GLOBAL CONSTITUTIONALISMO AS ECONOMÍA THE BASIS FOR THE UNIVERSALIZATION OF NATIONAL LEGAL SYSTEMS: SOCIO-PHILOSOPHICAL ANALYSIS

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ABSTRACT
The article studies the influence of global constitutionalism (as a social concept and phenomenon of social reality) on the processes of universalization of national legal systems taking place in the modern world, examines not only the limits and consequences of the impact of this dominant interpretation of social reality on the development of national legal systems, but also the problems that arise in national societies and states in terms of their preservation and development due to the growth of globalization processes in the world. The authors have developed a number of general principles, the observance and implementation of which will ensure, on the one hand, the preservation and development of national societies and states, and on the other hand, the rights, freedoms and legitimate interests of a person and citizen, which ultimately is a necessary condition for the preservation and development human society in the future.

Keywords: Global constitutionalism. Universalization. Legal system. Socio-philosophical analysis. Economic basis.

CONSTITUCIONALISMO GLOBAL COMO BASE ECONÔMICA PARA A UNIVERSALIZAÇÃO DOS SISTEMAS JURÍDICOS NACIONAIS: ANÁLISE SÓCIO-FILOSÓFICA

EL CONSTITUCIONALISMO GLOBAL COMO BASE ECONÓMICA PARA LA UNIVERSALIZACIÓN DE LOS SISTEMAS JURÍDICOS NACIONALES: ANÁLISIS SOCIO-FILOSÓFICO

RESUMO
O artigo estuda a influência do constitucionalismo global (como conceito social e fenômeno da realidade social) nos processos de universalização dos sistemas jurídicos nacionais em curso no mundo moderno, examina não apenas os limites e as consequências do impacto dessa interpretação dominante da realidade social no desenvolvimento dos sistemas jurídicos nacionais, mas também os problemas que se colocam nas sociedades e Estados nacionais em termos da sua preservação e desenvolvimento devido ao crescimento dos processos de globalização no mundo. Os autores desenvolveram uma série de princípios gerais, cuja observância e implementação garantirão, por um lado, a preservação e o desenvolvimento das sociedades e Estados nacionais e, por outro lado, os direitos, liberdades e interesses legítimos de uma pessoa e cidadão, que em última instância é condição necessária para a preservação e o desenvolvimento de sociedade humana no futuro.


RESUMEN
El artículo estuda la influencia del constitucionalismo global (como concepto social y fenómeno de la realidad social) en los procesos de universalización de los ordenamientos jurídicos nacionales que tienen lugar en el mundo moderno, examina no sólo los límites y consecuencias del impacto de esta interpretación dominante de realidad social sobre el desarrollo de los sistemas jurídicos nacionales, pero también los problemas que surgen en las sociedades y estados nacionales en cuanto a su preservación y desarrollo debido al crecimiento de los procesos de globalización en el mundo. Los autores han desarrollado una serie de principios generales, cuya observancia e implementación asegurarán, por un lado, la preservación y el desarrollo de las sociedades y estados nacionales, y por otro, los derechos, libertades e intereses legítimos de una persona y ciudadano, que en definitiva es condición necesaria para la preservación y el desarrollo de la sociedad humana en el futuro.

INTRODUCTION

Global constitutionalism as a social concept and a phenomenon of social reality has become the object of scientific research relatively recently – since the end of the 20th century. At the same time, the scientific works of most researchers, for example, R. Robertson (1992, 8), J.L. Dunoff and J.P. Trachtman (2009, 1-31), U.K. Preuss (2010, 23-46), J.M. Pureza (2012), D. Haberstam (2012, 150-202), M. Kumm (2017, 1-11), G.A. Vasilievich (2019, 85-92), J. Havercroft (2018, 1-13; 2020, 1-6), B.S. Ebzeev (2021), focus on its analysis as a legal phenomenon that has formed as the processes of globalization in the world grow and almost all modern states are involved in world trade and socio-cultural interaction. However, the share of researches in which global constitutionalism is analyzed as the dominant interpretation of social reality, dictating the need to universalize and unify international and national legislation into a single system of mandatory rules of conduct, standing not only above national governments, but also, often, above the will of voters of individual states, their regions and municipalities is small.

In this regard, it seems relevant to conduct a socio-philosophical analysis of the impact of global constitutionalism (as a social concept and phenomenon of social reality) as economic basis of processes of universalization of national legal systems taking place in the modern world, examining not only the limits and consequences of the impact of this dominant interpretation of social reality on the development of national legal systems, but also the problems that arise in national societies and states in terms of their preservation and development due to the expansion of globalization processes in the world.

METHODOLOGY

This article in the process of cognition of state-legal, economic and social and philosophical phenomena were used: a) general scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private and economic scientific methods (technical and legal analysis, statistical, functional analysis, specification, interpretation, etc.) (ZALESNY et al., 2019, 51-61; MORÓS & GONCHAROV, 2020, 114-128; ZALESNY & GONCHAROV, 2020a, 1-4; ZALESNY & GONCHAROV, 2020b, 1-10; KROTOV et al., 2020, 3521-3526).

MAIN PART

Global constitutionalism as a social phenomenon took shape in its modern form at the end of the 20th century with the collapse of the USSR and the fall of the Soviet socialist regimes, as well as the regimes of people’s democracies, in the countries of the former CMEA (Council for Mutual Economic Assistance). The final formation of global constitutionalism was expressed in the growing trend of globalization of the processes of state-legal, financial-economic and socio-political development of national societies and states. At the same time, global constitutionalism at the turn of the 20th and 21st centuries was formed as a social concept. A number of authors somewhat idealize the social concept of global constitutionalism, attributing to it only positive features for the formation of a single world-wide fair order in the regulation of public relations. Thus, A. Medushevsky notes that:

Global (or worldwide) constitutionalism is a stable philosophical theory ..., an area of legal and political debate about the possibility of a new, more just, global social and legal order, as well as a frame for designating a new network of modern political movements, generally oriented towards a globalized or more unified vision of constitutional values, norms and human rights based on a common international framework of law and global governance (MEDUSHEVSKY, 2020, 15).

At the same time, the real pragmatic goal of the processes of globalization of the socio-political, state-legal and financial and economic development of national societies and states is ignored, expressed in the need to preserve and develop the world capitalist system, as the most optimal modern socio-economic formation that allows you to preserve power and property in the hands of the global governing elite in the form of the global governing class. As rightly noted in this regard, K.S. Levichev,

[…] the goal of global constitutionalism is not so much to protect the rights, freedoms and legitimate interests of the broad masses of the population on the basis of uniform legal norms on a global scale, but mainly to strengthen the will of the ruling political classes, which is now elevated not only to the rank of national law, like this was in the time of Karl Marx, but also to the rank of the foundation of the global legal system ... thus, global legislation is the will of the global governing elite...
In our opinion, global constitutionalism as a social concept was formed as a socially conditioned and tendentious-aberrative form of perception and explanation of reality. As a system of knowledge of a socio-philosophical and political-legal nature, global constitutionalism is based on fundamental universal democratic values regarding the need to organize interstate, state and public life on a planetary scale in accordance with the ideological basis of the modern stage of development of capitalism in the world. At the same time, this dominant Western interpretation of social reality substantiates the minimization of negative consequences in the development of the capitalist system by exporting costs from the center (core) to its periphery and relies on a single system of division of labor within the world market. It is aimed at ensuring the development of the world capitalist financial and economic base and its socio-political superstructure.

The implementation of global constitutionalism in practice is possible only on the basis of the systemic military-political, financial-economic, cultural-creative and informational expansion of the West on a planetary scale through the imposition of Western state-legal, socio-political institutions with the help of the formed common governing centers of regulation and control, principles, connections, relationships, ideas in order to protect and promote financial and economic interests and needs. Why does global constitutionalism need the universalization of the national legal systems?

First, global constitutionalism, imposing on individual nation states a uniform understanding of the principles of organization, functioning and development of national societies and states, needs a unified system of rules of conduct that regulate social relations at the global and national state level. The rules of conduct in any modern society cover all spheres of human life: moral, cultural, legal, economic, religious and other. However, the most important types of social relations fall under the regulation of the rule of law - the rules of conduct in public relations sanctioned by the state, guaranteed to be observed and used by the authority, and sometimes - by the coercive force of the state (in the form of the possibility of applying legal liability measures to violators of legal norms). Consequently, the regulation of public relations at the international and national levels in the context of globalization tends to use a uniform system of legal norms. And the modernization of national legal systems is increasingly, according to a number of authors, based on the principles of unification, universalization and not contradicting the norms of international law (MASLOVSKAYA, 2019, 18-21; ZALESNY & GONCHAROV, 2019, 129-142).

Secondly, the lack of uniformity in national legal systems hinders to a large extent the intensification of international trade, the formation of a single market for goods, works and services, labor, etc., which is the main condition for the preservation of the world capitalist system by exporting costs from the countries of its core to the states of peripheral capitalism. Consequently, the national legal institutions established in the countries of peripheral capitalism and hindering the processes of forming a single world market (for example, export duties, other customs barriers) are serious threats to the development of globalization processes. And, if in the four-year period of Donald Trump’s presidency, the positions of supporters of the regionalization of world trade and exchange have somewhat strengthened, then with the victory of J. Biden in the presidential election, we will see growing trends in the acceleration of globalization processes. Consequently, these trends in the context of the development of national legal systems will be expressed in the deepening and acceleration of the processes of their universalization and unification.

Thirdly, the universalization of national legal systems will allow the supporters of the social concept of global constitutionalism to transform the legal systems in the world that still have key differences (continental, Anglo-Saxon, the system of Islamic law, etc.) into a uniform legal system of the Western, predominantly Anglo-Saxon type (represented mainly by the legal traditions of the USA and Great Britain). According to a number of authors, it is the cardinal difference between the legal systems, which include the national legal systems of a number of key countries in the non-Western world, for example, the People’s Republic of China, the Russian Federation, that are an important obstacle on the way, on the one hand, to the universalization of national legal systems, and on the other hand, their complete dissolution, subordination in the system of norms of international law (GONCHAROV, 2016, 171-176; KALININ, 2020, 14-23).

Fourthly, the universalization of national legal systems is used in the framework of the processes of globalization of state-legal and socio-political development of national societies and states and as an effective means of promoting these processes. As noted by a number of authors, global
constitutionalism is "a new legal philosophy, ideologies and political movement" and even "public ethics, strategy and politics of the current legal transformation" (MEDUSHEVSKY, 2020, 15). Thus, the universalization of legal systems within the framework of globalization processes is an element of the strategy and tactics of its development.

The universalization of the development of national legislation in different countries is presented as a panacea, thanks to which human rights and freedoms, understood in the same way, will be equally enshrined everywhere. However, in practice, the processes of globalization pursue completely different goals, far from the widespread imposition of democratic institutions. The main goal of global constitutionalism is of a purely pragmatic nature - preventing social revolutions and changing the optimal socio-economic formation for the global ruling elite in the person of the global ruling class - capitalism. So in what forms is the universalization of national legal systems of individual countries carried out at the current stage of the development of globalization processes?

Firstly, with the fall of the communist regimes in the countries of Europe and the USSR, not so much the norms of international legislation were directly incorporated into their national constitutions concerning the consolidation of the institution of human and civil rights and freedoms, a number of democratic principles in the organization and activities of state authorities and local self-government, but the Western constitutional and legal model (mainly American), although adapted to local historical specifics. Thus, one of the forms of universalization of national legal systems is the imposition of a standard approach to national states in the formation of national constitutions.

Secondly, within the framework of the social concept of global constitutionalism, the competition between the concepts of the "rule of law", which implies the subordination of the national legal system to international legal norms and principles, and the "rule of law", according to which the national state is completely independent in determining the constitutional and legal principles, regardless of their recognition at the international legal level is allowed in favor of the first. Moreover, as we have already noted in previous researches, supporters of the social concept of global constitutionalism, criticizing the concept of "rule of law", which implies the formation and development of national legislation based on the interests of preserving and developing national societies and states, appeal to the need to put a person in as a key element of the ideological and philosophical basis of the existence of modern societies and states (GONCHAROV et al., 2020a, 93-106). Within the framework of this approach, the interests of citizens in individual national states are leveled out in relation to the interests of a person in principle, and, as a result, waves of migrants swept over Europe, the protection of whose rights is given priority over the rights and interests of the indigenous population. At the same time, as noted by a number of authors, the social nature of the state is being destroyed, the personality is deactivated and dependent moods are growing in a society in which citizens lead a politically and socially infantile lifestyle. (AVAKIAN, 2019, 18-21).

Thirdly, an important form of universalization of national legal systems is the imposition of far-fetched rights, freedoms and legitimate interests into national legislation that have no historical, social, or cultural history in these national states. For example, an attempt is being made to incorporate the notorious rights of sexual minorities into the system of human and civil rights, freedoms and legitimate interests in certain countries. This leads, as we have already noted, to an attempt to break the national cultural code of indigenous peoples in individual States, which hinders the processes of globalization (GONCHAROV et al., 2020b, 78-90).

Fourthly, an important form of universalization of national legal systems is the development at the international level of model codes and laws in various areas of national legal regulation. They are formally advisory in nature, but at the moment they are actively used in national rule-making, for example, in the countries of peripheral capitalism (GONCHAROV, 2016, 172-177; KISILEVA, 2018, 61-69).

Fifthly, an important form of forcing national governments to universalize national systems of law is various forms of pressure on them from international governmental and non-governmental organizations, as well as the media belonging to transnational corporations. At the same time, these forms of pressure can also have quite tangible economic consequences, for example, in the case of decisions by international judicial bodies on claims of citizens or legal entities of a given national state (in particular, in the case of Khodorkovsky, as well as other shareholders of Yukos, Russian Federation forced to pay $ 50 billion) (RUSSIA, 2020).

However, the consequences of the universalization of national legal systems have a number of adverse socio-political consequences, which, on the one hand, pose a threat to the preservation and
development of national societies and States, and on the other hand, threaten the prospects for the preservation and development of humanity as a whole.

Firstly, forcing national societies and states to prioritize the concept of the "legal state" over the concept of the "rule of law" leads to the gradual loss by national states of part of their state sovereignty related to independence in determining the directions of development of national legislation.

Secondly, the compulsion of national societies and states to abandon the original forms of formation and functioning of national legal systems leads to the growth of legal nihilism in society, a decrease in the level of legal culture, and sometimes to the denial of imposed legal institutions.

Thirdly, the incorporation of potentially antisocial legal institutions into national legal systems, like the mythical rights of representatives of sexual minorities, undermines the foundations for the preservation and development of national societies in individual countries, making them unable to respond to current internal and external threats.

Fourthly, often the forms of imposing legal institutions on nation states lead to political and even military conflicts, the victims of which are the poorest categories of citizens of these countries.

Fifthly, the reverse side of the universalization of national legal systems is the degradation of the legal culture of lawmaking and law enforcement, when public authorities only reproduce standard legal models, often not understanding the cause-and-effect relationships between the processes of adopting regulatory legal acts, their implementation, as well as the legal implications of enforcement.

CONCLUSION

In connection with the above, it seems that the processes of universalization of national legal systems are an objective consequence of the globalization of socio-political, state-legal and financial-economic development of national societies and states. However, their implementation should be carried out considering the observance of a number of basic principles, including the following:

1) collisions in the implementation of the concepts of “rule of law” and “legal state” should not lead to the leveling of the sovereignty of national societies and states in terms of determining the essence, content and directions of development of national legal systems;

2) it is unacceptable to incorporate into national legal systems far-fetched legal institutions that are artificially modeled and contradict national, cultural, and political traditions in specific national states;

3) the universalization of national legal systems should facilitate the identification and subsequent implementation of the most successful legal institutions everywhere in terms of their optimal usefulness in regulating public relations;

4) universalization and unification of national legislation should not hinder the observance, implementation, protection of the principles of democracy and participation of society in the management of state affairs.

This will allow, on the one hand, to ensure the preservation and development of national societies and states, and on the other hand, the rights, freedoms and legitimate interests of man and citizen, which ultimately is a necessary condition for the preservation and development of human society in the future.

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