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Философско-политические аспекты Конституционных прав и свобод человека и гражданина в Российской Федерации

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Аннотация. Введение. В статье рассматриваются философско-политические аспекты определения сущности прав и свобод человека и гражданина в Российской Федерации. **Цель.** Выявление философско-политических аспектов определения в Конституции Российской Федерации сущности прав и свобод человека и гражданина, и особенностей деятельности российского государства и его органов по их обеспечению и защите. **Материалы и методы.** В исследование использованы Конституция Российской Федерации, другие законодательные акты РФ и международные документы, содержащие описание сущности прав и свобод человека и гражданина в СССР, Российской Федерации и иных государствах. Методами лингвистического, исторического, формально-юридического и сравнительно-правового анализа выявлялись и описывались философско-политические аспекты соотношения понятий прав и свобод человека, его обязанностей в российском конституционном праве и международной правовой системе. **Результаты и обсуждение.** В ходе исследования выявлены существенные различия философских, политологических и юридических научных школ о сущности феноменов, обозначаемых термином «права и свободы человека и гражданина», вследствие чего основные положения Всеобщей декларации прав человека не были в неизменном виде закреплены в юридических документах государств, но приняты в качестве ориентиров национальных доктрин, определяющих содержание прав и свобод человека и гражданина в большинстве государств. **Заключение.** Проведенное исследование позволяет утверждать, что в России в конкретно исторических условиях создана своеобразная система прав и свобод человека и гражданина. Ее основу составляют Конституция РФ и иные документы, содержание которых определяют доминирующие в обществе культура, мировоззрение и законодательство. Система прав и свобод человека и гражданина включает традиционные нормы естественного права и властно изменяемые нормативы общественных отношений, приобретающие временный, ситуативный характер. В России гарантами обеспечения прав и свобод человека и гражданина являются Президент РФ, другие публичные органы власти, государственные органы и общественные объединения, уполномоченные выполнять правоохранительные и правозащитные функции.

Ключевые слова: права, свободы, обязанности человека и гражданина, конституционные гарантии, обеспечение и защита прав и свобод человека, правоохранительные органы.

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Research article

Philosophical and political aspects of constitutional human and civil rights and freedoms in Russian Federation

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Abstract. Introduction. The article examines the philosophical and political aspects of determining the essence of human and civil rights and freedoms in the Russian Federation. Goal. Identification of philosophical and political aspects of the definition in the Constitution of the Russian Federation of the essence of human and civil rights and freedoms and the specifics of the activities of the Russian state and its bodies to ensure and protect them. **Goal.** Identification of philosophical and political aspects of the definition in the Constitution of the Russian Federation of the essence of human and civil rights and freedoms and the specifics of the activities of the Russian state and its bodies to ensure and protect them. **Materials and methods.** The study uses the Constitution of the Russian Federation, other legislative acts of the Russian Federation and international documents describing the essence of human and civil rights and freedoms in the USSR, the Russian Federation and other states. The methods of linguistic, historical, formal-legal and comparative-legal analysis revealed and described the philosophical and political aspects of the relationship between the concepts of human rights and freedoms, his duties in Russian constitutional law and the international legal system. **Results and discussion.** The study revealed significant differences between philosophical, political science and legal scientific schools about the essence of the phenomena referred to by the term "human and civil rights and freedoms", as a result of which the main provisions of the Universal Declaration of Human Rights were not fixed in the legal documents of states, but adopted as guidelines for national doctrines defining the content of rights and freedoms. a person and a citizen in most countries. **Conclusion.** The conducted research allows us to assert that in Russia, in specific historical conditions, a peculiar system of human and civil rights and freedoms has been created. It is based on the Constitution of the Russian Federation and other documents, the content of which is determined by the dominant culture, worldview and legislation in society. The system of human and civil rights and freedoms includes traditional norms of natural law and imperiously modifiable norms of social relations, which acquire a temporary, situational character. In Russia, the guarantors of ensuring human and civil rights and freedoms are the President of the Russian Federation, other public authorities, state bodies and public associations authorized to perform law enforcement and human rights functions.

Keywords: human and civil rights, freedoms, duties, constitutional guarantees, ensuring and protecting human rights and freedoms, law enforcement agencies.

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Introduction. Identifying the philosophical and political aspects of human and civil rights and freedoms is crucial for understanding the essence of the phenomenon denoted by this term and its appropriate use in the Constitution of the Russian Federation and national legislation, as well as the activities of state bodies tasked with ensuring their observance, protection, and restoration. Consequently, research into the philosophical and political aspects of constitutional human and civil rights and freedoms acquires not only scientific and educational but also practical political and legal significance for the Russian state and its law enforcement and human rights agencies.

Research materials and methods. The research materials included the Constitution of the Russian Federation, other legislative acts of the Russian Federation, and international documents describing the essence of human and civil rights and freedoms in the USSR, the Russian Federation, and other countries.

The use of linguistic, historical, formal-legal and comparative legal analysis methods in the study allowed us to identify and describe the philosophical and political aspects of the relationship between the concepts of human rights and freedoms, human responsibilities in Russian constitutional law and the international legal system, as well as the main areas of activity of the state and its bodies that guarantee the provision, observance, protection and restoration of human and civil rights and freedoms in the Russian Federation.

Research results and their discussion. A linguistic analysis of the legal term “human rights”, widely used in public practice, reveals its complex structure, in which the word “right” is interpreted in Russian as “power, strength, will, freedom of action given by someone or recognized by custom; power and will within conditional limits” [2, p. 519], and also as “a set of norms and rules established and protected by state authority, regulating relations between people in society..., a state-protected, legalized opportunity, freedom to do something, to implement something...; the ability to act, to behave in some way...” [3, p. 467].

The given definitions of the term “law” indicate the diversity of reflection of the essence of the phenomenon it designates in public and individual consciousness, giving rise to scientific discussions in which two opposing concepts of natural and positive law have been developed and are being developed.

The problems of defining the essence of the phenomenon of human rights are considered by all the humanities that utilize the official-authoritative paradigm of positive law, which contrasts morally based natural law with positive law, which, in the understanding of the proponents of this paradigm, makes legally significant only the rules of social relations officially enshrined in state laws and supported by the methods of political power. Moreover, as V.S. Narsesyants pointed out, “the official-authoritative reality of positive law acts as the highest authority in the question of what constitutes law at a given time and in a given place” [4, p. 7].

In domestic jurisprudence, the term “human rights” is used, as a rule, in a broad sense to denote the rules that prevail in society and are applied to protect the dignity of and freedom each individual person.

At the same time, since ancient times, debates have been ongoing about the social benefits and harms of individual freedom. In particular, Plato argued that “complete freedom and independence from all authority is far worse than moderate subordination to others” [5], and therefore, in an ideal state, there should be no absolute individual freedom, which must be subordinated to the interests of society as a whole, as expressed by the state [5].

Later, the term “freedom” in philosophy began to denote “a person’s ability to actively engage in activity in accordance with his intentions, desires, and interests, during which he achieves the goals he has set for himself. The practical realization of the internal freedom of the

individual is achieved thanks to the objective possibility, or external freedom, for such activity” [6, p. 567].

According to modern philosophers, the necessary prerequisites for freedom are created by the embodiment of natural conditions, social and economic relations, which determine the range of specific human interests and opportunities for realizing their goals. In this regard, the Newest Philosophical Dictionary defines freedom as a cultural universal of an objective nature, capturing the possibilities of activity and behavior in the absence of external goal-setting [7, p. 608].

Consequently, the term “freedom” can mean the ability of a person to exercise his will and desire to act in accordance with his own choice of goals, forms and methods of behavior, independently of other people, but taking into account the real political, economic, social and other conditions in which the individual finds himself.

Thus, the relationship between the phenomena denoted by the terms "rights" and "freedoms" turns out to be directly dependent on the actual conditions of human life, created not only by natural (environmental), but also by social conditions formed by society under the influence of the state or without its participation. The importance of human and civil rights and freedoms for the Russian state is described in Article 2 of the Constitution of the Russian Federation, which establishes that "man, his rights and freedoms are the highest value", and "the recognition, observance and protection of human and civil rights and freedoms is the responsibility of the state" [1]. At the same time, Article 18 of the Constitution of the Russian Federation recognizes that "human and civil rights and freedoms are directly applicable...", determining "...the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and ensured justice [1].

The state's recognition of the socio-political significance of regulating the rights and freedoms of individuals entering into relations with other members of society compels public authorities to develop and implement national laws in social practice in the territory under their control, defining the norms for the application of human rights and freedoms by creating conditions for activities permitted by law, as well as limiting the right to possess and use such rights and freedoms, or to protect and restore them in cases of their violation by public authorities, public associations, or individuals.

According to Articles 10 and 11 of the Constitution of the Russian Federation, the implementation of the state's control and regulatory functions is ensured by its federal and regional bodies within the limits of their jurisdiction and powers, delimited by legislation and relevant treaties [1].

By means of treaties and other legal norms formalized in laws, the state establishes social relations based on legal norms and maintains them using the means of power. At the same time, the methods of political power transform the law into a regulator of the possible conditions for the realization of individual freedoms, and the content of ideas about human rights and freedoms is politicized, while discussions about the essence of human rights and freedoms contribute to the politicization of public consciousness, the actualization of legislation and other cultural values dominant in society in the specific historical conditions of place and time. Taking into account these circumstances, when preparing the draft Universal Declaration of Human Rights, the representative of Canada, Ralph Maybank, expressed his opinion on the reasons for the disagreements regarding the content of the main provisions of the document under discussion: “*Every people has its own established views on human rights. These views are based on the legal and philosophical conception adopted in a particular state. As a result of this diversity, 150 amendments were proposed to the Universal Declaration of Human Rights. Each of them provoked debate*” [8].

At the suggestion of the Canadian delegation, supported by the majority of members of the preparatory commission, the document under discussion acquired a recommendatory nature and was proposed for independent implementation in the legislation of each state, taking into account national circumstances. Consequently, the Universal Declaration of Human Rights did not become a generally binding directive, and in its final version, adopted by resolution 217A (III). The UN General Assembly of 10 December 1948 stated that " as a common standard of achievement for all peoples and all nations, every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States and among the peoples of territories under their jurisdiction" [9]. But even in this compromise form, the content of the declaration did not satisfy the delegations of eight states (USSR, Belarus, Ukraine, Czechoslovakia, Poland, Yugoslavia, Canada, Saudi Arabia), which refused to participate in the vote for its adoption [8].

The Universal Declaration of Human Rights was not formalized by international treaties binding on the states that signed it, and was not adopted by any state as a legally binding document, but it serves as a moral guide for national legislation. Thus, Russia's recognition of the fundamental principles for determining human rights and freedoms was recorded in the Resolution of the Supreme Soviet of the RSFSR of November 22, 1991, No. 1920-1 "On the Declaration of the Rights and Freedoms of Man and Citizen," detailed in the Constitution of the Russian Federation in 1993 [10], in specific federal laws, as well as in the constitutions, charters, and laws of the constituent entities of the Russian Federation.

However, in the last decade, problems have arisen in resolving legal conflicts between Russian legislation and decisions of the European Court of Human Rights (ECHR), which often conflict with the norms of the Russian Constitution. In this regard, the Constitutional Court of the Russian Federation, in its ruling of July 14, 2015, No. 21-P, formulated a rule according to which state bodies may appeal to the Constitutional Court of the Russian Federation to justify their refusal to implement decisions of the ECHR recognized by the Constitutional Court of the Russian Federation as contrary to the Russian Constitution [11].

The provisions of the Declaration and international treaties that do not contradict the Constitution of the Russian Federation and do not entail restrictions on human and civil rights and freedoms in the Russian Federation, in accordance with Part 4 of Article 15 and Article 79 of the Constitution of the Russian Federation, have become an integral part of national legislation. They were taken into account in the development of Chapter 2 of the Constitution of the Russian Federation, entitled "Human and Civil Rights and Freedoms" [1]. Under the terms of Article 17 of the Constitution of the Russian Federation, these norms are recognized and guaranteed by the state in accordance with the principles and norms of international law [1].

Even after the Russian Federation's withdrawal from some international human rights organizations, as Russian President V.V. Putin said, our state does not abandon the generally recognized principles of the Universal Declaration of Human Rights and is ready to cooperate with partners in the human rights sphere, to comply with mandatory international covenants that are an integral part of the Russian legal system [12].

However, the content of the Universal Declaration of Human Rights and other UN legal acts prepared in its development, continues to give rise to numerous controversies, the results of which, for example, the United States used to refuse to sign the International Convention on the Rights of the Child and to retain numerous types of death penalty, while Ukraine, the Baltic States and some NATO member states constantly violate the principles of equal rights of people,

regardless of their national or religious affiliation, ideological and other differences, proclaimed in the Declaration.

For such reasons, questions about the philosophical and political aspects of human rights and freedoms, which are resolved by all states, communities and individuals independently within the limits determined by their understanding of justice and the ethical foundations of tolerance, remain relevant for modern humanities.

At the same time, the political elites of many countries selectively use certain findings of scientific and cognitive debates to justify legislatively establishing ideological standards of approved or condemned human behavior in the societies they govern, which have been dominant for a time. National systems of judicial and extrajudicial assessments of human actions in various contexts, as well as methods of rewarding compliance with legally established standards of behavior or punishing their violations, are formed on the basis of these laws. At the same time, certain ruling political institutions—government bodies and/or political parties, religious denominations—permit and encourage extraordinary deviations in so-called "positive directions" from the established norms of socially significant citizen behavior, including various violations of the principles of natural family and marital relations and other perversions.

Among evaluative judgments about human behavior, the concept of "correctness" occupies a prominent place. It denotes the conformity of the assessed actions with laws and national, religious, corporate, and other rules, which can vary significantly across communities and time periods. Consequently, the importance of rules, norms, and principles recognized by the majority of humanity as regulating human behavior in various spheres of life increases. However, not all communities, formed according to national, religious, ideological, and other criteria, recognize the norms of international law and implement them for the people living in the territories under their control. In particular, Western European and Atlantic states, aspiring to global domination, impose "democratic rules" on all of humanity, which are far removed from generally accepted norms of international law and contain double standards for assessing the security of human rights and freedoms in friendly and unfriendly states.

Following the best traditions of international law, the Russian Federation, in Article 2 of the Constitution of the Russian Federation, recognized the individual, his rights, and freedoms as the highest value of the state, and the observance and protection of human and civil rights and freedoms as the state's priority responsibilities [1]. The legally formalized obligations of the Russian state to ensure the full realization of human and civil rights and freedoms, as defined by the Constitution of the Russian Federation, are referred to as "constitutional guarantees." Their observance is ensured by the enshrinement in Part 1 of Article 15 and Article 18 of the Constitution of the Russian Federation of the principle of direct and immediate application of constitutional norms with respect to human and civil rights and freedoms [1].

Given the wide diversity of human activity, constitutional guarantees form a multifaceted system of state obligations, encompassing legal, political, socioeconomic, and spiritual aspects. Consequently, there arises a need for sectoral differentiation and specialization of public authorities and public associations tasked with ensuring the implementation, protection, defense, and restoration of constitutional human and civil rights and freedoms in general or in specific areas of life.

The formal legal basis for constitutional guarantees of respect for human and civil rights by the Russian state are legally enshrined obligations, which are the means, methods and ways of implementing human and civil rights and freedoms by authorized law enforcement agencies of the state and (or) human rights public associations, formalized by laws and other legal acts.

Constitutional guarantees of the state are conventionally divided into objective (provided by the state for all people regardless of their personal qualities) and subjective (implemented by a person at his discretion), as well as general (according to Part 1 of Article 45 of the Constitution of the Russian Federation, they serve as conditions and means of protecting all human rights and freedoms or a significant part of them) and special (relate to specific possible circumstances, situations, in which the definition of human and civil rights and freedoms is required).

The highest legal force for guarantees of human rights and freedoms in Russia is intended to be ensured by the political system, whose duties, in accordance with Articles 45, 46, 53, 55, 56, 60, 61 of the Constitution of the Russian Federation, include providing opportunities for the realization by every person on the territory of the state and every citizen of the Russian Federation, regardless of their place of residence, of all rights and freedoms enshrined in Russian legislation and the norms of international law [1].

At the same time, contradictions arise between the liberal-pluralist interpretation of the principles of ensuring the rights and freedoms of the individual and the rights and freedoms of other people who have a need to realize their own rights and freedoms through objects claimed by other people. An attempt at a universal solution to such contradictions was the proclamation in Part 3 of Article 17 of the Constitution of the Russian Federation of the peacekeeping principle of conflict-free social relations, according to which the exercise of human and civil rights and freedoms should not violate the rights and freedoms of others [1]. The application of this principle of conflict-free resolution of disputes requires mutual compliance on the part of interacting people, who are not always prepared to self-limit their rights and freedoms. As a result, conflict resolution requires an arbitrator, judge, or mediator capable of finding compromise solutions to contentious issues and, if necessary, using methods of authoritative coercion to end conflicts. The state possesses such methods, distributing its functions among the state bodies it has created, among which the state authorities stand out.

The highest official of the Russian Federation, ensuring guarantees of human and civil rights and freedoms, is the President of the Russian Federation. Upon assuming office, he or she takes an oath containing a vow to respect and protect human and civil rights and freedoms, to observe and defend the Constitution of the Russian Federation, to protect the sovereignty and independence, security and integrity of the state, and to faithfully serve the people [1]. When signing federal laws and decrees, the President of the Russian Federation evaluates their impact on ensuring human rights and freedoms and, if there is a threat of their violation, returns the bill to the Federal Assembly of the Russian Federation for revision.

A structural and functional analysis of the system of state authorities, local government bodies, and public associations involved in ensuring constitutional guarantees of human and civil rights and freedoms in the Russian Federation allows us to identify a set of bodies and organizations within society that perform certain state functions in protecting constitutional human and civil rights in our country. These bodies are authorized to apply regulatory and control measures to public authorities, public associations, and individuals in accordance with Russian law [13].

Article 46 of the Constitution of the Russian Federation guarantees every person judicial protection of his rights and freedoms, the possibility of appealing in court the decisions and actions (or inaction) of public authorities, public associations and officials. In the Russian Federation, the legal basis for the activities of courts, which are authorized to administer justice in accordance with Articles 118-128* of the Constitution of the Russian Federation and the principles of justice set out in Part 1 of Article 19, Articles 21-25; 46-51, 54 of the Constitution of the Russian Federation [1; 20].

In accordance with the laws of the Russian Federation, within the limits of their competence, the courts determine the compliance of the behavior of citizens, foreigners, and stateless persons within the country's territory with their legally established rights and freedoms, as well as the measures of responsibility and punishment for their violation.

The highest judicial body of constitutional review in Russia is the Constitutional Court of the Russian Federation, which, in accordance with Article 125 of the Constitution of the Russian Federation, exercises judicial power through constitutional proceedings in order to protect the foundations of the constitutional order, the fundamental rights and freedoms of man and citizen, and to ensure the supremacy and direct effect of the Constitution of the Russian Federation [1]. For example, the Constitutional Court of the Russian Federation, having considered the request of a group of deputies of the State Duma of the Federal Assembly of the Russian Federation, adopted a resolution recognizing the decree of the President of Russia of October 28, 1992 "On measures to protect the constitutional order of the Russian Federation" as inconsistent with the Constitution of the Russian Federation [14]. By this decision, the Constitutional Court of the Russian Federation prevented the possibility of violating the rights and freedoms of citizens of our country, which could have arisen as a result of arbitrary interpretations of the terms "terrorism" and "extremism", which at that time had no legal definition in Russian legislation, and were used in the discussed decree of the President of Russia [14].

In their activities, courts interact with supervisory and law enforcement agencies of the state, the structure of which is divided into branches, federal, regional and local levels.

Along with the state's obligation to ensure the protection of human and civil rights and freedoms, the Constitution of the Russian Federation grants individuals the opportunity to independently defend (self-defense) their rights and freedoms by all means not prohibited by law. Methods of self-defense are varied, including appealing the actions of officials to public authorities, including the courts, appealing to the media, human rights organizations, and others.

According to Part 2 of Article 55 of the Constitution of the Russian Federation, the state must not issue laws that abolish or diminish the rights and freedoms of man and citizen [1].

In the system of law enforcement agencies, the police is distinguished, the duties and powers of which to ensure the rights and freedoms of man and citizen are formulated in Article 5 of the Federal Law of 07.02.2011 No. 3-FZ "On the Police" (hereinafter referred to as the Law), called "Observance and respect for the rights and freedoms of man and citizen" [15].

In particular, paragraph 1 of the said article sets out one of the basic principles of police activity: "The police carry out its activities on the basis of compliance with and respect for the rights and freedoms of man and citizen" [13].

Particular attention should be paid to paragraph 2 of the aforementioned article of the Law, which requires that "police activities that restrict the rights and freedoms of citizens shall be immediately terminated if the legitimate objective has been achieved or it has become clear that this objective cannot or should not be achieved by restricting the rights and freedoms of citizens" [15]. Obviously, this provision of the Law is aimed at strict adherence to guarantees for ensuring the rights and freedoms of man and citizen in our country.

The following paragraphs of the article contain indications of restrictions on the actions of police officers in relations with citizens: "A police officer is prohibited from resorting to torture, violence, or other cruel or degrading treatment. A police officer is obliged to prevent actions that intentionally cause pain, physical or moral suffering to a citizen" [15].

Clause 6 of Article 5 of the Law prohibits the provision to anyone without the voluntary consent of the citizen, with the exception of cases stipulated by federal law, of information obtained as a result of police activity about the private life of a citizen [15]. At the same time, "... the police are obliged to ensure that every citizen has the opportunity to become familiar with

documents and materials that directly affect his rights and freedoms, unless otherwise established by federal law" [15].

Similar regulations are included in the documents regulating the activities of the prosecutor's office and other law enforcement agencies of the Russian Federation [13, 16].

In order to protect violated human and civil rights in the Russian Federation, specialized law enforcement institutions have been created: the Commissioner for Human Rights [17], the Commissioner for Children's Rights [18], the Commissioner for the Protection of the Rights of Entrepreneurs in the Russian Federation [19], which are called upon to consider citizens' appeals, complaints with reports of violated rights and freedoms, to seek their restoration and the prevention of illegal actions.

Part 3 of Article 46 of the Constitution of the Russian Federation grants everyone the right to international protection, which includes the ability to appeal to interstate bodies established to protect human rights and freedoms in accordance with the relevant international treaties of the Russian Federation.[1] Therefore, bodies within the law enforcement system of the Russian Federation, within the limits of their powers defined by federal legislation, implement guarantees to assist citizens in the realization and protection of their constitutional rights and freedoms.

At the same time, the culture of the peoples of Russia traditionally develops ethical norms and rituals of interaction, regulated by ethnic self-government bodies and supported by civil society institutions. Therefore, government bodies authorized by the state to ensure human and civil rights and freedoms in the Russian Federation are obligated to cooperate with civil society institutions that uphold the traditions of public diplomacy, which contribute to the prevention and resolution of social conflicts arising from disputes over the rights and freedoms of different people to satisfy their interests through a single object, the claims to which simultaneously become the subject of conflict between opposing parties.

Conclusion. The Russian Federation has established a system of human and civil rights and freedoms, the content of which has a specific historical character, determined by the dominant culture, worldview, and legislation in society. This system of human and civil rights and freedoms includes traditional norms of natural law, which provide stability to its structure, and norms of social relations, which are subject to change by the ruling political elites and acquire a temporary, situational nature, thereby generating systemic mobility.

The legal basis of the system of human and civil rights and freedoms in Russia consists of the Constitution of the Russian Federation, Russian legislation, relevant international legal acts insofar as they do not contradict the Russian Constitution, as well as generally accepted ethical norms.

In addition, in the regions of the Russian Federation, when developing and implementing measures aimed at ensuring the constitutional rights and freedoms of man and citizen, the traditions of public diplomacy must be taken into account, which contribute to the establishment of peaceful, mutually beneficial relations between people, taking into account the observance of the rights and freedoms of each of them.

In the Russian Federation, the guarantors of human and civil rights and freedoms are the President of Russia, other public authorities, state bodies, and public associations authorized to perform law enforcement and human rights functions. Clearly, the main focus of their activities should be fostering public understanding of the principles of peaceful coexistence among Russian citizens and fair treatment of their rights and freedoms.

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