



**National doctrine of Human
Rights in the 21st century:
value-normative and
political-legal measurement**

NATIONAL DOCTRINE OF HUMAN RIGHTS IN THE 21ST CENTURY: VALUE-NORMATIVE AND POLITICAL-LEGAL MEASUREMENT

DOCTRINA NACIONAL DE LOS DERECHOS HUMANOS EN EL SIGLO XXI: VALOR-NORMATIVO Y MEDICIÓN POLÍTICO-LEGAL.

ABSTRACT

The article analyzes the crisis of the liberal-democratic form of legal organization and the individualistic type of social integration, discusses the main approaches and research viewpoints on the relationship of spiritual and moral standards, human rights and freedoms, and the concept of national security in the 21st century. The authors discuss and formulate the basic principles and requirements for the formation of the national doctrine of human rights, represent its value-normative and political-legal characteristics, the role and importance of the latter in ensuring the sustainable development of the public system and national security. The paper proves the fundamental interrelation between human rights and duties and responsibilities, as well as the need to fix and harmonize the interests of the individual, society and the state in the national doctrine of human rights.

KEYWORDS: state, personal dignity, spiritual and moral standards, national security, politics, law, human rights, legal doctrine, religion, Christian philosophical and legal tradition.

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RESUMEN

El artículo analiza la crisis de la forma liberal-democrática de organización legal y el tipo individualista de integración social, analiza los enfoques principales y los puntos de vista de la investigación sobre la relación de los estándares espirituales y morales, los derechos humanos y las libertades, y el concepto de seguridad nacional. El siglo 21. Los autores discuten y formulan los principios y requisitos básicos para la formación de la doctrina nacional de los derechos humanos, representan sus características normativas y político-legales, el papel y la importancia de esta última para garantizar el desarrollo sostenible del sistema público y nacional. seguridad. El documento demuestra la interrelación fundamental entre los derechos humanos y los deberes y responsabilidades, así como la necesidad de corregir y armonizar los intereses del individuo, la sociedad y el estado en la doctrina nacional de los derechos humanos.

Palabras clave: estado, dignidad personal, estándares espirituales y morales, seguridad nacional, política, derecho, derechos humanos, doctrina legal, religión, tradición cristiana filosófica y legal.

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ARTÍCULO RECIBIDO: 20 DE NOVIEMBRE DE 2018

ARTÍCULO ACEPTADO PARA PUBLICACIÓN: 12 DE DICIEMBRE DE 2018

ARTÍCULO PUBLICADO: 28 DE DICIEMBRE DE 2018

INTRODUCTION

The current crisis of the liberal-democratic form of legal organization and the individualistic type of social integration (social unity, social cohesion), discussed above, is not surprising to anyone. Ideological battles and scientific and theoretical disputes related to the substantiation of the advantages and disadvantages, which dominate in the 20th century Western European legal discourse, became a thing of the past [1]. Regular discussion of the causes, conditions and factors that led to the current spread of global pessimism and the negativization of traditional solidarist values, the active spread of legal and spiritual nihilism on the planet has no meaning or heuristic value from our point of view. In recent decades, a huge number of articles, fundamental monographs, creative essays and other popular science and journalistic materials on this subject have been published.

At present, it is not only expedient but also vital for the entire scientific community to develop and discuss the social and legal alternatives to the liberal-democratic vector of development, which today (without exaggeration) is the only reasonable and systemic “world order” project to develop an individual, society, state. Within the framework of philosophical and legal discussions of the 20th century, the dominant issues were justification for reducing the role and importance of spiritual, moral and, above all, religious foundations of law and the state [2]. Today, this position is being questioned: in the domestic and foreign philosophy of law a cardinal change in the interpretation of religious and other spiritual and moral experience is approved, the importance of the latter is in establishing the value-normative and institutional state-legal organizations of society and its developing [3; 4].

Moreover, the crisis of normative Western European concepts, such as the secular state and multilevel of culture, the practice of

“delivering” public law communication from religious and ethical, normative pluralistic and private foundations of interaction between individuals, requires today objectively new ideological and theoretical and normative theories and concepts. In other words, this crisis initiates new post-secular and post-metaphysical forms and practices of thinking. At the same time, a post-secular is not a “return” of a religious or a “theological coup” (D. Zhaniko), but, on the contrary, the formation of a new (post-modern) “uncertainty about the religious-secular relation” [5, 101].

Italian researcher Vittorio Passenti in his work formulates a problematic issue that will be very relevant in the 21st century: will the attack on religion and the value-normative systems that it represents and defends continue in the third millennium? Will the processes of secularization and anticlericalism that were characteristic of the twentieth century when all traditional spiritual and moral systems were totally replaced by ideological projects (liberalism, communism, fascism), continue? Or are many societies waiting for “restoration” of vital spiritual and moral systems that ensure the sustainability and stable development of society?

From Passenti’s viewpoint, “the new century” requires “the restoration of a religious worldview” and a value-normative regulation based on high spiritual and moral standards. Moreover, “in the 21st century, a new form of interrelation between religion and politics (law, state, individual institutions and civil society structures — the author) will emerge, compared to the form in which it was consolidated over a certain period; which will be able to prevent new adversities for religions (public, state-legal and other development - auth.) that form the basis of world civilizations ... The main task of the 21st century is to achieve that the sphere of social relations to be ethically and religiously qualified, and the religion and democracy to be interacted and understood each other in it” [6, 130-131].

As one of such forms of interrelation of religion, high spiritual and moral standards and law, politics, is, from our point of view, the formation of the doctrinal-legal basis for the development of relations in the system of person - society - state.

The national doctrine of human rights represents the necessary system of ideological and conceptual provisions, authoritative views, sociocultural and spiritual and moral standards, that "code" the development and functioning of various elements of the legal system and legal practice; and also ensures the legitimation of the results of public power activities. In this regard, the legal doctrine forms a stable framework for the development of the national legal system, taking into account the requirements of national security and socio-cultural sustainability, directly influencing law-making, law-implementing and judicial practice.

The formation of the doctrinal legal basis for the development of the legal system of society based on traditional, successively reproduced religious and moral values and spiritual standards contributes to the creation of an ideological and conceptual basis necessary for formulating a strategy of legislative and law-making activities, as well as advanced law-making. The establishment of an ideological conceptual framework is, above all, a process of advancing legal development, as well as a logically and scientifically based form of authorized law-making, i.e. the process of real right reflection of historically established spiritual and moral standards and religious values, positive forms and methods of public-power interaction in the system of personality – society – state.

Moreover, in a complex and multi-confessional society the national doctrine of human rights will provide an efficient and harmonious basis for conducting ethnocultural and religious expertise of law-making innovations, assessing and legitimizing the results of legal activity. For example, a number of scholars actually offers a special kind of legal expertise needed to determine whether the adopted bills are consistent with Christian values, since modern legislative novels often run counter to traditional moral values, giving rise to numerous social conflicts [7, 26-30].

THE BASIC APPROACHES AND METHODOLOGICAL POSITIONS.

The significance of legal doctrine based on traditional spiritual and moral requirements is obvious, since it forms the basis for sus-

tainable right-cultural development, a stable process of reproduction of the national legal system and public sense of justice [8]. In addition, the latter determines the guidelines for the improvement of the individual, society and the state. In contrast to the rational-communicative theory of law, which dominates in the modern Western European legal discourse, Christian social and legal doctrine is based on the moral ideal [9]. So, if the current positive law (rule) is a temporary, conventional phenomenon, then spiritual and moral ideals have an eternal character [10]. It is well known that the relationship of law and legal consciousness proves itself in the legal traditions of the people, which are formed throughout the entire historical life of a society, proceeding according to certain regulatory prescriptions, having a universal (obligatory) character for a particular social community, incorporating the experience of individuals in the legal sphere affecting their legally relevant behavior.

In this regard, the legal doctrine should be based on the traditional national value-normative system that reflects "originality" and "uniqueness" of the spiritual, moral and legal development of Russian society. What is this originality? First of all, it is necessary to take into account the fact that law in the domestic legal culture has not so much an external as much as an internal dimension, it represents "a necessary form of the spiritual being of a person" [11]. It should be borne in mind that in this value-normative system (the structuring element) there is no original idea of natural law and the problematics of the relationship between natural and positive law [12]. Russian sense of justice, as noted by P. I. Novgorodtsev, is traditionally "expressed in the eternal striving for something higher than the law and the state", the problem of natural rights and freedoms in it is a secondary, not central, structure-forming idea [13, 232].

Legal doctrine in this aspect acts as a relatively independent element of the legal system, and at the same time it is connected with other doctrines (religious, spiritual, moral, socio-political), which are important sources of modern Russian law [14; 15]. All these doctrinal bases for the development of the modern national legal system, as E.O. Madaev rightly notes, are inseparable, since they are genetically and organically connected by the

state and law, modeling and directing their transformation in a certain direction and quality: the structure of the legal system of the Russian Federation as a relatively independent and important element... On the basis of its content, the entire law-making, including legislative, law-interpretive, compliance practices in the relevant field of legal regulation, Doctrine determines the strategy and tactics of the legislative development of the appropriate scope, its provisions further develop in the current legislation” [16, 13-14].

Human rights and freedoms, the spiritual and moral foundations of law in a strictly formal legal sense act as metajuristic (ideological and conceptual) bases for the development of the legal system of society. M. I. Baitin has also a point there, noting that “natural law itself as moral and legal ideas, principles, ideals, wishes and demands is not law in the legal sense but are morality, sense of justice, democratic aspirations, i.e. the immediate and necessary spiritual prerequisite of law. An important role in the implementation of the ideals of natural law in life belongs to the positive, legal law based on it” [17, 22].

In turn, the system of ideas, principles, concrete historical understanding and interpretation of the spiritual and moral foundations, human rights and freedoms can act and take shape as a doctrinal and legal basis for the development of the legal life of society and the improvement of the existing legal material. In this respect V.P. Malakhov’s judgments are right, that ideas, values, views “are akin to the ideas of welfare, good, right — everything that is indefinable (and not fully disclosed through exclusively logical-rational thinking operations — the author), but being felt, accepted by virtue of spiritual consensus ... Values in general are not an object of knowledge but only a means of forming a position, an object of reflection, acceptance” [18, 101].

THE MAIN BODY

The spiritual and moral foundations of development are not only a universal value-normative system that ensures the unity and reproduction of the socio-cultural and spiritual and moral foundations of the legal system; but also form guidelines for the development and improvement of the legal system of society. Therefore, leveling or emasculation “of eternal, universal moral values from the legal

system leads to the loss by the right of its spiritual essence, to the loss by a person of the right of a personal life-affirming principle. Any subject of law must see his firm spiritual support and protection in it” [19, 5].

All key legal ideas and values, such as the dignity of the person (part 1 of article 21 of the Constitution of the Russian Federation), its rights and freedoms (article 17 and 18 of the Constitution of the Russian Federation), justice, equality (article 19 of the Constitution of the Russian Federation), etc. by their nature are spiritual and moral forms of development and organization of the legal reality of society. It is no coincidence that a number of researchers insist that the basic spiritual and moral characteristics of Russian society should be fixed at the constitutional and legal level, which would act not only as the sources for the development of Russian society, but also as the guidelines for the formation of doctrinal and legal documents (and other security).

In modern conditions, under the action of a wide range of threats and civilizational risks, the restriction of human rights and freedoms acquires special significance, and morality is one of the main criteria for this restriction. Part 3 of article 55 of the Constitution of the Russian Federation establishes that “The rights and freedoms of a person and a citizen may be limited by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of other persons, ensuring the country’s defense and security of the state”.

Moreover, at present, amendments have been made to the FCL “On the Constitutional Court of the Russian Federation”, permitting the Constitutional Court of the Russian Federation to declare decisions of international courts, first of all, the European Court of Human Rights (ECHR), in case of their contradiction to the Constitution of the Russian Federation invalid. At the same time, the motivation in deciding on the priority of Russian law over the decision of the ECHR does not contradict the European Convention for the Protection of Human Rights, since we it is talked of the cases where the legal and spiritual and moral standards set by the Russian Constitution are higher than the standards that exist in international law [20].

So, due to the fact, as fairly asserts O. I. Tsybulevskaya, that in the course of legal reforms the moral and spiritual and historical traditions of the Russian state were completely ignored, the legal system and, in general, our society "suffers large-scale losses: the collapse of a single spiritual space, the loss of a consolidating state idea, the denial of national dignity, the commercialization of culture, amoralism. And as a result – a decline in the standard of living of the people, high mortality, rising crime, corruption, etc." [19, 10]. We fully hold with the position of the researcher that for the purpose of social counteraction and

legal prevention of the above negative processes, it seems reasonable to fix at the constitutional and legal level the basic spiritual, moral and state legal values: "morality", "justice", "civil duty", "state interest", "social solidarity", "public interests" and others.

Human rights and freedoms are, first of all, spiritual and moral values, that have an obvious legal nature and a moral one. The dignity of the individual, as noted above, is rooted in the Christian worldview and theological ethics, which forms fundamentally different doctrinal foundations for the development of a person's legal life. These foundations offer an alternative to the liberal-individualistic regulatory system. Unlike the last subject of law, it is interpreted as a unique participant in the legal life of society, in contrast to the Western European concept of "personality", describing an atomized and egoistic subject who is forced to engage in social and legal interaction with others in order to realize their legitimate interests and needs.

A.M. Velichko rightly notes in this regard, that "very often in our days the concept of personality becomes synonymous with individuality, the individual, which is devoid of sufficient grounds. Even a man-made thing is individual, the representatives of the living world are all, without exception, individual, as created beings with their own unique features and properties. But the concept of "personality" is hardly applicable to them. And, of course, from a formal point of view, there is no reason to single out a person from this logical chain, which with iron inevitability reduces him to the level of a thing that can talk" [21, 121].

E.V. Timoshina, analyzing the foundations of Western European and domestic legal culture, as well as the fundamental differences of the latter, rightly notes that, in the Western European tradition "law is an instrument of depriving of individuality and equalizing, typifying the personality as a carrier of a single human nature, representing so-called natural rights, or as a bearer of various social roles, and the latter is the limit of personalization. In any case, law, unlike religious morality, does not recognize personal uniqueness" [12, 169].

Degradation in legal development occurs because the destruction of the spiritual and moral foundations of law is followed by the corruption of the dignity of the individual. In this aspect, human rights acquire only one natural dimension, and instead of harmonious development, the latter focus only on the bodily — the somatic dimension of human rights — individualistic narcissism becomes the key.

"The Declaration of the Rights and Dignity of Man of the 10th World Russian People's Council" can be used as an ideological conceptual framework and core content elements of the national doctrine of human rights [22].

Based on this Declaration, one can highlight the following key points:

1. The third millennium is facing the threat not only of civilizational risks and conflicts but also involves the competition of sociocultural development models based on different interpretations of human rights, a meaningful understanding of the dignity of an individual and individual's destination;

2. The Russian state and law are original and stable civilizational phenomena that have a long history of development and stable socio-cultural forms, and spiritual and moral foundations that are reproduced from generation to generation. It is the latter that makes it possible to characterize the state-legal development of society as a successful civilizational development project and a sustainable sociocultural model of interaction in the system of personality – society – state. Consequently, state-legal institutions are not a self-value and self-sufficient reality but are charged with implementing and maintaining a civilizational identity and a socio-cultural

project for the development of the Russian nation;

3. The concept of man as an image of God and the dignity of the individual as a synthetic concept (harmony of the soul, spirit and physicality) are key to the socio-economic and political-legal organization of the social system. The protection of rights, freedoms and interests of the latter are fundamental for the state, and spiritual and moral standards and religious values determine the development of the legal system and the legitimation of public power (recognition of existing institutions and structures, evaluation of legal activities, etc.). In turn, by implementing spiritual and moral standards and traditional value-normative requirements in public law and private law activities, an individual acquires dignity. With regard to this aspect, traditional value-normative regulators and spiritual and moral standards are, on the one hand, an eternal, unshakable law, given by the creator; on the other hand, external data (reproduced and existing) are the foundations of Russian civilization, its originality. At the same time, personal dignity is a specific content acquired and improved in the life of a particular person: "Value is what is given, dignity is what is acquired". The first is the Eternal and Civilization form, the second is a specific content; the first and the second cannot be conceived and realized without each other;

4. Human freedom in accordance with the Eternal (Divine Law) and the Civilization form and specific content has two dimensions – internal freedom and external freedom, protection and ensuring of which is the main value of society and the state. Internal freedom (positive) is connected with moral choice, freedom of choice acquires value, and personality – dignity, respectively. Freedom is external (negative) when it is associated with the political, legal and socio-economic conditions of the free exercise of their freedoms and legitimate interests;

5. The abstract doctrine of human rights is not a self-contained value, theoretically and historically, their interpretation depends on the civilizational and ideological context. Therefore, there are values (Eternal and Civilized), which are no less than human rights. These are such values as faith, morality, shrines, fatherland, dignity of the individual. Therefore, these values and human rights

must be harmonized and co-ordinated with abstract human rights in essence: "When these values and the realization of human rights conflict, the society, the state and the law must combine both. We should not allow the situations in which the implementation of human rights would suppress faith and moral tradition, would lead to an insult to religious and national feelings, revered shrines, would threaten the existence of the fatherland". In this regard, the development of the fifth generation of human rights associated with somatic rights and biotechnology legitimizes life forms and behavior that run counter to civilizational specifics and are condemned by traditional morality, traditional religious systems.

6. The national doctrine of human rights is based on the absolute value of the personality and its dignity, while spiritual and moral standards and the traditional value-normative system are its specific, civilizational content: "the content of human rights cannot but be connected with morality. The separation of these rights from morality means their profanation, because immoral dignity does not exist".

Human rights aim to embody and protect the dignity of the individual, to protect from the destructive tendencies of modernity and to preserve the traditional values on which a particular civilization is based, develops and stably functions. That is why human rights are organically linked with duties and responsibilities. First of all, this means fixing and harmonizing in the doctrine of national interests – the interests of the individual, the society and the state. In a specific interaction, in the implementation of civil, political, social, economic, cultural rights, freedoms and legitimate interests; the individual is called upon to relate them to the interests of traditional institutions – the family, the community, the people, another person, and humanity on the whole.

It is such a responsible position and ideological attitude in the consideration and interpretation of human rights that ensures the harmony and stability of social development in the 21st century. In this aspect, human rights must be consistent with the rights of nations and ethnic groups, language, culture, religious system and socio-cultural way of life. This approach "will help to avoid the conflict

of civilizations, to achieve a peaceful combination of different worldviews, cultures, legal and political systems on the planet" [22].

Christian philosophical and legal doctrine proceeds from the premise that all ideological, state-legal and other foundations of the organization of society are the essence of external, temporal and relative forms of association of personalities. In contrast to modern projects for the formation of new, global forms of civic (constitutional-legal) identity, the Christian philosophical and legal doctrine justifies that a real community can only be spiritual, and civil institutions are already based on this spiritual and moral community. All other formal legal and external constructs are in their essence abstract, unstable and temporary.

SUMMARY

Firstly, legal doctrine acts, on the one hand, as a relatively independent element of the legal system, and on the other, it is associated with other different doctrines and teachings (religious, spiritual, moral, socio-political), which are important sources of modern Russian law. In turn, the formation of the doctrinal and legal foundations should be based on the successively reproducing traditional value-normative system and moral standards, which are the ideological and conceptual basis necessary for formulating a strategy of law-making and law-implementing activities, as well as advancing law-making;

Secondly, the importance of establishing ideological and conceptual frameworks is due to the need to form an effective process of advancing legal development, as well as a logically and scientifically based form of sanctioned lawmaking (a real right reflection of historically established spiritual and moral standards and religious values, positive forms and ways of public-authoritative interaction). With respect to this aspect, the national doctrine of human rights is presented as a necessary system of ideological and conceptual provisions, authoritative views, sociocultural and spiritual and moral standards, "coding" the development and functioning of various elements of the legal system and legal practice;

Thirdly, the third millennium faces the threat not only of civilizational risks and

conflicts but also involves the competition of sociocultural development models based on different interpretations of human rights, a meaningful understanding of the dignity of the individual and an individual's destination. In this regard, the national doctrine of human rights should reflect the originality of the Russian legal system as a successful civilizational development project and form a stable right-cultural model of interaction in the system of personality – society – state. At the same time, the protection of rights and freedoms are fundamental for the state, and spiritual and moral standards and religious values are determining in the development of the legal system;

Fourthly, the universal doctrine of human rights is not a self-sufficient value, the interpretation of the latter theoretically and historically depends on the civilizational and ideological context. Therefore, there are the values (Eternal and Civilized) which are no less than human rights. In this regard, human rights and freedom in accordance with the Eternal (Divine Law) and civilizational form has two dimensions – internal freedom and external freedom, the protection and enforcement of which is the main value of the society and the state. Internal freedom (positive) is connected with moral choice, freedom of choice acquires value, and personality – dignity, respectively. External freedom (negative) is associated with the political, legal and socio-economic conditions of the free exercise of their freedoms and legitimate interests. From whence one can conclude that the national doctrine of human rights is based on the absolute value of the individual and his dignity, and spiritual and moral standards and the traditional value-normative system are its specific, civilizational content;

Fifthly, human rights are organically linked with duties and responsibilities, which implies fixation and harmonization in the doctrine of national interests – the interests of the individual, the society and the state. However, it has been substantiated above that today there is an imbalance in the fixation of this system of interests, in some doctrinal-legal acts the interests of the state prevail, in others predominantly interests of the individual, their rights and freedoms, a generally small importance is attached to the interests of society and right-cultural integrity, traditional values. However, in the implementa-

tion of civil, political, social, economic, cultural rights, freedoms and legitimate interests, the individual is called upon to relate them to the interests of traditional institutions – the family, the community, the people, another person and humanity on the whole. It is this responsible position and the right cultural orientation in the interpretation of human rights that ensure the harmony and stability of social development in the 21st century. In this context, human rights must be con-

sistent with the rights of nations and ethnic groups, language, culture, religious system and socio-cultural way of life. Therefore, in a complex and multi-confessional society, the national doctrine of human rights will provide a clear and harmonious basis for conducting ethnocultural and religious expertise of law-making innovations, evaluation and legitimization of the results of legal activity. ¶

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