

PROSPECTS OF LEGAL DEVELOPMENT AND CONSTITUTION

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Abstract: The article considers current tendencies of the constitutional development and global ways of legal evolution. By means of comparative legal analysis and theoretical generalization of law evolution, an attempt to map out some prospects of legal development was made. The significant role of constitutional acts as a foundation and fundamentals of system-generating legal and political instruments for organizing a national system, its development and interaction with international law and international institutions is emphasized. It is accentuated that in spite of occasional crises, disputes and new conflicts, the uniting processes in law are objective. A new level of legal development is being formed—metalaw as a complex planetary system of law and law of space civilization being born on planet Earth. Constitutional acts of different levels acting as adapters of legal systems of different levels and basic elements of some segments in a hierarchical complex legal system of humanity are expected to play an essential role.

Key words: law, constitution, development, evolution, civilization, national law, international law, metalaw, forming of extraterrestrial civilization, planetary law.

Some tendencies in the evolution of modern constitutions

The phenomenon of the Constitution is closely connected with a multidimensional process of legal development.

During the last half a century, constitutions all over the world have undergone some evolution: some countries have established new constitutions, new independent countries appeared, and their constitutional development started from that moment¹. Researchers single out several tendencies in the development of new constitutions. Thus, some established constitutions (in Italy, France, Greece, Spain, Portugal, Japan) include provisions about public or national sovereignty. In some coun-

¹ See also: S.F. Udartsev. Globalizatsiia, perspektivy pravovogo razvitiia i konstitutsiia [Globalization, Prospects of Legal Development and a Constitution]// Yuridicheskiĭ forum [Legal Forum]. Nauchno-prakticheskiĭ gurnal [Scientific-Practical Journal]. Bishkek, Issyk-Kul, 2014, pp. 60 – 68.

tries (in Austria, Bulgaria, Germany, India, Kazakhstan, Poland) the constitutions state that the source of state power is the people². The constitutions continue to strengthen the legal equality between men and women, specify correlation between religious and temporal rules of law. The decision of the US Supreme Court adopted in June, 2015, will probably effect the constitutional development of western countries. Dividing five to four, the US Supreme Court justices held that “principles of equity before the law and the court guaranteed by the Constitution means that some states cannot prohibit entering into a same-sex marriage”³.

In some countries, the new constitutions give homage to previous historical experience. So, in the Constitution of Hungary adopted in 2011, the name of the country was changed from the Republic of Hungary in Hungary. Though the country remains a republic, the new state symbols have appeared such as a golden Crown and the scepter of the first king, St. Stephen, under whom in the early XXth century, Hungary was about twice bigger in area and included the territories of Austria, Rumania, Serbia, Slovakia, Slovenia, Ukraine and Croatia, that is “lands of St. Stephen’s Crown”⁴.

In *constitutions and constitutional practice* there are different tendencies as to strengthening of the executive power in some countries and strengthening of the legislative power in other countries. For instance, the new constitutions of the Scandinavian countries have defined that the first place in the system of the supreme organs of government belongs to the Parliament. In particular, in Sweden, the head of the state has ceased to have the right of veto regarding to draft laws of Riksdag⁵. In the development of Parliaments in some countries, lower chambers are getting stronger, but in some European countries (Denmark, Greece, Iceland, Portugal, Sweden) the Parliaments became a single chamber organs⁶. The power of Kyrgyzstan Parliament has increased too.

The constitutions more accurately define and consolidate rights and freedoms of the person, especially while countries are ratifying major international treaties in this

² M.A. Mogunova. *Konstitutsiia zarubezhnykh stran* [Constitutions of Foreign Countries]// *Konstitutsionnoe pravo zarubezhnykh stran: uchebnik dlia vuzov* [Constitutional Law of Foreign Countries: Textbook for Universities]// Edited by M.V. Baglay, Yu.I. Leybo and L.M. Entin. Moscow, 2006, p. 78.

³ The US Supreme Court allowed to enter into a same sex marriage// Available at: <http://www.golos-ameriki.ru/content/supreme-court-marriage-1st-update/2838532.html> . (Accessed on: July 17, 2015).

⁴ One Republic less// Available at: http://gazeta.zn.ua/POLITICS/odnoy_respublikoy_menshe.html . (Accessed on: October 11, 2013).

⁵ M.A. Mogunova. *Konstitutsii zarubezhnykh stran* [Constitutions of Foreign Countries]. p. 81.

⁶ *Ibid.*

sphere. At the same time, the authorities vested with constitutional supervision clarify the relationship between the legal force of decisions made by international courts and the fundamental law of the country, take measures to protect traditional values. Hence, on July 14, 2015, the RF Constitutional Court emphasized in its decision once again that the decisions made by the European Court of Human Rights cannot abolish the priority of the Russian Constitution having the highest legal power on its territory. In case of dispute, owing to the supremacy of the Constitution, Russia, like other countries, has the right to refuse from a literal adherence to the resolutions of the Strasbourg court⁷.

In modern constitutions, much more attention is paid to issues relating to foreign policy and international law. The constitutions of the EU countries have included norms on delegating a part of powers to the EU authorities.

The evolution of human civilization and its legal system

Modern civilization is increasing its power and spreading beyond regional limits in all parts of the world. It is becoming complex but uniform to a large extent. "As P.A. Sorokin stated, mankind is a new power of the world. This power is growing: it defines the area of its existence and expands this area more and more"⁸.

With modern means of communication, transport and services, the planet is becoming a more adequate space for the operation of people, their international public associations, states, intergovernmental organizations. Karl Jaspers, thinking about tendencies of world development, noticed that freedom of the person, including freedom of developing new territories, new space, has continued to evolve with the development of humanity and its expansion all over the world. When the whole planet has become available to a man, and while humans are deprived of the opportunity to expand their presence in the Universe, "the density of humanity seems to be growing on Earth"⁹.

⁷ RF Constitutional Court has established the priority of RF Constitution over the decisions made European Court on Human Rights// Available at: <http://www.infovonezh.ru/News/Konstitutsionnyiy-Sud-RF-ustanovil-prioritet-Konstitutsii-RF-nad-resheniyami-Evropeyskogo-Suda-po-pravam-cheloveka-39421.html> . (Accessed on: July 17, 2015).

⁸ P.A. Sorokin. *Chelovek. Tsivilizatsiia. Obshestvo* [Man. Civilization. Society]// Generally edited by the author and preface A.Yu Sogomonov. Translated from English. Moscow, 1992, p. 521; V.E. Chirkin writes that some investigators count up to 300 certain civilizations. V.E. Chirkin. *Nekotorye voprosy formatsionno-tsivilizatsionnogo podkhoda v sravnitel'nom pravovedenii* [Some Issues of Formational and Civilizational Approach in Comparative Jurisprudence]// *Voprosy pravovedeniia* [Issues of Law]. 2013, No. 2, p. 39.

⁹ K.T. Jaspers. *Smysl i naznachenie istorii* [Meaning and Purpose of History]. Moscow, 1991, p. 246.

As a result, a new whole is acquiring shape on the planet – the universal civilization is institutionalized. Step by step, this new whole is getting its features, a structure, and a regime of functioning. Technology, culture, economy, world market cross national boundaries and unite nations; in addition, the same processes are taking place in politics and law. Speaking to students of St. Petersburg State University (Russia) in September, 2013, the UN Secretary General, Ban Ki-moon, emphasized that “you are citizens not only of Russia, you are citizens of the world”¹⁰. In this case, he reproduced I. Kant’s idea from his treatise “To Eternal Peace” (1795)¹¹. However, if Kant formulated an abstract idea about the distant and uncertain future, Ban Ki-moon’s words sound quite practical for the youth of today.

Globalization creates new grounds for sustainable development of global systems. At the same time, the evolution of former political and legal systems can cause increasing instability in some links and at certain levels during the global transformation of law, statehood and formation of new levels of political and legal systems, as N.S. Bondar noted that

“Globalization directly impacts the constitutional systems of modern states, pre-determines new value-related criteria of their protection, new tendencies of development, and in many cases becomes a factor of instability of the national constitutional system”¹².

But in the course of historical development and especially in the context of globalization, international relations become more civilized and bound by universally recognized standards which are under the control of international arbitration. The relations among states are established not by power and tyranny but gradually penetrate into the sphere of law. Acts committed “in the interests of the state”, “state security”, due to political expediency and necessity (including force, violence, emergency) which could remain uncontrolled earlier, get more under the control of inter-

¹⁰ Ban Ki-moon – to students of St. Petersburg University: you are citizens not only of Russia but you are citizens of the world// Available at: www.fontanka.ru/2013/09/04/126 . (Accessed on: September 6, 2013).

¹¹ See: E. Kant. *Ideia vseobshej istorii vo vsemirno-grazhdanskom plane. K vechnomu miru* [The Idea of Universal History in the Context of in the World Civil Aspect. To Eternal Peace]. Introduction and annotation made by S.F. Udartsev. 2-d ed., Almaty, 2004.

¹² N.S. Bondar. *Kostitucionnoe pravosudie v sootnoshenii s politikoi’: teoriia i praktika...bez politicizatsii* [Constitutional Justice in Correlation with Policy: Theory and Practice...without Politicization]// *Kostitucionnoe pravo i politika. Sobranie materialov mezhdunarodnoi’ nauchnoi’ konferentsii. Yuridicheskii Fakultet MGU imeni M.V. Lomonosova. 28-30 marta 2012* [Constitutional Law and Politics. Collected Materials of International Scientific Conference. MSU Law Faculty, Moscow Lomonosov State University. March 26 – 30, 2012]// Editor-in-Chief S.A. Avakiyan. Moscow, 2012, p. 528.