International legal acts as the source of contemporary constitutional law, and their role in universalization of norms of the constitutional law

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Abstract: As was already noted earlier, universal principles were embodied in a number of international legal acts which, in their turn, served as the source for the constitutional building (or reforming) in most contemporary states. Based on this prerequisite, it seems necessary to analyze the specific features and the role of international legal acts in the processes of universalization of norms of the constitutional law. Before the immediate solution of this task, we will analyze the contemporary understanding of sources of law. It is recognized now that the basic place of the constitutional law in the system of branches of law is fixed by its main source, i.e., the Constitution of the state. In addition to the Constitution, the sources of the constitutional law include: laws about most important questions concerning the state organization (electoral law, laws about parties and public organizations, judicial system); decisions, taken through referendum, declaration of rights; decisions, taken in the course of the judicial constitutional control; constitutional customs, in a number of countries; devotional duties of the Koran, in Muslim states.

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1 Introduction

Constitutional Courts are at interface between the law and politics [1].

In the contemporary political science, the law is defied as a special form of public organization, serving as a value, norm, and fact [2].

Quantitative indices are constructed for five social rights: right to social maintenance, education, health, accommodation, and worker rights [3].

Uncertainty of normative act leads to contradictions between imperative administrative principle of the information certainty, legal principle of the juridical applicability, and the acting legal norms [4].

This is the so-called "classic approach" to the system of sources of the constitutional law. At the same time, in last decades the idea about supremacy of the international law (specific international legal acts, i.e., UN resolutions and declarations, decisions of the European Court of the Human Rights, etc.) relative to the national lawmaking increasingly deeper penetrates to constitutional normmaking of the democratic legal states. It is just international legal norms, as was already noted many times above, that determine the basic rights and freedoms of a human.

In the twentieth century, 1948 UN Declaration is thought to be an international standard for universal rights of a human [5].

The Russian Constitution was accepted and acts now. It may not be good for somebody, and be totally incompatible with requirements of the modern democracy; nonetheless, it is an official document, having superior juridical power [6].

In particular, paragraph 4 art. 15 of the Constitution of the Russian Federation states that if an international agreement of the Russian Federation establishes other rules than it was provided by the law, then rules of the international agreement are applied. The Constitution of the Russian Federation embodies rules stating that (1) generally accepted norms and (2) principles of the international law are the part of the national legal system, thereby becoming still another source of the constitutional law.

As the generally accepted (universal) norms and principles, the international practice considers those "recognized by quite a representative majority of states". The form of their existence is the international custom and international agreement.

The classic doctrine of the international law singles out 10 universal principles [7]:

- The principle of non-use of force and threat of force;
- The principle of peaceful settlement of international disputes;
- The principle of nonintervention in affairs, belonging to the internal competence of the states;

- The principle claiming that states are obliged to cooperate;
- The principle of the equal rights and self-determination of nations;
- The principle of the sovereign equality of the states;
- The principle of honest implementation of obligations in compliance with international law;
- The principle inviolability of state frontiers;
- The principle of the territorial integrity of states;
- The principle of respect for human rights and fundamental freedoms.

The main international normative acts, containing these principles, are:

- UN Charter;
- General declaration of human rights;
- International pacts on civil and political rights, as well as on economical, social, and cultural rights;
- Declaration of principles of the international law, concerning friendly relations and cooperation between states in accordance with the UN Charter adopted on October 24, 1970;
- Final Act of the Conference on Security and Cooperation in Europe held in 1975;
- UN Declaration;
- Decisions and resolutions of international juridical bodies (International UN Court, European Court of Human Rights, Inter-American Court of Human Rights, and so on);
- International agreements, and so on.

Principal part. These principles are universal in character, since they serve as a basis for the world law and order. They cover traditional and new spheres of international relations, determining the orientation and character of international-legal regulation as a whole. Reference to the international agreements and generally accepted norms of the international law are also contained in a number of contemporary Constitutions.

For instance, ch. 2 "Rights and freedoms of a human and citizen" in the Constitution of the Russian Federation begins by stating that rights and freedoms of a human and citizen in the Russian Federation are guaranteed and recognized in accordance with generally accepted principles and norms of the international law and in accordance with the current Constitution of the Russian Federation (paragraph 1 art. 17). In the same chapter, the reader is again referred to the international sources in art. 62 and art. 63, regulating the questions of nationality and concession of the political refuge for foreign citizens and persons without citizenship.

Analysis of the role of the international legal acts in the process of universalization of norms of the contemporary constitutional law makes it possible to speculate that the effect of these legal acts can be differentiated according to the following attributes:

1) Universalization at the level of unification of general points for determining the basics of regulation of social relations in states within different regions.

This feature is manifested in that contemporary states, despite their geographical, cultural, and historical differences, having resulted in significant differences in legal systems, nonetheless may use (and use) a number of similar, universal principles in their constitutional regulation. These principles, with insignificant changes, can be found in practically all contemporary Constitutions. In particular, the above-mentioned ten principles of the classic international law are recognized by absolute majority of the contemporary states.

2) Universalization of the principles of the international law in the international territorial unions and international organizations.

On the whole, this feature is quite similar to point one, with the only difference being that, in this case, the universal principles, embodied in the international legal acts, are backbone, i.e., compulsory.

3) Universalization in the system of interrelation between international and national laws.

This basis for differentiation is sufficiently complex and has various forms of expression. Very crudely, this model can be reduced to two constituent parts: legal systems that admit the supremacy of the international law, and legal systems that recognize the supremacy of the national law. As a rule, the contemporary constitutional regulation lacks such "extremes", and every national legal system independently establishes some level of relationship. This aspect will be addressed in detail below.

4) The use of principles of the international law as universal basics for creating the national (constitutional) fundamentals of the legal regulation of social relations in contemporary governmental forms.

This basis is typical for a number of "new" Constitutions, i.e., those adopted after World War II. In this case, the universal fundamentals are originally laid as priority basics, sometimes undergoing certain changes, due to national peculiarities. Specific features of these processes will be addressed in the second paragraph of this chapter.

On the whole, it should be noted that inclusion of international legal acts in the system of sources of the contemporary constitutional law represents a relatively new approach to studying the constitutional regulation, despite the fact that this process has already become an objective reality. Therefore, we

will analyze some methodological and essential characteristics of this type of sources of the constitutional law.

The question about the sources of the law was interesting to almost all jurists in the past and remains to be so at present.

Some scientists [8] identify the sources with the form of expression of the law, and the other distinguish them by defining the source as a phenomenon engendering the norms of the law, and by defining the form of expression as some "container of norms", not coinciding with the source in its essence.

We should agree with S.F. Kochekyan in that: "There is no commonly accepted definition for this concept, and even the proper meaning, in which words "the source of law" are defined (On the concept of the source of law [9]), seems debatable".

We will try to clarify the question about universal character of sources of the constitutional law with the help of the contemporary methodology of system approach. These sources have a few specific features, which can be formulated as follows:

Firstly, the law in operational understanding is the system of social norms, in which every norm, representing a decision of governance subject, has life cycle, including stages of its creation, establishment, realization, and reconsideration. Every stage has its own legal sources. Neglect of any source makes the future norm of the law insignificant. In order to avoid annihilation, there should be a unified model of norm of the law, including not only semantics, but also the place and time of appearance of the concept and subsequent "life" of the concept within its surroundings. This may determine the specific norm of law and particular sources, necessary for this norm.

Secondly, constitutional norms of law dominate over all other norms of law in the state, serving arguments for the latter. They give rise to all other norms of the law and, as such, cannot be derived from norms, created by themselves, like members of one and the same family, who cannot be parents and children simultaneously. Also, constitutional norms cannot be derived from norms of the law of other states, because sovereign states are at the same hierarchical level, and norms of the law of other states do not have mutual power force; these norms may have informative-inquiry character only.

Thirdly, norm of the law (the result of lawmaking) has been so far derived from sources of the law (arguments), owing to the existence of the cause-and-effect relation. This type of relation is an expression of the rational thinking; and norm of the law, which is created by this type of thinking, always depends on the subjective choice. Some or other sources of the law can be used, depending on individual preferences of subject of the law or researcher. As a consequence of this approach, in constitutional law, as a system, there occur lacunas and gaps, serving the sources of false constitutionalism and instability of the law.

Therefore, the constitutional sector of the law requires a more fundamental methodological basis than cause-and-effect relation, available for the rational thinking and being subjected to the subjective choice.

The institution of the law is widely recognized to be constructed on the basis of the "domination-subordination" relations, protected by power of the state. The essence of these relations is the governance process, the features of which are just created by universal principles and norms of the law. Governance is taken to mean immanent property of organized systems of different (social, technical) origins; it ensures preservation of their structure, maintenance of their activity regime, and implementation of their programs for achieving the goal. Governance is present in any system, which comprises many components, interacting with each other and environment.

In this human-created system, the governance processes can be found not only in its end product, i.e., in ordering of social relations, but also at any stage of the life circle of norm of the law, including origin, existence, development, reconsideration, and death. The above-listed traditional sources are engendered by the law system itself, and there is no new property in the concept of the law (subject) that follows from the latter. Therefore, the judgment about the sources of the law contains nothing new, or presents no true knowledge. In contrast, governance or, more specifically, its universal principles do not follow from the subject of the judgment (law); therefore, governance represents a new property. At the same time, interrelation between subject and predicate (universalism) is "universal and necessary", since universalism (its principles) enters organized legal systems as a tool for developing the system and ensuring its purposefulness.

Therefore, universal legal principles can be referred to the general category of existence of an individual and society.

System represents an operator which turns input into output. Input is represented by resources: labor of people, their funds, and natural resources, which are located on sovereign territory of the state and turn into final product (output). The product is used to satisfy the needs and desires of humans at present (and also at future) times; for this, a part of the final product recycles back to the input, for a new circle of the production.

The system exists in the environment, which includes (a) supersystem, artificially created by a human, such as world community of states; and (b) nature. The system interacts with the environment according to the principle: "subordination – domination".

We turn attention to the fact that constitutional law involves three diverse elements of the governance system:

1) the organization of the state power (functions, structures, and other components and relations);

2) the product of the system activity, i.e., administrative (state) decisions;

3) decision-makers, i.e., hierarchs of power.

The first element represents a "rigid", weakly changing part, i.e., governance skeleton. This case is characterized by administrative decisions, including all stages of the life circle of the decision: preparation, decision making (approval), control of realization, and update on the basis of practical evaluation. It admits more frequent and less regulated changes. For many years, the life quality and the fate of the state and people will depend on how well the creator of the administrative skeleton (e.g., Constituent assembly that adopted constitution) understood the essence of governance in the state, and how perfect governance system could be created.

Elaboration and adoption of the governmental decisions is influenced substantially by the hierarchs of power, i.e., by decision makers. This influence is subjective in character. For instance, the character of future decision in the state may depend on personal (subjective) views of Individuals, deciding about reasons, forcing them to take a given decision, their possibilities and readiness to implement a decision, as well as on interests of political powers promoting the power hierarch.

The character of interaction between subject and governed object is embodied in the constitutional law, and interaction between subject and environment is documented in international law.

Therefore, constitutional law is not only the methodological tool that forms all other sectors of law; also, it enriches these sectors with imperatives of overlying governance levels, i.e., with the norms of the international law, e.g., protection of rights and freedoms of a human, and environmental protection, such as ecological constraints on the human activity and the responsibility of state for warning the population about coming natural cataclysms, which, undoubtedly, can be referred to the principles of universalization in constitutional law.

The principle of the information certainty is self-evident (and, as such, does not have fixed name in governance). Nonetheless, once there appear hierarchical (domination-subordination) relations between subject and object of governance, relying upon individual desires and preferences, the information, circulating between its participants, may be deliberately distorted. Rather often, not only bodies of governance, but also citizens and visitants of the state are interested in this. Permissible volume and character of distortions in the process of governance are regulated by intrastate laws and international law, all having imperative character, and by morality of end subjects of governance, i.e., people.

In the state, the contradiction of interests can reach the maximum level, since power is endowed with additional recourse of governance, namely, legitimate right to apply violence against its citizens, up to imprisonment and deprivation of life at peaceful time, and compulsion of citizens to take part in military conflicts, provoked by threats against another state or direct aggression against it.

Administrative principle of information certainty is known in the constitutional law as the principle of juridical applicability. Its essence is "clarity, accuracy, unambiguity, and consistency", i.e., the conditions for citizens and authority to uniquely understand the meaning of actions and legitimacy of application of real material and physical actions.

There are several sources of this contradiction. They include insufficiently well-grounded belief that creators themselves understand the norms of law equally well, in view of the fact that education, the level of preparedness, and psychophysical features of people, engaged in lawmaking, are not identical. Another source is non-professionalism of decision-making individuals and their morality.

However, the main source of negative phenomena is compromises of political interesants, with the purpose of satisfying the personal (egoistic) and corporal interests of persons in the subject of governance. Consequences of compromises are invariably delayed decisions of state problems, leading to unavoidable losses (of property, dignity, health, and often even life) in the object of the governance, namely, in population, and, subsequently, in the subject of governance itself, in the form of social conflicts, which destabilize the power. Uncertainty of information, embodied in material and procedural laws, entails delinquencies, primarily in terms of corruption, making legal norm insignificant.

Therefore, in order to eliminate the distortion of information, norms of the constitutional law should rely upon the combined principle of "information certainty and juristic applicability", which should be recognized as an obligatory source of the law, and application of this principle in decisions of all the

branches of power should become the subject of expertise of norms of law.

Another universal administrative principle in the contemporary constitutional law is the feedback principle, which consists of influence of the object of governance (population and a citizen) on decisions of the subject of governance and on the subject (power) itself. It is through feedback that the idea of the legal state can be realized: "the source of law in the state is people". Satisfaction or dissatisfaction of people, fed back to the government, is the decisive factor of stability of the state.

Numerous coups and revolutions are sufficient evidences of consequences of broken feedback principle, which led to great losses of human and material resources, and will lead to even bigger losses in future. At the same time, they may signify an insufficient attention to socialization in society and to education of citizens.

The feedback principle can be found to be present in the constitutional law and, in particular, in laws on authority elections, in control over the activity of deputies (recall power), in the complex of personal rights and freedoms (press, meetings, judicial defense of the rights of a citizen in the suit against state, etc.). However, this principle, which represents pervasive influence on the state governance, is not embodied yet in jurisprudence as a source of law. This is probably why the conditions of implementation of this principle are not supported by norms of the law, in many cases; and people cannot realize their prerogative to be the source of law in the state.

There are at least two obstacles for a normal functioning of the feedback principle.

The first obstacle underlies the proper norms of the law, containing no procedures for implementing the people's power. For instance, after being nominated and elected according to party lists during elections to the bodies of state power, elected representative have no personal responsibility to its electors.

Another example is the absence of antimonopoly laws about selling the information products to mass media and political technologies, preventing citizens from obtaining confident information, necessary to take adequate decisions.

The age of democracy has an elevated importance in new strategy of identification; but, the existing quantifies of when countries became democratic states seem to be broken. Two new measures of democracy age were introduced. Primary signs are when countries firstly had sincere democratic elections; and secondary signs are when its applicable constitution was adopted [10].

Second obstacle for normal functioning of the feedback mechanism lies in that feedback rights, given to citizen, have only declarative character, because they presuppose no conditions for their realization. At the same time, the law of civilized states is designed not only "to permit all that is not prohibited", but also to create conditions for consolidation of citizens, make them feel that decisions of power can be altered.

A tendency toward consolidation should be laid as a basis in the system of school and higher education of future citizens, and is embodied in the activity of the civil society. Its role consists of stabilization of governance of the state, preparation and training of political consciousness, political culture, civil responsibility, and, at last, stimulation of modernization of governance.

Civil society, like education system, requires not only the declarative recognition of its rights, but also material support in equal amount to other structural components of power, such as: protection from external aggression, or maintenance of law and order. However, until the feedback principle is not recognized as the source of constitutional law, its tool, i.e., civil society, will not occupy an appropriate place in state governance.

The third obstacle is associated with the hierarchical principle of governance of organizational systems. The governance hierarchy is present in all organized systems (biological, organizational) as a means for ensuring the purposefulness of the system and material (thing) economy in the governance system, achieved by delegating authorities.

Form all manifestations of the dictate of upper hierarchical levels on the state, we can recognize that hierarchical principle of governance is a dominating source of constitutional law. The sphere of influence of this administrative principle, and ensuing universal norms and rules, cannot be confined to sovereignty of the state, and are determined by power force of environmental effect, e.g., , by efficiency of norms of international law and by threats of ecological damages in certain period of time. For instance, even more global influence of laws of the universe or motion of planets cannot be considered as a source of constitutional law in a particular historical period.

There is a controversy in the law itself. A human, being an end subject of law, endowed with free will by nature, is qualified in state governance as an object (subordinated to someone's will). In a like manner, he should be considered as an object of law in the public law, since decisions are taken by power instead of (or on behalf of) him, and sometimes even against his will.

By the way, this controversy and, probably, the associated delay in recognition of the public law as a

rightful branch of law, having universal properties, is indeed the consequence of ordinary mixing of concepts.

The essence of the controversy is that, in private right, the contradiction of interests of parties arises not in subjects of law (people) themselves, but rather in the public law; and not between the subject and object of law, but rather between social roles of people. In private right, people temporarily act as, e.g., plaintiff and defendant. In an individual right, people, still remaining the subjects of law, also temporarily act as a leader and subordinate (the subject of the state).

2. Conclusion

As a result of changes of roles, the relations between parties in a private right, such as during dispute of litigant parties, completely correspond to relations of participants in an act of governance. For instance, a judge, pronouncing judgment, is a decision-making person, he personally presents verdict on actions of every litigant party, and these parties in the period of lawsuit play the roles of objects of governance, i.e., they act as subordinates to the decision-making person.

In its turn, the basis for constitutional law is the expediency, pragmatism, i.e., the interrelation between results and expenses of temporal and material resources; and individual rights of participants are represented in the form of different kinds of restrictions of a higher level (such as protection of rights and freedoms of a human).

The history of application of democratic governmental (constitutional) law spans a little more than two hundred years (since the adoption of the world's first constitution of the United States); and the history of its application in almost half of states in the world spans nearly half century; although separate constitutional norms had existed almost eight centuries, e.g., in the history of Great Britain (since 1215) and a few thousand years in works of philosophers and rulers of the past.

Too short historical span, very small number of instances when norms of democratic state law were created, and short and incomplete practice of application of them in the world give no well tested models for decision-making. Therefore, effective laws and subordinate regulatory acts of the public law should be created using "prejuridical" stage, when specialists in governance, system analysis, forecasting and planning, psychology of governance, and many other fields should develop the models for effective governance. Then, jurists will be able to give justified description of models in the language of law.

3. Summary

Based on the aforesaid, we can recognize that:

- firstly, the constitutional law and all the other branches of law, and its material and procedural norms have different origins and diverse designations;
- secondly, the constitutional law, as a higher legal level of the state, cannot be derived from subordinate sources of law.

On the other hand, based on analysis of the sources of law, we can state that the sources of the constitutional law can be legal regulations of higher, supranational levels. These properties are characteristic for the general universal principles, as well as for restrictions, imposed by international law and forces, independent of human, on the state governance.

Such sources of law are not engendered by state, and the constitutional law, which relies upon them, can be protected from subjective preferences of the subjects of law themselves. Subjectivism in choosing sources of law, which are not necessary, but desirable for political interesants, unavoidably leads to false constitutionalism and creates prerequisites for corruption, immoral deeds, and offences in power.

At the same time, reliance upon the legal regulations of superior, supranational levels, caused by the application of scientific methodological basis, ensures the description of legal system and its norms with comprehensive completeness, representing a condition for stability of legal basis of the state, and decreasing the need in frequent reconsideration of laws and introduction of amendments. Legal sources of other states may have only information-inquiry character, because they have no power on the foreign sovereign territory.

Constitutional law, constructed using these sources, can be defined as a methodological basis for generating all other branches of law and their legal norms of indirect action, as well as conditions for their implementation in the life of citizens and residents of the state. It defines the functions, structures, and other "rigid" skeleton universal principles and their interrelations in the system of state governance.

The conditions for implementation of legal norms represent goals for the state, which serve as an instrument for consolidating the citizens, as well as restrictions for all norms of the law and methods for legal regulation (permission, obligation, and prohibition), i.e., as norms of direct influence. The conditions for implementation include restrictions on decisions of state, dictated by international law, i.e., its supremacy.

Thus, we can conclude that international legal acts are the exclusively important source of the

constitutional law and, in the long run, they are primary guarantees for penetrating the universal principles and norms to constitutional law of particular states.

Identification of the role of international legal acts in the process of universalization of norms of contemporary constitutional law allowed us to conclude that their influence can be differentiated according to the following attributes:

1) universalization at the level of unification of general points for determining the fundamentals for regulating the social relations in states within different regions;

2) universalization of the principles of the international law in international territorial unions and international organizations;

3) universalization in the system of interrelation between international and national laws;

4) use of the principles of international law as universal basics for creating the national (constitutional) fundamentals of the legal regulation of social relations in the contemporary state forms.

These levels of universalization, however, have different penetration "depths" to legal systems of different states.

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