

## The Concept of Universalization in the Law of the Constitution

Denis Valerievich Vokhmyanin

Branch of Not State Educational Institution of the Higher Vocational Training “the St.-Petersburg Institute of Foreign Economic Relations, Economy and the Rights” in Perm, Perm 614022, Russia

[vdw2006@yandex.ru](mailto:vdw2006@yandex.ru)

**Abstract:** Talking about the concept of universalization in the Law of the Constitution, we should first note that it is directly connected with the theories and concepts of universalization developed under the frameworks of other sciences and departments of knowledge. The studies of universal predetermination in the regularities of the social developments were made through the logic of adverting to the socio-cultural tendencies which are responsible for the exertion of universality as social characteristics. The significant tendency of universalization of the world is the tendency of globalization, the studying of which is based on the concept of the postindustrial society, post-national world and phenomenological compression characterized by the turnover and precarity of modern times.

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### 1. Introduction

If we summarize the general criteria of universalization separated under the frames of the above mentioned studies (as well as under other studies), we will be able to make a conclusion that the modern world step by step obtains the unanimity not through the commonality of all departments of knowledge, their reduction and narrowing down to ontological principals of a separate leading science, but assumes the existence of “unity in diversity” (*Lat. im pluribus unum*) and self-organization of complex systems. The last hypothesis is the one that can be examined as the essence of universalization which penetrates into all spheres of scientific knowledge and public relations.

The constitutional courts stand in the interface between the law and the policy [1].

In the modern political science the Law is defined as a special form of social organization which represents itself as a norm, value and fact [2].

The quantitative indexes are built for five social rights: right to social insurance, education, health, housing and rights of employees [3].

Due to the uncertainty of the legal act the contraventions between the imperative principles of informative clearness management, law principle of jurisdictional adaptability and current legal norms [4] arose.

In fact, in the constitutional regulations of any state we can mark off the human universal rights and freedoms given as a pledge of key international documents and national universals, which can be changed depending on the national, social,

economical, religious and political identity of a separate state.

In the 20<sup>th</sup> century the UNO Declaration accepted in 1948 was considered to be the international standard for universal human rights [5].

The Constitution of the Russian Federation was accepted and already acts. Someone might not be satisfied with it, or the Constitution may not meet the requirements of the modern democracy, but, however, this is the official document which has the highest legal force [6].

A practical visualization of collective “human rights and freedoms” in particular Constitution is a kind of superstructure which is called “the constitutional status of a person.” For the modern concept of constitutional universalization such term is very important, and in this regard we will make a more detailed analysis of this definition.

So, these regularities are the criteria of separation of the key elements of constitutional status which include:

- rights, freedoms and liabilities of person;
- guarantees of rights, freedoms and liabilities of person;
- principles of constitutional status of person.

In the constitutional status the rights of freedom and liabilities of person always mean the subjective opportunities and necessities. In other words, the rights, freedoms and liabilities of person contained in the constitutional status exist in the form of subjective right. In such case they can be

characterized by such universal features as inalienability from person, directness of their action and guarantee.

## 2. Main part:

The guarantees of key rights, freedoms and liability of person are considered to be the legally provided norms and principles of international law and Law of the Constitution, the legal arrangements and special activity of authorized subjects based on such laws and focused on providing the key legal status to the person.

The key principals of the constitutional status of person build such constitutional-legal regime at which the complexity of fixing of humanism, freedom, equality and liability of person in the constitutional norms, as well as their performance and guarantee turn to be the aims of all and any type of political organization of the society in general.

The reference to the international agreements and generally recognized rules of international law in particular is contained in few Articles of the Constitution of the Russian Federation.

Thus, Part 2 “Rights and freedoms of person and citizen” starts with the provision about the recognition and guarantee of rights and freedoms of person and citizen in the Russian Federation as prescribed by the generally recognized rules and principles of international law and in accordance with the current Constitution of the Russian Federation (Part 1, Article 17). The same part (articles 62 and 63) also contains the reference to international law provisions which regulate the issues of citizenship and providing of political asylum to foreigners and person destitute of nationality.

In the Russian Federation all issues on contracting activity alongside with the norms of international law are regulated by the special law “Concerning the international agreements of the Russian Federation.” The international agreement being the resource of the Law of the Constitution means the agreement between the Russian Federation and foreign state (or states), or the agreement between the Russian Federation and international organization made in a written form and regulated by the international law. The ratification of international agreement is made in a form of a federal law.

First of all we should note that the problem of sources of law has engrossed the minds of almost all legal theorists and experts of both, past and modern times.

It is worth agreeing with the opinion of Kochevyan S.F who wrote that, “There is no generally accepted definition of “source of law” and

the sense of this definition is still disputable” (Concerning the definition of the source of law [7]).

Let’s try to find an answer to the issue of universal character of sources in the law of the Constitution using the modern methodology of the system approach. The mentioned sources have few specifications to formulate which is possible only in the following way:

Firstly, the law in its operational understanding means the system of social norms where each separate norm representing the decision of the subject of management has its own life cycle which includes the steps of its creation, acceptance, implementation and restatement. Each of such steps has its own legal sources. The ignoring of any of these steps makes the future norm to be null and of no effect. To avoid the annihilation we need the unitized model of the norm of law which will not only include the significs, but will also include the place and the period of appearance of definition and the further “existence” of such definition in its surrounding. On this basis the exact norm of law and important and necessary for it exact sources can be identified.

Secondly, the constitutional norms of law stand above all other norms of law in the state being their arguments. They give a birth to all other norms of law, and thus cannot be brought off the norms created by them, as the members of a family cannot be parents and children at the same time. The constitutional norms cannot be brought off the norms of law of other states as the sovereign states stand on the same hierarchical level and the norms of other states have no any mutual power; these norms can have an information-reference character.

Thirdly, the norm of law (the result of law-making) is still brought off the sources of law (arguments) by reference to the existing cause and effect relationship. This type of relationship is the express of rational thinking, and the norm of law which was developed by this type of thinking, always depends on the subjective choice. Depending of the personal preferences of the subject of law or the researcher this or that sources of law can be used. In a consequence of such approach in the Law of the Constitution as in a system the gaps and deficiencies of law which act as the source of imaginary constitutional system and irregularity of the law appear.

Consequently, for the constitution branch of the law we need the more fundamental methodological ground than the cause and effect relationship available to the rational thinking and approved by the subjective choice.

The definition of system can also include the definition of law – the “system of statutory social

norms which controls the separate sphere of public relations, and which are protected by the state power” [8].

In this system created by the human the processes of management can be found not only in the target product (the regulation of public relations), but also at any stage of the norm of law life cycle, including the appearing, existence, development, restatement and dying. Let’s try to find out if it is possible to take the management as a centerpiece of relations fixed by the law.

On the assumption of Kant’s concept of thinking, the perception (gnosis) consists of judgments [9] where one thing serves as a predicate to another thing (A means B). Only the judgments where the connection of subject A and predicate is represented as the “universal and necessary” and there is a presence of some new feature in the subject that is not brought off it shall be considered as being true and real.

The traditional sources of law listed above are created by the system of law itself, and the definition of law (subject) does not include any new feature which can issue from it. That’s why the judgment about the sources of law does not contain anything new or does not compose any true knowledge. Contrariwise, the management, or more specifically its universal principles does not flow off the subject of judgment (law), and thus represents the new feature. Alongside with that the connection between the subject and predicate (universalism) are the “universal and necessary”, as the universalism, its principles are included into the organized legal systems as a tool for the development of the system and providing of its purposiveness.

But here the universal law principles can be referred to the general category of existence of individuum and society.

At the same time, constantly being in the direct contact with the process of universalization, daily fixing the universal principles and controlling their use in the norms of law, the legal science as a discipline still is not supported by this general category, preferring to withdraw the legal concept of the law of the Constitution from its self-matter, from the existing sources of law.

And up to now, the achievements related to the branches of knowledge of management over the kindred organizational systems such as the International corporations and companies, which by the number of employed people, the volume and diversity of activity often leave behind many of the states (the differences are in the right of the state to use the legitimate violence over a human and to have penal authorities), are still largely ignored. The management over such organizational systems which

have achieved economic and social success and have changed the face of the world shall be built on the scientific principles of universality fixed by the norms of public law.

We will try to show that the universal principles of organizational systems management which have not received any formal recognition as the sources of the Law of the Constitution still exist in it, though not always in the non-complete form. For the scientific grounding of this argument it is necessary to refer to the models from the methodological range of system analysis.

Organizational systems, including the legal system created, in the final result, by people to meet their needs and desires are completely opened (interacting with the environment: the nature, the world community) purposeful systems with a large number of interacting components (people) that have a free will. The general properties of a coherent system can be understood from the model of the system.

The system is an operator that transforms the input into the output. The resources of input are: the human labour, their facilities and natural resources located on the territory of sovereign state transfer into the final product (the output). The product is used to meet and satisfy the needs and desires of people in the present and in the future, for the purpose of which the part of the final product returns to the input of the new production cycle.

The degree of satisfaction of needs and desires of people can be judged through the information about the move of the system towards the set target. The information comes from the output to the input through a feedback and is used to adjust the movement of the system to the direction of the set target.

The system exists in a sphere which includes an artificially created human super-system, for example, the international community of states, and nature. The system interacts with the environment according to the principle of “submission – dominion.”

### 3. Conclusion:

Let’s pay our attention to the fact that the Law of the Constitution includes three different element of the system of management:

- 1) the organization of the state power (functions, structure and other components and relations);
- 2) the product of the power activity – management (state) solutions;
- 3) individuums that take decisions – hierarch of power.

The first element is a “hard” slightly changing part – the so-called frame of management. Here the typical specifications are the management solutions which include all stages of the life cycle of solution: development, acceptance (adoption), control over the implementation and the adjustment basing on the results of practice. It lends itself to the more frequent and less regulated changes. Due to how the creator of the frame of management (for example, the Constituent Assembly which adopted the Constitution) understood the nature of the state government and was able to create a perfect system of management, the quality of life and the future destiny of the state and people will depend during long period of time.

The age of democracy has an increased importance in the new strategy of identification, but the existing measures of when the states became democratic are shown to be spoiled. The two new measures of age of democracy were introduced. First thing is when the country first has genuinely democratic elections, and the second one is when its current Constitution was proclaimed [10].

The hierarchy of power (the decision makers) has a significant impact on the development and acceptance of the state decisions. This impact has a subjective nature. Thus, the personal (subjective) views of Individuals who make the decision about the reasons that make them make such decision, their abilities and willingness to enforce the decision, as well as the interests of the political forces which support the hierarchy of power can affect the nature of the future state decisions.

The more perfect is the system of state management and the more exact and high are the professionalism and moral qualities of the Individuum who makes the decisions, the more prospects and hopes that the made decisions would be optimal from the point of view of the purposes of the system and objective with respect to internal and external limitations are exist.

Respectively, the supreme objectiveness of decision can be expected in the terms of legal state in which these parameters are fixed by the state laws and are backed by the moral hierarchy of power (such as the President).

The nature of interaction between the subject and the object of management are established by the Law of the Constitution, and by the international law with the external environment.

Consequently, the law of the Constitution is not only a methodological tool that forms all other branches of law, but also the tool that brings these spheres the imperatives of the higher levels of management - the rules of international law, such as, for example, the protection of rights and freedoms of

human and nature, for example, environmental restrictions onto the human activities and the responsibilities of the State to warn the population about coming natural disasters which together can reasonably be counted to the principles of universalism in the law of the Constitution.

#### **Key findings:**

The modern view of the world step by step obtains the unanimity not through the commonality of all departments of knowledge, their reduction and narrowing down to ontological principals of a separate leading science, but assumes the existence of “unity in diversity” and self-organization of complex systems. The last hypothesis is the one that can be examined as the essence of universalization which penetrates into all spheres of scientific knowledge and public relations.

In fact, in the constitutional regulations of any state we can mark off the human universal rights and freedoms given as a pledge of key international documents and national universals, which can be changed depending on the national, social, economical, religious and political identity of a separate state. This is in fact the key result of the process of the constitutional universalization, the exact implementation of methodology of constitutional universalization.

The main outcomes of the process of development of the methodology of legal universality in the present conditions can be summarized to the following results:

- first of all, the universal concept of human rights in the form of international (in the frames of the UNO, European Union, various religious systems) standards of human rights was developed;
- secondly, basing on the international standards and with the due regard to the national originality each separate state builds and creates its own concept of human rights, its own list of rights and freedoms of its citizens different in some way from the same concept of another state.

Thus, at the turn of the 20-21<sup>st</sup> centuries the process of human rights universalization takes place and this process lies in the fact that the human rights as a separate institution start to be approved even greater than before and this institution rises above the state as a whole (now at the level of the entire world community), as well as in the fact that the formation of the world law and order starts to play a role of

objective right of a person as a supranational constitution.

It should also be note that the process of globalization of human rights affirms the universality of human rights the display of which lies in the development of international human rights standards and their implementation in the domestic laws of most states in the world with the cultural and ethnic diversity preservation.

**Corresponding Author:**

Dr. Denis Valerievich Vokhmyanin  
Branch of Not State Educational Institution of the  
Higher Vocational Training “the St.-Petersburg  
Institute of Foreign Economic Relations, Economy  
and the Rights” in Perm, Perm 614022, Russia  
[vdw2006@yandex.ru](mailto:vdw2006@yandex.ru)

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