

## THE IMPACT OF GLOBALISATION ON THE CONSTITUTIONAL REGULATION OF HUMAN RIGHTS

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<https://doi.org/10.21684/2412-2343-2021-8-1-63-85>

*The objective of this research paper is to provide an in-depth analysis of the essence of the constitutional and legal regulation of personal status, which is the primary obligation of present-day national governments with respect to preserving and protecting major human values when globalisation processes are underway. Consistent and comprehensive human development, politicisation of the law, the elimination of poverty, the fight for equality, global economic injustice, the search for a new ideal constitutional model and other issues are relevant and are on the agenda for the entire global society. Countries with different economic levels of development, historical traditions, cultural origins, and legal systems have varying concepts of human rights, freedoms and duties, which they implement in practice in various ways. These issues are of paramount importance for Russia, which has equal participation rights in matters of international relations and in the system for global governance and international law making. Solving the problem of satisfying the national interest and preserving prestige and the standard of living of every person depends on the primary social responsibility of each person and on the active role of the modern state. Most of all, it is necessary to solve functional problems that are simultaneously political, scientific, organisational, and legal. The most important task here is to enhance the effectiveness of the activity of the state system and the local self-government authorities. To achieve its objective, the paper utilises general scientific-scholarly methods, and specific scientific-scholarly research methods including those denominated concrete-historical, logically historical, system-based, comparative legal (law), among others.*

*Keywords: human rights; globalisation of law; global constitutionalism; new constitutional model; constitutional dimension.*

**Recommended citation:** Ellada Balayan, *The Impact of Globalisation on the Constitutional Regulation of Human Rights*, 8(1) BRICS Law Journal 63–85 (2021).

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## Introduction

The modern world is increasingly faced with issues arising from the impact of globalisation on the constitutional and legal regulation of personal status, mechanisms of national and international defence of human rights and freedoms, and identification of tendencies for international public and constitutional law to develop, interact and mutually exert influence.

Globalisation, as a phenomenon and a process, is an ambiguous concept for today's experts in the fields of international and constitutional law. Publications may be encountered in the scientific-scholarly literature that are representative of the problematic nature of globalisation processes and their impact on the constitutional and legal regulation of relationships, which collectively define the subject of legal regulation of constitutional law.<sup>1</sup>

At the same time, the subject matter of such categories as "global constitutionalism,"<sup>2</sup> "constitutional monitoring" and "constitutional diagnostics,"<sup>3</sup> "constitutional futuristic,"<sup>4</sup>

<sup>1</sup> For more detail please refer to Умнова-Конюхова И.А. Современное понимание предмета конституционного права в условиях бинарного развития внутригосударственного (национального) и международного права // Актуальные проблемы российского права. 2018. № 10(95). С. 151–162 [Irina A. Umnova-Konukhova, *Contemporary Understanding of the Subject of Constitutional Law in Conditions of Binary Development of Domestic (National) and International Law*, 10(95) Actual Problems of Russian Law 151 (2018)].

<sup>2</sup> Anne Peters, *Global Constitutionalism and Global Governance*, Max Planck Institute for Comparative Public Law and International Law (Jan. 5, 2021), available at <http://www.mpil.de/de/pub/forschung/nach-rechtsgebieten/voelkerrecht/global-constitutionalism.cfm>.

<sup>3</sup> See Арутюнян Г.Г. Конституционный мониторинг как гарантия преодоления дефицита конституционализма (концептуальные подходы) (доклад на Ереванской международной конференции 22 октября 2016 г.) [Gagik G. Arutyunyan, *Constitutional Monitoring as a Guarantee for Overcoming Deficit of Constitutionalism (Conceptual Approaches)*, Speaker Paper at the Yerevan International Conference on 22 October 2016] (Jan. 5, 2021), available at [http://www.concourt.am/armenian/structure/president/articles/yerevan\\_conf2016\\_ru.pdf](http://www.concourt.am/armenian/structure/president/articles/yerevan_conf2016_ru.pdf).

<sup>4</sup> For more detail please refer to Умнова-Конюхова И.А. Конституция Российской Федерации 1993 года: оценка конституционного идеала и его реализации сквозь призму мирового опыта // Lex Russica.

“constitutional ideal” and new “constitutional model,”<sup>5</sup> and many others, has not been fully studied and specified. All this indicates the need for and relevance of developing and studying the multiple problematic aspects of such a complex phenomenon as globalisation and its impact on human rights.

Nowadays, the issues of the constitutional and legal regulation of personal status, defence of human rights, elimination of poverty, global economic justice, among others, have constantly been the main focus of attention for the international community, transnational institutional structures, governmental entities, human rights organisations and the mass media. These issues have agitated people and have been regularly discussed during various academic and research events, as they are directly associated with all areas and conditions of the activities of human life. As M. Marchenko rightly states,

Studying the issues arising from the impact of globalisation and regionalization on the state, legal, social and political lives is of enormous value from both the theoretical and the practical perspective.<sup>6</sup>

The objective of this research paper is to provide an in-depth analysis of the essence of the constitutional and legal regulation of personal status, which is the primary obligation of present-day national governments with respect to preserving and protecting human values in the conditions of the worldwide globalisation processes.

Pursuant to this objective, the following central issues have been formulated for the purposes of this research:

- explore the problematic aspects of the subject matter of the constitutional and legal regulation of legal personal status in Russia;<sup>7</sup>
- examine specific aspects of the impact of the globalisation processes on the observance and defence of human rights and civil rights and freedoms in Russia;

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2018. № 11(144). С. 23–39 [Irina A. Umnova-Konukhova, *Constitution of the Russian Federation, 1993: Assessment of the Constitutional Ideal Model and its Implementation in the Context of the World's Experience*, 11(144) Lex Russica 23 (2018)].

<sup>5</sup> For more detail please refer to Хабриева Т.Я. Конституционная реформа в современном мире: монография [Talia Ia. Khabrieva, *Constitutional Reform in the Modern World: Monograph*] 36 (2017).

<sup>6</sup> Марченко М.Н. Государство и право в условиях глобализации [Mikhail N. Marchenko, *State and Law in Conditions of Globalisation*] 7 (2015).

<sup>7</sup> With no intention of fully and thoroughly analysing the concept of “legal personal status,” both due to the limited scope of this paper and taking into account somewhat different research issues, one will specify some important aspects of the impact globalisation processes have on the most essential structural elements of legal personal status in the context of defending human rights in the modern state. For more detail on the concept of the constitutional-legal status of a person please see Балаян Э.Ю. Проблемные аспекты конституционно-правового статуса личности в современном государстве // Вестник Кемеровского государственного университета. 2015. № 4(64). С. 177–181 [Ellada Iu. Balayan, *Problematic Aspects of Constitutional-Legal Status of a Person in the Modern State*, 4(64) Bulletin of Kemerovo State University 177 (2015)].

- analyse the shortcomings of the Russian Federation legislation in effect and suggest specific measures to improve it.

The conclusions and suggestions provided herein may be used to enhance the effectiveness of the activity of governmental authorities as well as local self-government bodies.

The author of this research paper has made an attempt to highlight several issues and does not purport to have found final, comprehensive solutions; she would appreciate any and all constructive feedback that not only stems from a formal interest in the discussed subject matter, but also reflects personal involvement in preserving and protecting the most fundamental human values in the modern conditions of the globalisation of constitutional law.

## **1. Materials and Methods**

The background for the methodology of the research constitutes such rigorously developed and standard-practice, key scientific methods as the dialectical cognitive method that allows analysing all phenomena and processes in their development, interrelations and interdependence, as well as general and specific scientific-scholarly methods and analysis, including those denominated concrete-historical, logically historical, system-based and comparative legal (law), among others.

The theoretical background for the research involves the works of foreign and domestic specialists in the fields of constitutional law, theory of state and law, international law and other areas of legal science. The materials of the research paper is based on examining various scientific-scholarly information sources, such as monographs, theses, papers, material from research and practical conferences, and similar. As far as the issues discussed in the paper are concerned, the author has studied and taken into account the opinions of a number of highly respected legal experts, such as G. Arutyunyan, N. Bondar, T. Vasilieva, A. Dzagharyan, A. Zakharov, V. Kartashkin, I. Kravets, E. Lukasheva, I. Lukashuk, S. Narutto, V. Nevinsky, I. Umnova-Konukhova, V. Chirkin, T. Khabrieva, B. Ebzeev, I. Brownlie, E. Engle, T.J. Farer, P.M. Kennedy, K. Möller, K. Nicolaidis, K. Ohmae, A. Peters, D. Rodrik, and others, to whom the author expresses a deep sense of gratitude.

The regulatory framework for the study was as follows: the Constitution of the Russian Federation dated 1993, other Russian laws, the constitutions and case law of other countries, judgments of the constitutional courts of a number of countries, individual judgments of the European Court of Human Rights and key international legal acts.

The structure of the research paper is related to the position of the author on the issues in question. First, the author specifies relevant issues that will be further studied in depth and in an integrated manner.

Thereafter, certain particular constitutional characteristics of the Russian state are considered in the context of globalisation's impact on them; the importance

of a state's ability and commitment to carry out an effective social policy in the challenging conditions of the modern world is especially emphasised.

The issue of the impact of globalisation on the individual person, on his or her rights and duties, and on the fundamentals of social interaction is of the highest importance for Russia particularly because until recently the Soviet literature had not recognised as relevant the issue of human rights nor the issue of the thorough constitutional and legal regulation of personal status. Moreover, exercising the right to freedom of speech and thought (criticism of authorities, in particular) was considered an illegal activity with all of the consequences that could entail.

It is supposed that the comprehensive and natural development of an individual, a state, the international community, the constitutional dimension of the interaction and interdependence between the earlier listed subjects of law will specify the importance of examining globalisation-related transformations and their impact on creating a new constitutional model.

On the basis of the above, this research paper examines the issue of the impact of globalisation on the basic law of a state, on the regulation of the most important aspects with regard to observing and protecting major human rights and civil rights and freedoms, and on the duties and guarantees for implementing common human values in the conditions of contemporary globalisation processes, as a constitutional duty of a social state, which is an indispensable prerequisite for stability in society and the state.

## 2. Discussion

### ***2.1. Processes of Globalisation and the Specific Constitutional Characteristics of the Russian State***

What is globalisation? This is the central question to be answered. There is no general consensus in the literature on how this phenomenon is definitively defined. On the whole, one may agree that globalisation is an on-going process during which political, social, economic and cultural impacts become identical across the entire worldwide community.<sup>8</sup>

While there may be differing views on globalisation, it is nonetheless an objective and natural process of development of the modern world, constitutional law and public international law. All possible aspects and contexts of this trajectory of development across the globe have been examined by experts in various scientific-scholarly fields. The opinions voiced about expectations and perspectives of globalisation have been, remain and will be different.<sup>9</sup>

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<sup>8</sup> A similar in meaning definition of "globalisation" may be found in the Cambridge Dictionary (Jan. 5, 2021), available at <https://dictionary.cambridge.org/ru/>.

<sup>9</sup> For more detail please refer to Paul M. Kennedy, *Preparing for the Twenty-First Century* (1993); Kenichi Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy* (1990); Dani Rodrik, *Has Globalization Gone Too Far?* (1997).

Globalisation processes have an enormous impact on the law as a whole and on constitutional law in particular, most notably affecting the subject of the legal status of an individual. As it is rightly stated in law books, the constitutional development of any state occurs under the multi-aspect influence of globalised processes on the national legal system.<sup>10</sup> Constitutional and legal institutions have become involved in these processes to the greatest possible extent.

In the conditions of Russia's integration into the international and European legal framework, the importance of reverse impact of global constitutionalism theory and practice on Russian national law will be considered in the context of the interrelation between national specific features and global regularities in the development and enhancement of the main principles and institutions of modern constitutionalism.<sup>11</sup>

Russian constitutional law is no exception. The constitutional dimension of the phenomena and processes that form the basis of the activities of life of an individual in the modern state comes to the forefront. Here, it should be taken into account that a state, as a key subject of law, also constitutes a principal political player. And one can hardly disagree with A. Zakharov's opinion that,

The level of impact of global factors on the national state and law depends on the exterior, formal component of state and legal institutions, and substantially involves their intrinsic and conceptual components.<sup>12</sup>

At the same time, as M. Marchenko states:

However, an institutional component shall not be ignored, since globalisation affects a state and a law both with its functional component (through the system of integrative factors), and its institutional one (through the system of institutions, engendered and cultivated by globalisation).<sup>13</sup>

The modern world, society and the individual person are experiencing changes with dramatic speed. The law, including constitutional law, under the impact of

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<sup>10</sup> For more detail please refer to Khabrieva 2017, at 6.

<sup>11</sup> *Кравец И.А. Два гаранта Конституции в российском конституционализме и концепция сильного государства // Конституционное и муниципальное право. 2014. № 1. С. 5 [Igor A. Kravets, Two Guarantors of Constitution in the Russian Constitutionalism and a Concept of a Powerful State, 1 Constitutional and Municipal Law 4, 5 (2014)].*

<sup>12</sup> *See Захаров А.В. Влияние глобализации на функции современного государства // Юридический мир. 2016. № 11. С. 47 [Alexander V. Zakharov, Impact of Globalisation on the Functions of a Modern State, 11 Juridical World 46, 47 (2016)].*

<sup>13</sup> *Марченко М.Н. Государство и право в условиях глобализации [Mikhail N. Marchenko, State and Law in Conditions of Globalisation] 21 (2015).*

intense globalisation processes, has become ever more politicised. States do whatever it takes to preserve their social, cultural and spiritual identity, and ideological independence, and retain their national sovereign rights and interests

against the background of financial and economic, geopolitical, ethno-confessional and other social contradictions. It is eventually related to the system crisis in the traditional institutions of constitutional state mechanism, including critical deficit of trust for ... the state itself, its authorities, and the enacted laws.<sup>14</sup>

Thus S. Narutto rightly specifies the negative consequences which may a priori arise due to violation of the requirements of legal workmanship:

Statutory provisions that do not meet the criteria of clarity, transparency, intelligibility, stability engender contradictory law-enforcement practices, create potentially ambiguous interpretation and arbitrary application of such, thus, leading to violating constitutional guarantees of the state and, among others, judicial, defence of rights, freedoms, and legal interests of citizens, guaranteed by the Constitution.<sup>15</sup>

These and other problems aggravate global social injustice and social inequality; they lessen the possibilities of national governments to overcome poverty; and they facilitate the lack of legitimacy of state authorities and local self-government authorities, and, eventually, of the state constitution and even the generally recognised norms of international law.

Nevertheless, the generally recognised norms and principles of international law are conceptually associated with the constituent function of the Constitution of the Russian Federation,<sup>16</sup> form an integral part of the legal system of the state, constitute the basis of legal personal status, and are a measure and a guarantee for ensuring and protecting human rights and freedoms, including those in the conditions of globalisation.

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<sup>14</sup> For more detail please refer to Бондарь Н.С., Джагарян А.А. Правосудие: ориентация на Конституцию: монография [Nikolai S. Bondar & Armen A. Dzagharyan, *Public Justice: Orientation to Constitution*] 5 (2018).

<sup>15</sup> For more detail please refer to Нарумто С.В. Определенность законодательства как гарантия прав и свобод человека и гражданина в конституционно-судебной доктрине // Lex Russica. 2018. № 10(143). С. 41 [Svetlana V. Narutto, *Definiteness of Law as a Guarantee for Human and Civil Rights and Freedoms in Constitutional-Judicial Doctrine*, 10(143) Lex Russica 40, 41 (2018)].

<sup>16</sup> See Эбзеев Б.С. Глобализация и становление транснационального конституционализма // Юридическая техника. 2017. № 11. С. 601–609 [Boris S. Ebzeev, *Globalisation and Emergence of Transnational Constitutionalism*, 11 Juridical Techniques 601 (2017)].

The Constitution of the Russian Federation proclaims the country to be a democratic state (Art. 1), acknowledging that the multi-national people of Russia<sup>17</sup> are the only holder of sovereignty and the source of power (pt. 1 of Art. 3). The prerequisites of democracy are recognition and consolidation of human rights and freedoms, true sovereignty, adherence to the principle of checks and balances in the context of exercising public authority, political diversity and pluralism, legitimacy of the Constitution and its true action.

The Constitution of the Russian Federation asserts that the people exercise their power directly and through the state authorities and local self-government authorities, namely in two forms: direct and indirect democracy.

The direct form of democracy implies that each citizen is involved in managing the state and public affairs through taking part in referendums, meetings, demonstrations and other mass events. The mechanisms and guarantees for exercising human rights are enshrined in the Constitution (Arts. 32 and 130) and in the country's federal laws.<sup>18</sup> For instance, the enacting clause of the Federal constitutional law of the Russian Federation "On the Russian Federation referendum" proclaims that,

The state guarantees the Russian Federation citizens free act and deed in the referendum of the Russian Federation, and defence of democratic principles and norms of law, which specify the right of the citizens to take part in the referendum.

In terms of global constitutionalism, the most important norm is part 5 of Article 12, declaring the provision which states that referendum issues shall not restrict or abolish generally accepted human rights and civil rights and freedoms, and constitutional guarantees of exercising such rights and freedoms.

Since the Constitution recognises that the people are the only source of power, it is therefore methodologically justified that the laws on referendums acknowledge the people as a subject that might initiate referendums. The problem is that when creating and establishing a democratic state governed by the rule of law what is critical

<sup>17</sup> Thus, in all general laws of countries with democratic systems, a formula "All power belongs to the people" gained general recognition, with minor differences in formulation. For example, Federal constitutional law of Austria (Art. 1), Constitution of Belgium (Art. 33), Constitution of the Federal Republic of Germany (cl. 2 of Art. 20), Constitution of Greece (cl. 3 of Art. 1), Constitution of Italy (Art. 1) and the respective articles of general laws of other countries. Конституции государств Европейского Союза [*Constitutions of European Union Countries*] 11, 113, 187, 245, 423 (1995).

<sup>18</sup> See Федеральный конституционный закон от 28 июня 2004 г. № 5-ФКЗ «О референдуме Российской Федерации» // Собрание законодательства РФ. 2004. № 27. Ст. 2710 [Federal Constitutional Law No. 5-FCL of 28 June 2004. On the Russian Federation Referendum, Legislation Bulletin of the Russian Federation, 2004, No. 27, Art. 2710]; Федеральный закон от 12 июня 2002 г. № 67-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации» // Собрание законодательства РФ. 2002. № 24. Ст. 2253 [Federal Law No. 67-FL of 12 June 2002. On the Main Guarantees for Voting Rights and a Right to Participate in Referendum of the Russian Federation Citizens, Legislation Bulletin of the Russian Federation, 2002, No. 24, Art. 2253].



is the degree to which the people are the holders and the source of the power that belongs to them.

Another very important constitutional form of exercising the people's sovereignty in a democratic state is representative democracy,<sup>19</sup> which implies that the people manage state affairs through free and fair elections via forming the most important and basic state institutions (president, parliament, local self-government authorities).<sup>20</sup> These authorities, as the authorised representatives of the people, within their terms of reference, adopt legal acts, through which the will of the people expressed by majority is transformed into compulsory rules of conduct, a political will.

Moreover, as per Federal Law of 6 October 2003 No. 131-FL "On the General Principles of Organizing Local Self-Government in the Russian Federation" (pt. 1 of Art. 1):

Local self-government constitutes one of the foundations of the constitutional system of the Russian Federation, is recognized, guaranteed, and performed throughout the entire Russian Federation.

Moreover, "Local self-government in the Russian Federation is a form of the people's exercising their authority ..." (pt. 2 of Art. 1).<sup>21</sup> Hence, an active and proper participation of the *residents* of municipal entities is indispensable when solving the problems of local significance. Therefore, it is quite justified to ensure that non-citizens, who permanently live in this community and have a residence permit, may have the right to participate in the election of local self-government authorities and referendums on local issues. This idea, with certain restrictions, is enshrined in Russian law.<sup>22</sup>

One more essential attribute of the Russian democratic state in the conditions of global constitutionalism is the national selection of a liberal concept of legal personal status, which implies legislative recognition and provision of natural and undeniable

<sup>19</sup> On representative democracy, for more detail please refer to Масленникова С.В. Народное представительство и права граждан в Российской Федерации [Svetlana V. Maslennikova, *Representation of People and Civil Rights in the Russian Federation*] (2001); Городецкий В.М. Пути формирования механизма народовластия на основе действующей Конституции Российской Федерации // Конституционное и муниципальное право. 2000. № 1. С. 15–21 [Victor M. Gorodetsky, *Ways of Creating a Mechanism of People's Sovereignty Based on the Effective Constitution of the Russian Federation*, 1 Constitutional and Municipal Law 15 (2000)].

<sup>20</sup> The opinion prevails in legal literature that elections are the core of democracy since through them the people deliver their mandate to their representatives, namely deputies. See Невинский В.В. Гражданин и основополагающие принципы Конституции Федеративной Республики Германии: автореф. дис. ... докт. юрид. наук [Valerii V. Nevinsky, *Citizen and Fundamental Principles of the Constitution of the Federal Republic of Germany: Thesis*] 18–19 (1994).

<sup>21</sup> Федеральный закон от 6 октября 2003 г. № 131-ФЗ «Об общих принципах организации местного самоуправления в Российской Федерации» // Собрание законодательства РФ. 2003. № 40. Ст. 3822 [Federal Law No. 131-FL of 6 October 2003. On the General Principles of Organizing Local Self-Government in the Russian Federation, *Legislation Bulletin of the Russian Federation*, 2003, No. 40, Art. 3822].

<sup>22</sup> Federal Law on the Main Guarantees for Voting Rights, *supra* note 18.

human rights and freedoms.<sup>23</sup> In the context of putting into action part 4 of Article 15 of the Constitution of the Russian Federation, the obligation of the state to recognise, observe and defend the principal human rights and freedoms enshrined in the norms of international law is acknowledged as legal.<sup>24</sup> By way of example, a norm from the International Covenant on Civil and Political rights (16 December 1966) may be cited, according to which each state-participant shall: (a) for any person whose rights and freedoms, recognised by this Covenant are infringed, provide “a required legal remedy;” even if this infringement was committed by an executive officer; (b) provide for any person in need of legal defence establishment of such a right of defence from judicial, administrative, or statutory competent authorities, or other authority, provided for by the legal system of the state, and the possibility of improving judicial defence; (c) arrange for implementing defence measures on the part of the competent authorities, in case of their availability (cl. 3 of Art. 2).<sup>25</sup>

However, application of the provisions enshrined in key international legal documents may be provided only through their detailed and specific representation in the domestic laws. In a similar manner, state authorities enter into a legal relationship and communicate with the persons living in the territory of the state and having various statuses (citizens, foreigners, non-citizens).

The provisions on human rights, enshrined in the norms of international law, find their expression primarily in the primary state law. For example, the Constitution of the Russian Federation declares the primary human rights and civil rights, freedoms and duties (Chapter 2). As in the basic international legal acts, they are enshrined in the Constitution of the Russian Federation in a system-based form that facilitates their effective use. At the same time, when improving legislation and enhancing the effectiveness of the state and municipal public institutions and public human rights organisations, it is advisable to systematise all norms according to which an individual has qualified legal assistance. For example, it is herewith suggested to develop the project of a codified act of the Russian Federation on the professional legal defence of human rights.

The meaning of the rights enshrined in the Constitution, for the state and the society, lies in the fact that it is the exercise of those rights that enables the implementation of the essential attributes of a democratic state governed by the rule of law.<sup>26</sup>

<sup>23</sup> See Подмарев А.А. Конституционное закрепление концепции статуса личности в правовых системах и семьях // Вестник РУДН. Серия «Юридические науки». 2014. № 4. С. 42 [Alexander A. Podmarev, *Constitutional Consolidation of the Concept of Personal Status in Law Systems and Families*, 4 RUDN Journal of Law 41, 42 (2014)].

<sup>24</sup> See Карташкин В.А. Международные механизмы защиты прав человека. Как подать жалобу в международные органы [Vladimir A. Kartashkin, *International Mechanisms of Protecting Human Rights. How to Make a Complaint to International Authorities*] 5 (2003).

<sup>25</sup> *Human rights: A Compilation of International Instruments* 21 (1994).

<sup>26</sup> See Ерицян А.Г. Права и свободы человека и гражданина в демократическом государстве: система, институты, юридический механизм реализации и защиты: монография [Armen G. Eritsyanyan, *Human and Civil Rights and Freedoms in a Democratic State: System, Institutions, Legal Mechanism of Implementation and Protection: Monograph*] 37 (1998).

The basic laws of most modern countries involve provisions and criteria of the documents adopted by universal and regional international organisations. It is natural that the states are keen to maximise alignment in the areas of constitutional norms and de facto reality in the country, which is possible only in conditions of the established and existing democratic system in the country.

The Constitution of the Russian Federation (Chapter 2) also proclaims the human rights and freedoms provided for by key international legal documents, and, like any democratic and law-bound state, declares (pt. 1 of Art. 17):

In the Russian Federation, human rights and civil rights and freedoms are recognized and guaranteed according to the generally accepted principles and norms of international law and pursuant to the present Constitution.

Here, the Constitution provides a number of human rights only to citizens, which are recognised as such by international law.

Therefore, it is advisable in the conditions of the contemporary globalisation when putting constitutional reforms into practice to declare the right of everyone to hold meetings peacefully and without weapons present.<sup>27</sup>

A similar controversy (between the Constitution, the law in effect<sup>28</sup> and international legal standards) arose in the Republic of Armenia prior to introducing amendments to that country's constitution.<sup>29</sup>

The way out of this difficulty is as follows: it is necessary to specify and prescribe a global constitutional methodology on human rights through recognising and guaranteeing the supremacy of the law.

At the same time, in terms of effective defence of human rights and civil rights and freedoms, not only statutory consolidation and recognition of these common human values seem to be important, but also the adequacy and legitimacy of enforcement that is applied as those rights are being provided and secured. A democratic state not merely agrees on the point of enforcement, but, on the contrary, suggests that it should be performed, as may be required by law. For example, defence of human rights and freedoms, and the prevention of crime and other infringements of law, is a primary obligation of any state.

This is shown by the content of Article 114 (cl. "e" of pt. 1) of the Constitution of the Russian Federation and the norms of the Criminal and Civil Codes of the Russian Federation.

<sup>27</sup> The norm mentioned is detailed in Федеральный закон от 19 июня 2004 г. № 54-ФЗ «О собраниях, митингах, демонстрациях, шествиях и пикетированиях» // Собрание законодательства РФ. 2004. № 25. Ст. 2485 [Federal Law No. 54-FL of 19 June 2004. On Meetings, Political Meetings, Demonstrations, Processions, and Picketing, Legislation Bulletin of the Russian Federation, 2004, No. 25, Art. 2485].

<sup>28</sup> Law of the Republic of Armenia of 28 April 2004 "On Holding Meetings, Political Meetings, Processions, and Demonstrations," Official Bulletin of the Republic of Armenia, 2004, No. 26(325).

<sup>29</sup> After introducing changes, Article 29 of the Constitution of the Republic of Armenia declares: "Everyone has the right to hold peaceful meetings without weapons."

It is considered methodologically valid to take various legal liability measures against law-breakers (federal state authorities, state authorities of the subordinate entities of the Federation, local self-government authorities, executive officers) in the event of failure to comply with the requirements of the laws, their evasion or abuse.

Thus, as per part 2 of Article 19 of the Constitution of the Russian Federation:

The state guarantees equality of human rights and civil rights and freedoms independently of gender, race, nationality, language, origin, financial and employment status, place of residence, religious beliefs, beliefs, affiliation with public associations, and other conditions. Any forms of restricting civil rights on grounds of social, race, national, language, or spiritual identity are prohibited.

In the event of failure to comply with the provisions of this constitutional norm, the indicated executive officers may, as prescribed by the Criminal Code of the Russian Federation, be brought to justice on the charge of exceeding their authority or abuse of official position (Arts. 201, 202, 285).

Therefore, human rights represent a superior value and a reference point for the modern state to be guided by. If this idea is accepted and implemented in practice, the society is characterised as stable,<sup>30</sup> otherwise tension and a threat to progressive development of the country may arise. It is important to emphasise that a global model of human rights is formed in the present-day conditions.<sup>31</sup> One might agree with the opinion of leading Russian and foreign scholars that various models (usually, three global models are specified, in conformity with the three main legal systems) differ from one another in their socio-cultural natures. The processes of convergence of these global models occur differently, do not lead to needed changes in the legal regulation of various human rights, and sometimes may involve components of antagonistic contradictions. These contradictions may be overcome through changing the essence of these legal systems as such.<sup>32</sup>

The value of overcoming these contradictions becomes clearer in terms of general regularities, from which it is evident that with no convergence and identification of the people's and the state's interests, the existence of both the society and the state is put in jeopardy, since the interests of the state are of higher priority and more important to the degree to which they affirm and protect the rights and freedoms of the society and its members. To this extent, the subject matter of the Constitution

<sup>30</sup> See Лукашева Е.А. Права человека как фактор стратегии устойчивого развития [Elena A. Lukasheva, *Human Rights as a Factor of Sustainable Development Strategy*] (2000).

<sup>31</sup> Kai Möller, *The Global Model of Constitutional Rights* 239 (2012); Чиркин В.Е. Современные глобальные модели основных прав человека: новый подход // Вестник университета им. О.Е. Кутафина (МГЮА). 2015. № 5. С. 128 [Veniamin E. Chirkin, *Modern Global Models of the Main Human Rights: A New Approach*, 5 Bulletin of Kutafin Moscow State Law University 127, 128 (2015)].

<sup>32</sup> For more detail please refer to Chirkin 2015.

of the Russian Federation proclaims that the Russian Federation rejects the idea of solving the “individual-state” issue in favour of the state, when the state deals with addressing the issues of the activities of human life, and an individual is “made happy” and loses the opportunity to realise his or her human potential to the fullest.<sup>33</sup>

The priority of the individual with respect to the state allows one to define the individual’s position and role in the global community. In the modern conditions, a democratic state regulates the behaviour of the individual only in general, and in such a way as not to infringe human rights, but to sustain and protect the interests of the members of society and their continuous and free development.

That the individual person, the state and society co-exist to provide natural development for all, clearly does not mean that human rights are absolute and cannot be limited. Basically, it is impossible to imagine real freedom of a person with no harmony between the interests of the person and the interests of society and the state.<sup>34</sup> This is reflected not only in the national legislation, but in key international legal documents. In particular, the Universal Declaration of Human Rights declares the potential restriction of human rights to “ensure ... common wealth in a democratic society” (cl. 2 of Art. 29).

The Constitution of the Russian Federation, in accordance with the norms of international law in whole and in detail, does not contain constitutional limitations on restricting human rights in general nor in emergency situations. Thus, the Constitution (pt. 3 of Art. 55) states that,

Human and civil rights and freedoms may be limited by the federal law only to that extent, to which it is needed for the purposes of protecting the foundations of the constitutional system, morality, health, rights, and legal interests of other individuals, country’s defence support and safety of a state.

Being in accord with the idea of such a provision,<sup>35</sup> it should be noted at the same time that a required restriction of any right specified in the constitutional norm must always be justified.

Along with that, the recognition of the priority of the rights and freedoms of an individual will violate one of the most essential and fundamental principles of democracy: exercising an individual’s rights and freedoms must not infringe the rights of other persons. Therefore, it is noteworthy that in the constitutions of some

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<sup>33</sup> Баглай М.В. Конституционное право Российской Федерации [Marat V. Baglai, *Constitutional Law of the Russian Federation*] 100 (2001).

<sup>34</sup> See Права человека и процессы глобализации современного мира [Human Rights and Globalisation Processes in the Modern World] 59–60 (Elena A. Lukasheva ed., 2007).

<sup>35</sup> See Лебедев А.В. Политические права и свободы граждан Российской Федерации (конституционно-правовое исследование): автореф. дис. ... канд. юрид. наук [Anton V. Lebedev, *Political Rights and Freedoms of the Russian Federation Citizens (Constitutional-Legal Research Study): Thesis*] 34–35 (2003).

countries certain norms are enshrined that prevent a legislative authority of a country from adopting laws the purpose of which is to restrict human rights.<sup>36</sup>

Naturally, restrictions on human rights and civil rights and freedoms are not related to the entire complex of rights and freedoms included in an individual legal status.

The subject matter here will also be in compliance with certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, since it enables the temporary restriction of some rights, taking into account the extent of applying restrictions with respect to the rights provided for by the Convention (Art. 18), and departing from the obligations in conditions of emergency situations<sup>37</sup> (Art. 15).

Additionally, when considering Article 56 of the Constitution of the Russian Federation in detail, federal law will take into account the provisions of the Convention. The point is that, based on Article 15 of the Convention, in emergency situations a state is enabled to depart from the obligations provided for by the Convention. However, any restriction as a result of such departure should be based on legitimacy and necessity and, as much as possible, be short-term, and not cause any harm to the obligations of the state with respect to human rights and freedoms undertaken under other international agreements.

Along with that, for a quite in-depth understanding of the purpose and essence of Article 15 of the Convention, it is essential to become familiar with the General Comment No. 29 of the Human Rights Committee on article 4 of the Covenant on Civil and Political Rights,<sup>38</sup> where it is emphasised that the remedies of departing from the Covenant provisions must be exceptional and temporary. Furthermore, prior to referring to article 4 of the Covenant, a state must adhere to two fundamental principles: the emergency situation has to pose a threat to the nation's life, and a state-participant must officially declare a state of emergency.<sup>39</sup>

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<sup>36</sup> Thus, according to Article 18 of the Constitution of the Federal Republic of Germany, everyone who exercises the freedom of expressing opinions, in particular, the freedom of the press (pt. 1 of Art. 5), teaching freedom (pt. 3 of Art. 5), freedom of meetings (Art. 8), freedom of association, postal secrecy, secrecy of post, telegraph and telephone messages (Art. 9), ownership rights, or the right of asylum to fight against the foundations of a free democratic system, loses these basic rights. The fact and the scope of forfeiting these rights shall be defined by the Federal Constitutional Court.

<sup>37</sup> Thus, the European Convention on Human Rights authorises countries-participants in certain circumstances to limit certain rights guaranteed by this international legal document. First, the states may, based on Article 57 of the Convention, when signing it or depositing its instrument of ratification, enter a reservation to any provision of the Convention. Second, if there are grounds, listed in the second clauses of Articles 8–11 of the Convention, the state might interfere in exercising the rights guaranteed by it and limit them. Third, states are authorised, in exceptional cases, to withdraw from the obligations undertaken and limit most (provided for by the Convention) rights, the exercise of which must be in strict compliance with the order prescribed by the Convention.

<sup>38</sup> See General Comment No. 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001.

<sup>39</sup> Thus, observance of the provisions of the European Convention on Human Rights is mostly guaranteed owing to the international court that functions within the system of the Council of Europe. The binding nature of its decisions forces the countries-participants of the Convention to undertake their

One of the basic principles of establishing a democratic state, the principle of the separation of powers, plays an important role in respect of the issue of ensuring the protection of human rights in the conditions of globalisation.

The principle implies that for the effective assurance and defence of human rights and civil rights and freedoms, various functions of state authority (power) are fulfilled by different government bodies, which are independent, balanced owing to legal provisions and mutually restrain each other.<sup>40</sup> As a consequence, the potential threat of centralising power is eliminated, and the prerequisites needed to observe and ensure the guaranteed protection of human rights and civil rights and freedoms are created. Here, a step-by-step implementation of the principle of the separation of powers also guarantees the independence of the judicial power.

The constitutional system of Russia may be characterised by a number of basic attributes: the people's sovereignty and the existence of the state as an organisation of all the people; a duty to ensure the protection of the individual, their rights and freedoms; democracy, as a foundation of the political system (regime) and mode of living in Russia; ideological variety and political pluralism; freedom of economic activity and a variety of ownership forms, etc. However, the problem is that to establish a constitutional system (and a global constitutionalism as well), it is not yet sufficient to have a Constitution in a state governed by the rule of law.<sup>41</sup> How this constitutional system behaves in the life of the community is important, so too is the extent to which the principles enshrined in the Constitution are implemented and the people hold the power, which belongs to them, how human rights and freedoms are guaranteed and protected in reality and how the international and legal obligations undertaken by the state are satisfied.

Each state may fully provide and protect the rights and freedoms of its citizens and each person in its territory only when sovereignty is an essential attribute of the state. Hence, part 1 of Article 4 of the Constitution of the Russian Federation declares: "Sovereignty of the Russian Federation extends to its entire territory."<sup>42</sup> This means

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international obligations on protecting human rights more seriously and in a more responsible manner. For more details, please refer to judicial judgments made: with regard to the case *Lawless v. Ireland* (Judgment of 1 July 1961); the case *Ireland v. United Kingdom* (Judgment of 18 January 1978); the case *Aksoy v. Turkey* (Judgment of 18 December 1996); the case *Jersild v. Denmark* (Judgment of 23 September 1994); and the case *Demir and Others v. Turkey* (Judgment of 23 September 1998).

<sup>40</sup> The "Founding Fathers" of the Constitution of the United States considered the principle of the separation of powers to be a principal guarantee, which is in opposition to the seizure of power and specifies a prerequisite for protecting human rights. See, e.g., Алибастрова И.А. Основы американского конституционализма [Irina A. Alibastrova, *Fundamental Concepts of American Constitutionalism*] 83 (2001).

<sup>41</sup> For more detail please refer to Gagik G. Arutyunyan, *From Constitution to Constitutionalism* 41–61 (2004) (in the Armenian language).

<sup>42</sup> Конституция Российской Федерации (принята всенародным голосованием 12 декабря 1993 г.) (с учетом поправок, внесенных Законами РФ о поправках к Конституции РФ от 30 декабря 2008 г. № 6-ФКЗ, от 30 декабря 2008 г. № 7-ФКЗ, от 5 февраля 2014 г. № 2-ФКЗ, от 21 июля 2014 г. № 11-ФКЗ) // Собрание законодательства РФ. 2014. № 31. Ст. 4398 [Constitution of the Russian



that the Russian Federation is capable of expressing the will of its citizens and provide and protect the rights and freedoms of the persons under its jurisdiction.

Sovereignty is the supremacy of the state's authority, the independence of the state in its own territory and in relations with other states.

The legal nature of state sovereignty is manifested in the supremacy of the state's authority, its oneness and independence (inwardly and outwardly). As a sovereign state, the Russian Federation has an international legal personality, that is to say, it is a full-fledged member of the present-day international community<sup>43</sup> (here, what is involved is a global political system, the elements of which are states<sup>44</sup>), it may freely and independently become a member of international organisations and unions, it may sign or join international treaties and agreements, and individually solve problems of war and peace, and so on.

The issue of the adequate protection of human rights involves not only the essential role of the principle of state sovereignty, but also the central principle of modern international law: non-interference in the affairs of a state. Interference in the affairs of a state<sup>45</sup> is qualified

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Federation (adopted by a nationwide vote on 12 December 1993) (considering amendments, introduced by the RF Laws on amendments to the RF Constitution of 30 December 2008 No. 6-FCL, of 30 December 2008 No. 7-FCL, of 5 February 2014 No. 2-FCL, of 21 July 2014 No. 11-FCL), Legislation Bulletin of the Russian Federation, 2014, No. 31, Art. 4398].

<sup>43</sup> The term "international community" began to be used after the adoption of the U.N. Charter. Thus, U.S. President H. Truman in 1946 declared: "Progress in science, communications, technology united the world into one community, where economic and political health of each member directly depends on economic and political health of every other member." *Cited by Community, Diversity and New World Order: Essays in Honor of Inis L. Claude, Jr.* 10 (1994).

<sup>44</sup> See Лукашук И.И. Глобализация, государство, право, XXI век [Igor I. Lukashuk, *Globalisation, State, Law, 21<sup>st</sup> Century*] 57–61 (2000).

<sup>45</sup> Thus, only humanitarian interference is considered an exception, when a state, to protect the rights and property of its citizens (sometimes, national and other minorities) who are in the territory of another state, may use force, including initiating military action. For more detail please refer to Гроций Г. О праве войны и мира. Три книги, в которых объясняются естественное право и право народов, а также принципы публичного права [Hugo Grotius, *On the Law of War and Peace. Three Books That Explain Natural Law and Law of People, and the Principles of Public Law*] 562–63 (1956); Карташкин В.А. Актуальные проблемы теории и практики международного гуманитарного права // Вестник МГУ. Серия «Право». 2000. № 3. С. 112 [Vladimir A. Kartashkin, *Relevant Problems in the Theory and Practice of International Humanitarian Law*, 3 Bulletin of Moscow State University. Series "Law" 112 (2000)]; Карташкин В.А. Международная безопасность и права человека [Vladimir A. Kartashkin, *International Security and Human Rights*] 61 (1988); Лукашук И.И. Военная доктрина правового государства // Международная жизнь. 1994. № 3. С. 88 [Igor I. Lukashuk, *Military Doctrine of a Law-Governed State*, 3 *International Life* 88 (1994)]; Шамсон Р.Т. Права человека и внутренняя компетенция государства // Московский журнал международного права. 2003. № 2. С. 77 [Riiaad T. Shamson, *Human Rights and Domestic Jurisdiction of a State*, 2 *Moscow Journal of International Law* 77 (2003)]; Черниченко С.В. Теория международного права. Т. 2 [Stanislav V. Chernichenko, *2 Theory of International Law*] 449–76 (1999); Права человека [Human Rights] 459–61 (Elena A. Lukasheva ed., 2003); Vladimir Kartashkin, *Common Global Home in Human Rights for the 21<sup>st</sup> Century, Foundation for Responsible Hope: A US-Post Soviet Dialogue* 223 (Peter Juviler & Bertram Gross eds., 2000); Vladimir Kartashkin, *Human Rights and Humanitarian Intervention in Law and Force in the New International Order* 202 (Lori Fisler Damrosch & David J. Scheffer eds., 1991); Tom J. Farer, *An Inquiry into the Legitimacy of Humanitarian Intervention in Id.* at 185; Ian Brownlie, *International Law and the Use of Force by States* 339–40 (1963); *Id.* at 113–142; Kalypto Nicolaidis, *Germany as Europe: How the Constitutional Court Unwittingly Embraced EU Democracy: A Comment on Franz Mayer*, 9(3–4) *Int'l J. Const. L.* 786 (2011).



as a gross violation of sovereignty.<sup>46</sup> However, in the conditions of globalisation there is a need to observe the processes of changing the attitude towards the “sovereignty” category both in national constitutional law and in international public law. The changes concern the personal legal status institution and, mostly, human rights.<sup>47</sup> It should be rightly noted that,

In the XXI century, defence of population and respect for human rights are the principal components of sovereignty and statesmanship, and, hence, sovereignty implies compliance with the obligations towards its own people.<sup>48</sup>

This idea is enshrined in international legal acts.<sup>49</sup>

## **2.2. Providing a Decent Life as a Principal Duty of the Modern Social State**

Radical changes occurring in Russia over the past decade have increasingly concentrated public attention on the issue of priority of common human values, involving, first, undeniable human rights and civil rights and freedoms.

The social characteristic of a state<sup>50</sup> was first reflected in the constitutions of a number of Western European countries (Italy, France, the Federal Republic of Germany) which were adopted after II World War.

Today, the idea of the social state, based on socially oriented politics, economics and law of the modern state, has become widespread and is enshrined in a constitution, and is one of the most essential characteristics of a democratic society.

<sup>46</sup> For more detail please refer to Волкодав В.Я. Соотношение прав человека и суверенитета государства (2000) [V.Ia. Volkodav, *Relationship Between Human Rights and State Sovereignty* (2000)] (Jan. 5, 2021), available at [http://www.mstu.edu.ru/science/conferences/11ntk/materials/section10/section10\\_6.html](http://www.mstu.edu.ru/science/conferences/11ntk/materials/section10/section10_6.html).

<sup>47</sup> For more detail please refer to Васильева Т.А. Концепция суверенитета в условиях глобализации и европейской интеграции // Конституционное и муниципальное право. 2016. № 2. С. 7–9 [Tatiana A. Vasilieva, *A Concept of Sovereignty in the Conditions of Globalisation and European Integration*, 2 Constitutional and Municipal Law 7 (2016)]; Eric Engle, *The Transformation of the International Legal System: The Post-Westphalian Legal Order*, 23(23) Quinnipiac L. Rev. 23 (2004).

<sup>48</sup> Report of the Secretary-General “Undertaking a Duty to Protect,” United Nations General Assembly, 63<sup>rd</sup> Session (Jan. 5, 2021), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/206/12/PDF/N0920612.pdf>.

<sup>49</sup> The concept of “responsibility to protect” was first formulated in clauses 138–140 of the Final document of the World Summit dated 2005 and approved in clause 4 of Resolution 1674 (2006) of the U.N. Security Council.

<sup>50</sup> The concept “social state” came into common use after 1949: it is during that period that the term “sozialer Rechtsstaat” was included in the General Law of the Federal Republic of Germany, which is translated word-for-word from German as “social law-governed state.” The word combinations “welfare state” and “the Welfare State” (translation of the English term) have approximately the same meaning. Лепихов М.И. Социальное государство и правовое регулирование социальной защиты населения // Электронная версия журнала «Право и жизнь». 2000. № 31 [Mikhail I. Lepikhov, *Social State and Legal Regulation of Social Protection of the Population*, 31 Online version of “Law and Life” (2000)].

Along with this, considerable efforts are required from the state and community to implement in practical ways the ideas and principles of the modern state enshrined in the constitution.

It may be inferred from the legal literature that the social state is a state that focuses on social fairness, wealth and the social security of its citizens. It is intended to create conditions in the country that ensure a decent life for everyone.

This definition implies that the role and the value of a state in the area of exercising and ensuring social human rights are rather high. Here, it is about the purpose of a social state, which is, actually, a programme for ensuring and constantly improving a satisfactory level of the social status of a person and a citizen. The major part of the programme will contain the directions and principles of the corresponding economic and social policy of the state, which imply the system of constitutional guarantees and freedoms of an individual and rigorous fulfilment of the respective obligations of the state towards the people. Based on this, the modern social state will not only form the system of these guarantees, but also take on the role of the main guarantor of its declared constitutional rights and freedoms. Here, the question arises as to whether these can become the foundation for exercising major human rights when an individual applies to a court with a complaint to the state authorities.<sup>51</sup>

In its Constitution, Russia, as a social state, will first declare a long list of social civil rights, including the right to protect family, motherhood and childhood (Art. 38); old-age welfare, provision in case of disease, physical disability, loss of the breadwinner, to raise children, and the rights in other cases provided for by the law (pt. 1 of Art. 39); the right to housing (Art. 40); the right to health protection and medical assistance (Art. 41); and the right to education (Art. 43) and other social support guarantees.

However, the constitutional consolidation of social human rights and civil rights is separate from their implementation. To put social rights into practice, it is necessary to create economic, political, social and other conditions for their implementation. Here,

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<sup>51</sup> There are such social guarantees the implementation of which enables everyone to exercise and defend their rights and freedoms. In particular, this is a potential free judicial defence for persons who have no sufficient means of living. This conclusion is confirmed by the decision made by the European Court of Human Rights (*Airey v. Ireland*, Judgment of 9 October 1979) "On the case of husband's beating." Thus, Ioanna Airey came from a very modest family. She did not share a joint household with her husband at the time he was convicted of violence against her. However, since the fact that the two were married suggested that they should share a joint household, Mrs. Airey could not prevent her husband from coming back. Her efforts to register by a court order the fact of separate residences did not produce any positive results, since the application for divorce could have been submitted only to the Superior Court of Dublin, and with no lawyer's support she would not succeed. In this case, the Court adhered to the position that, according to Article 6 of the European Convention on Human Rights, the state was obliged not only to provide for the potential judicial defence of Mrs. Airey's rights, but to help in eliminating the reasons (poverty, in this case) that hampered her in exercising this right. Thus, Ireland was recognised as the country infringing the Convention for failure to effectively protect in court a person with no sufficient means of living. For more detail please refer to *Европейский суд по правам человека: Избранные решения: в 2 т. Т. 1* [1 *European Court of Human Rights: Selected Cases*] 271–87 (Vladimir A. Tumanov ed., 2001).

the obligation of a social state to create economic prerequisites is an indispensable condition for implementing any human rights and civil rights.<sup>52</sup> At the same time, social human rights differ from the civil (personal) and political rights in terms of the role and value of a state, when it comes to their assurance and protection in a general sense. Personal and political human rights are not awarded by a state; they are given to an individual by birth. The state ensures their implementation and refrains from interference.<sup>53</sup>

Social rights have a different nature. Their concept and practical implementation throughout the entire system of human rights are more vulnerable and require the permanent and goal-oriented concern of the state. Therefore, the attribute “social state” enshrined in the Constitution of the Russian Federation (Art. 7) is not a formal norm, it implies a real determination to creating respective structures, which are based on the law, that are aimed at providing a decent life for each citizen. Hence, to put the norms, enshrined in the Constitution, into practice, Russia is trying to properly regulate its activity and gradually transition the satisfaction of economic and social needs of its citizens on to a legal platform. This is being implemented by increasing minimum wages and pensions, carrying out federal programmes and projects for overcoming poverty, increasing the national birth rate, and other measures.

Over the last few years, legislation has actively been formed which regulates complex and various issues of the social protection of multiple population groups. Yet, there is no harmony between the requirements of the norms of the adopted legal acts and the true situation of the people, although there is a stable tendency for effectively solving many social and economic problems and fulfilling the social functions of the state.

In spite of the enormous efforts of the state to ensure implementation of the social and economic rights of the individual, there are still many unemployed people<sup>54</sup>

<sup>52</sup> See Захаров А.В. Влияние глобализации на функции современного государства // Юридический мир. 2016. № 11. С. 46–48 [Alexander V. Zakharov, *Impact of Globalisation on the Functions of a Modern State*, 11 *Juridical World* 46 (2016)]; Lebedev 2003, at 16; Путило Н.В. Социальные права граждан и законодательство // Журнал российского права. 1998. № 8. С. 124–125 [Natalia V. Putilo, *Social Rights of Citizens and Laws*, 8 *Russian Law Journal* 124 (1998)]; Казанцев В. Международный стандарт: труд гарантия достойного существования // Российская юстиция. 2000. № 3. С. 35–37 [V. Kazantsev, *International Standard: Work – a Guarantee of Decent Life*, 3 *Russian Justice* 35 (2000)].

<sup>53</sup> For more detail please refer to Иваненко В.А. Социальные права человека и их закрепление в конституциях государств – участников Содружества независимых государств: автореф. дис. ... докт. юрид. наук [V.A. Ivanenko, *Social Human Rights and Their Consolidation in the Constitutions of States – CIS Participants: Thesis*] 12 (2000).

<sup>54</sup> Thus, based on the results of the study performed in January 2019, the size of the workforce in Russia was 74.9 million people, or 51% of the total population of the country, including 71.2 million people who were involved in the economy, and 3.7 million people with no occupation, but who were actively looking for work (according to the methodology of the International Labour Organization, they are classified as unemployed). In 2018, out of the total workforce, there were 31.9 million, or 45.8%, regular employees (not taking into account part-time workers) who were not self-employed entrepreneurs. On conditions of spare-time work and with civil law contracts, another 1.3 million people were involved in

and, as a result, many people without means. While in June 2008 the number of Russian citizens with unemployed status was 1,331,500,<sup>55</sup> in June 2018 this number was 3,543,000.<sup>56</sup>

At the same time, poverty in Russia has various specific features: attributes due to territory, age and gender, seasons, number of family members, level of education, availability of more vulnerable groups, and other circumstances. In particular, as per the data from the Federal Labour and Employment Agency, the number of unemployed people in Russia registered in the state institutions of the Agency in 2017 was 776.0thsd.: the number of unemployed women was 35034thsd.; for men the number was 37108thsd.<sup>57</sup>

It should not go unnoticed that there are concerns about the fact that, compared to 2000, the number of unemployed people with higher education increased by more than 7% (from 13.3% to 20.6%).<sup>58</sup>

Simultaneously, by the amount of state-provided funding for education Russia has considerably reduced the gap with countries with a higher standard of living. Thus, according to the data of the Federal Treasury, in 2017 the expenditures for education amounted to 17.1% (in 2007, 23.6%) of all the expenditures of the Russian Federation's consolidated budget for social and cultural events for that year. Furthermore, in 2017 the expenditures for applied research in the area of national economics in Russia amounted to 0.41% of GDP (0.2 % in 2007<sup>59</sup>). For comparison, it should be noted that as recently as 2000, the worldwide average GDP provided to education was 3.4% (0.54% in 2007); for countries with low and average standards

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work in these organisations (equivalent to full employment). The number of working positions, replaced by payroll workers, part-time workers or persons who performed work under civil legal agreements in organisations (with no self-employed entrepreneurs), in 2018 amounted to 33.2 million, and this was more than in 2017 by 459,000, or 1.4%. In 2018, the specific weight of working positions of external part-workers in the total number of the replaced working positions in organisations was 1.6%; of the people who worked under civil law contracts it was 2.5%. See Официальный сайт Федеральной службы государственной статистики [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/wps/wcm/connect/rosstat\\_main/rosstat/ru/statistics/wages/labour\\_force/#](http://www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/wages/labour_force/#).

<sup>55</sup> See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/scripts/db\\_inet/dbinet.cgi](http://www.gks.ru/scripts/db_inet/dbinet.cgi).

<sup>56</sup> See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/bgd/free/B04\\_03/IssWWW.exe/Stg/d01/165.htm](http://www.gks.ru/bgd/free/B04_03/IssWWW.exe/Stg/d01/165.htm).

<sup>57</sup> See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/bgd/regl/b18\\_13/Main.htm](http://www.gks.ru/bgd/regl/b18_13/Main.htm).

<sup>58</sup> *Id.*

<sup>59</sup> See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/bgd/regl/b08\\_11/IssWWW.exe/Stg/d03/23-01.htm](http://www.gks.ru/bgd/regl/b08_11/IssWWW.exe/Stg/d03/23-01.htm).

of living 3.0% (0.47% in 2007); for the countries of Europe and Central Asia 5.0% (0.92% in 2007); and for developed countries 5.0 (0.91% in 2007).<sup>60</sup>

At the same time, over the past several years social and demographic parameters of Russia show that the number of people born in the country,<sup>61</sup> the students of general education institutions,<sup>62</sup> the number of hospital beds<sup>63</sup> and the number of doctors<sup>64</sup> have all increased.

In addition to all of the issues described, there are others in the sphere of Russian Federation social policy which, in the conditions of intense competition for work, resources, material wealth and other assets, need to be urgently resolved. It follows from the constitutional obligation of the Russian state (Art. 7) that the state should provide the individual with a decent life and freedom for development.

### Conclusion

Intense globalisation processes make constitutional rights ever more politicised. States are doing everything possible to preserve their social, cultural and spiritual identities, their ideological independence, and to protect their national-sovereign rights and interests.

Countries with different levels of economic development and different historical traditions, cultural origins and legal systems have different concepts on human rights, freedoms, duties and guarantees and implement them in practice in different ways. All the same, human rights and freedoms as an essential characteristic of the modern world cannot be under the power of undemocratic regimes. Equal attention must

<sup>60</sup> See *Higher Education in Developing Countries: Peril and Promise* 119, 123 (2000).

<sup>61</sup> Hence, it should be noted that in recent years in the Russian Federation there has been a tendency towards an increase in the number of births. The number of children born in 2000 was 1,266,800, while in 2017 the number was 1,690,307. The increase over this period was 423,507. Unfortunately, there was no natural increase; on the contrary, there was a natural loss (–0.9). See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/bgd/regl/b18\\_13/Main.htm](http://www.gks.ru/bgd/regl/b18_13/Main.htm).

<sup>62</sup> Thus, as per the data of the Federal State Statistics Service, in 2017 the number of students at full-time general educational institutions in the Russian Federation was 15,705,900.

<sup>63</sup> From 1990 onwards, the number of hospital beds has constantly decreased. In particular, in 1995 the number of hospital beds in Russia was 1,855,500, while in 2007 the number was 1,522,100; (Jan. 5, 2021), available at [http://www.gks.ru/free\\_doc/2008/zdrav/82.htm](http://www.gks.ru/free_doc/2008/zdrav/82.htm). In 2017 the number of hospital beds was 1,182,700. See Официальный сайт Федеральной службы государственной статистики Российской Федерации [Official website of the Federal State Statistics Service of the Russian Federation] (Jan. 5, 2021), available at [http://www.gks.ru/bgd/regl/b18\\_13/Main.htm](http://www.gks.ru/bgd/regl/b18_13/Main.htm).

<sup>64</sup> Thus, the number of doctors in Russia in all specialties in 2000 was 680,200; in 2005 – 690,300; in 2006 – 702,200; in 2007 – 707,300; in 2017 – 697,100. Availability of doctors in Russia per 10,000 persons in 2007 was 49.8 (in 2017 – 47.5); availability of nursing staff per 10,000 persons in 2007 – 108.6 (in 2017 – 103.8). See *Id.*

be given to rights and freedoms, on the one hand, and to duties and responsibilities, on the other. This is a balanced and effective approach to holding a cross-cultural global dialogue. The moral power of the legal protection of conscience implies its integrated appeal to respect personal dignity, rights and freedoms as opposed to the authoritative power of a state.

The rights, freedoms and duties of a person and a citizen serve as an indispensable and essential attribute of the modern democratic state governed by the rule of law. Considering the essence of the mission of the modern constitutional state in terms of common human values, it may be supposed that legal personal status acquires its own and independent legal meaning and potential, namely it becomes a foundation and a criterion for the normal functioning of a state. In other words, human rights and civil rights and freedoms constitute the basis and objective of the existence of a state governed by the rule of law. In terms of protecting common human values, such a state may be characterised as the embodiment of the state authority based on the faith and trust of the citizens.

In the complex conditions of the contemporary globalisation processes, for the purposes of a social state it is necessary to create a stable and developing economy, design effective social programmes, organise their continuous financing (through, in particular, promoting charity, overcoming poverty, developing education, science and culture), provide for reasonable state, regional and local budgets, and a tax system, take an active part in the process of pricing, approach each problem in terms of law and morals,<sup>65</sup> and cultivate a proper attitude towards globalisation and other changes that are occurring in the international community.

In the conditions of modern globalisation in Russia, the defence of human rights and civil rights and freedoms is a direction that requires vital and urgent response, since the state, which proclaims itself as being democratic, governed by the rule of law and social, must provide a decent life for individual persons, their free and continuous development, personal inviolability, and the supremacy of law and defence of human rights.

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<sup>65</sup> The capabilities of a state in undertaking social reforms are limited. Some social problems are rather too complex to be solved through the law, and others are rather subtle and intangible, while others still, in most cases, depend on certain moral reasons. Новгородцев П.И. Кризис современного правосознания // Антология мировой правовой мысли. Т. V: Россия, конец XIX–XX в. [Pavel I. Novgorodtsev, *Crisis in the Modern Legal Consciousness* in 5 *Anthology of the World Legal Thought*] 341 (1999).

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