

Human Rights Functions of Lawyers and Notaries as Civil Society Institutions in Russian Federation

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The urgency of the stated in the paper topic is conditioned by the fact that human rights in the Russian Federation is currently receiving increasing development not only in the framework of various public organizations, but also in the most important civilian institutions, acting in the interests of society as a whole, as the lawyers and notaries. The purpose of the article is to demonstrate the evolution of the human rights functions of lawyers and notaries, their integration into civil society. The present work is based on historical and comparative research methods. **Results:** The study finds that, in spite of the historical attraction to absolutism now in the Russian Federation all conditions has been created for the development of all sorts of institutions of civil society; human rights functions of lawyers and notaries play an important role in protecting the rights and freedoms of individual citizens in the face of the state. The results obtained allow us to determine the role of lawyers and notaries in the development of civil society in Russia, to refute the view of the lack of interest of the modern Russian state in the development of civil rights and freedoms, to draw a conclusion about the need develop for Russia its own standards of human rights activities, based on multi-ethnicity and multiculturalism Russian society. The present work is of interest to Russian and foreign scholars, human rights activists, lawyers, students of public relations in the Russian Federation and it promote a deeper understanding of the role of lawyers and notaries in the development of civil society.

KEYWORDS

Advocacy, notaries, civil society, the protection of rights

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Introduction

The origin of human rights activities in Russia originates simultaneously with the penetration of liberal ideas of Boden, Hobbes, Grotius, Lock, Pufendorf in the era of the reforms of Peter I (Mityureva, 2015). By the middle of the XIX century it becomes clear that Russia needs a deeper change, further economic growth, and thus the fate of the autocracy directly depends on reforms that must inevitably give rise to new rights and

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freedoms of citizens. In this case, it appears that the restriction (restraint) of the autocracy, as a consequence of the reform, at that time, was not perceived seriously. Meanwhile, the main and significant reform of Alexander II - the abolition of serfdom was the basis of civil society's origin and inevitably led to further reforms, among which a special place is occupied by the judicial reform of 1864 (Isaev, 2014).

Proclaimed and implemented principles of judicial reform - publicity of proceedings; oral and adversarial nature of proceedings; the right to protection in court in conjunction with other principles made the judicial system of tsarist Russia one of the most advanced at that time, and at the same time raised to an unprecedented level the human rights activities. Forensic speech of barristers P.A. Alexandrov, F.N. Plevako, V.D. Spasovich, A.I. Urusov still serve imperishable examples of judicial rhetoric, and their value is not limited to the interests of the accused, they were listened, read and analyzed by all educated Russia, therefore, their influence on the formation of civil society in general cannot be overestimated (Judicial speech of known Russian lawyers, 2015).

Indicative was the trial of Vera Zasulich in 1878, her justification by the jury was inconsistently perceived by the public and had a wide resonance in the US and Europe, giving rise to a heated debate about human rights in general, and how to protect their borders. At the same time the ideas of protection of individual rights, which were largely identified with the struggle against the autocracy often, began to get exaggerated form, in fact, becoming a terrorist activity, to justify jurors' legal profession at the time, of course, had nothing to do.

It is noteworthy that with the establishment of Soviet power by the first decree of the court number 1 dated November 24, 1917 all judicial institutions existed previously were abolished, as well as institutions of the judicial investigation, the prosecutor's supervision and the legal profession, sworn legal profession ceased to exist, replaced by revolutionary expediency. Nevertheless, the legal profession even though was not fit fully into the model of the early Soviet state, but there was needed by it, did not cease to exist and continued to serve to protect citizens in the courts, fulfilling legal aid as a whole, often found itself under threat of violence. Soviet power initially treated unkindly to lawyers, often guided by the words of V.I. Lenin expressed it long before the revolution: "... lawyers need to take a rod of iron, put in a state of siege ... to be afraid and do not believe them."

Stalinist era also did not bring anything positive neither for advocacy nor for human rights activities in general, because about the possibility to fully exercise protection on became traditional at that time the political processes could be out of the question, moreover, that virtually in all the cases the confessions were "beaten out" and the majority of the trials were of either closed or exemplary character. In addition, the Criminal Code of the RUFSSR, adopted in 1926, contained the article. 58_10. "Propaganda or agitation, containing a call for the overthrow, subversion or weakening of Soviet authority or the commission of certain counter-revolutionary crimes", i.e. for their speech for the defense lawyers could actually lose their freedom.

Even during the Khrushchev thaw state gave to the lawyers only the role of one of the builders of socialism, but not human rights' defender. In his speech at the 6th session of the Supreme Soviet of the USSR in 1957, N.S. Khrushchev openly called for lawyers to help in strengthening of socialist legality and justice.

During the so-called developed socialism 1964-1985 human rights activity in Russia is largely was identified by the power with dissidence, advocacy, in turn, came to the defense of dissidents that sometimes turn into harassment of lawyers themselves working on dissident cases.

Since the mid of the 19th century in parallel with the legal profession in Russia notary was developed. One of the main functions of notaries is also the protection of the rights and legitimate interests of participants in civil commerce and economic relations, while it is inherent in this body, and has historically developed along with notaries since its inception. (*Fundamentals of RF legislation on notaries, 2016*) An important document establishing notary as a human rights institution of civil society became Interim provision on the notary part, approved in April 14, 1866 by Emperor Alexander II. Changes in the political and economic system in Russia in 1917 led to a radical change in this institution. First, it ceased to exist, and then from 1921 to 1993, was developed as a public authority, carrying out notarial acts. The notary was an ordinary employee and received wages, virtually independent of the results of his work. The work was largely purely mechanical, related to verification of the correctness of filling in forms approved contracts, powers of attorney, declarations, and it was low paid.

The era of perestroika and the follow-up course to a market economy in the 90s of the last century marked a new stage of development of the human rights movement, professionalization was growing and specialization of human rights groups, their number has increased dramatically, the human rights movement began to operate openly and freely. Improving of the state policy in the field of security and protection of the rights and freedoms of man and citizen, as well as promotion to the development of civil society was reflected in the transformation by Presidential Decree of RF of V.V. Putin Council under the President of the Russian Federation for the Promotion of Civil Society Institutions and Human Rights Council under the President of the Russian Federation for the Development of Civil Society and Human Rights, which has been successfully operating since 2011, members of the Council of which are the leading Russian human rights activists, including lawyers and managers of legal practices (Presidential Decree, 2016).

Methodological framework

The basis of the research is the historical and comparative methods.

The principle of historicism means considering of every phenomenon in its development, in particular in the origin and formation. Historicism as a way of thinking about the past, present and likely future needs to look for the roots of the phenomena in the past; to understand that between them (events) there is a causal connection, continuity, and each phenomenon should be assessed in terms of its historical features and capabilities. As a result on this or that problem one can look as something integral and interrelated, and integrity enables a deeper understanding of the individual processes. Taking into account the fact that the legal profession and notary were born in Russia at the same time, the historical method of research is the most applicable. In turn, the comparison - is a logical technique required in all cognitive activities: at its various stages and levels, regardless of its subject. The need for the comparative method usually arises when comparing the complex objects and phenomena, which are described by a large set of widely varying characteristics. With the help of comparative method it is possible to assess the role of lawyers and notaries both individually and collectively in the development of civil society in Russia.

Results

A large number of lawyers in general, lawyers and notaries in particular among human rights defenders - not an accidental phenomenon, since the state apparatus's pressure restriction on the individual citizen in a democratic society is only possible within the legal framework.

According to Art. 1 Fundamentals of RF legislation on notaries, adopted by the Supreme Council of the Russian Federation February 11, 1993, notary designed to ensure the protection of the rights and legitimate interests of citizens and legal persons, by notarial acts on behalf of the Russian Federation (Fundamentals of RF legislation on notaries, 2016). For more than 20 years of practice updated notary has showed its effectiveness in human rights activities.

Later adopted in May 31, 2002 Federal Law "On Advocacy and the Legal Profession in the Russian Federation", stated that the essence of the legal profession is institution of civil society (Clause 1 of Article 3), and at the heart of advocacy is qualified legal assistance (1 Article .1) (Federal law of 31.05.2002 N 63-FZ, 2016).

Membership of the lawyers to the institution of civil society and human rights activities in general is realized through its principles of action, as defined by federal law (paragraph 2 of Article 3), namely the rule of law, independence, self-government, corporate, equity of lawyers (Federal Law of 31.05.2002 N 63-FZ, 2016).

The main function of human rights activity - restoration of violated rights and freedoms of man and citizen, fully corresponds with the statutory forms of advocacy. In general terms, the legal profession in Russia is designed to solve a triune task as together with the State (to protect the violated rights of citizens by other citizens and officials of the state, state institutions), as well as with civil society (protecting the rights of citizens when as their offender serves the state itself as a whole). It should be noted also that in some cases, for example when it comes to the implementation of the constitutional right to judicial protection of rights and freedoms in criminal cases this right in almost all cases is implemented exclusively with the help of lawyers.

At its core, notary system in Russia connects civil society and the state. Notary has a dualistic nature. On the one hand, the notary acts as an authorized representative of the state, performs public functions and acts on behalf and on behalf of the state, and on the other, - the notary, is a member of the "free trade" and an independent legal advisor, which ultimately balances the rights of citizens and state.

Human rights function of notary is connected with the essence of the notarial activity - the creation of qualified written evidence. Evidentiary function is the most important in the activities of notaries, since the very origin of the notary profession and its genesis reflect the needs of developing civilian traffic.

Notary, as a non-judicial form of protection of civil rights and interests protected by law, it is (according to the European Parliament Resolution) body of preventive justice. According to the Congress of the International Union of Judges the function of notaries, first of all, is that the notary is empowered to certify legal acts, impartially inform the parties on the substance and the legal consequences of such acts, to carry out real efforts to prevent disputes. Notary with their activity protects the rights of person thanks for which in the number of cases the subsequent (that person's) appeal to the court to protect those rights is prevented. If however one cannot avoid going to court, notarial acts most greatly facilitate the administration of justice.

Legislation on Notaries does not contain such a notarial act, as "legal aid", but in fact all of this activity is to provide legal assistance to persons who apply for a notary's. It is expressed in the provision of conditions by the notary for the implementation of civil law relations.

Human Rights the nature of the activities of notaries confirmed and by the Russian Ministry of Justice (in a letter to the Ministry of Justice of Russia from 13.08.2014 № 16-71832 «clarification on a number of issues in the sphere of notaries," is stated that "the notary in the Russian Federation carries out functions of public law, designed to protect

the rights and legitimate interests of citizens and legal entities by the notaries' commission of stipulated by legislative acts notarial acts of the Russian Federation, and operates not in the economic sphere but in the sphere of protection of the rights and legitimate interests ") (Letter of the Russian Federation Ministry of Justice, 2014).

The peculiarity of the human rights of notary function is that it is in most cases not implemented independently, but in close cooperation with the justice system. Delivering judgment with indisputable evidence produced before the occurrence of the case, notaries contribute to a more equitable settlement, more complete realization of the rights and legitimate interests of the parties to the litigation. Ultimately, on the presented by notaries evidence largely depends respect for the entities' rights of economic activity, including property rights and guarantees of its implementation.

However, the very significant role of lawyers and notaries in building a civil society in Russia could not and, in our opinion, should not be monopolized.

Thus, according to the Federal State Statistics Service, in 2013 there were 113 thousand socially oriented non-profit organizations (not commercial organizations) in Russia. Their distribution by types of activities in 2012 is presented in Table 1 (in some cases, the same NCO are reflected in 2 or more activities)

Table 1. Distribution of NCO in Russia by type of activity, in 2012

Activities of socially oriented NCO	The proportion of the total number of socially oriented NCO in 2012,%
Education and Science	25,4
Social support and protection of citizens	21,9
physical Culture and sport	17,9
The patriotic and spiritual and moral education of children and youth	14,7
Charity	13,2
Health	10,9
Culture and art	9,5
Psychological help	9,4
legal aid	8,8
Support for the elderly	5,7
Support of disabled	5,5
Support for mothers and children	4,2

In December 30, 2015 according to the Ministry of Justice 225 489 NCO were registered in Russia employing more than 670 thousand people.

NCO structure in Russia (%) is shown (Figure 1).

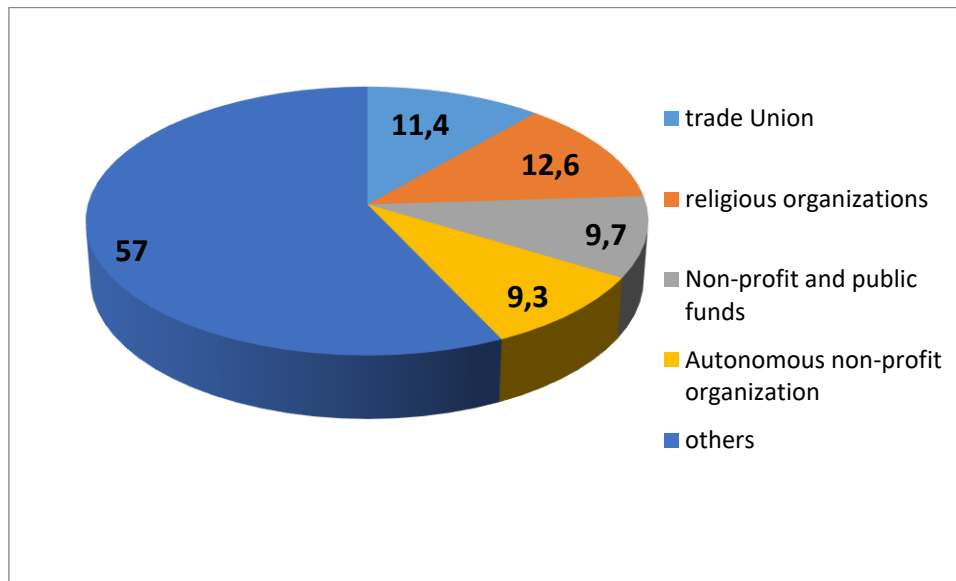


Figure 1. Structure of NCO in Russia, %

The share of the Moscow region (Moscow and Moscow region) account for about 21% of all registered NCO.

In 2015, to support non-commercial organizations that implement social projects in the sphere of protection of human rights and freedoms, from the federal budget 4.3 bn. Rub. was allocated.

noteworthy that, as in February 2016 the register of NCO that perform functions of a foreign agent (an issue causing heated debate in the human rights environment), included 120 organizations.

And what about the lawyers and notaries? According to the Russian Ministry of Justice the number of lawyers in Russia at the beginning of 2016 was about 80 thousand, notaries - 7.7 thousand, or 13% of the number of members of human rights organizations in Russia.

Neither the lawyers nor notaries do not receive public funding (excluding compensation for the provision of free legal aid, protection for its intended purpose), there exist, respectively, due to customer fees and payment for services according to notarial tariffs.

Thus, both the legal profession and notaries in Russia are the institutions of civil society engaged in human rights function, complementing the existing and constantly evolving sustainable system of human rights organizations, which represents to date an effective mechanism to protect human rights and freedoms.

Discussions and Conclusion

In the studying of the role of lawyers and notaries in the development of civil society in Russia are engaged researchers like L.Y. Grudtsyna (2009), V.V. Yeremyan & A.A. Klishas (2015), N.I. Kulenko (2005), L.A. Prokudina (2010), F.M. Rayanov, R.G. Minniakhmetov & D.A. Ponomarev (2004). However, the works of these authors is a study of individual institutions - lawyers, notaries, public organizations. In the present study the question of civil society in Russia is considered in a complex with the study of the contribution of each institution in the total process, features of a synergy effect.

Currently, Russia is going through a difficult stage in its development. One of the central parts of the mentality of the Russian person is the consciousness of belonging to a great nation. This understanding has not arisen in a vacuum, it grew stronger throughout the development of the state, is confirmed by the outstanding cultural and scientific achievements, vast territory, rich natural resources, etc. As a kind of a bridge between Europe and Asia, Russia is inevitably absorbed the historical experience of these geopolitical centers. However, due to its multi-cultural, multiethnic, multi-confessional nature Russia cannot (in fact is not committed to it) copy and use any of the existing models of social development of those or other countries. For this reason, Russia is forced to find its own way, adapt to its conditions existing in the world economic, political and other models. It is no exception and advocacy. From the point of view of human rights, such as the European countries, it would seem that in Russia is relatively high level of non-freedom. In the information space of Europe and the US the theme of "totalitarianism" in Russia is the most "popular". Moreover, the facts allegedly supporting a mockery of human rights and freedoms in the Russian Federation, in the vast majority of cases are not so, that is falsified. And in this regard, we can speak about a kind of propaganda and information war even. On the contrary, from the point of view of some public figures, such as Asian countries, the Middle East, Russia is a country with a progressive democracy which upholds the interests of the international rule of law, international law. Of course, the foregoing separation of points of view on the world countries is conditional, however, there is no doubt that the mood of the European and American elites at the moment have clearly anti-Russian character in the total mass. In this regard, Russia is constantly point to its inconsistency with "civilization standards", including in terms of human rights activities. On the other hand, we do not undertake to say that in Russia there are no problems in the sphere of protection of human rights and freedoms, or, on the contrary, civil institutions have reached its perfection. Of course, in fact there is neither one nor the other. Of course, there are some problems that need to be addressed. These and other problems exist in other countries too. However, when assessing the level of protection of human rights and freedoms in the modern Russian society, in our opinion, there is a need to avoid (at the level of dogma) adherence to those or other "standards", adopted in individual States, which claim to leadership. On the contrary, one should always refer to the roots, to its history, to take into account the multi-ethnic and multicultural nature of Russia and only through comprehensive analysis to make certain decisions, including those relating to the criteria for assessing the state of civil society, finding ways to develop its institutions. In this regard, it is a very fair position of V.V. Yeremyan & A.A. Klishas (2015): "It is very difficult to prove the correctness in case of total" privatization "on the part of individual states in the whole championship ..." However, it is necessary to prove.

Recommendations

This work is potentially of interest to Russian and foreign scholars, human rights' activists, lawyers, political scientists, contributes to a better understanding of the role of lawyers and notaries in the development of civil society, gives an overview of the state of human rights in the Russian Federation.

Disclosure statement

No potential conflict of interest was reported by the authors.

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