

THE LEGAL STATUS OF AN INDIVIDUAL IN RUSSIAN SCIENTIFIC, POLITICAL AND LEGAL DOCTRINES

Abstract

The article explores the notion and peculiarities of the legal status of the individual in the Russian scientific, political and legal doctrines in the context of Philosophy of Law. In the given research, the author, based on the study of the materials of the history of legal-political thought, not only reveals the peculiarities of the legal status of the individual in the Philosophy of Law but also implements versatile, holistic, systematic (methodical) analysis of content and of the concept “legal status of the individual”.

Summing up the investigated issues, the author came to the conclusion that the scientific views and developments of Russian jurists (from the end of the 18th century to the beginning of the 20th century) had a tremendous impact on the development of the legal status of the individual, and civil society, as well as the relationship between the state and the individual.

Therefore, theoretical and practical research of the problems of the development of the legal status of the individual in the works of famous Russian jurists in the context of the philosophy of law makes it possible to understand the current situation of human rights in the theoretical and legal, and even constitutional and legal aspect.

Keywords: legal status of the individual, Russian jurists, reforms, natural human rights, interests, the freedom and equality of people, public relations.

Introduction

In modern philosophy of law, the concept of “the legal status of the individual” has been studied in depth and comprehensively by European and Russian well-known jurists and philosophers, who have endowed this concept with unique nuances and features. The legal status of the individual is a complex, social, legal phenomenon that has manifested itself in different ways in different historical periods and social formations. Consequently, it is natural that the legal status of an individual and its structural elements are investigated both by the modern philosophy of law and by branch sciences and special legal sciences (constitutional law, criminal law, criminology, etc.). *According to the generally accepted definition, the legal status of an individual is his actual state in a given society*

and state, which to a greater or lesser extent (depending on the form of government and political regime of the state) is reflected in law (Ayvazyan, 2008, p. 12).

According to E. Lukasheva (2011), since the 17th century, one of the most important components of European civilization has been the idea of human rights, which has never been included in the political conception of Russian scholars and therefore has not been able to capture the public consciousness and become the goal of society (pp. 68-70).

In our opinion, E. Lukasheva’s idea that Russia cannot belong to any particular type of civilization, including the European civilisation, is subjective. Despite the fact that Europe preceded Russia with its progressive ideas, Russia did not stand on the verge of universal development. Moreover, from our perspective, modern jurists

are exaggerating, noting that the positions of Russian jurists have been decisive in the process of shaping world liberal views (Alekseev, 1995). The conducted research shows that the political and legal concepts about the interaction between the state and the individual are developed in pre-revolutionary Russia in the same way as in the West, but with certain features. It is obvious that the pre-revolutionary Russian legal consciousness was not far from the political processes regarding the legal status of a person.

It should be noted that Russian legal thought originated, developed and was seriously influenced by the practice of Western European theory. However, it has had endowed with its own liberal-legal traditions concerning the concept of the legal status of the individual, human rights, relations between humans and state. Moreover, the idea of the legal status of the individual in state and society developed within the framework of the liberation process, the main task of which was the abolition of serfdom.

V. Bagdasarov (1996) rightly pointed out that the dissemination of ideas about the inalienable nature of human rights was initiated in the leading social strata (pp. 44-45).

Nevertheless, the implementation of human rights was more related not to the development of civil society but to the programs and actions of the state. At the same time, special attention was paid to the right to intellectual property and the doctrine of limiting the power of the state in favour of human rights.

Analysis of Main Ideas about the “Legal Status of the Individual” from the 18th to the 20th centuries

It is noteworthy that from the end of the 18th century to the beginning of the 20th century, basic doctrines and structures for the protection of individual rights were established and developed in Russia. They were based on the ideology of world-famous representatives of the philosophy of law and received their special reflection in law

enforcement practice. Russian legal scholars have found a connection between human rights and specific historical conditions, socio-economic relations, the social structure of society, traditions, civilization, legal awareness and ethics. However, it was necessary to overcome the disregard for the theoretical experience of previous generations of Russian political thinkers, well-known scholars and lawyers, while not excluding the views of the representatives of the autocratic-conservative ideology, which were based on new socio-economic and political processes in the country.

Thus, K. Leontev and L. Tikhomirov were active opponents of any manifestation of individual rights, freedoms, and universal equality, arguing that the individual should not claim rights in order to preserve the vitality of the state and society (Tomsinov, 2015, pp. 25-30).

It should be noted that according to M. Katkov and K. Pobedonoscev, individual rights and freedoms were paternalistic in nature, where an impartial monarch personally exercises legal control over the relationship between state bodies and society. Consequently, the rights of the individual automatically followed from the rights of the monarch, personifying the nation and society. The harmony of the interests of the state and the society can be achieved by combining them. Therefore, the rights and freedoms of the individual can be achieved by combining them with the rights and freedoms of the monarch. These basic ideas did not deny the recognition of the permissible limits of individual rights and freedoms in civil law in the field of property rights.

The reforms adopted in Russia in the middle of the 19th century (abolition of slavery, land and procedural reforms) had a revolutionary impact on the legal status of the individual, freedoms, as well as on the formation and development of the ideas of a legal, social state.

It should be noted that during that period of time, a number of Russian jurists (A. D. Gradovsky, V. M. Khvostov, B. A. Kistyakovsky, M.M.

Kovalevsky, N. M. Korkunov, P. S. Novgarodtsev, G. F. Shershenevich, B. N. Chicherin, N. S. Polienko, A. N. Radishchev) developed and presented various theories of the legal (constitutional) state and the legal status of the individual.

Russian scientists, cooperating with European jurists, presented neoliberal approaches to human rights and the legal (constitutional) state. Simultaneously they established theoretical ideas of a new generation of rights which reflected global trends of the role of the state in the process of ensuring human rights.

It should be noted that in the works of A. D. Gradovsky, the protection of inalienable and natural human rights was not accompanied by a corresponding criticism of the existing regime. The freedom of the individual was presented quite feasible within its framework. In his publications, there are none of those angry invectives against the "lawlessness" of the Russian order. However, according to A. D. Gradovsky, the fundamental human rights are based on the civil rights of the person, are fundamental and inalienable (Gradovsky, 1885., pp. 112-113; Tomsinov, 2015, pp. 110-112).

N. Korkunov emphasizes the principle of formal equality of legal norms, where people must exercise each other's rights and obligations. Moreover, the obligation to exercise someone else's interest has an advantage. N. M. Korkunov's views on the nature of law coincide with the psychological theory of L. I. Petrazhitzky. In this context, the legal obligation remains only as long as there is someone else's interest for which it is established (Korkunov, 1898, p. 102).

The evolutionary development of the political regime of the bourgeois constitutional monarchy led to the establishment of the Parliament at the beginning of the 20th century and the granting of political rights to its nationals.

It is obvious that society often raised questions about inalienable and inviolable human rights, and the philosophy of law continued to develop in a liberal way. Therefore, the adoption of liberal laws (1905-1906) was not an initiative

of the government but a result of the revolution, pressure of the society (1906-1907).

The rights of citizens were proclaimed in the October Manifesto, and a number of laws enshrined the scope of human rights and guarantees for their realization. These include the right to privacy, property rights, right to liberty of movement and freedom to choose the residence, the right to freedom of expression, the right of peaceful assembly, the right to freedom of thought, conscience and religion, etc.

The idea of equality of the people in pre-revolutionary Russia was analyzed in numerous works of A. Radishchev. From the standpoint of natural law, he developed ideas about the freedom and equality of people in their natural state, their right to life, property, the right to a fair trial, freedom of expression etc. (Shchipanov, 1951, pp. 297-301; Yeritsyan, 2011, pp. 114-115).

The peculiarities of a person's legal status, based on the equality of people, have a special place in B. Chicherin's legal and political concepts. In particular, by comparing liberal approaches of Kant and Hegel, B. Chicherin substantiated the idea of justice, equality of the people. He represented a person as a creature with metaphysical freedom and rational will, who stands at the base of all public relations (Chicherin, 1900, p. 55).

In other words, B. Chicherin opposed the idea of limiting the activities of the state to the protection of the law but also did not accept the idea of the complete subordination of private activities to state power. Moreover, B. Chicherin distinguished two meanings of law: subjective and objective. He defined the subjective right of the person as a moral opportunity, as legitimate freedom and the right to demand something from the government. The objective right was revealed as the law defining those legitimate freedoms. According to B. Chicherin, the developed civil society is a guarantee that the state would not violate the legal limits of its activities and would not invade the field of private relations, and in this case, politically free citizens will become partici-

pants in state power through elections (Tomsinov, 2015, p. 27). B. Chicherin considered the recognition of man as a free person as the most important step in the historical course of civil society, in the achievement to a degree where the political regime becomes truly democratic. B. Chicherin justified the need for reform of Russian autonomy, the progress of the country towards civil society and the rule of law (in the form of a constitutional monarchy). The goal of all these reforms is the freedom of the individual and the improvement of society (Chicherin, 1900, p. 225).

It is noteworthy, the opinion of P. Novgorodts, the leader of the ideology of the revival of natural rights in Russia, that the pursuit of individual freedom, equality and justice does not depend on historical or sociological preconditions (Kornev & Borisov, 2011). The primary source of human rights is the objective ideal of universal, eternal love, right and goodness, similar to Hegel's "absolute idea" and Kant's "categorical imperative". P. Novgorodtsev's researches on human rights and freedoms included new ideas of the relationship between the individual and state powers. Those researches led to the theoretical justification of the existence of socio-economic human rights, which were based not only on the right to a decent life but also on state obligation to protect this type of rights. According to P.I. Novgorod, the state is obliged to eliminate obstacles to the development of human rights and freedoms, as well as to provide financial support for their implementation. Society, according to Novgorod, has always faced the dilemma of "public harmony" or "freedom" (Novgorodtsev, 1991, 235-242). Making a choice in favour of the inalienable dignity of the human being, equality of rights and freedoms of the people, he confirmed that the respect for and protection of the basic rights and freedoms of the human being and the citizen should be the duty of the public power. However, P. Novgorod justified the idea of free social development but did not substantiate its ultimate goal.

Therefore, it is the moral duty of every individual to invest his efforts in the "uncertain future perspective", to promote the moral principle of "free universalism", to the realization of the "idea of free solidarity of all", where freedom and equality of individuals are combined with their unity.

Russian jurist, philosopher N. Berdyaev considered human rights and freedoms to be spiritual rights and absolute values based on duties to God (Berdyaev, 2010, pp. 326-328).

Furthermore, in the new concept presented by N. Berdyaev, "person" was distinguished from "individual". According to Berdyaev, "individual" is a naturalistic, biological, sociological category, and "personality" is a spiritual category. Therefore, a person is a particle of the Universe, society, state and is an independent "world" (Yeritsyan, 2011, p. 120). Moreover, the person is above the state, and God created man in his own image. In its turn, the state is devoid of the divine, and it will never reach the kingdom of God. Since freedom is, first of all, the freedom of the individual, the person acts as a being who limits the power by preventing its illegal steps. According to N. Berdyaev: the violation of human rights by the state and society and its replacement with the right of ownership as a socio-economic right is unacceptable. Consequently, the conflict of individual rights and interests of the state and society must be solved in favour of the individual and his inalienable rights (Yeritsyan, 2011, p. 123).

It is obvious that N. Berdyaev's ideas are based on human rights and freedoms, their guarantee and implementation, smoothing out contradictions between spiritual and material values in society.

It is noteworthy that the merit of Russian natural law lies in the enrichment of the classical concept of human rights, the affirmation of personal values, the axiological identification of problems, as well as the substantiation of human socio-economic and cultural rights.

Proponents of legal positivism, which spread

in Russia in the second half of the 19th century, believed that human rights were based on positive norms (laws).

Thus, Shershenevich replaces the metalegal concept of human rights with the concept of “subjective law”. Subjective law follows from objective law, the source of which is the state power. Therefore, the freedoms of citizens are “donated” by the state. Therefore, the positivist theory of the subjective rights of the individual, in the political sense, fights against the abuse of powers of state bodies and other illegal actions.

Representatives of legal positivism, developing the theory of subjective law, came to the conclusion that subjective human rights lead to a clear consolidation of the integrity of human rights in the law.

Based on this theory, sociological, legal positivism was established in Russia in the second half of the 19th century. M. M. Kovalevsky notes that the state and law derive from the same source, pursue the same problem, meet the same requirements – human solidarity.

According to M. M. Kovalevsky (1889), the state and law proceed from the same sources, have the same problems. Moreover, M. M. Kovalevsky emphasized that human rights are the result of social evolution, the assimilation of the historical experience of real, public needs and demands. The realization of human rights (including judicial protection of citizens’ rights, the implementation of social obligations of the state to the person) is connected with the idea of a real rule of law. In this case, such a model of the state contradicts the role of “the night watchman state” represented by Hobbes.

N. V. Mikhailovsky was not a supporter of the concept of free will and did not deny the laws of historical development. V. N. Mikhailovsky’s ideal is a fully and comprehensively developed personality. Moreover, society should consist of individuals who are capable of mutual understanding, mutual respect and common efforts to achieve happiness (Lossky, 1991, p. 105).

Describing the ideas of Russian legal thought from the end of the 19th century to the beginning of the 20th century, within the framework of the studied topic, Baghdasarov noted: “Different concepts of human rights stem from their individualistic or collectivist (group) spirit, which is reflected in the struggle of liberal-democratic and even totalitarian tendencies” (Bagdasarov, 1996, p. 74).

It is known that individualistic concepts, when solving the problems of the relationship between the right of the individual and the state, consider the interests of the society derived from individual interests, giving preference not to the interests of the state but to the interests of the individual. According to collectivist concepts, the rights and interests of the collective society prevail over the rights of the individual.

Supporters of this concept criticized those bourgeois-democratic rights, the principles of the rule of law, which are designed to ensure human rights, and also ignored the fundamental nature of the system of fundamental rights of the individual, denied the right of ownership and the principle of separation of powers, parliamentarism, etc.

At the beginning of the 20th century, the socialist doctrine became more widespread in Russia, whose followers were: V. I. Ulyanov-Lenin, A. V. Lunacharsky, S. V. Plekhanov, L. D. Trotsky, Yu. O. Martov and others.

The objective of the socialist ideology of that period was to carry out radical reforms based on the denial of bourgeois-democratic values and institutions based on the working class.

Within the framework of the legal status of a person, manifestations of individuality were mildly denied, limiting individual human and citizen rights and giving preference to collective rights.

Nevertheless, the noted theory emphasized the need for a moral and judicial point of view of the legal status of the individual, the coexistence of social relations, the precise consolidation of

the legal status of a person at the state level and the process of its implementation.

It is worth noting that the development of the idea of human rights in the post-revolutionary Soviet system was particularly influenced by the concepts of Marx and Engel on human rights. They, considering man as a “result of history” and simultaneously leading the political and civil life of the subject, define the natural rights of the individual as historically formed bourgeois-democratic rights and freedoms, where the individual and the citizen are private owners (Marx & Engels, 1955, pp. 390-392; Kazanchian, 2020).

It should be noted that the developed socialist doctrine of human and civil rights was entrenched in the Soviet Constitutions of 1936 and 1977. Along with personal rights, the political rights of citizens were also established (Constitution, 1936, articles 125, 126; Constitution, 1977, articles 48-51, 97, 100).

The 1977 Constitution gave a more detailed interpretation of political rights. In contrast to the constitution of 1936, the right of every citizen of the USSR was emphasized to take part in the management of state and public affairs, the right to criticize the work of state bodies. The responsibility of officials and other persons was established for the prosecution of criticism or evasion of its acceptance. Changes have taken place in the electoral law. In the 1977 Constitution, the age limits of passive suffrage were lowered: to all Soviets - up to 18 years (previously for the Supreme Soviets of the Republics - 21 years), to the Supreme Soviet of the USSR - up to 21 years (before that - 23 years). The right of citizens and public organizations to participate in the preparation and conduct of elections was also emphasized. There are provisions on the possibility of electing a citizen to no more than two Councils on attributing election expenses to the state account (Kukushkin & Chistyakov, 1987, pp. 310, 332-334).

The conducted research shows that the idea of Russian legal scholars about the equality of all before the law was reflected in constitutions only

in a narrow sense, granting privileges to the citizens of the country. Thus, the 1977 Constitution enshrined the equality of all citizens, regardless of not only nationality and gender but also regardless of origin, social and property status, education, attitude to religion, type and nature of the occupation, place of residence and other circumstances. It is obvious that equality has become absolute. It was also a great achievement that the constitution entrenched the equality of men and women not only in rights and obligations but also in the possibilities of obtaining an education, profession, career advancement, etc.

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Conclusion

Summing up the results of explored issues and considering the legal status of the individual as a dynamic phenomenon of philosophy of law, we concluded that Russian philosophers and jurists have had a significant contribution to the study of the legal status of the individual. Moreover, the principles and characteristic features of the legal status of the individual, which were presented by famous Russian jurists from the end of the 18th century to the beginning of the 20th century, became the basis for the further development of doctrines on the legal status of an individual, not only in the context of the philoso-

phy of law but also in the system of political doctrines. It is obvious, the peculiarities of the legal status of the individual and its basic elements are of great importance for the development of a democratic legal state, as well as for the equitable relationship between the state and the individual.

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