

Protection Indicator in the Constitutions of the European Federations

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Abstract: The article presents the results of a comparative legal analysis of the constitutions of European federal states (Austria, Belgium, Bosnia and Herzegovina, Germany, and Switzerland) with a view to identifying the norms that minimize human rights risks. The identification of such constitutional provisions is associated with the formalization of the protection of the human rights and freedoms, as well as its legal statuses and conditions. 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. The unity of the constitutional approach of the European federal states to formalize the judicial protection of the rights and freedoms of the individual (Austria, Belgium, Bosnia and Herzegovina, Germany, Switzerland) has been determined. The identification of such constitutional provisions are associated with the formalization of the protection of the human rights and freedoms, as well as its legal statuses and conditions. The Novelty of the study is carrying out the declared constitutional analysis of the defense was on the example of European federal states.

Keywords: Constitution, human rights, risk, human rights risk, protection.

INTRODUCTION

The relevance of the study is mediated by the need to find and update theoretical, methodological, and practical approaches to protecting the rights and freedoms of a human and a citizen.

Despite the international and national standardization of human rights standards (High Commissioner for Human Rights United Nations, 2010; Cardenas, 2003; Thorpe, 1994), official statistics indicate ongoing violations of the rights and freedoms of the individual. Moreover, these violations are increasingly associated with the occurrence of risks in various fields (Butko, *et al.*, 2017; Makogon, *et al.*, 2017).

Currently, the risk is indeed a phenomenon a person faces constantly with and therefore has to reckon with. It is as widespread in society, as large the area of directions consciously carried out by a person and the number of circumstances perceived by people as deviating the actual results of their actions from the intended ones is (Askari, *et al.*, 2012; Sunstein, 2002; Shapiro, & Glicksman, 2002).

LITERATURE REVIEW

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 the proposed concept of human rights risks (Lyudmila *et al.* 2018).

Scientific interest in the constitutions of foreign countries is mediated by comparative legal results, supplementing the theory of human rights risks being developed (Kuksin, *et al.*, 2017). The establishment of norms that positively or negatively affect the human rights space and minimize human rights risks is highly relevant in particular (Lyudmila, *et al.*, 2018: 3682-3685; Korniyushkina, *et al.*, 2017). The identification of such constitutional provisions is associated with the formalization of the protection of the human rights and freedoms, as well as its legal statuses and conditions.

Checking a set-up of pointer living beings in recovered gushing is bound to be prescient of the presence of specific microorganisms, and a requirement for extra microbe observing in recycled water so as to secure general wellbeing was recommended (Harwood, *et al.* 2005). The quality of the association among the measurements was featured and the significance of considering youngsters as imperative to exchange around common freedoms and a human advancement plan were accentuated

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(Habashi, Wright, & Hathcoat, 2012). A "developmental" way to deal with understanding why rising polarization in the United States has not been self-revising however rather keeps on increasing was introduced (Pierson, & Schickler, 2020).

In the framework of this article, the declared constitutional analysis of the defense was carried out on the example of European federal states (Austria, Belgium, Bosnia and Herzegovina, Germany, and Switzerland).

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. The latter include formal-legal, linguistic-legal, and comparative-legal methods, which were used together to identify the indicator of protection in the constitutions of European federal states, the texts of which are taken from the database of the Internet library "Constitutions of states (countries) of the world" (<http://worldconstitutions.ru/>).

RESULTS AND DISCUSSION

The comparative legal study established an unambiguous affirmative approach to formalize (Makogon, *et al.*, 2019; Makogon, *et al.*, 2017), the judicial protection of the rights and freedoms of the individual (Lyudmila *et al.* 2018).

The Austrian Constitution provides a concise wording of Part 2 of Art. 83 that no one may be deprived of his legal judge. We emphasize that it is not a court, but a judge.

Art. 13 of the Belgian Constitution has more rich content, according to which no one can be deprived against his will of judicial protection established by law (Art. 13). This wording secures a double guarantee of ensuring the right to judicial protection: firstly, the right to judicial protection itself, and secondly, the impossibility of depriving it in any situations, except for the decision of the person himself, which makes this right absolute.

An analysis of the constitutional norms of the Federation of Bosnia and Herzegovina showed that the right to judicial protection was not formulated directly. This is due to the purpose of Art. 2, emphasizing that the rights and freedoms enshrined in the Convention

for the Protection of Human Rights and Fundamental Freedoms and its protocols have direct effect in Bosnia and Herzegovina. This means that this state provides for the right to judicial protection, as well as guarantees for the exercise of this right (Articles 5-7 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

In Germany, according to the declared parameter, part 4 Art. 19 and part 1 Art. 103 should be mentioned. They state that if a person's rights are violated by state power, such a person has right to apply to the court and be heard in court in accordance with the law. As a remark in relation to human rights risks, we note the unsuccessful wording of the right to appeal to the court in case of violations by the government. We believe that not only state bodies can act as violators, and this fact cannot deprive citizens of the opportunity to apply to court.

As follows from the content of part 4 Art. 19, the legal procedure is open to everyone, applies to any individual and means a guarantee to foreign citizens and stateless persons to apply to the court for a right violated by public authority.

The legal literature and judicial practice of the German Constitutional Court describe a number of constitutional and legal claims for judicial protection, judicial protection of the right, as well as effective legal protection. As was established, *inter alia*, by the practice of the German Constitutional Court, the claim for judicial protection of the law implies that "everyone has the right to appeal to an independent court with his own case, which must, with all due diligence to factual and legal circumstances, resolve the case and enforce the accepted solutions" (Lyudmila *et al.* 2018).

The Swiss Constitution in Art. 29 "General Procedural Guarantees" and Art. 30 "Judicial Proceedings" provides an indication of the right of everyone to free justice, to free legal assistance, to a legally established, competent, independent and impartial court and other rights that can mostly be attributed to procedural rights rather than directly to the right to judicial protection. The given totality expressed using the category of "justice" allows us to consider the parameter of judicial protection of rights in this Constitution.

Further, the declared European constitutions are assessed for their use of the term "protection" in relation to subjective rights, legal statuses, and personal conditions.

A minimum set of standards was found in the Belgian Constitution. Art. 13 contains an already discussed by us case of judicial protection, established by law. In Art. 19 protection is addressed to the identity and property of any foreigner located in Belgium.

In the Constitution of Bosnia and Herzegovina, the required standards are also minimal and are found both in the preamble and in the main text.

In the first case, the desire to protect private property is expressed: “desiring to promote the general welfare and economic growth by protecting private property and developing a market economy”.

The main text of Art. 7 “Citizenship” defines that a citizen of Bosnia and Herzegovina is protected by Bosnia and Herzegovina when staying abroad. We believe that this article should substantively include citizens who are in the territory of Bosnia and Herzegovina. In the current format, we believe that there is every reason to regard the norm that potentially mediates human rights risk.

Let us clarify that most of the norms of the Swiss Constitution that use the term “protection” are devoted to various types of subjective rights that are correlated with the general or special status of an individual.

Art. 9 “Protection from Arbitrariness and Respect for Good Faith” verbatim contains the following statement: “Each person has the right to bona fide treatment by government bodies”. As we can see, the protection declared in the title of the article is disclosed as part of the formalization of the subjective right of everyone to bona fide treatment by state bodies.

A formally substantive essence of Art. 25 “Protection against Expulsion, Extradition and Deportation” sounds similarly. The following rules are formulated in the text through prohibitions:

- Swiss cannot be expelled from Switzerland (part 1);
- Refugees cannot be deported to the state they are persecuted in or extradited to such a state (part 2);
- No one shall be deported to a state this person is at risk of torture or other cruel and inhuman treatment or punishment in (part 3).

Art. 13 - The title of the norm “Protection of Private Life”, directly in par.2, states that each person has the right to protection from the abuse of his personal data.

Part 1 Art. 28 “Freedom of Union” can be interpreted similarly. Its text directly states that both employees and employers of both genders, as well as their organizations, have the right to rally to protect their interests, form associations and join or leave them.

Art. 32 and 36 can be specified in this content. The first, headed “Criminal Procedure”, formalizes the imperative of each accused person to be able to exercise his rights of defense (part 2).

Art. 36 “Restrictions on Fundamental Rights” specifies that restrictions on fundamental rights should be justified by the public interest or by protecting the fundamental rights of third parties (part 2).

The constitutional section, which is devoted to security, national and civil defense, also contains protection-formalizing norms.

Art. 57 refers to the protection of the population as the competence of the Union and the cantons (Part 1).

The article devoted to youth and adult education also notes that the Union and the cantons, in carrying out their tasks, consider the special needs of children and adolescents in their promotion and protection (part 1 Art. 67).

The norm of Art. 120 titled “Genetic Engineering Outside of Man” causes some interest. It states that a person and his environment are subject to protection from abuses of genetic engineering (part 1).

Thus, the Swiss Constitution presents protection as an independent subjective law, an element of subjective law, a subject of authority, special activities related to the response to a violation of subjective rights.

The Austrian Constitution is dominated by rules formalizing protection as a matter of competence. According to Part 1 Art. 10, the jurisdiction of the Federation includes legislation and executive activity on the issue of institutions for the protection of society from persons who have committed crimes, neglected and other dangerous persons (correctional labor and similar institutions).

Part 1 Art. 12 assigns to the Federation the establishment of general principles of legislation, and to the states - publication of specific laws and executive activities on labor law issues, as well as the protection

of the rights of workers and employees engaged in agriculture and forestry.

Part 2 Art. 21 assigns to the lands the legislative and executive activity on the protection of the rights of employed persons, and the replacement of positions of employees of the states other than employees of enterprises.

As we can see, the universal version of human rights activity, even within the framework of the subjects of jurisdiction, contains no constitutional norms, although there is reason to argue about the particularities of formalizing human rights components.

The Federal Constitutional Law of November 29, 1988, "On the Protection of Personal Freedom" is an integral part of the Austrian Constitution. It consists of 8 articles. Its text does not include the term "protection", however, the fact that these articles establish freedom together, the procedure for its implementation, restrictions and prohibitions, allows us talking about a human rights mechanism for this kind of freedom.

In the German Constitution, protection, like in the Swiss version, correlates with subjective rights, special legal statuses, and the subject matter of public authority.

In the aspect of correlation with special statuses, Art. 6 and 11 should be mentioned.

In accordance with Part 4 Art. 6, every mother has the right to protection and support from the state.

Based on Part 2 Art. 11, freedom of movement may be restricted by law or on the basis of the law and only in cases of the protection of youth from neglect or the prevention of crime. This provision is duplicated in Part 2 Art. 17-a.

In the remaining articles, protection correlates with the duty of the military (part 3 Art. 12-a), guarantees of the European Union (part 1 Art. 23) and the competence of the Federation (Art.73).

CONCLUSION

The unity of the constitutional approach of the European federal states to formalize the judicial protection of the rights and freedoms of the individual (Austria, Belgium, Bosnia and Herzegovina, Germany, Switzerland) has been determined.

All other cases of the use of the term "protection" by the declared constitutions are associated with its

presentation as an independent subjective law, an element of subjective law, a subject of authority, special activities related to the response to a violation of subjective rights.

LIMITATION AND STUDY FORWARD

Doing similar research on a larger scale increases the accuracy of the results and generalizes it globally

AUTHORS CONTRIBUTION

Marina V. Markhgeym, Alevtina E. Novikova, Evgeniy E. Tonkov, Alla N. Gutorova, Aleksandr M. Tsaliev

M V.M; collected the data, A E.N; analyzed the information, E E.T; collected the data, A N. G; wrote the paper. A M.T; wrote the paper.

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