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Constitutional and legal ideology as a guarantee of the rights and freedoms

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Abstract

The study aims to demonstrate that the formation of a democratic state should be manifested in the trends in the development of public control and increase its impact on the effectiveness of the monitoring functions in relation to the state. The methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. As a result, the process of interaction between civil society and the state should be based on ensuring the inviolability of the fundamental social, economic and political rights.

Keywords: democracy, rights, society, legal, constitutional.

La ideología constitucional y legal como garantía de los derechos y libertades

Resumen

El estudio pretende demostrar que la formación de un estado democrático debe manifestarse en las tendencias en el desarrollo del control público y aumentar su impacto en la efectividad de las funciones de monitoreo en relación con el estado. La base metodológica de este estudio es el método dialéctico de cognición de los fenómenos y conceptos sociales y legales en su desarrollo e interdependencia. Como resultado, el proceso de interacción entre la sociedad civil y el Estado debe basarse en garantizar la inviolabilidad de los derechos sociales, económicos y políticos fundamentales.

Palabras clave: democracia, derechos, sociedad, legal, constitucional.

1. INTRODUCTION

Not less important and urgent is the further development of the functional characteristics of human rights guarantees, which suggests a mechanism for implementing the study subjects overbearing measures to promote and protect human rights in criminal proceedings, primarily by the example coercion. Usage it makes necessary studying the theoretical foundations of this mechanism as a means of (forms) of the

constitutionally guaranteed rights and freedoms of a person and a citizen.

Signs of democratic and legal state largely overlap. Implementation of the main features (principles) the rule of law is one of the conditions of its formation, they reflect the direction of movement of a civilized society. The democratic nature of the state is expressed primarily in a democracy, as well as the recognition of the rights and freedoms of citizens, in the separation of powers, in the guarantee of local government, political diversity and multi-party system, freedom of economic activity, in a variety of forms of ownership.

2. METHOD

The methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

3. RESULTS

Genuine democracy in society and the state is not created instantaneously, not copied to an external sample. It is necessary that the society was ready to use democratic mechanisms, wanted to create a vibrant civil society in which it would be comfortable to live in all segments of the population - and the rich and the poor. To most people feel the citizens would be willing to spend on a regular basis their attention, their time, their efforts to participate in the governance process.

The idea of democratic rule of law is based on the need to achieve harmony and justice in society. The century experience of state-legal development has developed certain characteristics that allow implementing them in society to protect the individual from arbitrary state, to achieve an optimal balance between the interests of the state and the individual.

There is a theory of democratic transition, when the state turns into a democracy. In the example above all East Asian countries found that democracy becomes possible only when a society reaches a certain level of economic development. For example, South Korea and Taiwan to pursue their economic miracle in conditions of severe dictatorship, and then, having reached a certain level, especially in per capita income, the transition to democracy. While civil society does not put the power in certain conditions,

making it possible to control it, it does not learn to respect the society (people), and to serve him, You can do it through real democracy, ie, the actual exercise of power by the people. At the same time we should not forget that real democracy is not just freedom, and the rule of law (Choice after the elections, 2012).

Analysis and study of the problems of legal regulation of individuals rights and freedoms in criminal proceedings permitted to formulate the author's concept of individual rights security and protection in the application of coercive measures, scientific and theoretical propositions and conclusions about the nature of human rights security and protection, based on the given proposals to improve legislation and practice enforcement to ensure the rights of subjects in criminal procedure relations.

Russian democracy - it is the power of the Russian people, with its own traditions of national governments. VV Putin noted that: "It pains me to say this, but I say about it owes. Russian society today is experiencing a clear shortage of spiritual braces" (What the President said in his Address to, 2012).

The formation of a democratic state should be manifested in the trends in the development of public control and increase its impact on the effectiveness of the monitoring functions in relation to the state. Civil society activities should be regulated not only by the law, but also moral, religious attitudes, the content of which is determined by

historical experience, national traditions, the level of democracy and culture. The process of interaction between civil society and the state should be based on ensuring the inviolability of the fundamental social, economic and political rights and freedoms granted to civil society by the state apparatus. Deserve the attention of many of the proposals, including a rule to introduce a mandatory consideration in the parliament of the social initiatives that will gather a hundred thousand or more signatures on the Internet (Putin, n.d.).

Democracy is, as a fundamental right of people to choose the power and the ability to continually influence the government and its decision-making process. This means that democracy must be mechanisms for ongoing and direct, effective channels of dialogue, social control, communications, and "feedback". A growing number of policy information should go in the quality of political participation, civil government and control. First of all, it is - general civil discussion of draft laws, decisions, programs adopted at all levels of government, the evaluation of existing laws and their performance.

The quality and effectiveness of criminal justice should primarily be determined by the effectiveness protection of the legitimate interests of society and the state guarantee the individuals rights and freedoms, any damage caused by crime. According to law guarantees of legality and validity of human rights restrictions, in the application of measures of procedural coercion, set of conditions, means and methods established by the rules of international,

constitutional, criminal procedural law and other laws, should be understood as well as carried out on the basis of their procedural activities, ensuring the protection of the human physical, moral and mental integrity, individual freedom and personal security against arbitrary encroachments in criminal proceedings. For proper observance of human rights in accordance with the purpose of criminal proceedings, it develops and discusses the concept of «security mechanism, implementation and protection of human rights.» This mechanism during pre-trial proceedings is defined as a structured set of procedural and legal means and methods, as well as a certain sequence of realization of human rights.

The structural organization of the of human rights mechanism includes the participants and their prosecution of criminal procedural powers; procedures for the implementation and protection of human rights in criminal proceedings; rights, duties and responsibilities of participants in criminal proceedings for the implementation purpose of criminal proceedings. A mechanism ensuring the content of human rights during the pre-production includes she set of means and ways of relations with the criminal proceedings.

Realization of human rights shows the sequence of certain "technical steps" commission in its functioning. At the first stage mechanism ensuring, implementation and protection of human rights starts from the participants of criminal proceedings, providing access to justice in accordance with their legal status. The second stage of the

human rights mechanism is studying and establishing the rule of law, guarantees of their realization, factual circumstances. The third stage is the realization and protection, primarily overbearing subjects of rights and liberty, including the application of the coercive procedural measures.

The limits of human rights are the statutory provisions allowing to determine the nature and degree of intervention methods in the sphere of individual rights and interests, the application of statutory law limits. Legitimate restriction of human rights must meet the following requirements: strict legal regulation; a limited number of people who can use it and for whom can be used law limits data; temporary in nature; exceptional.

The first stage of human rights realization in the application coercive procedural measures is to ensure that all participants in the criminal justice access to justice. Subject to the protection of their rights and liberty and legal interests must be specified directly and recognized not only the victim, but also the suspect, the accused and any other person who is a participant in the criminal proceedings.

As an immediate measure, she legislate provision stating that failure of the investigator, the investigator in making and to adduce as evidence objects, documents that are relevant to the criminal case, should be adopted as well as necessary for a decision on the election of procedural enforcement, in terms of relevance, reliability,

affordability, presented by the defense, to provide for the acceptance of legislative regulation of these particulars, address the issue of liability for breach of the given duty.

Ensuring human rights by applying measures to its coercive procedural should include information about the person possessing all the rights given to him under the law, understanding their meaning; create the conditions necessary to support implementation of the rights; protection of rights; means. In connection with this proposed legislation to impose the investigator the duty to make victims acquaintance with his rights by handing him a written list of rights.

4. DISCUSSION

Democracy, rule of law, human rights are incompatible with anarchy, anarchy, arbitrariness. Human freedom in its moral and legal forms of this behavior is a person in which the implementation of its healthy, intelligent and noble interests would be combined with respect for the interests of others, society and state. Parenting legal consciousness in organic connection with the beginnings of morality, a democratic consciousness of all citizens is the process of improving the culture of society, a man finding his dignity, freedom and justice.

The formation of a democratic state should be manifested in the trends in the development of public control and increase its impact on

the effectiveness of the monitoring functions in relation to the state. Civil society activities should be regulated not only by the law, but also moral, religious attitudes, the content of which is determined by historical experience, national traditions, the level of democracy and culture. The process of interaction between civil society and the state should be based on ensuring the inviolability of the fundamental social, economic and political rights and freedoms granted to civil society by the state apparatus.

The study formulated theoretical propositions that can be the basis for the characteristics guaranteed by the Constitution of the Russian Federation to ensure human rights and liberties during the pre-trial proceedings.

Formulate regulations defining responsibilities of an investigator, a prosecutor, a judge, aimed at the promotion of human rights, as well as their responsibilities and the consequences of improper performance of their duties.

There is only one way - the democratization of public life. One of the most important for Russia is the question: what is the ratio of the current conservation processes antisocial social systems and processes to overcome it (Mikulski, 2009). In connection with this thesis is important proposal N.S. Bondar that constitutionalism, being inherently political and legal phenomenon, is at the same time, moral and ethical imperative, not only for the subjects of public authorities,

but also for every member of society as a citizen of Russia (Bondar, 2010).

According to V.I. Lafitsky, constitutional rights and freedoms are one of the constraints on the Russian despotism, and at the present stage of development of this issue is extremely important, as well as the need to improve the legal status of the individual Warranty (Lafitsky, 2006).

Most constitutions of foreign countries regulate the rights and freedoms of man and citizen (France, United States, Indonesia, Japan, etc.). For example, the Constitution of the Republic of Indonesia in 1945 stipulates that the restriction of individual rights and freedoms may in exceptional law (Constitution of Asian States, 2010).

As rightly pointed K.M. Isayeva, in theory and in practice, there are still a number of contentious outstanding issues in the field of constitutional and legal regulation of ideological diversity, and in the implementation of the constitutional principle in practice. In jurisprudence, there is no single approach to the problem of the existence of the state ideology in the Russian Federation (Isayev, 2015).

According to the author, in Russia permitted the existence of a mandatory constitutional ideology of the state, functioning within the legal framework does not violate the rights, freedoms and legitimate

interests of others, and towards the realization of the needs and requirements of the multinational people of the Russian Federation. It can be not only the foundation of the national idea, but should serve as a means of bringing together social groups and individuals to address national goals and objectives.

Constitutional legal ideology - a system of constitutional values, based on the recognition of the individual, his rights and freedoms the supreme value and recognizes its right to ideological diversity, the protection of state interests. This follows from the meaning and content of the norms of the Constitution of the Russian Federation, views, ideas and understanding of the basic fundamentals of existence, cooperation and the development of society and the state in the conditions of the legal, democratic state.

5. CONCLUSION

Democracy, rule of law, human rights are incompatible with anarchy, anarchy, arbitrariness. Human freedom in its moral and legal forms of this behavior is a person in which the implementation of its healthy, intelligent and noble interests would be combined with respect for the interests of others, society and state.

Developing the Russian federalism, we must rely on our own historical experience, use flexible and varied patterns. Development of

the regions, their autonomy should work on creating equal opportunities for all citizens, regardless of their place of residence; the elimination of imbalances in economic and social development in Russia and means to strengthen the unity of the country. After consolidating their national identity and strengthened its roots, remaining open and receptive to the best ideas and practices of the East and the West.

It is in a democracy, democracy can be fully and comprehensively to ensure the rights and freedoms of all people, including properly protecting the rights of individuals in criminal proceedings. This is the answer to the question - do at the present stage of development of society, democracy in Russia. Democracy does not change the nature of power. It only limits its ability to repair the outrage, violence, engage in self-enrichment.

We are entering the era of the multi-polar world, interdependent world where everyone is in the same boat and everyone is faced with the results of what happens anywhere in the world.

6. CONFLICT OF INTEREST

The author confirms that the data do not contain any conflict of interest.

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