

Role of Parliaments of the Asia-Pacific Group of States in Protection of Human and Civil Rights and Freedoms

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Abstract: The problem of protection of the human and his civil rights is topical for the whole world community as human rights affirmed in constitutions of various states quite often have a declarative character that leads to their infringement. The recognition of human and civil rights and freedoms is an attribute of the legal system of any state where the democratic and legal organization of public power is guaranteed, therefore, in modern conditions a problem of protection of human and civil rights and freedoms gains the greatest importance for the whole international community. In this study, the researchers consider the functions and powers of parliaments of Foreign countries in human rights activity. It determines the key role of parliament in assistance to human rights distribution and their protection. As a result of the conducted research the researcher comes to a conclusion that the effective implementation of the function on protection of civil rights demands the effective, really functioning mechanism of protection of human and civil rights and freedoms. First of all, the human rights role of parliament is expressed in the legislative activity. Efforts organizing the state work, its bodies, parliamentarians and also public organizations including political parties on the implementation of instructions of the constitution are necessary for the effective realization of constitutional norms. The reality of the basic law, affirmed human rights and freedoms have to be provided with the development and deepening of political, social and economic and organizational guarantees. In the Asia-Pacific countries a problem of protection of human rights is also topical. In the Russian Federation parliament, its structural divisions, deputies, taking part in creation of laws, try not only to affirm most fully legislatively human and civil rights and freedoms but also to create effectively operating systems and levers of their realization to establish responsibility for violations.

Key words: Human rights, protection of human rights Asia-Pacific group, parliament, Ombudsman, responsibility

INTRODUCTION

The problem of protection of the human and his civil rights is topical for the whole world community as human rights affirmed in constitutions of various states quite often have a declarative character that leads to their infringement. The recognition of human and civil rights and freedoms is an attribute of the legal system of any state where the democratic and legal organization of public power is guaranteed, therefore in modern conditions a problem of protection of human and civil rights and freedoms gains the greatest importance for the whole international community.

In the Asia-Pacific countries a problem of protection of human rights is also topical. It should be noted that the states of this region represent various political and legal systems. Therefore, their certain influence on the constitutional fixing of personal rights and freedoms is obvious. The regulation and protection of human rights

and freedoms person is provided to that degree and by those mechanisms which are provided by national legislation.

MATERIALS AND METHODS

During the study and determination of a role of the supreme legislative and representative body in protection of human and civil rights comparative and legal, historical, systemic-functional and some other methods of scientific knowledge have a defining value.

The purpose of the present comparative and legal research consists in the definition of a place and a value of parliaments of the Asia-Pacific Group of States in the mechanism of protection of human and civil rights and freedoms. The researchers define that the parliament plays the leading role in assistance to human rights distribution their protection and also they analyze some features of powers of parliament in the sphere of protection of human rights.

RESULTS AND DISCUSSION

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts in order to promote and protect human rights and fundamental freedoms of individuals or groups. The principle of universality of human rights is the cornerstone of international human rights law. This principle as first emphasized in the Universal Declaration on Human Rights in 1948 has been reiterated in numerous international human rights conventions, declarations and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of states to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. All states have ratified at least one and 80% of states have ratified four or more of the core human rights treaties, reflecting consent of states which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

It is known that in literature fundamental, key human and civil rights and freedoms fixed in the constitution of the state are called the basic rights and freedoms (Avakjan, 2015). Protection human and civil rights and freedoms in any democratic state begins with their legislative fixing of the government by the respective authority. The constitution of the Russian Federation guarantees rights and freedoms their inherence and abrogation inadmissibility (Page 1 to Artical 17). It is forbidden to make laws abrogating or infringing upon human and civil rights and freedoms (Chapter 2 Artical 55).

In countries where the division of authorities is established, a legislature has a generalized universal name "Parliament" and in some Asian-Pacific Group of States Parliament has another name: the Congress (United States

of America, Chile, Philippines), the Federal Assembly (Russian Federation), the National Assembly (Panama), the National People's Congress, etc. Regardless of a name parliament is a supreme legislative and representative body of the state. In this regard, the position of the famous constitutionalist Avakjan (2007) according to which "legislative" in this name characterizes a body as an instance authorized on adoption of laws, "representative" means that a body is also intended to represent the population's interests.

The scientific literature determines that parliament as a supreme legislative and representative body of the government consisting of one or several chambers which main objective is the development and adoption of laws in interests of the population.

As theory of the division of authorities which to that or other degree found the reflection in constitutionalism of each democratic country says, parliament as an agent (Anonymous, 1787) of the supreme legislature takes an exclusive position in the system of supreme bodies of the government (Mishin, 2013). For example, the Constitution of the United States of America of 1787 determines that all legislative powers are conferred to the Congress of the United States. As the Artical 90 of the Peruvian Constitution of 1993 says only the Congress has the legislature (Anonymous, 1987). As the Constitution of the Republic of the Philippines of 1987 claims the only agent of the legislature is the Congress (Anonymous, 1950, 2016). The Article 41 of the Constitution of Japan of 1946 proclaimed that "parliament is a supreme body of the government and the only legislature of the state" (Anonymous, 1950, 2016).

An analysis of the above mentioned constitutions has showed that fundamental laws of a number of the Asian-Pacific Group of States fix the leading role and value of parliament in the system of government bodies.

In this regard, the position of a (Tsaliev, 2011) according to which the characteristic of Parliament as a legislative and representative body of the state defines the high constitutional legal status of parliament and thereby, its wide volume of powers including in the sphere of protection of human rights seems to be interesting (Tsaliev, 2011). It is difficult to challenge this position because the role of the Asia-Pacific Group of parliaments in Protection of human and civil rights and freedoms is great.

First of all, the human rights role of parliament is expressed in the legislative activity. For example, in the Russian Federation taking part in creation of laws parliament and its structural divisions set not only the fullest legislative fixing of human and civil rights but also the creation of operating-mechanisms directed on

realization of human and civil rights and also establishing responsibility for their violation as a primary task. At the solution of problems of ensuring human and civil rights and freedoms the creation of the effectively working mechanism of institution functioning of constitutional and legal responsibility is basic.

The basic human and civil rights and freedoms fixing in the Constitution of the Russian Federation subject to conventional principles and norms does not create full-fledged guarantees of the personal legal status realization. Besides, there are no guarantees from unreasonable restriction of human and civil rights and freedoms (Kondrashev, 2014). The solution of these problems demands positive will of a legislator, the Federal Assembly of the Russian Federation, parliamentarians, human and civil rights and freedoms institutionalization by means of the development of constitutional provisions in the current legislation and subordinate regulations (Astaf'ev, 2010).

Annually the Federal Assembly of the Russian Federation adopts a set of Federal laws which a vast majority to any degree affects civil rights and freedoms. The adoption of the following normative legal acts became a considerable step in the development of Russian legislation on protection of human rights: The federal Constitutional Law of 26.02.1997 N 1-FKZ "On the Commissioner for Human Rights in the Russian Federation", the Federal Law of 28.12.2012 N 272-FZ "On measures against persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation", the Federal Law of 10.06.2008 N 76-FZ "On public monitoring of human rights in places of enforced detention and on assistance" and some other laws.

Thus, the given and other examples testify to the value of legal regulation in protection of human and civil rights which is carried out by Parliament of the Russian Federation.

An interesting example of bodies of protection of human and civil rights and freedoms can be found in Australia where the Australian Commission on Human Rights Operates. Among unique features of this commission it should be noted its Amicus Curiae function in deals connected with principles of human rights and also introduction of a new position of the Aboriginal and Torres Straits Islanders Social Justice Commissioner (Australian Human Rights Commission Act 1986 as Amendments up to Act No. 136, 2012). Besides, in each staff the independent commissions which within the implementation of regional legislation are engaged, respectively in the anti-discrimination activity, ensuring equal opportunities (Western Australia, South Australia),

encouragement of human rights (The Victorian Commission on equal opportunities and human rights) are created. Together with the federal commission they form the Australian human rights commission. However, the fact that Australia known for its historical role in the development of international declarations and contracts in the field of human rights, has no separate constitutional act of human rights has the impact on the activity of the Australian Commissions. In the last decade the subjects of the Australian Union began to actively adopt laws and charters of human rights. At the same time it should be noted that adoption of the national plan of action on human rights promotion and protection causes bigger unification of human rights protection in the Federation and to expansion of functions of the Australian Commission on Human Rights.

Unlike the other organizational and legal forms of protection of human and civil rights the institution of the Commissioner for Human Rights takes a special place. In many countries specialized services of ombudsmen in spheres of the most mass and gross violation of human rights, for example, rights of children, businessmen, military personnel, refugees and displaced persons on control of the activity of law enforcement agencies are created.

In the Russian Federation the institution of an ombudsman has gained recognition and legislative fixing. So, in the Article 103 of the Constitution of the Russian Federation it is mentioned introduction to the system of government bodies of the Commissioner for Human Rights in the Russian Federation which main objective according to the Federal Constitutional law of February 26, 1997 "On the Commissioner for Human Rights in the Russian Federation" is providing guarantees of state protection of civil rights and freedoms their observance and respect with government bodies, local governments and officials.

The institution of the commissioner for human rights exists not only at the federal level but also in the entities of the Russian Federation. A position of the Commissioner for human rights in the territorial subject of the Russian Federation can be established according to the constitution (Charter) as the law of the Federation entity. Thus, territorial entities of the Russian Federation independently make a decision on establishment in the region of the corresponding position. According to the Page 1 of the Article 1 of the Law of Primorsky Krai No. 110-KZ of 11.12.1997. "On the Commissioner for Human Rights in PrimorskyKrai" a specified position is established according to the Charter of PrimorskyKrai and the Law for Rendering Assistance to citizens in protection of their rights and legitimate interests. And noting that the

importance of the institution of the Commissioner for Human Rights in the mechanism of protection of civil rights is that necessary to specify its advantages as openness and availability to the population, free of charge assistance and also independence and not accountability to government bodies and officials.

Research: Along with a legislative form of protection of human and civil rights of the legislative (representative) body of the Russian Federation there is also another form of protection-control powers of parliament over observance and performance of laws. It should be noted that in the structure of chambers of the Russian parliament there are specialized committees on protection of human rights: on health protection, concerning a family, women and children, on work, social policy and affairs of veterans, etc. In the world practice various bodies for providing and protection of human and civil rights are also created: Bureau of the US President on applications of citizens, the National Commission for Women Act in India (The National Commission for Women No. 20 of 1990), the Constitution of Scheduled Castes created in India for data security of categories of citizens from operation and for the development and protection of their social, educational, economic and cultural rights, the inter-departmental of the Philippines on the fight against human trafficking and others (Anonymous, 1950).

Historically first Federation-the USA seems to be a global leader in the field of protection of human and civil rights and freedoms. Though in the USA the constitutional differentiation of powers of the Federation and states with the use of exclusive and residual competence in practice results in essential distinctions of legislative regulation of human rights at the level of the Federation, states, municipalities and also to problems with the implementation of international treaties on human rights providing along with the consulting mechanism, control measures (Chuksina, 2014). It is also remarkable that now at the Federal level the USA have no national institutes on assistance and protection of human rights, no ombudsman.

CONCLUSION

The solution of mentioned problems is promoted by the work of legislative (representative) public authorities which play a key role in formation of the system of institutions, mechanisms and organizational forms of protection of human rights in each country because in parliaments there is creation and adoption of laws. In the Russian Federation Parliament, its structural divisions,

deputies, taking part in creation of laws, try not only to affirm most fully legislatively human and civil rights and freedoms but also to create effectively operating systems and levers of their realization, to establish responsibility for violations. Efforts organizing the state work, its bodies, parliamentarians and also public organizations including political parties on the implementation of instructions of the constitution are necessary for the effective realization of constitutional norms. The reality of the basic law, affirmed human rights and freedoms have to be provided with the development and deepening of political, social and economic and organizational guarantees.

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