

VIEW OF THE SOCIAL CONCEPT OF GLOBAL CONSTITUTIONALISM ON THE LEGAL SYSTEM

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ABSTRACT

This paper is devoted to a conceptual analysis of the relationship of the social concept of global constitutionalism to the legal system. The purpose of the research: from the position of socio-philosophical methods of cognition of social reality and ideas reflecting it, to analyse the relationship of the social concept of global constitutionalism to the legal system. Object of research: the phenomenon of globalization of socio-political, state-legal and financial-economic development of national societies and states as a phenomenon of social reality, highlighted in the social concept of global constitutionalism. Subject of research: the relation of the social concept of global constitutionalism to legal regulation carried out at the international and national levels.

The analysis of the impact of globalization on national legal systems, giving rise to their inability to resolve historically inherent problems of a state-legal nature, is carried out.

The directions of the development of the system of international law under the influence of globalization are investigated: (1) its transformation into a global legal system, characterized by a complex mechanism of subordination of national legal systems to international law, based on democratic legal values of the Western sample; (2) international integration of national legal systems into the system of international law without regarding to the interests of national states; (3) the absence of a clear system of statutory bases at the international level for the organization and activities of the international legal system, which entails its unsystematic impact on public relations at the level of national states; (4) the lack of a mechanism for interaction and transformation of legal systems in the process of globalization.

Keywords: Global Constitutionalism, Social Concept, Attitude, System of Law, Legal Regulation, International Law, National Law, Neoliberalism, Neo-conservatism, Society.

INTRODUCTION

Research questions on the relationship of modern interpretations of social reality in the context of globalization to the legal system are widely studied in the works of Belousov (2015), Bugayenko (2013), Valyarovsky (2012), Kaminskaya (2014), Lazarev & Saidov (2011), Udartsev & Temirbekov (2015), and several other authors.

These works are of great importance in the process of analysing the relationship of the social concept of global constitutionalism to the legal system. However, the share of the researches consecrating questions of a place of the legal regulation carried out at the international and national levels in the philosophy of the main socio-philosophical approaches in the context of ensuring the comprehensive development of national societies and states, provided that a

balance is reached between international (global) and national (state) interests in all spheres of their life in connection with the planned expansion of Western interpretations of the social structure is extremely small.

In this regard, the main purpose of this research is to analyse the relationship of the social concept of global constitutionalism to the legal system, carried out from the perspective of sociophilosophical methods of cognition of social reality and ideas reflecting it, and the subject of research is the relationship of the social concept of global constitutionalism to legal regulation carried out on international and national level.

Law plays a huge role in the social concept of global constitutionalism due to the fact that this doctrine uses the institution of law as the main instrument for organizing and managing society on a national and global scale. K. Marx and F. Engels noted that law is

"The will of the ruling class elevated to law, the content of which is determined by the material conditions of life of this class, its interests" (Frolov, 1981; Yerkin et al., 2019).

Thus, the law, appearing simultaneously with the state and being the product of the differentiation of society into political classes, always serves the interests of those political classes that are dominant in the territory of a given state in a given historical period, expressing their political will in the legal language and fixing the mechanism for implementation and protection of rights, freedoms and legitimate interests. The legal system is a complex set of norms, sub-institutions, institutes, sub-sectors and branches of law, united on the basis of a number of principles:

1. Unity, when they, due to their belonging to one legal system, are characterized by common goals;
2. The differences by virtue of which they have their content, the object of legal regulation;
3. Interactions.

In the context of globalization, the system of international law, which is used to regulate relations between national states, international governmental and non-governmental organizations, and other subjects of international relations, is gaining importance. According to some lawyers, we are talking about the formation of legal globalism as a combination of international and national legal systems (Lazarev & Saidov, 2011), which is a consequence of legal globalization in the context of world development (Bugayenko, 2013; Zalesny & Goncharov, 2019).

Any legal system is built on the basis of a number of principles-basic ideas, guidelines, defining the content and directions of legal regulation (general legal, sectoral and intersectoral).

In the context of this research, general legal principles of legal regulation are of interest, which include the following:

1. The principle of the rule of law, according to which the law is the concentration of the basic, most important rules of conduct governing the life of a state-organized society;
2. The principle of legality, according to which any subjects (state, authorities and local self-government, legal entities and individuals) are required to comply with legal requirements contained in legal norms under the threat of the application of sanctions by the state;
3. The principle of the equality of all before the law (equality), according to which all of the above subjects have the same opportunities and are placed in the same conditions when participating in public relations;
4. The principle of mutual responsibility of the individual and the state, implying, on the one hand, the obligation of a person to comply with legal requirements contained in the legal system, and on the other

hand, the obligation of the state to protect, by any legal means, the rights, freedoms and legitimate interests of a person and citizen;

5. The principle of responsibility in the presence of guilt, according to which any guilty illegal behaviour that is condemned by society and attributed by the legal system to the category of offenses should lead to the mandatory involvement of the guilty person in the liability established by law.

In the era of globalization of the socio-political, state-legal and financial-economic structure of national states, national legal systems undergoing a significant transformation (Sapun, 2012; Bogatyrev, 2013; Zalesny et al., 2019).

Firstly, the processes of integration of national legal systems are intensively taking place through the implementation of international law into the legal systems of individual states, the borrowing of legal norms by individual states from each other, (Nikulin, 2011) etc. In the Russian Federation, the whole system of law after 1991 was reformatted in the context of Westernization.

Moreover, this process has not been completed to this day. Increasingly, proposals are being made for further reception of Western legal norms and institutions. Thus, a number of scientists suggest expanding the list of sources of law in the Russian legal system to include, in addition to normative legal acts, legal customs and judicial precedents (similar to the Anglo-Saxon legal system, to which, in particular, the United States and Great Britain belong), or use the international judicial precedent as an element of modernization of the legal system of Russia (Shchetinin, 2009).

At the same time, the authors ignore the fact that Russia historically belongs to the countries of the continental system of law, and legal customs and judicial precedents are not inherent in it as sources of law. In addition, the system of judicial precedents and legal customs has been built in the Anglo-Saxon countries for centuries, it is very cumbersome, requires a huge number of qualified lawyers, and most importantly, the institution of independent judges with a very low level of corruption in judicial decisions.

Secondly, in the context of global constitutionalism, there is a clash of the concepts of "*rule of law*" and "*legal state*" (Udartsev & Temirbekov, 2015). So, on the one hand, the concept of a "*legal state*" assumes that the national legal system, the entire state mechanism is devoted to the main goal—the protection of the rights, freedoms and legitimate interests of person and citizen. Moreover, this protection is carried out by any means and methods.

At the same time, the concept of the "*rule of law*" assumes that the system of national law is naturally implemented in the international system of law, which distances it from the urgent goals of upholding the practical interests, rights and freedoms of specific citizens of specific national states in the name of mythical universal human rights values, standards, norms, rules, in fact, becoming subordinate to the general logic of the development of the world capitalist system and the interests of the global governing elites in the person management class. As a result of this, the rights, freedoms and legitimate interests of citizens at the level of national states (especially people with low material incomes) are not protected by either national or international legal norms, and it is not possible to take advantage of judicial protection in the absence of finance.

Thirdly, the core of constitutionalism is eroded at the level of the national state, the norms and principles of the constitutional law of individual countries are increasingly being replaced by international norms and principles, which often contradict the national legal

tradition, the peculiarities of the organization and functioning of the state apparatus, and the national political system of society.

Thus, according to Trofimova (2014), globalization acts as a legal transforming factor in national legal systems and at the same time entails for the most part the negative consequences of such a transformation. This can be especially vividly illustrated by the example of Ukraine, when, subject to any wishes of the "senior" partners from Western Europe and the USA, the national legal system is formatted in terms of the systemic foundations of organizing the state apparatus, ensuring the economic, financial, political and military security of the state, preserving its sovereignty and territorial integrity.

Fourthly, national legal systems, when westernized, are often unable to resolve historically inherent problems of a state legal nature that were resolved using legal norms and principles that are different from the Western model (for example, due to the peculiarities of the national mentality, a high degree of corruption, the presence of clan system in society, etc.).

As Adelbayeva (2015), notes, legal globalization is inherent in legal idealism, due to which *"it is necessary not only to create good laws, but also to provide the necessary mechanisms for their practical implementation"*. Moreover, the legal systems of Western countries are used as standards both for building national legal systems of other states and for developing and adopting international legal norms. But at the same time, often, national legislators of the countries of the periphery of the capitalist world do not take into account the negative experience of applying these legal norms in Western countries themselves, as well as the negative socio-political consequences of such an application.

Obeying the logic of legal globalization, national legal systems, according to some authors, began to react less flexibly to changes in public relations within national states, which significantly worsens the quality of legal regulation of public relations, creates favorable conditions for legal nihilism, offenses, lawlessness on the part of state bodies authorities and their officials (Marchenko & Deryabina, 2013).

Thus, the system of law at the international and national-state level is the main political and legal instrument used by the concept of global constitutionalism in the context of managing national societies and states, in the struggle for power and while holding it.

The legal system in the context of global constitutionalism is, first of all, a mechanism for managing national societies and states, subordinating them to the logic of historical preservation and development of the world capitalist system, which are a permanent goal of global governing elites and a means of preserving their power and property. In addition, the legal system at the international and national level is an effective instrument for oppressing, on the one hand, the countries of the periphery of the world capitalist system by the West, and on the other hand, the majority of the world's population by the global governing class.

This oppression makes it possible to export the costs and contradictions of the development of the world capitalist system from its core to peripheral countries, as well as transfer them from the shoulders of global and national elites to the main masses of the population, which generally undermines the stability of the national economies of peripheral countries, slowing their economic growth and driving into economic stagnation (Gilinsky, 2013).

The legal system is also a means of subordinating national states, as well as any socio-political, state-legal, financial and economic entities, to the leading will of the global governing elites in the person of the global governing class (Turaev & Tyumenev, 2015).

At the same time, globalization also formats the system of international law. Firstly, international law is transformed from a system of legal norms ensuring the interaction of national and international legal entities into a global legal system, which is expressed by a complex system of subordination of national legal systems to international law based on Western democratic values (Valyarovsky, 2012; Bogatyrev, 2015). Secondly, the international integration of national legal systems into the system of international law is increasingly carried out without taking into account local national interests. For example, in the Russian Federation this leads to the infringement of the interests of the national economy, which poses a threat to the stability of the socio-political system as a whole (Belousov, 2015; Efremova, 2014). Thirdly, there is no clear system of statutory bases of organization and activity of the international legal system, legislatively fixed at the international level, which entails its unsystematic impact on public relations at the level of national states. Fourthly, the mechanism of interaction and transformation of legal systems in the process of globalization has not been worked out in detail in international law and the legal doctrine (Pankevich, 2010; Polyakov, 2013).

Thus, the legal system in the context of global constitutionalism is a necessary and basic element of it, without which the practical implementation of globalization processes of the socio-political, state-legal and financial-economic structure of nation-states is not possible.

CONCLUSION

The legal system in the context of global constitutionalism acts as a mechanism for managing national societies and states, oppressing them, subordinating them to the logic of historical preservation and development of the world capitalist system, which is a permanent goal of global governing elites and a means of preserving their power and property.

The system of law at the international and national levels in the context of global constitutionalism acts as a necessary and basic element. At the same time, national legal systems undergoing significant transformation: through mutual integration; through a clash of the concepts of "rule of law" and "legal state"; by eroding the core of constitutionalism at the national state level; through westernization.

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