
CONSTITUTION AS A LEGAL INSTRUMENT OF SOCIETY: ISSUES AND TRENDS

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In the article there is an attempt to understand, taking into account the historical experience, the social, legal and economic nature of the Constitution as a legal management tool, issued in the end of the XVIII century, which has a dual nature. On the one hand, the historical appearance of the Constitution as a legal act related to the socio-economic (structural public) shifts (revolutions) in developing societies, when the Constitutions replaced the monarchs and were a tool of society, which was negotiating with the state. On the other hand, the evolution of the spirit of the Constitution over the past two centuries almost completely changed its content, when it is not society dictates its terms to the state, but the state with the help of the Constitution establishes for the society those or other requirements, obligations, legal boundaries. From the subject of management society is transformed into an object of management, and the state, which once acted as a control object, becomes the subject of management. In this regard, according to the authors, it is necessary to consider the suitability of this instrument of management (Constitution) to the changing realities. Social Contract may become a desired national idea of Russia, uniting the state and society and contributing to the development of democracy at its best.

Key words: constitution, government, civil society, monarchy, bourgeoisie, revolution, middle class, law.

The history of the first constitutions: the conditions and reasons

The word «constitution» (from lat.) means «to install, set up.» We could remember, that this term called one of the types of legal acts of the emperors of ancient Rome (the other acts were called imperial decrees, crypts). Even in the ancient states (for example, the Sumerian civilization, laws of King Hammurabi of the XVIII century B.C) the rulers composed the collection of laws, according with the rules, how they were living. However, the term «constitution» in its modern sense appeared in the XVIII century [18. P. 22].

England is considered as the homeland of Constitutionalism. For example, in XVII in this state actively took constitutional acts (laws), which had only a few features of the Constitution (Habeas Corpus Act in 1679, the Bill of Rights of 1689) The Constitution, however, in the sense of a single instrument in the UK was not accepted. We believe it is necessary to particularly pay attention to the existing state system of Great Britain — the monarchy. G.B. did not become a republic [4. P. 5–15].

The second phase of constitutional development takes place on the American continent. In 1776 the United States adopted the Declaration of Independence, which has a constitutional character. The ideas of the Constitution were returned to Europe.

The second constitution in the world was adopted in 1791 in France [6. P. 71; 9. P. 8; 11. P. 6].

A long time ago the science formed the approaches on the issues of the essence of the Constitution:

– Liberal (Hobbes T., John. Locke). Representatives of this approach consider the Constitution as a legal act, limiting the power of the state and guaranteeing human rights. Thus, in their understanding of the Constitution unambiguously progressive document, that served the interests of the whole society;

– Social-Democratic (F. Lassalle, V.I. Lenin). According to the Social Democrats, the Constitution in its essence reflects the balance of class forces, consolidating the rule of one class, overwhelming other groups in society. Thus, in this approach, the Constitution does not explicitly link to the progress of society, with ensuring the interests of all its members.

The Constitution of 1993 reflects the Russian Social-democratic approach [13. P. 10], which has not changed since the time the idea of the Great October Socialist Revolution of 1917 [3. P. 47].

State prevails over man, and the state's interests prevail over the interests of society, which is clearly apparent in the Soviet and in the modern Russian Constitution. The positive role of the constitution was caught by the Liberals but not by Social Democrats. According to the second, the Constitution is not in the interest of all, and above all is for the selfish interests of the bourgeoisie. Therefore, they say that it serves for ones and misleads others [4. P. 6–15].

What is the Constitution?

Constitution — is a normative legal act (a set of acts), which has the highest legal force and regulating the most important public relations. The Constitution is at the head of the system (pyramid) of the laws. This is a legal document, the provisions of which in any case should not contradict each other [16. P. 91; 29. P. 22].

According to the Dictionary of the Russian Language by V.I. Dahl, constitution (from the Latin. — education, the device of the Board, the foundation of the State Administration) — is the basic law, governing the rights and duties of election meetings and their relationship to the sovereign and to the people; management of law, limited by monarchy, where the law is above the ruler [1. P. 18].

What does the constitution control [25. P. 1]? It manages the general principles of functioning of the state. In particular, the critical areas are articles that show the political system, form of government, political regime, types of power, the concept of human rights and freedoms, etc. The Constitution should express the interests of not only the state, but equally of civil society [17. P. 17], by which we mean a community of independent subjects (citizens) within the state, producing moral and material goods for the benefit of the community and the state, along with the aggravation of relations between society and the state both sides make steps towards each other [22. P. 3].

In the modern sense, the term «constitution» is associated with the period of decomposition of feudal relations and the formation of the capitalist relations.

During the feudal period in a society dominated the class of land owners (feudal lords) [7. P. 61].

State expressing mainly the interests of the feudal lords, it did not guarantee the inviolability of property entrepreneurs [2. P. 18]. Entrepreneurs were getting richer than feudal lords, but they had not right to exercise management functions in the state. Taking advantage of the plight of workers and peasants, businessmen organized their anti-monarchical power [14. P. 1]. During this period, appears the idea of the Constitution as a legal act, designed to limit the arbitrariness of the state to secure the equality of rights and freedoms of individuals [20. P. 12]. The engine of the constitutional process was entrepreneurial class, as well as the most advanced thinkers of modern times. Fighting businessmen led to the revolution (democratic, bourgeois-democratic) and the adoption of the first Constitution [15. P. 61].

The Constitution as a legal instrument of the bourgeoisie

It requires a brief excursion into the history of the French Revolution in 1789. The bourgeoisie made the revolution; they fought for civil rights and economic freedoms. By that time they understood the opportunities and the need to participate in government, and ultimately — to lead this process. Approval of the new, capitalist mode of production prevented the feudal-absolutist system, the feudal relations of production. The King did not suit the bourgeoisie, and the constitution was the replacement — a very good legal instrument — to exchange the King to his inanimate form [28. P. 25].

How it works: There took place (accumulated) serious changes, first individually and then in collective sense of justice, which have a mutual influence on each other [8. P. 61]. They become part of public consciousness and become the collective administration of justice. As a result of the appearance of a collective sense of justice as if it is divided into individual justice of each, it replaced the true individual human consciousness (the instinct of the crowd).

What we are now writing, may not be immediately perceived, but over time the sense of justice will change, as has happened more than once, following the change of socio-economic formations, and specialists (lawyers, philosophers, psychologists), and will switch to something else [19. P. 56]. Especially brightly it is reflected in the legal system: from what it comes from and in whose interests. It is enough to compare the two points of view: V.I. Lenin (Ulyanov) in the «State and Revolution» and L.I. Petrazhitzky in his seminal work «The Theory of law and state in connection with the theory of morality».

On the one hand, there is the prevalence of national interests against the interests of the individual. For example, the death penalty is not always used for the murder, but, often, for the appropriation of socialist property (theft). And the opposite approach: the rule of law and, especially, their use is based on the rules of morality, in society [23. P. 22].

The level of development of modern society has outgrown the scope of the existing state, legal registration provisions of the Constitution. It seems that today, there is a need for a more modern and more appropriate management legal tool, that can meet the challenges of the time [14. P. 1].

The Constitution in modern Russia: searching for balance between the interests of society and state

The Constitution is the fundamental principle of a modern sovereignty, which today is called democracy. And since modern democracy, in our opinion, has outlived

its usefulness, as it is an expression of the constitution has also become archaic. Thinking about democracy as a trend of development of the state, we cannot recall the words of Winston Churchill that «democracy — the worst form of government except for all the others». Sir Winston Churchill as an undoubted expert on democratic principles and their implementation, in our opinion, characterized the essence of a democratic state structure [26. P. 58].

Indeed, the regime of democracy provides the holding of free elections, followed by all the familiar set of words, with which today adherents of democracy shook the air [6]. But democracy — it is not a frozen form, but a process. Democracy must be developed; otherwise it will stagnate and decay [27. P. 1–2].

Unfortunately, Russia's Constitution in 1993, although it is a document of direct action [21. P. 5] does not provide a real, adequate cooperation between the State and society [12. P. 10]. It is known that in 1992, the draft Constitution, developed by the Constitutional Commission, proposed section on civil society, which had planned to attempt to resolve the complex relationship between the state and civil society, bringing them to the level of parity relations [24. P. 17].

However, adopted in 1993 Yeltsin's version of the Constitutional Council in a section of the Basic Law has not been selected, although the current models of the constitutions in the world are not limited to the regulation of the state apparatus and freedoms.

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КОНСТИТУЦИЯ КАК ПРАВОВОЙ ИНСТРУМЕНТ УПРАВЛЕНИЯ ОБЩЕСТВОМ: ПРОБЛЕМЫ И ТЕНДЕНЦИИ

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В статье предпринята попытка осмысления с учетом исторического опыта социальной, правовой и экономической природы Конституции как оформившегося в конце XVIII в. правового инструмента управления, имеющего двойственную природу. С одной стороны, историческое появление Конституции как правового акта связано с социально-экономическими (структурными общественными) сдвигами (революциями) в развивающихся обществах, когда Конституции заменяли собой монархов и были инструментом общества, которое договаривалось с государством. С другой стороны, эволюция сущности Конституции за прошедшие два века практически полностью изменила ее содержание, когда не общество диктует государству свои условия, а государство с помощью Конституции устанавливает для общества те или иные требования, обязательства, правовые границы. Из субъекта управления общество превращается в объект управления, а государство, некогда выступавшее в роли объекта управления, становится субъектом управления. В этой связи, по мнению авторов статьи, приходится задуматься о пригодности самого инструмента управления (Конституции) к меняющимся реалиям. Общественный договор может стать искомой национальной идеей России, объединяющей государство и общество и способствующей развитию демократии в ее лучших проявлениях.

Ключевые слова: конституция, государство, гражданское общество, монархия, буржуазия, революция, средний класс, закон.