitution. Thus, in this Constitution, human rights, security state tasks are correlated with individual and collective entities.

This norm continues in Art. 19 of Section III "Human rights, guarantees and duties", on the basis of which public authorities are obliged to respect and observe human rights in accordance with the Constitution, international human rights treaties signed and ratified by the Republic and laws adopted to develop them. Apparently, nevertheless, a constitutional imperative for the state appears in the aspect of respect and observance of human rights.

It should be noted that in the considered constitutions, the state human rights obligation is addressed to both an indefinite and concretized circle of subjects.

Regarding the latter, an example of Art. 29 of the Venezuelan Constitution is relevant, according to which the state is obliged to investigate cases of crimes against human rights committed by its authorities, and to punish them under the law.

Art. 30 of this Constitution formalizes the obligation of the state to provide full compensation to victims of human rights violations and their successors, including compensation for damage and harm.

The texts of federal American states are characterized by the aggregate (paired) formalization in one norm of subjective law and state obligations in relation to it.

The Brazilian Constitution has identified norms formalizing the collectively subjective law and the state obligation to guarantee it. For example, Art. 196 of Chapter II "On Social Security" states that health is the right of all and the duty of the state to guarantee it by pursuing social and economic policies aimed at reducing the risks of diseases and other accidents and ensuring universal and equal access to measures and services designed to improve, protect, and restore health. We note the value of this norm not only in the imperative particular actions of the state in the field of healthcare, but also in that it uses the term of risk.

Similarly, the norms on sport (Art. 217) and education (Art. Art. 205, 208) are set out.

It is almost interesting that quantitative data are established at the constitutional level in relation to the discussed area (Art. 212).

It should be noted that the Constitution of Argentina lacks universal standards with the purpose of recognizing, observing, and protecting the rights and freedoms of man and citizen. However, in the Constitution of Argentina, Chapter Two, "New Rights and Guarantees," formulated subjective rights precisely in conjunction with a guaranteeing or protective mechanism. It is positive that such guarantees and protection are correlated with the state and its bodies. As a negative aspect, it follows that guarantees and protections are not represented with all rights and freedoms; there is no regularity in the use of the terms "guarantees" and "protection".

For example, Art. 37 of the Argentine Constitution states that the Constitution guarantees the full exercise of political rights in accordance with the principle of popular sovereignty and laws adopted with a view to its implementation. Thus, there is only a constitutional guarantee.

Further, Art. 41 and 42 of the Argentine Constitution compares protection with environmental subjective rights and consumer rights, respectively. In both the first and second cases, protection is provided by authorities.

An even greater number of norms combining subjective law with its state protection are found in the chapters of the Venezuelan Constitution devoted to certain types of subjective rights (Art. 43, 55, 69).

The required norms in Canadian acts are found in the Constitutional Act of 1982. In accordance with its Part I, the Canadian Charter of Rights and Freedoms ... establishes the guarantees of rights and freedoms that are indicated in it. This norm of a general nature served as a source for the formulation of subsequent norms, also combining subjective law and its protection or guarantee (paragraphs 15, 25, 28).

Due to our own specificity and the importance of formalizing protection in minimizing the declared risks, the constitutions of American federal states were also evaluated by us for the presence in them of a prescription for protection by public authorities (including the law, as a result of legislative activity of the parliament) as applied not only to a person, his rights and freedoms, but also to special statuses and conditions.

Art. 14bis of the Constitution of Argentina enshrines that labor in all its forms is protected by law, which provides workers with: decent and fair working conditions; limited working day; paid breaks in work and vacation.

Already in terms of the establishment of social protection by the state, its comprehensive and mandatory nature was noted. The participation of the state in the implementation of social protection is evidenced by the wording that the laws provide, for example, mandatory social insurance, family welfare protection, etc.

If we take a look at specific chapters on the subjective rights of the Brazilian Constitution, we can also conclude that the use of the term "protection" is

not always correlated with the state. Chapter II "On Social Rights", Art. 7 determines that the rights of urban and rural workers in addition to those aimed at improving their social conditions are the following... for example... protection of wages in accordance with the provisions of the law; withholding wages is a crime...

Protection in the Constitution of Venezuela is also correlated with international instances; Art. 31 states that everyone has the right, according to the human rights treaties, covenants and conventions ratified by the Republic, to address petitions or complaints to the international bodies established for the purpose in order to request protection of his human rights.

In the framework of Chapter V "Social and Family Rights" of the Venezuelan Constitution, state protection is compared with the conditions and corresponding categories of persons (Art. 75-78, 84).

Also, with regard to the various statuses in the Brazilian Constitution, the term "protection" and similar terms establish state human rights. This will be demonstrated considering the provisions of Chapter VII "On the family, childhood, youth and the elderly". According to Art. 226, family is the basis of society, enjoys special patronage of the state.

At the same time, a stable union between a man and a woman is recognized as a family unit in order to protect it from the state; the law should facilitate the transition of this union to a state of marriage.

The state guarantees its assistance to the family and personally to each of its members; it forms organs (mechanisms) with the goal of reducing domestic violence.

In the group of the considered constitutions, the court as a standard human rights institution is formalized in conjunction with subjective law (Art. 18 of the Constitution of Argentina, Art. LV of the Brazilian Constitution, and Art. 27 of the Venezuelan Constitution).

The constitutions of American federal states practice the formalization of the status of human rights bodies or the human rights powers of specialized structures of general and special competence.

We should note that the Venezuelan Constitution in Chapter II "On the National Executive Power" formalized the President's obligation to guarantee the rights and freedoms of Venezuelans (Art. 232).

According to Art. 24 of the Brazilian Constitution, the US and the Federal District legislate on a competing basis on ... legal aid and public defense matters; protection and social integration of disabled persons. Of course, this norm does not constitute universal human rights protection in any situations and within the framework of an indefinite circle of persons, but this is a full-fledged special case of ensuring rights.

Art. 75 of the Constitution of Argentina also has reference to such particulars in terms of the addressee of the defense, vesting the Congress with power to adopt codes of social protection and provide specialized and comprehensive social protection for children in the period when they are defenseless, from intrauterine development to primary education, and mothers during pregnancy and lactation.

Chapter IV "On the Basic Functions of Justice" Section I "On the Prosecutor's Office", Art. 127 of the Brazilian Constitution, defines the prosecutor's office as a permanent institution ... on which lies the protection of ... inviolable social and personal interests.

Art. 129 further attributed the legal protection of the rights and interests of the Indian population to the institutional functions of the prosecutor's office. This norm, we believe, also has a human rights potential for a country with an indigenous population.

The experience of the Brazilian constitution is not unique and it is worth mentioning Art. 75 of the Constitution of Argentina. It contains wording on the recognition by the Congress of Argentina of the ethnic and cultural birthright of Argentine Native American peoples. The guarantees of respect for their cultural identity and their right to conduct bilingual education in an intercultural exchange have been clarified. In addition, a recognition has been established for their communities of legal personality, as well as the right to joint tenure and property in relation to the lands that they traditionally occupy.

In the human rights and institutional aspect, Part III of the considered Constitutional Act of Canada provided for equalizing opportunities in the context of regional inequalities.

The constitutions of Argentina (Defender of the People) and Venezuela (Public Protection Authorities) formalized a specialized human rights institution. In Argentina, it is the Protector of the People (Chapter 7).

The specificity of the Venezuelan Constitution also consists in the fact that in addition to the typical institutions that we have identified that minimize human rights risks, protection is additionally provided for in the framework of national and civil security.

Section VII "National Security" of the Venezuelan Constitution, Art. 323 determines that the National Defense Council is the highest advisory body for planning and advising public authorities on issues related to the comprehensive protection of the nation, its sovereignty and the integrity of its geographical space. At the same time, we draw attention to the fact that we are talking about protecting a collective subject - a nation.

Chapter IV, "Civil Security Bodies", notes that the national executive branch, in order to ... protect citizens and citizens, their homes and families and securing this by decisions of the competent authorities and ensuring the peaceful use of constitutional guarantees and rights in accordance with laws, organizes: a single corps of the National the police; corps of scientific, criminal and forensic investigations; corps of firefighters and civil emergency management; Corps of Civil Protection and Disaster Management (Art. 332). At the same time, civil security bodies have a civilian character and respect dignity and human rights without any discrimination.

Some constitutions, considering the objective specifics of the historical development of countries, reflect groups of norms that minimize human rights risks as follows:

- The axiology of individual rights and freedoms in a broad meaningful interpretation (Brazil, Venezuela, Canada, Mexico, and USA);
- The prohibition of slavery (Argentina, Mexico, and USA);
- The obligation, the task of the state to protect the rights of the individual, addressed to both an indefinite and concretized circle of subjects, supplemented by an aggregate (paired) formalization in one norm of subjective law and a state security obligation in relation to it (Argentina, Brazil, Venezuela, and Canada);
- Judicial protection of individual rights (Argentina, Brazil, and Venezuela);
- Special human rights powers of public authorities (President, national and civil security agencies in

Venezuela; Union, states, federal districts and prosecutors in Brazil; Congress in Argentina);

- Isolation of a special human rights institution (Argentina and Venezuela).

In a nutshell, in this study, it was attempted to analyze the Human rights risks in the constitutions of the American federal states. As a result, the comparative legal method contributed to the identification of resources and means of minimizing risks to human right advocacy in the foreign constitutions. The novelty of this research is identifying the norms that minimize human rights risks. Actually, these norms and criteria have not been proposed quite thorough so forth.

CONCLUSION

As a general conclusion for this part of the study, we propose a Federal-American model that contributes to the systematization of the results of constitutional comparative legal experience of minimizing human rights risks (Argentina, Brazil, Venezuela, Canada, Mexico, and the USA). The declared human rights-minimizing parameters of an axiological, functional and institutional nature are established in full only in the Venezuelan Constitution (SHvec 2019).

LIMITATION AND STUDY FORWARD

Similar research can be done in other countries to reach a global conclusion.

AUTHORS CONTRIBUTION

Marina V. Markhgeym, Alevtina E. Novikova, Vladimir K. Dmitriev, Ruslan M. Dzidzoev, Ol'ga G. Larina

M V.M; analyzed the results, A E.N; collected the data, V K.D; analyzed the information, R M.D; wrote the paper, O G.L; wrote the paper.

REFERENCES

- Beck, U. (2009). World at Risk. Polity. 269 p.
[https://doi.org/10.1016/S0262-1762\(09\)70218-4](https://doi.org/10.1016/S0262-1762(09)70218-4)
- Belyaeva, G. S., Markhgeym, M. V., Novikova, A. E., Samsonov, V. N., & Tonkov, E. E. (2017). System of Legal Limitations on State Power: in Search of Criteria. Turkish Online Journal of Design Art and Communication, 7, 1934-1938.
- Cardenas, D., Bermudez, C., & Echeverri, S. (2019). Is nutritional care a human right? *Clinical Nutrition Experimental*, 26, 1-7.
<https://doi.org/10.1016/j.yclnex.2019.05.002>
- Cremer, S. (2019). How New Business Models Can Address Human Rights Risks in the Cobalt Supply Chain. Available at SSRN 3679885.
<https://doi.org/10.2139/ssrn.3679885>
- Gelunenko, V. V., Markhgeym, M. V., Shadzhe, A. M., Tkhabisimova, L. A., & Veliev, E. E. (2019). Freedom of speech in constitutional binds of eastern European countries. *Amazonia Investiga*, 8(19), 403-407.
- Genders, E., & Player, E. (2020). Long sentenced women prisoners: Rights, risks and rehabilitation. *Punishment & Society*, 1462474520933097.
<https://doi.org/10.1177/1462474520933097>
- Holzer, J. (2020). The effect of copartisan justice ministers on human rights in presidential democracies. *Plos one*, 15(9), e0234938.
<https://doi.org/10.1371/journal.pone.0234938>
- Hopson, C. P. (2020). The Family vs. the State: Protecting the Rights of Parents to Raise and Educate Their Children. *Geo. JL & Pub. Pol'y*, 18, 605.
<https://constitutions.ru/>
<https://worldconstitutions.ru/>
- Kornyushkina, A. Y., Markhgeym, M. V., Novikova, A. E., Doronina, O. G. N., & Zajcev, S. Y. (2017). Minimization of human rights risks: the constitutional legal experience of post-soviet states. Turkish online journal of design art and communication, 7, 352-356.
- Kuksin, I. N., Markhgeym, M. V., Novikova, A. E., Samsonov, V. N., & Tonkov, E. E. (2017). Constitutional hypostases of citizenship of the westeuropean countries. *Journal of History Culture and Art Research*, 6(4), 286-295.
<https://doi.org/10.7596/taksad.v6i4.1173>
- Kuksin, I. N., Tonkov, E. E., Safronova, E. V., Vasekina, E. M., & Shabalina, E. I. (2017). The constitutional experience of consolidation the human rights function of the state in the post-soviet space. Turkish Online Journal of Design Art and Communication, 7: 303-308.
- Losilkina, L. O., Shadzhe, A. M., Tkhabisimova, L. A., & Zajcev, V. A. (2018). Formalization of guarantees of human and civil rights and freedoms in the constitutions of the Commonwealth of Independent States.
<https://doi.org/10.29042/2018-3682-3685>
- Makarova, O. (2017). The modern context of the human development risks. *Knowledge and Performance Management*, 1, 27-35.
[https://doi.org/10.21511/kpm.01\(1\).2017.03](https://doi.org/10.21511/kpm.01(1).2017.03)
- Makogon, B. V., Markhgeym, M. V., Minasyan, A. A., Nincieva, T. M., & Novikova, A. E. (2019). Legal form of action: the issues of content and methodology. *Revista inclusiones*. 6(NÚMERO ESPECIAL): 402-409.
- Makogon, B. V., Markhgeym, M. V., Minasyan, A. A., Novikova, A. E., & Yarychev, N. U. (2019). Logical classification of legal procedural restrictions. *Revista Inclusiones*, 6, 395-401.
- Makogon, B. V., Nikulin, M. I., Samsonov, V. N., Sorokoletova, M. A., & Tovstukha, O. O. (2017). Objectives and Principles of Administrative Proceedings: Doctrinal Ideas and Legislative Wordings of the Eastern European Countries. *Journal of Politics and Law*, 10(4): 221.
<https://doi.org/10.5539/jpl.v10n4p221>
- Novikova, A. E. (2011). Ponyatie i sushchnost' pravozashchitnyh riskov. *Nauchnye vedomosti BelGU. Seriya: Filosofiya. Sociologiya. Pravo*. 14 (109), 151-157. (In Russian)
- Novikova, A.E. (2013). Zarubezhnyj opyt konstitucionno-pravovogo zakrepleniya polozhenij, napravlenykh na minimizaciyu pravozashchitnyh riskov. *Probely v rossijskom zakonodatel'stve*, 5, 16-21. (In Russian).
- Popkova, E. G., Fetisova, O. V., Zabaznova, T. A., & Alferova, T. V. (2018, April). The modern global financial system: social risks vs. technological risks. In International Conference Project

"The future of the Global Financial System: Downfall of Harmony" (pp. 1013-1019). Springer, Cham.
https://doi.org/10.1007/978-3-030-00102-5_107

Shvec, YU.YU. (2019). Normotvorcheskie principy prava cheloveka na zdavoohranenie v konstituciyah zarubezhnyh stran. Problemy ekonomiki i yuridicheskoy praktiki, 6, 123-126. (In Russian)

Received on 26-10-2020

Accepted on 04-12-2020

Published on 29-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.281>

© 2020 Markhgeym *et al.*; Licensee Lifescience Global.

This is an open access article licensed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>) which permits unrestricted, non-commercial use, distribution and reproduction in any medium, provided the work is properly cited.