

Moral Support of the Constitution: Modern Approaches and Regularities

Marina V. Markhgeym, Alevtina E. Novikova, Evgeniy E. Tonkov and Ludmila V. Butko
Belgorod State University, Pobeda Street, 85, 308015 Belgorod, Russia

Abstract: In study some problems concerning the scientific bases, modern approaches and regularities of constitutions moral support are considered. The texts of 56 countries constitutions of the world presenting the European and American regional groups regarding attraction to the constitutional words (phrases) texts from a moral row as well as for the purpose of general and special identification in this sphere are analyzed.

Key words: Constitution, state, norms, right, morality, morals

INTRODUCTION

In spite of the fact that constitutions work in the modern states, process of the constitutional ideas development, their formalizations and realization continues, being guided at the same time by improvement of society and state condition, streamlining of the relations between them in individual and collective manifestations. The best conductors to “the best new” ideals as a rule are the “old” rules proven by time, culture and civilization. Having the different nature such rules are built on norms of morals, right, religion, traditions and act as integrative social regulators. Among them a specific place is held by the morality giving according to professor G.V. Maltseva “an opportunity to design the correct and socially approved standards of behavior for members of society on the basis of the broad valuable experience relating to all spheres of regulation”. Constitutions of the states are universal in their ordering influence which causes interest to consider them from a moral and ethical row in regard to norms for identification of moral support of constitutions, comprehending meanings and regularities of such regulatory symbiosis.

The Russian and foreign researchers representing various social sciences, including legal, continue to address matters of the constitutional and ethical (moral) standards ratio. In particular, the morality was investigated together with the right as the most important forms of social regulation (Melnikova, 2013) with traditions in constitutional right (Bork, 1984) in system of the constitutional values and observance of the constitution (Lyons, 2013) as object of the constitutional protection (Petryanina, 2014) in interrelation with society (person) and constitutions of Russia and the USA (Lambright, 2012). The attention was paid to understanding the constitutional morality (Beteille, 2008) and relation of morality and the constitution (Pitts, 2008).

At the same time earlier the analysis of constitutions texts regarding identification was not carried out from the moral support point of view as well as for regularities and features which are present in this regard. Meeting this lack as research object the texts of 56 states (13 constitutions representing two regional groups European and American were chosen. The first of them includes two subgroups: Western European (22 constitutions) and East European (18 constitutions); the second 16 American constitutions.

MATERIALS AND METHODS

In research various general scientific methods and ways of logical knowledge are used: system, analysis and synthesis, modeling, formal and logical. Special methods are presented by the content analysis, correlation and private-scientific, lingvo-legal, legallistic, comparative and legal method of law rules interpretation.

RESULTS AND DISCUSSION

Studying texts of the named groups of states constitutions by means of the specified methods allowed to reveal that their third part (19 of 56) does not contain the word “morality” or the like in the text. Taking into account regional criterion 9 Western European, 3 East European and 7 American constitutions were chosen.

Considering that quite often as a synonym of morality the morals are considered and in English they coincide (morality), texts of the specified 19 constitutions were analyzed also regarding existence of the word “morals” or its variations. It turned out that in texts of five of 56 constitutions words from a moral row in 2 of Western European (constitutions of Monaco and Switzerland) and 3 of American (constitutions of Honduras, Canada and the USA) regional groups were

not used. The word “morals” contains in 5 Western European constitutions (Denmark, Iceland, Spain, Portugal, San Marino), all East European and 4 American (Argentina, Guatemala, Cuba, Peru) constitutions. Therefore, the East European states are the most recognizing of the importance of moral constitution support. In constitutions of Finland and France words “honestly” are used having obvious moral coloring.

The results we received by lingvo-legal and content analysis of constitutional texts of 56 states give the grounds to claim the existence of the regularity which is: constitutions of the states of all regional groups contain lexical designs from a moral row. At the same time the word “morality”, including its derivatives, acts in this case as the most used. As its synonym the word “morals” (its derivatives) is mainly applied.

Also other words which are relating to a moral row and contained in texts of constitutions are revealed. For example, the word “justice” is used in constitutions of Spain, Bulgaria, USA; “honesty” Luxembourg, Malta, Lithuania, Brazil; “respect” Germany, Hungary, Argentina; “conscientiousness” Ireland, Lithuania, Mexico; “respectability” Venezuela; “decorum” and “decency”-Malta, “fidelity” Italy. By means of such words and phrases the moral background of the constitution which unites perception of people and makes them closer is formed in our opinion.

In our opinion, the fact of existence in constitutional texts of qualities “kind” in relation to management (Canada) to the King (Netherlands) to traditions (Czech Republic) to customs (Italy, Romania) and “good” in relation to reputation (Portugal, Hungary, Mexico, Nicaragua) to standards of behavior (Canada) and to behavior (Costa Rica) to administration of law (Haiti), management (Monaco) is interesting. We believe that live identity of the constitution of the country is reflected this way.

Let us note also that words and phrases from a moral row according to the contents, value and place in the text of basic laws can be called principles or gain their quality. For example, in study 37 of Section I of Chapter VII of the Constitution of Brazil it is directly fixed that “public administration, establishments of each of the power branches, act on the basis of the principles of moral behavior ...”; Article 2 of the Constitution of Venezuela formalized “... the predominating value ... of the moral principles ...”.

In essence we consider as reflection of principled stands for example, the following: P. 1 Art. 2 of the Basic law of Germany addresses the moral law; Art. 29 of the Constitution of Italy and Art. 12 of the Constitution of San Marino mark out moral equality of spouses; P. 3

Art. 19, etc. of Constitutions of Cyprus and clause (ii) of P. 4 Art. 39, etc. of Constitutions of Malta mention public morality and Art. 206 of the Constitution of Portugal, Art. 19 of the Constitution of Argentina-public morals. Interface of the constitutional, moral, traditional norms, according to researchers is urged to provide stability and viability of the state and public systems.

Now we will address the identification and systematization of substantial aspects and models of morality inclusion in texts of constitutions as it “gives the chance to design the correct and socially approved standards of the society members behavior on the basis of the broad valuable experience relating to all spheres of regulation. It develops the uniform scale, a reference system”, including the constitutional construction of the modern states. The analysis of those 38 constitutions containing the word “morality” and its derivatives, allowed to reveal models of semantic characteristics of “morality” (“customs”). For example, exclusive models are fixing morality (customs) as measured lawmakings (Art. 84 of the Constitution of Andorra “laws are adopted taking into account customs and traditions...”) as protection forms (Art. 30 of the Constitution of Italy “provides the law to the children born out of marriage, ... protection ... moral character...”); as a reference point of the state development (Art. 23 of the Constitution of Nicaragua-Nicaraguans “are obliged ... to assist ... spiritual, moral ... strengthening and improvement” of the Homeland); as a condition of subjective duty replacement (Art. 124 of the Constitution of Estonia “...the person who ... for moral reasons refuses service in defense Forces is obliged ... to pass alternative service”); as qualification of naturalization (cl. P. II Art. 12 of the Constitution of Brazil “...residence, continuous within 1 year in Brazil and possession of sweet temper suffices for persons native to the Portuguese countries”).

As the criterion for evaluation of social morality (customs) institutes is enshrined in the P. 1.1 Art. 41 of the Constitution of Ireland “the state recognizes the Family ... as moral institute...” and Art. 21 of the Constitution of Haiti “...marriage is directed to strengthening of purity of customs...”; as a component of the status of children Art. 22 of the Constitution of Belgium “each child has the right for respect and moral ... inviolability” and P. (1) Article XV of the Constitution of Hungary “children have the right for such protection and care which is necessary for their ... moral development”.

Morality (customs) in constitutions appear as the judicial qualification: P. (2) Art. 130 and P (3) Art. 147 of the Constitution of Bulgaria established that “...the lawyers possessing high ... moral qualities” are elected members of the Supreme judicial council and judges of the

Constitutional court. 4.1 Art. 35 of the Constitution of Ireland “the judge of the Supreme Court or High Court cannot be displaced from a position otherwise than for the established immoral behavior”.

Morality (customs) are reflected in the studied texts of constitutions as criterion of a ban: Art. 13 of the Constitution of Greece “...Holding cult ceremonies offending ... ethical standards are not allowed”, Articles 19 and 21 of the Constitution of Italy “all have the right to profess the religious beliefs in any form except for the ceremonies opposite to kind customs”, “the press, shows and any demonstrations opposite to kind customs are forbidden”, Art. 64 of the Constitution of Croatia “children cannot ... be forced to perform research which does harm to their ... morality”.

Representation of morality (customs) as legitimacy criteria “is more common to texts of constitutions if it does not contradict the law and morality” (Art. 16 of the Constitution of Austria), “...Nobody can be subjected to punishment for any research,... if only he consciously or openly does not show ... contempt ... to morality” (§100 Constitutions of Norway), “... Stay or confiscation of the printing edition ... is allowed ... when they undermine kind customs” (P. (2) Art. 40 of the Constitution of Bulgaria), “...the obscene manifestations contradicting kind customs” (are forbidden P. (7) Art. 30 of the Constitution of Romania).

In addition, in the constitutional texts morality (customs) appear as a reference point of child education: “...so that the youth ... received ... moral education...” (Art. 15 of the Constitution of Liechtenstein); parents have the right to choose (to provide) “...moral education of children” (P. 3 Art. 20 of the Constitution of Andorra, Art. 41 of the Constitution of Slovenia); “Parents and trustees freely care about ... moral education of children and wards...” (Art. 26 of the Constitution of Lithuania); “in all educational institutions the attention is paid to moral education of children...” (Art. 102 of the Constitution of Nicaragua).

Morality (customs) as a condition of religious liberty realization “with observance ... of morality requirements” (Art. 37 of the Constitution of Liechtenstein), “not contradicting the general morals and kind customs” (Art. 76 of the Constitution of Costa Rica); freedoms of expression, “if they do not break kind customs...” (Art. 6 of the Constitution of Mexico).

The option when in texts of constitutions the morality (customs) is considered as restriction of publicity (openness) of courts meeting is quite widespread: “...if ... publicity does not constitute danger for ... customs” (Art. 148 of the Constitution of Belgium), “...if it is not dangerous for ... morality...” (Art. 88 of the Constitution of Luxembourg); “for ... protection of

morality...” (Art. 21 of the Constitution of Estonia); “...when there is a threat for kind customs” (Art. 140 of the Constitution of Bolivia); “...if it does not threaten ... the kind customs...” (Art. 107 of the Constitution of Haiti); “...when morality reasons ... demand carrying out closed meeting” (Art. 94 of the Constitution of Mexico).

The morality (customs) in texts of constitutions are enshrined also as objects of protection by means of “customs police” (clause 8) of Paragraph. 3 Art. 118 of the Constitution of Austria), cares of the state “about protection..., moral ... interests of the people” (Art. 14 of the Constitution of Liechtenstein), the Act of “parliament for protection of morals and morality” (h. 3 Art. 7 of the Constitution of the Netherlands), taking measures “for, protection of public morality” (clause 2) of Art. 155 of the Constitution of Bolivia), prevention and investigation of cases “... on norms of morals and morality and to punish encroachments” (Art. 274 of the Constitution of Venezuela), control by the authorities of all kinds of activity and all professions “as they mention public morality...” (Art. 39 of the Constitution of Colombia).

The most widespread in texts of constitutions is the model of definition of morality (customs) as measures of realization restriction of the rights and freedoms: “... in that measure in what it does not break ... ethical standards” (Art. 2 of the Constitution of Germany, Art. 5 of the Constitution of Greece), “only for protection of “public morality” (Par. 6 Art. 18, Par. 2 Art. 19 Par. 1 Art. 20, Par. 1 Art. 21 the Constitution of Cyprus), for “...protection ... of morality” (Art. 116 of the Constitution of Latvia, (P. (1) Art. 49 of the Constitution of Romania), “for protection ... of morality” (Paragraph. 4 Art. 24, Par. 4 Art. 25, Par. 2 Art. 28 of the Constitution of Slovakia (P. (4) Art. 16, Part. (4) Art. 17, Part. (2) Art. 19 of the Constitution of the Czech Republic) without “... damage ... to morality” or “for protection ... of morality” (Art. 40, 45, 47 of the Constitution of Estonia) if “...result without respect to ... to kind customs” (h. 3 Art. 6 of the Constitution of Dominican Republic), “when it does not contradict ... to kind customs” (Article 106, 110 of the Constitution of Nicaragua).

CONCLUSION

The characteristics of morality presented in constitutions indicate its substantial capacity and regulatory universality. Through inclusion in texts of constitutions of legal norms by the nature as well as norms of morals and morality which are realized as a rule without special legal mechanisms the content and regulatory potential of the constitution grows. The support on extremely wide set of positive social regulators in texts of the states constitutions does not allow basic

laws to lose the quality in the conditions of modern calls and risks. We believe that such constitutional system has more chances not to collapse and to realize self-regulation potential by means of other checked social norms.

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