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GLOBAL LEGAL DEVELOPMENT BASED ON EQUAL RIGHTS OF CULTURES

In philosophy, culture is interpreted as the system of supra-biological programs of human ability to live (activity, behavior and communication of people).² In this logic of reasoning, law appears as one of such programs, and its evolution can be considered in the general context of cultural and even civilizational development.

Two alternative strategies of globalization, designated as poly- and monocentric scenarios, include legal aspects. In the first variant, strengthening countries' system communication implies preservation of their state sovereignty and development of agreements on certain adjustments of International Law.³ The second variant is aimed at spreading established legal norms of the globalization leader to all regions of the planet, as which the US leaders have already publicly declared its country.⁴

Currently, there is a trend to transition from the monocivilizational model to the multi-civilizational one of the world order. In this regard, the legal doctrine and practice raise the question of a new concept of correlation of universal and national law⁵, which should be sought in the coordi-

nate system of the universal civilizational project⁶. In many states, including Russia, there is the search for new semantic contents for this concept, which is confirmed by constitutional reforms and the practice of national courts. Thus, in 2015, in its Resolution dated July 14, 2015 No. 21-P, the Constitutional Court of the Russian Federation pointed out that "interaction of European and constitutional legal orders is impossible in conditions of subordination, since only dialogue between different legal systems is the base for their proper balance." The Court also determined parameters of formation of the national constitutional identity concept, to basic components of which it attributed intrastate norms on fundamental rights, as well as provisions on foundations of the constitutional system, ensuring these rights.⁷ Now, new revision of Article 79 of the Constitution of the Russian Federation establishes that decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation in their interpretation, contrary to the Constitution of the Russian Federation, are not subject to be executed in the Russian Federation.

In the global legal development, there happened a reversal in this direction. Hierarchical correlation of universal and national law has been replaced by combination of the all-human, the universal and the local (the polycentric approach based on fundamental equal rights of different cultures and civilizations). Prerequisites for this were growing discrepancy between the statement about the universal nature of the civilizational model developed by one local (European – American) culture, and obvious diversity of vectors of evolution of other local (Russian, Arab-Muslim, Indian, Chinese, etc.) cultures, which formed their own civilizational projects.⁸

This has resulted in identification of the vector of global legal evolution in the logic of the all-human civilizational project. States implement new development strategies, searching for their own sociocultural, national and constitutional identity,⁹ equal rights for cultures. Original concepts

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² See: *Степин В. С.* Идея права как социокультурный феномен // Трансформация парадигмы права в цивилизационном развитии человечества: докл. членов РАН. М., 2019. С. 93.

³ See: *Право и национальные традиции: материалы круглого стола / А. А. Гусейнов, В. С. Степин, А. В. Смирнов, Г. А. Гаджиев, Н. С. Бондарь, Э. Ю. Соловьев, В. М. Межуев, П. Д. Баренбойм, В. В. Лапаева, С. Л. Чижков // Вопросы философии.* 2016. № 12. С. 5–41.

⁴ See: *Хабриева Т. Я.* Конституционная реформа в России: в поисках национальной идентичности // Вестник Российской академии наук. 2020. Т. 90, № 5. С. 403–414.

⁵ See in detail: *Хабриева Т. Я.* Новый концепт соразмерности в конституционном праве: докл. на Междунар. конф. Конституционного Суда РФ «Конституционная идентичность и универсальные ценности: искусство соразмерности», состоявшейся в рамках IX Петерб. междунар. юрид. форума (Санкт-Петербург, 14 мая 2019 г.) // Феде-

ральная палата адвокатов РФ: [website]. URL: <https://fparf.ru/news/fpa/konstitutsionnaya-identichnost-i-universalnye-tsennosti/> (accessed: 23.05.2023).

⁶ See in detail: *Смирнов А. В.* Всечеловеческое vs. общечеловеческое. М., 2019.

⁷ See: Постановление Конституционного Суда РФ от 14 июля 2015 г. № 21-П «По делу о проверке конституционности положений ст. 1 Федерального закона „О ратификации Конвенции о защите прав человека и основных свобод и Протоколов к ней“, пунктов 1 и 2 статьи 32 Федерального закона „О международных договорах Российской Федерации“, частей первой и четвертой статьи 11, пункта 4 части четвертой статьи 392 Гражданского процессуального кодекса РФ, частей первой и четвертой статьи 13, пункта 4 части третьей статьи 311 Арбитражного процессуального кодекса РФ, частей первой и четвертой статьи 15, пункта 4 части первой статьи 350 Кодекса административного судопроизводства РФ и пункта 2 части четвертой статьи 413 Уголовно-процессуального кодекса РФ в связи с запросом группы депутатов Государственной Думы».

⁸ See in detail: *Смирнов А. В.* *Op. cit.*

⁹ The concept "constitutional identity" appeared in Russian Constitutional Law several years ago. It was mentioned (along with the terms "constitutional values" and "constitutionally protected values") in the ruling of the Constitutional Court of the Russian Federation dated July 14, 2015 No. 21-P "On the case of checking constitutionality of the provisions of Article 1 of the Federal Law "On Ratification of the Convention for Protection of Human Rights and Fundamental Freedoms and Protocols Thereto," Paragraphs 1 and 2 of Article 32 of the Federal Law "On International Treaties

of correlation of universal and national values emerge. This, for example, is evidenced by the extensive practice of updating national constitution.¹

Cultural and historical specific features become characteristic of modern constitutions. If dozens of new constitutions of the 1990s era were written in very similar language, reflecting ideas about the final victory of liberal ideology, the constitutional reforms of the 21st century demonstrate the unique surge of national identity. This might be facilitated by unsuccessful results of the new wave of globalization, the crisis of multiculturalism policy, the next cycle of disintegration, regional upheavals like the Arab Spring.

Some countries in the post-Soviet space have amended their constitutions, changing the scale or priority of national values (Armenia, Kyrgyzstan, Kazakhstan, Turkmenistan, Azerbaijan). For example, the Constitution of the Republic of Armenia (as amended in 2015) emphasizes the fundamental principles of Armenian statehood, recognition of the exclusive mission of the Armenian Apostolic Holy Church “as the national church in the Armenian people’s spiritual life, in development of its national culture and preservation of its national identity” (while guaranteeing the freedom of activity for all religious organizations operating there in accordance with the procedure established by law). The Constitution of Kyrgyzstan (as amended in 2016) states “the firm will to develop and strengthen the Kyrgyz statehood, to protect the state sovereignty and unity of the people, to develop its language and culture.” The Constitution of Kazakhstan (as amended in 2017) lists “eternal” constitutional values in a new way, which are not subject to be changed by subsequent constitutions. These are the state’s independence, unitarity and territorial integrity, the form of government, as well as fundamental principles of the Republic’s activity.

A similar modernization of constitutional texts is also observed in non-CIS countries. Thus, the preamble of the Egyptian Constitution of 2014 indicates “the gifts of Egyptians to humanity”, milestones of the unique Egyptian history, and listing Egyptian society’s goals and values takes several pages.

of the Russian Federation,” Parts 1 and 4 of Article 11, Paragraph 4 of Part 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Parts 1 and 4 of Article 13, Paragraph 4 of Part 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Parts 1 and 4 of Article 15, Paragraph 4 of Part 1 of Article 350 of the Administrative Procedure Code of the Russian Federation, and Paragraph 2 of Part 4 of Article 413 of the Criminal Procedure Code of the Russian Federation, because of the group of the State Duma deputies’ request (Collection of Legislation of the Russian Federation. 2015. No. 30. Art. 4658). This concept is historically associated with intensified competition of national, supranational and transnational legal systems and is increasingly used by judicial authorities of other countries (mainly France, Germany and Italy) as part of legal protection of their national constitutional values in context of integration. “National identities of the member States” that “should be respected” are mentioned in Article 4 of the Treaty on the European Union (as amended by the Lisbon Treaty of 2007). Importance of the phenomenon of national constitutional identity and the developed constitutional culture for a particular society is that as the society “matures”, it forms the sustainable and consistent system of fundamental legal principles based on the values recognized by this society. This allows it to further develop comprehensively, and carry out self-adjustment, logically and morally verify improvement of the national legal system, and first and foremost its foundation – the constitution.

¹ See in detail: *Хабриева Т. Я.* Конституционная реформа в современном мире. М., 2016; *Хабриева Т. Я., Чиркин В. Е.* «Цветные революции» и «арабская весна» в конституционном измерении: политолого-юридическое исследование. М., 2018; *Khabrieva T. L.* La réforme constitutionnelle dans le monde contemporain. P.: Société de législation compare, 2019.

Constitutions of many developed countries consolidate higher values. They reflect priorities of moral and spiritual development of each particular society, raised to the state policy level.

In the Constitution of Italy, nature, the nation’s historical and artistic heritage, social solidarity, freedom, peace and justice, mutual assistance, especially public assistance to the elderly, the disabled and the unemployable, private charity, public benefit, good morals, loyalty to the Republic, discipline and honesty of public servants are designated as values. The Constitution of Spain explicitly lists values considered the highest ones, among others: freedom, justice, equal rights and political pluralism. Herewith, the text of the Constitution fixes the democratic system, the state of law, culture, traditions, language, peace and cooperation with other peoples. In the Bulgarian Constitution, freedom, peace, humanism, equal rights, justice, tolerance are declared the highest values; in the Greek Constitution – respect and protection of the human person, consolidation of peace and justice, development of friendly relations between peoples and states, social and national solidarity of the citizens.

Besides references to the will of Allah and belonging to “the great Arab nation”, in almost all new constitutions of Muslim countries, there are indications of their own traditions.

Modern constitutional reforms are important and interesting because they affect not only the law itself and the country’s legal system. The value-based legal understanding, more profound view of national and constitutional identity, and new concepts of the “multi-level” world legal order are widely strengthening themselves in the world. Taking into account the constitutional values, relations between a person and the state are built.²

The strategic guidelines of the new paradigm of global legal development are accepted by Russia, as well. As the result of the constitutional reform of 2020, the value list in the Basic Law was expanded. The historical origins, spiritual traditions and own ideals of Russian society were more clearly reflected in it. Moreover, configuration of the national legal system dichotomy, the ratio of its openness and protection from external influence by embedding in the Constitution and constitutional legislation a new, but already tested due to the activities of the Constitutional Court of the Russian Federation, the formula of correlation of universal and national legal values, principles and norms has changed.

In the updated Constitution of 1993, a number of socially significant institutions and guidelines received a new sound, which essentially expanded and deepened the value content of the Basic Law. Among them, the following should be highlighted:

– *sociocultural and spiritual values – the basis of national (state) identity and self-identification of the Russian people – the multinational union of equal peoples united by the thousand-year history; continuity in development of the Russian state; historically established state unity; the state (Russian) language as the language of the state-forming people; equal rights for all peoples of Russia; all-Russian cultural identity, culture as the unique common heritage while preserving the cultural identity of peoples, ethno-*

² See: *Зорькин В. Д.* Современный мир, право и Конституция. М., 2010. С. 81.

cultural and linguistic diversity; preserving the memory of the ancestors who gave us ideals and faith in God¹; historical truth and its protection; patriotism; citizenship; honoring the memory of the defenders of the Fatherland; the importance of the feat of the people in the defense of the Fatherland; traditional Russian family values – marriage as the union of a man and a woman; ensuring the priority of decent family education; respect for parents and elders and caring for them; solidarity of generations;

– *values of social (including socioeconomic) development* – sustainable economic growth; advanced scientific and technological development; state policy focused on society; “value-based” attitude to labor and respect for the person of labor; social partnership; public and individual health and formation of the citizens’ culture of responsible attitude to their health; environmental value guidelines – preservation of the country’s natural and biological diversity, ensuring environmental safety, environmental education. Regulation of these provisions aims, inter alia, at establishing optimal balance between individual freedom and the social, public interests;

– *sociopolitical values* – civil peace and harmony in the country; economic, political and social solidarity; development of civil society and support of its institutions, including non-profit organizations; international peace and security, peaceful coexistence of states and peoples. In the Russian Federation, the listed values have not been raised to the level of constitutional regulation before, except for a number of provisions of the foreign policy section of the Constitution of the RSFSR of 1978 (where there is a reference to the Constitution of the USSR);

– *state-legal values* – the principle of succession (legal succession) in relation to the USSR, consolidating the Russian constitutional identity in domestic and international space; the principle of the public authority unity. Since the system of separation of powers, assuming “checks and balances”, is one of the signs of the rule of law and represents a value of the political, state-legal nature, it is possible to state certain changes in this system.

Emphasis has been placed on such values previously enshrined in the Basic Law as sovereignty and territorial integrity of the Russian Federation, entrepreneurship and private initiative, goodness and justice. Systematic interpretation of the norms of the Constitution makes it possible to single out as values the strong, independent state that corresponds to the Russian mental tradition.

Thus, in the new constitutional cycle, the value list of the Basic Law has been replenished with moral guidelines, generally significant political and legal ideals that have become real constitutional features of Russian society and the

¹ As noted by the Constitutional Court of the Russian Federation, these amendments relate to issues of all-Russian state identity; they are non-political, non-partisan and non-confessional in nature. Russian belief in God does not mean abandoning the secular nature of the state and does not put citizens in the unequal position depending on such faith; it is intended only to emphasize the historically significant sociocultural role of the religious component in development of Russian statehood (see: Заключение Конституционного Суда РФ от 16 марта 2020 г. № 1-3 «О соответствии положениям глав 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации „О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти“, а также о соответствии Конституции Российской Федерации порядка вступления в силу статьи 1 данного Закона в связи с запросом Президента Российской Федерации» // Российская газета. 2020. № 56).

state. They are historically inherent in the Russian people and form the basis of its “sociocultural code”. Mechanisms of public power are also improved. Russia has developed its own national model of the Constitution, respective with the domestic mentality and new requirements of the country’s national security. It better than before reflects the state-civil identity of Russia, its sociocultural basis, political-legal ideals. This value model considers the accumulated historical experience, practices proven by evolution and priorities realized not only by the authorities, but also by the broad strata of society.²

Values forming the sociocultural core of the Russian mentality have been institutionalized not only in the updated Constitution, but also in official strategic documents. For example, the Strategy of the State National Policy of the Russian Federation for the period up to 2025³ identifies such values as truth and justice, distinctive traditions of the peoples inhabiting Russia and some others. According to Paragraph 11, “the modern Russian state unites the single cultural (civilizational) code based on preservation and development of Russian culture and language, historical and cultural heritage of all the peoples of Russia, which is characterized by a particular desire for truth and justice, respect for original traditions of the peoples inhabiting Russia, and the ability to integrate their best achievements into the single Russian culture.” This results in receipt of another support at the level of the Constitution by Russia’s strategic policy.

In 2020, among the values of social (including socioeconomic) development, which have become the most important guideline and priority of state policy (at the federal and regional levels), scientific and technological progress, as well as science and scientific potential of Russia as its sources and independent values, received constitutional consolidation. As a result, the constitutional and legal basis of Russian science has been significantly expanded.

The Constitution of the Russian Federation essentially establishes the function of the state, which consists in ensuring scientific and technological development (by referring to the subjects of jurisdiction of the Russian Federation) and managing it. The Basic Law provides for this the necessary tools:

– Article 71 – fundamentals of the federal policy (this issue is attributed to the subjects of the Federation for the first time); state regulation, state (federal) programs of scientific and technological development of the Russian Federation (this means the immutability of state funding);

– Article 114 – powers of the Government of the Russian Federation in the field of supporting, preserving and developing the scientific potential of Russia (this is also a novelty);

– Paragraph “m” of Article 71 – an independent area of state activity – “ensuring safety of the individual, society and the state in application of information technologies, digital data turnover.”

The constitutional basis of science consists of not only the four articles of the Constitution of the Russian Federa-

² See: Хабриева Т. Я. Право и новые стратегии цивилизационного развития // Хабриева Т. Я., Черногор Н. Н. Будущее права. Наследие академика В. С. Степина и юридическая наука. М., 2020. С. 71.

³ The Strategy was approved by the Edict of the President of the Russian Federation dated December 19, 2012 № 1666 “On the Strategy of the State National Policy of the Russian Federation for the period up to 2025” (СЗ РФ. 2012. № 52. Ст. 7477).

tion, including Article 44, but also other constitutional novelties, which, due to their polyfunctional nature, form “the field of opportunities” and the solid constitutional-legal foundation for development of domestic science. Among them:

– norms aimed at improving the mechanism for ensuring supremacy of the Constitution of the Russian Federation throughout the state, as well as changes designed to ensure that the updated concept of correlation between the universal and the national is reflected in the Basic Law and the legislation of the country (Articles 79, 125 of the Constitution of the Russian Federation). These norms make it possible to preserve the autonomy of Russian science and education necessary to achieve the national development goals of Russia (in accordance with the Edict of the President of the Russian Federation dated July 21, 2020);

– provisions extending social warranties for citizens, importance of which has significantly increased when the role of human capital, scientists and researchers has essentially grown. Accordingly, measures of their social support become an important factor in development of domestic science, which, in turn, transforms into a determining factor of economic growth. The situation with development of coronavirus vaccines is a vivid example of this.

It can be stated that the updated Constitution, firstly, creates the worldview paradigm, in a sense, the ideology of socioeconomic development of Russia (based on knowledge and high technologies), including criteria for determining the limits of permissible use of technological innovations. They reflect incentives for scientific and technological development (in the unity of science as a source and technology as a result of scientific research), and warranties of protection from its undesirable effects, and for all the main subjects of constitutional relations – individuals, society, the state.

Secondly, meanwhile, constitutional guidelines are formalized for achieving Russia’s strategic goals.

Thirdly, the constitutional model of the public life sphere called by philosophers as “technosphere”, or more broadly as “anthropotechnosphere”, including its value basis, institutional and functional foundations, objects and subjects of legal interaction, legal instruments for imple-

mentation of state priorities, as well as constitutional warranties for safety of the individual, society and the state, is being formed.

There is no such comprehensive approach to the realities of the new technological order in any constitution of the world. This lays the solid foundation for development of own culture, including the legal one, especially since Part 4 of Article 68 of the Constitution of the Russian Federation for the first time as the result of the amendment made in 2020 recognizes the culture in the Russian Federation as the unique heritage of its multinational people, which is supported and protected by the state. Thus, the state recognizes its culture as the most important factor in harmonization of public relations, a condition for preservation of the single cultural space and the territorial integrity of Russia. Confirming by the Constitution of the Russian Federation the culture importance is designed to ensure a higher level of the society development, its ability to civil unity, setting and achieving common goals in national development.

In the search for new strategies of legal development both at the global and national levels, the ideological issues related to cultural identity are attributed to the core ones in most states of the world. For Russia, it is extremely relevant. The value markers are finally placed in the Basic Law, and the legal system of the Russian Federation continues to be adjusted in accordance with the constitutionalized spiritual, moral, and political-legal guidelines.

The domestic legal doctrine, which has absorbed values of both pre-revolutionary and Soviet jurisprudence, is able not only to provide ideological support for the appropriate strategy of state-legal development, but also to maintain the immunity of public consciousness to concepts and ideologies that provoke cardinal changes in the value basis of the state-legal arrangement of Russian society.

This does not mean that domestic legal science should ignore changing legal conditions. Here it is important to distinguish between unshakable values that help preserve all the most important things within the sociocultural genotype, and values of the evolutionary nature, which are offered to humanity by the changing environment. These values, introduced by new challenges, will also gradually be integrated into the public consciousness of justice.