

Human Rights: a Sight in the Light of Advocacy Risks

Marina Vasiljevna Markhiem, Alevtina Evgenjevna Novikova and Evgeniy Evgenjevich Tonkov

Belgorod State National Research University, Belgorod, Russia

Abstract: In this article, based on an analysis of current research of human rights, taking into account the prevailing context of systematization proposed unconventional - through the prism of human rights risk - an approach to the study of human rights. Hypothesized is the idea that this approach will be an additional increment of the direction of human rights theory and practice of optimizing their protection. Interpretation of human rights risk is presented as the probability of random occurrence of unwanted, adverse events associated with the violation of human rights and subject to appropriate damages, rights-based understanding of risk in the narrow and broad sense according to mediate its causes. It is shown the dual effect of the right to human rights risk - and as a regulator and the causes of imperfections due to the different legal structures and institutions. Using specific examples of the characteristic of some human rights risks of the international and national levels, taking into account their respective features and varieties.

Key words: Human rights law • International law • National law • Protection of human rights • The uncertainty • The risk of human rights • Globalization • National security • International cooperation

INTRODUCTION

Research of various aspects of human rights is a problem as inexhaustible as inescapable. Human rights as a matter for scientific inquiry are very many-sided and able to respond to new challenges of social development. Some sides of human rights are already represented in modern legal law from the viewpoint of idea [1], legal category [2], constitutional concept [3], element of personal legal status [4], international relations [5, 6, 7, 8] etc. However it is well known that in every phase of history in certain regions different representations of human rights were given different political, cultural, axiological and other determinants. Human rights have been also worked out within governmental functions [9], constitutional system of their defense [10], globalization processes [11, 12]; national security [13] and other aspects. Non-conventional approach to the study of human rights (in the light of advocacy risks) is proposed. It is represented as it can be an additional concept of increment in human rights theory and optimization of their defense.

Main Body: Today advocacy risks are studied from the perspective of conceptual renderings in the context of similar and related categories, taking into consideration corresponding methodology and legal instruments [14], in connection with human rights activity of modern Russian society and state [15]. Though there is no general notion of risk in legal literature, general approach in prevailing consideration of its negative aspects is rather clear.

Advocacy risks are to be understood as probability of accidental upraise of undesired event connected with violation of human and citizen rights and freedoms, resulting in corresponding damage. Advocacy risks can be mediated by reasons of legal and non-legal character, which gives ground for understanding them in narrow and general senses respectively.

An advocacy risk shows itself in two ways. From one hand, it is controlled by the law, for example, for the purposes of the most equitable distribution or minimization and liquidation of adverse effects. From the other hand, the law itself creates an advocacy risk in view of imperfection of separate (or prevailing) legal

construction and institutions. So, one can make a conclusion that advocacy risks arise both on international and national levels.

Let us study some aspects of the first level. Taking into account the basic international postulate on universal respect of human rights, states should act in order to transfer this respect from simulation to real state. But manipulation of human rights, resulting in aggravation of the situation, because of which foreign policy pressure and armed interference were “needed” is allowed in spite of world community systematic steps on adoption of new international documents, connected with human rights and related to their separate types, different categories and groups of persons. During 2011-2013 the number of such examples significantly increased. We consider that this situation needs an in-depth integral analysis, first of all from the juridical viewpoint with consideration of advocacy risks.

An international standardization influences human rights. International standards are being accepted for practical purposes in order to overcome spontaneity in optimization mechanism of human rights defense and for connection of human rights horizons of the states. In our opinion these standards should be considered as the whole of minimum imperative requirements, which are addressed to the states in connection with the recognition, observance and defense of the rights of persons under their jurisdiction. The states themselves, which are interested at increasing their legal potential, can improve such standards conceptually, lexico-juristically, formally etc. Thus, the requirement to abide by the definitions, containing in international acts on human rights, carries a risk of narrowing human rights possibilities. The example is Part 1 and 2 Article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The first Part foresees the possibilities to limit the transparency of court hearings under particular circumstances when the transparency disserves the interests of justice. Such definition leaves great opportunities for judicial discretion. The Russian procedural legislation in force proceeds on the basis that the limitation of transparency is allowed only in particular cases, specified by the law. Incorporation of the above mentioned “European standard” can result in discretionary limitation of court hearings transparency, which is very undesirable and harmful from the viewpoint of human rights.

The second part of the Article of the above mentioned Convention contains a very important concept

- presumption of innocence. Comparing its definition to Part 1 of the Article 49 of Constitution of the Russian Federation it is obvious that the human rights capacity of the “Russian sample” is greater. According to the Russian constitutional variant it is necessary to give inculpatory evidences in the order, prescribed by the federal law and determination of guilt by court verdict, which has come into legal force. For conventional text it is enough to give inculpatory evidences in accordance with the law.

The given arguments allow us to pay attention, firstly, to the perfection of the human rights standards and, secondly, to the risks, arising of following them unconditionally.

National level of advocacy risks is immanent to any state, responding to the challenges of modern times, as the latest inevitably influence human rights. Let us study some aspects of advocacy risks display in Russia.

In the Article 2 of Constitution of the Russian Federation of 1993 it is stated that a person, his/her rights and freedoms are the supreme value. The transfer of this norm from ideal and model-like into real norm requires also the improving of old legal mechanisms of human rights guarantee and defense and creating new ones. In this process there is always the discordance of a desired human rights aim and obtained result. Suppositions on how effective new corrected human rights measures and institutions will be can be based both on the experience of other states and on the ground of scientific research results. But, in any case, there is an uncertainty (advocacy risk) that needs to be minimized.

The human rights defense is understood as a set of measures, aimed at restraint of legal right violation and restoration. It is sensitive from two positions minimum. The first one (let it be “self-human-rights-defense”) depends on identification of violation and evaluation of defense necessity, level of violation (making decision of possibility of neglecting it or not) and choice of defense method. The second one (human right defense as such) depends on the corresponding activity of the authorized bodies, organizations and persons. In these cases such uncertainties (risks) as “human factor” and “technical deficiency” can often appear. To overcome these problems it is important to understand their nature, conceptual and other peculiarities.

Thus, “human factor” is connected with the fact that it is impossible to exactly predict human behavior in the process of work. It is influenced by the level of education, experience, creative talent, interests, character, individual reactions on certain words, acts, events and so on.

Together it is a characterization of a personality. These features should be carefully analyzed and evaluated primarily, upon entry into employment, especially in human rights organization and periodically, for example during the official evaluation. Professional “impropriety” and deformation of a personality, being revealed timely, helps to avoid a lot of risks arising from the group of “human factor”. The example can be the decision of the Russian Federation Supreme Court of September 15, 2006, #. GKPI06-927 [16] on application of P. to revoke the decision of the qualification board of judges of Kemerovskiy region of May 25, 2006 about the imposition of disciplinary penalty in form of early termination of the powers of justice of the peace of the Court Circuit #.2 of Promyshlennovskiy district. The bases for imposition of disciplinary penalty are the actions, which dishonor a judge, derogate the authority of judicial power. These actions expressed in gross violation of civil legal proceeding, red - taper on cases under his procedure, entering of decisions. The later ones aroused doubts on fairness and neutrality. Similar situations are specified in other court decisions and definitions. All these, on one hand, hinder the proper human rights defense and on the other hand, form negative attitude towards the judicial power and the state on whose behalf the law is executed.

A sort of “human factor” in the aspect under observation is the “social content”. The uncertainty connected with it is the result of people’s wish to form social binds and help (or hinder) one another. People behave in accordance with value systems, mutually accepted obligations, employer-employee relations, roles, motivations, conflicts and customs and so on. The structure of such relationships is rather variable. At the legislative level a part of “social contents”, which is based on relation and property and expressed in line organization, is forbidden in the frame of public law. However friendship, dislike or other emotional relationships between people aren’t governed by the rules of law, but they can significantly influence the made decisions (including human rights ones) thus discretionally creating risk for ones and giving chance to the others.

Technical uncertainty (“technical deficiency”) proves itself rarer comparing to the “human factor”. However, one should not neglect it as it is the question of human rights defense. Such risks are mediated by the degree of reliability of the equipment enabled in the maintenance of legal acts. For example, the breakdown of the computer can result in failure of recordation of court proceedings, observance of dates of preparing, rendering and issuance

of court and other decisions. All these have negative effect on human rights defense.

Summary: The authors do not consider the proposed approach to the increasing of the human rights theory and improvement of their defense, studied in the light of advocacy risks, as an absolute or a human rights panacea. This is a try to pay attention to the idea, to evaluate its scientific and practical productivity. In Introduction we presented the review of the researches of such an inexhaustible object as human rights, which shows that human right are connected with acute problems, which can be characterized not only as the challenges to modern times, but also as risks. And the states should fight them by means of uniting efforts and coordinating goodwills.

CONCLUSION

Summarizing the above said it is possible to make the following conclusions.

- Human rights as an idea, legal category, concept, institution etc. are an integral part of scientific legal researches. They can diametrical influence the science and practice. Thus, with the help of scientific researches of human rights, the scientists of different countries coordinate and adjust various directions and methods of their development. A lot of problems, including those which do not concern human rights, appear and aggravate through the modern practice of announcing of their defense by definite states (group of states).
- Though human rights problems, variety and manysidedness of their study are very popular in scientific legal sphere, the real state of human rights defense is far from being satisfactory. That’s why there is a necessity to look for new approaches in human rights study. In authors’ opinion an advocacy risk is a good criterion for this.
- Advocacy risk is to be understood as probability of accidental upraise of undesired event connected with violation of human rights, resulting in corresponding damage. Depending on mediating reasons, it can be understood both in narrow and general senses.
- An advocacy risk, being a regulated law for the purpose of its minimization, can be created by the law because of imperfections of legal constructions and institutions. So, advocacy risks appear both on international and national levels, having respective peculiarities and types.

REFERENCES

1. Ramcharan, B.G., 2008. Contemporary human rights ideas. NY, pp: 192.
2. Kryazhkova, O.N., 2012. Man, his rights and freedoms are the Supreme value as a legal category. Democracy and human rights. Proceedings of the VI International scientific conference. Moscow: RUP, pp: 353.
3. Lukasheva, E.A., 1996. Priority of human rights as a defining principle of the legal state. General Theory of Human Rights, pp: 68-75.
4. Vitruk, N.V., 2008. General theory of legal status of an individual. Moscow: Norma, pp: 223-240.
5. Forsythe, D.P., 2000. Human Rights in International relation. Cambridge University Press, pp: 247.
6. Klang, M. and A. Murray, 2005. Human Rights in the Digital Age. London: The GlassHouse Press, pp: 243.
7. Koch, I.E., 2009. Human Rights as Indivisible Rights. Leiden-Boston, pp: 347.
8. Branco, M.C., 2009. Economics Versus Human Rights. NY, pp: 168.
9. Tonkov, E.E. and M.A. Bespalova, 2012. Human rights function of the state: problems of theory. Rostov-on-Don, pp: 292.
10. Markheim, M.V., 2005. Protection of the rights and freedoms of man and citizen in modern Russia: systemic constitutional model, the problem of its functioning and improvement. Rostov-on-Don, pp: 200.
11. Kartashkin, V.A., 2009. Human Rights: international protection in the context of globalization. Moscow: Norma, pp: 288.
12. Lee, D.E. and E.J. Lee, 2011. Human Rights and the Ethics of Globalization. Cambridge University Press, pp: 264.
13. Human rights and national security. 2013. Moscow: GPI RAS.
14. Novikova, A.E., 2011. Constitutional-legal characteristic of the human rights risks. Belgorod, pp: 160.
15. Markheim, M.V. and A.E. Novikova. 2012. Risk factor in human rights work of the contemporary Russian society and the state. Belgorod, pp: 148.
16. <http://www.consultant.ru>.