

Dialectical Approach to the Study of Legal Phenomena and the Processes Using General Scientific and Private-Science Methods

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Abstract

The article provides the arguments in favor of interaction inclusion in the category of constitutional principles based on the analysis of doctrinal approaches, international acts and the constitutional texts of Western European countries and CIS countries. The comparison of the approaches of this group of states in the constitutional use of "cooperation" and "interaction" led to the conclusion that they often act as synonyms. At that, only the "cooperation" of states has the status of a formalized principle. It was revealed that the constitutions of the West European states associate interaction with the nonpublic sphere, in the constitutions of the CIS countries - with the state public institutions, which are mainly the functional triad of state power, but not limited by them. Considering that the interaction of the authorities divided by the principle of power separation, provides the unity of state power, we believe it is expedient to recognize the cooperation as a constitutional principle.

Keywords: *Constitution, Principles, Cooperation of States, Interaction, The Principle of Interaction, The Head of State, Public Authorities.*

Introduction

phenomena that characterize different areas of knowledge and continue to be developed by them. As a rule, this principle is treated as a fundamental idea, which is generally a binding one. At that, each science fills in the theory of principles with its own content. A legal doctrine, including its industrial segments, also preserves the non-indifference to principles: new principles [1], new exposition [2] or the content [3] of known principles are proposed, general [4], priority [5] and unwritten [6] principles are substantiated, the potential of constitutional principles in international

law is disclosed [7], the principles of legal phenomena and processes are considered [8].

The principles determining the systems of public relation legal coordinates can be determined both by science and practice; they can receive a legal registration or be perceived as an absolute ideal; they can reflect the existing or desired relations.

Constitutional and legal science, considers the principles as system-forming elements among other things. In particular, they are presented in the context of constitutional law system [9], the system of constitutional values [10], the system of human rights [11].

According to the traditional understanding of a system as an orderly, integral set of interacting elements, we believe that interaction here claims to be a principle status. This is what we intend to justify by the analysis of international act and constitution provisions of European and CIS countries.

Methodology

The study was based on a dialectical approach to the study of legal phenomena and the processes using general scientific (system, logical, analysis and synthesis) and private-science methods. The latter include the formal-legal, linguistic-legal and provided by Belgorod State University through its COBE are collectively used to study the texts of the EU Charter, the Declaration on the Principles of International Law (1970), the United Nations Millennium Declaration (2000), and as well as the constitutional texts to identify the options and the peculiarities of the term "interaction" and "cooperation" use in them in order to substantiate the thesis that interaction corresponds to the constitutional principle status. Initially, the focus group comprised 37 European states and 10 CIS countries, whose constitutions were taken from the Internet library "The constitutions of the states (the countries) of the world"

(<http://worldconstitutions.ru/>). The choice of this focus group is conditioned by an obvious difference in the specific historical conditions for the adoption of constitutions, as well as the internal and external factors that influenced these processes. This allows us to expect the variety of state approaches to the use of interaction term, taking into account the contexts and the conjugations to substantiate the thesis stated by us.

Results and Discussion

With regard to the social and public spheres, interaction is expedient to interpret not simply as a link, an activity, a process, but as a form of mutual relations in which each of the parties included in it, not being in the relationship of power and subordination, does not replace and does not absorb the other one, but promotes the functioning of each of them. This understanding of interaction contributes to the justification of its role as a constitutional principle [12]. This is facilitated by the consideration of interaction as a reference point in the constitutional negotiations on federal reforms [13], as well as the revealed peculiarities of interaction in the public sphere between constitutional bodies [14], formal and informal institutions [15], judges and politicians [16]. We believe it is important to clarify that such synonym of "interaction" as "cooperation" has already been recognized and formalized at the international level. Thus, in the UN Charter [17], the cooperation of states is articulated as one of the United Nations goals - "... 3. To carry out international cooperation to resolve international problems of an economic, social, cultural and humanitarian character and to promote and develop the respect for human rights and fundamental freedoms for all, without taking into account the aspects of race, sex, language and religion ... ". Later, according to the Declaration on the Principles of International Law of 1970 [18], "cooperation" was transformed from target guidelines into a "principled duty" addressed to states - to cooperate with each other in accordance with the Charter. Consequently, in these acts, cooperation is addressed obviously to states, i.e. turned into an external public environment.

In the Millennium Declaration [19], the desire of states to strengthen the United Nations is expressed through "... further improvement of the interaction between the United Nations, its agencies, the Bretton Woods institutions and the World Trade Organization, as well as through other multilateral bodies, in order to ensure a fully coordinated approach to the problems of peace and development ... ", "the cooperation between the United Nations and national parliaments through their world organization - the Inter-Parliamentary Union - in various fields, including peace and security, economic and social development, international law and human rights, democracy and gender issues." Let's

pay attention that in this act the interaction of the United Nations is related both with internal, and with external subjects, and the cooperation is related only with external ones.

We will analyze the options and the contexts of such relationship use in them as interaction and cooperation based on the texts of the current constitutions of the European states and the CIS countries. The primary analysis showed that the constitutions of Eastern European countries do not use the term "interaction", therefore their texts were not analyzed in detail. It was revealed that both "interaction" and "cooperation" are used to ensure, for example, the constitutional partnership and the description of such bilateral / multilateral relations between public and other entities at the national level. At that, they used mainly cooperation, which concerns both external and internal subjects - separately or in aggregate. For example, the Art. 128 of the Belgian Constitution stipulates that "§ 1. The councils of the French Community and the Flemish Community shall govern the decree ... the cooperation between the communities and international cooperation, including the conclusion of treaties". In the German Constitution, cooperation is mentioned in connection with the relations between the Federation and the Länder (Article 73 par. 10) and public authorities (Article 87-a, paragraph 3, Article 108 par. 4). The Art. 20 (1) of the Constitution of Denmark stipulates that "The powers conferred on the ... state bodies of the Kingdom may ... be delegated to international organizations ... in order to promote the development of international law and order and cooperation".

Further analysis of the constitutional texts of Western European countries showed that universal "cooperation" is complemented by the "interaction" only in four countries - Austria, Spain, Portugal and Switzerland. A positive, productive, solidary interaction was common for these states, but, as it was expected, each of them found its application of interaction, connecting it with different actors. A legislator and voters are among them; a nation and all the peoples of the Earth; the scientific institutions and enterprises; the union and cantons.

So, in accordance with the Art. 117 of the Constitution of Austria "8. A land legislator can envisage a direct participation and the interaction of voters in elections to the community council in the matters of the community own competence."

The Preamble of the Constitution of Spain stated the desire of the Spanish Nation "... to cooperate in order to strengthen peaceful relations and an effective cooperation among all the peoples of the Earth".

As follows from the Art. 73 of the Constitution of Portugal, "4. The scientific creativity and discoveries, as well as technological innovations are stimulated and

supported by the state in such a way as to ensure ... the interaction between scientific institutions and enterprises."

An original decision to "reduce fundamentally" "the interaction" and "the cooperation" is implemented in the Constitution of Switzerland, where "Section 2. The interaction between the Union and the cantons" includes "the cooperation" as a principle: "1. The Union and the cantons support each other in the fulfillment of their tasks and cooperate" (Article 44). It follows that cooperation is a kind of interaction.

According to the above constitutional provisions the interaction characterizes the electoral sphere, it is expressed through support, promotes the strengthening of peaceful relations and an effective cooperation, and also has the features of a fundamental principle, touching on the most important spheres of the state life.

The analysis of the constitutions from the CIS countries showed a more active application of the word "interaction" along with "cooperation" or separately. The first model is implemented in the constitutions of Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova and Tajikistan, and cooperation has an external orientation here and is supposed to be "mutually beneficial", and the interaction is related to domestic actors. The second model is presented in the constitutions of Belarus, Russia and Uzbekistan. The term interaction was not used in the Constitutions of Armenia and Turkmenistan.

Interaction is associated mainly with legislative, executive and judicial authorities (Part IV, Article 7 of the Constitution of Azerbaijan), legislative, executive and judicial branches "using the system of checks and balances" (Part 4, Article 3 of the Constitution of Kazakhstan) and state bodies (Article 6 of the Constitution of Belarus). Art. 6 of the Constitution of Moldova, called "The separation and the interaction of authorities" stipulates that "the legislative, executive and judicial authorities are divided and interact during the exercise of their prerogatives in accordance with the Constitution provisions." These approaches, reflecting the essential interconnection of state power organization principles (primarily the principles of unity, the division into functional branches, checks and balances), serve as additional arguments in favor of the interaction attribution to the number of constitutional principles.

Besides, the constitutions specify the prerogatives of the state head through the interaction. Thus, the President of Belarus "ensures ... the continuity and the interaction of public authorities ..." (Article 79); The President of Russia "... ensures the coordinated functioning and the interaction of public authorities" (Part 2, Article 80); The President of Tajikistan "is the guarantor of ... the coordinated functioning and

interaction of state bodies ..." (Article 64); The President of Uzbekistan "8) ensures the interaction of the highest authorities and the Republic government ..." (Article 93).

The prerogatives of the head of parliament are open in part 2 of the Art. 75 of the Constitution of Kyrgyzstan through the interaction "4) ... provides the interaction ... with the President, the Government, judicial authorities and local self-government."

These constitutional formulations support the understanding of interaction as a form of relationship, in which each of the parties included in it assists the functioning of each, without the substitution and absorption of the other one.

Conclusions. European constitutional versions of the term "interaction" use do not concern the public sphere, although they are determined by the public will, for example, of a legislator and a state. Considering the importance of relations to which interaction is attached - elections, peace, scientific creativity and discoveries, technological innovations, as well as the objectives of interaction - the strengthening of relations and cooperation effectiveness, the support of each other, there are some grounds to assert that the interaction has the features of a fundamental origin here.

The constitutional options for the consolidation of authority interaction, characteristic of the CIS countries, are aimed at the unity of the public space of the state and the sustainability of the state mechanism provision. Therefore, the interaction is such a fundamental idea that it is advisable to refer to independent constitutional principles and develop it specifically.

It should also be clarified that the constitutional principle of interaction can be consolidated and formulated directly, and can be also derived from a constitutional text meaning. Moreover, as for specific authorities the interaction itself relies on certain principles that should not be violated by the subjects of this kind of public relations. In particular, these are the principles of lawfulness, authority independence, expediency, continuity, responsibility, etc.

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