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LEGAL MENTALITY IN NATIONAL CULTURAL SPACE: CHARACTERISTICS OF THE ERA OF CHANGE (CHURCH SCHISM OF THE 17TH CENTURY)

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Abstract: The article explores various aspects of the national political and legal mentality: content-structural, methodological, cultural, religious, functional, etc. The authors highlight the nature and features of the domestic legal (broader, politico-legal) mentality, identify its main functions, show the place and significance in the Russian state and legal space, as well as look at the main theoretical developments through the prism of the old believers' political and legal ideas, the spiritual component of which turns out to be extremely interesting and in many respects indicative for studying such topical problems of today as legal mentality, political mentality, legal awareness, legal culture of the transitional period of the development of the state and law in Russia of the XXI century.

Keywords: Legal mentality, Old Believers, monarchy, state power, state, dignity, religion.

INTRODUCTION

It is difficult to counterargue that in the modern legal research there are no more complicated and, at the same time, more attractive issues of state building and modernization of the national legal system than the category of "legal culture", especially when a scientific study is aimed at a period connected with various kinds (legal, political, spiritual, economic, etc.) of transformations, and even shocks in the foundations of a concrete society.

Most often, addressing such epochs, domestic and many foreign jurists raise the issue of the dynamics, the changes in the field of national legal culture and public legal consciousness. In rare cases, the deepest aspects of the political-legal world become the object of research, which undoubtedly includes the legal mentality (sometimes it is considered more broadly as political-legal), legal

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archetypes, etc. (Mordovtsev & Popov, 2007; Mordovtseva, 2007; Ovchinnikov et. al., 2009).

The reasons for this kind of established research practice are the still actual Soviet heuristic schemes, which included, of course, other (non-national) accents (class, socio-economic), and clearly insufficient (despite the ever increasing number of articles on “mentality”, belonging written by various humanitarian specialists) level of understanding the nature of the national mentality and its various manifestations (legal, economic, political). In many respects, it is due to the search by Russian lawyers for certain “universal” legal principles, institutions, and norms that could be “simply” “superposed” onto the domestic legal and political system; then the desired goal - the rule of law and civil society - will be achieved with minimal intellectual and organizational efforts (Russian liberal-legal discourse of 1990’s).

However, the effectiveness of this approach was low and its social, legal, spiritual and other costs turned out to be great and unpredictable for the proponents of the strategy of liberal reforms, many of whom underestimated the fact that “even the most perfect constitution will not create a new society in Russia. First of all, it is necessary to radically change the Russian mentality...” (Chirkin, 2008). The others, though, really believed that such a “cardinal change” in the Russian mentality might occur, even in a short time.

Of course, at the same time, another approach to understanding the content and practical significance of the national legal mentality, its influence on the strategy and tactics of political and legal reform in post-Soviet Russia is beginning to take shape in Russian jurisprudence (Baranov, P.P., Mamychyev, A.Y., Ovchinnikov, A.I., 2016).

METHODS AND MATERIALS

The methodological basis of the article includes research in the field of political science, philosophy and methodology of legal science, carried out by domestic and foreign specialists. Important influence on the work presented were the works of N.N. Alekseev, P.P. Baranov, V.M. Baranov, G.J. Berman, V.Yu. Vereshchagin, A.D. Gradovsky, I.A. Ilyin, L.S. Mamut, N.I. Matuzov, V.S. Nershsians, V.M. Rozin, N. Rulan, V.N. Sinyukov, M. Foucault, G. Hofstede, V.E. Chirkin, A.S. Yashchenko and others.

The article combines universal, general scientific (dialectical, logical and structural-functional analysis and synthesis, sociological, intellectual-technological and mental measurement, genetic reconstruction, etc.) and special research methods (comparative legal, historical legal, etc.).

Special emphasis is given to the application of the principle of complementarity in understanding the specific behavior of individuals and groups in the political and

legal sphere, when, on the one hand, political institutions, structures and mechanisms determine human activity and its nature, and on the other hand, the effectiveness and stability of legal and political components of national statehood are predetermined by the “subjective factor”.

RELATED RESEARCH

Among the foreign and domestic philosophers, political scientists and sociologists, whose work is of undoubted interest in the development of the concept of the national mentality are E.A. Anufriev, M.M. Bakhtin, N.I. Biryukova, G. Bouthoul, P.S. Gurevich, G.G. Dilihgensky, W. Dilthey, P. Dinzelbacher, E. Durkheim, A. Inkeles, J. Carbonnier, D. Levinson, L.V. Lesnaya, B.V. Markov, I.V. Mostovaya, A.S. Panarin, I.K. Pantin, V.M. Rosin, H. Simon, N.E. Tikhonova, M. Foucault, G. Hofstede, R. Emerson, and others. In the socio-psychological context, much attention to the problems posed was paid in the fundamental works of Z. Barbu, I.G. Dubov, B.A. Dushkov, W. Wundt, G. Le Bon, R. Mandrou, V.A. Shkuratov, E. Fromm, K.G. Jung, and others.

The research of national foundations of the Russian state and law, the domestic political system, the prospects for their development is found in the recent works by such authors as A.M. Velychko, A.V. Malko, L.A. Morozov, V.N. Sinyukov, and others. Of importance are also the original works of L.V. Akopov, V.M. Baranov, P.P. Baranov, N.N. Voplenko, V.N. Kudryavtsev, S.I. Maksimov, G.V. Maltsev, N.I. Matuzov, A.Yu. Mamychev, A.Yu. Mordovtsev, V.S. Nersesyants, A.I. Ovchinnikov, V.P. Salnikova, dedicated to the problems of legal conscience, legal culture, legal thinking, law, the philosophical comprehension of the political and legal reality, the specifics of Russian state power.

THE MAIN PART

Aspects of studying the Russian legal mentality. From the point of view of “penetration” into the method of mental measurement of law and state, of undoubted interest is the concept of the domestic legal mentality proposed by V.N. Sinyukov in his works “The Russian legal system. Introduction to the general theory” and “Legal system: questions of law-realization”, in which the problem of the national legal mentality “is taken” through the search for a deep and authentic source of identification of legal relations – the way of life of the people (norms, views, ideals, cults, mores, etc.) (Sinyukov, 2010; Sinyukov & Grigoryev, 1995).

In the former of these works, the author makes an interesting and methodologically justified historical section of the problem: he examines the evolution of the domestic legal mentality from the Slavophiles and P. Ya. Chaadaev to the modern “chaos of reforming actions and the confusion of power”, without offering, however, an explicit definition of legal mentality and in principle using purely contextual definitions.

Probably, this gap should be filled: the legal (political-legal) mentality is a sum of legal archetypes and representations, stable, habitual images, forms and styles of legal thinking that in different societies, ethnic groups, types of civilizations, etc. have their own content, are combined in different ways, but always form the basis of the perception of the components of national statehood (legal and political institutions, national and confessional relations, etc.), determine the specific nature of legal behavior of an individual, social and professional groups, state bodies and officials.

The legal mentality determines an individual's readiness and predisposition to act, think, feel, perceive various phenomena, assessing them as positive or negative, in the state and legal sphere; it involves a combination of cognitive and value motives for the legitimate or unjust behavior of subjects (Mordovcev, A., Mamychyev, A., Mordovceva, T., 2016).

In its essence (not closing in on the psychic nature of the phenomenon under consideration), the legal mentality should be looked into through the study of its national architectonic elements (the political and legal paradigm, the style of legal thinking, the type of socio-legal and "pre-legal" interaction of subjects), which will undoubtedly allow to understand its sociocultural, national nature. It is also obvious that "the legal mentality as a complex phenomenon is reflected in all elements of the structure of the legal consciousness and is revealed in the specifics of legal understanding, legal feeling, legal vision" (Polyakov, 2001).

Under a more or less scrupulous examination, it becomes obvious that the legal mentality is a polystructural open dynamic system that includes a multitier relationship between its own elements and other social systems and is in constant (though often imperceptible) development. Natural and cultural, rational and emotional, conscious and unconscious, individual and social – all these oppositions inevitably "intersect", become in a certain way emphasized at the level of political and legal mentality, dissolving in its structures. Combining logical and sensory, value-colored and other views, the mentality expresses the image, character, way of individual and group legal and political action; it largely determines the vector and specificity of the thinking activity of participants of certain social practices, influences the formation and change of power strategy and tactics in a certain society and the state.

From the positions of the system-structural approach, it is most productive and methodologically justified to present the legal mentality as a system with continuously interacting structural elements. As a result, various properties and characteristics of the national legal mentality arise – "legal" (formal legal), tolerant, charismatic, dynamic, characterized by legal nihilism or legal idealism, etc. It also specifies the regulatory role that legal mentality plays in the processes of law enforcement and lawmaking, its influence on the behavior of the individual, social or national groups, classes, on the entire population of the country.

The link between the legal mentality and the national language, logical and linguistic discourse that takes place in a particular country is very interesting. In general, (and this is hard to argue with) language is the most significant phenomenon of culture, it perfectly expresses, preserves and in a special way standardizes the national understanding of the world, determines the way of comprehending reality. The fact that the legal language is always consistent with the style of legal thinking, immanent to the national state-legal paradigm, is simply trivial.

For example, in the western philosophical-legal and political discourses of the pre-Machiavellian period, we see a certain logical and semantic position regarding the meaning of the concept of “state”. In particular, the ancient Greeks used the word “polis” in this sense, the Romans already had categories “res publice”, “civitatis”.

Most likely, it was the expression “status rei publice” and the like, for example, “status rei romanae”, which were common in antiquity, that eventually transformed into the later (the beginning-middle of the 16th century) concept of “state” (stato, Staat, etat, state).

The crystallization of ancient ideas about the state in language and institutions, various kinds of state functions naturally predetermined the content of Greco-Roman political doctrines.

“Aristotle perceives the state as a special kind of collectivity, arising for the needs of life, but existing as a self-sufficient state for the sake of achieving the life of the good” (Mamut, 1996). In many respects following the same traditions, Cicero defines the state as “the cause of the people”, people “connected with each other by agreement in matters of law and common interests”, this is the “general rule of law.”

Antique philosophical and legal (reflected in the language) constructions, to some extent, later were used by Thomas Aquinas, Marsilius of Padua, H. Grotius, J. Locke, I. Kant, and others.

J. Maritain went even further. In his opinion, the most appropriate translation of such categories as πόλις or civitas, “would be’ commonwealth’ or ‘political society’, but not ‘state’ ” (Maritain, 2000).

In the domestic mental language discourse, taking place in the political and legal field, of interest is the approach of O. Kharkhordin, who devoted a very original collection of articles “The concept of the state in four languages” to the problem of “linguistic” formulation of the concept of the state. In his opinion, “the triad” ruler - state – subjects”, crucial for the innovative concept of the state, in Russia was formed in two stages.

First, at the level of political and legal thinking (in his style), there is a distinction between the person of the “Ruler” and, in fact, his own “State”, which is now more often understood as “Fatherland”, i.e. a community based partly on blood ties, re-

generating into a special relationship with the “Earth”, a common historical and cultural background and way of life, which includes, first of all, the spiritual and religious basis (in the popular everyday worldview this primacy persists until 1917, the elite awareness of their own religious, spiritual and social foundations undergoes serious tests during Peter the Great’s reformation and in the subsequent centuries of imperial state-legal existence).

“Personal service to the sovereign gradually began to be understood as serving the country or, better to say, the fatherland (this situation is quite evident in the Time of Troubles – authors’ note) ...”. In this context, one can understand the roots of the fact that in Russia the “tradition of ... ‘public service’” arose and that until the middle of the 17th century it was called “the Tsar’s service”.

The second stage comes later. “A decisive change in the discourse, however, occurs in the era of Peter the Great, when the notion of the common good is introduced and an attempt is made (ultimately unsuccessful – authors’ note) to distance the person of the sovereign from the community, the “state”... in the most radical way ... The hierarchy that existed in the Russian medieval idea of the state – the Tsar serves the god, the people serve the tsar, – was replaced(?) by a new paradigm: both the Tsar and his subjects serve the Fatherland, the “common good” of the state”.

Nevertheless, the modern logical linguistic and doctrinal (involving various kinds of Russian political and legal doctrines) analysis convinces us that in the Russian language the word “state” is derived from the category “sovereign”, which undoubtedly expresses a certain image of this institution of public authority, denotes its place and role in the socio-political and legal space, personifies the political organism, confirms the relations of domination, subordination, service, etc. In the history of Russia (as it is partially shown above), neither actually nor legally the state in the ancient, Euro-American version of its organization existed, and it was not perceived by either the masses or the elite as a political association that is equal in scale to the society and even less so, opposing to it.

The patrimonial origin and the special patrimonial-paternalistic nature of the Russian state leads many supporters of the unification of political and legal structures in the Western style to the idea of the emergence of this complex socio-political phenomenon beyond the framework of the public-law universe of understanding (vision). It is perceived in the following way: the state is the absolute ruler and owner of the land, of people and objects in its own territory.

On the contrary, the English “state” or the French “l’etat”, in their opinion, belongs to the public legal universe of reasoning, reflects the political state of society as a single (dynamic) consolidated entity, its special status, organization and order within the legal framework.

With the presented semantics of the concept of “state” and the corresponding analysis (of course, in the domestic model), is also clear why the Russian concept “government” goes back to the word “ruler”, and closer in meaning to “domination” and “ruler”, than the English “Government” or its French equivalent “gouvernement”, meaning simply “management”, “management system”.

In general, both theoretically and methodologically, and (as time shows) in practice, it is right to refine and study the meaning and significance of a number of important legal and political concepts, considering them as an expression, the explication of a particular concept that is self-sufficient, self-valuable, reflecting the unity of the spiritual, political and legal life of the Russian civilization, not limited to (as, for example, was the case in the jurisprudence of the 1990’s and still persists today) interpretation of an exclusively Western conceptual version of the “state”, “the autocracy”, “absolute monarchy”, “government”, “society”, “right”, “law”, etc.

For example, in the light of the ongoing processes of the Russia’s gradual return to its historically organic imperial status (at least since the days of Ivan III), there is an interest in understanding the meaning and content of the category “empire”, but not in its Western transcription, but in the domestic philosophical-legal and political-legal thought, that is, in the Russian legal and political discourses. Therefore, in the special literature, we often find different positions regarding this concept, which is certainly important for the past and modern state-legal construction. I.A. Ilyin, N.N. Alekseev, I.L. Solonevich, L.A. Tikhomirov, M.O. Menshikov and other Russian political-legal classical authors have repeatedly turned to the logical and conceptual analysis of the concept “empire” and researched it in a broad socio-cultural context.

Thus, M.O. Menshikov wrote: “The word imperium in the homeland of this word has always been understood as the supreme state power, that is exactly the same thing that is understood by the Russian word kingdom or state ... If Russia still somehow holds up as an empire, then only insofar as it remains a kingdom ... As soon as Russia ceases to be a kingdom in the ancient and eternal meaning of this word, it will fall apart. We do not like to think about the words and titles that are used every minute ... “ (Menshikov, 2005).

I.L. Solonevich dwells in detail on the content aspect of the imperial-monarchist organization of power relations in Russia. “The Moscow monarchy was by its deepest essence an elective monarchy. With the only difference that people chose it not for four years and not for one generation, they chose forever ... So, if we translate into Russian the term “constitutional democratic monarchy as “joint and popular monarchy”, and if we fill this latter term with its Russian content, the content with which monarchy was actually filled - though not always - we will probably get rid of misunderstandings both about the “constitution” and about “democracy” (Solonevich, 2003).

It is this argument (weighty in the conceptual-linguistic context) that is the basis for I.L. Solonevich's original concept of "people's monarchy" in the Russian political and legal field.

Returning to the theoretical and methodological "track" of considering the nature and significance of the national legal mentality and summarizing all of the above, we can distinguish several of its main functions:

1. Cognitive-transformational function is connected not only with the accumulation of a certain amount of knowledge about the specificity of figurative, stable (architectonic) elements of the national legal environment and their different orders (from legal stereotypes, values and attitudes to the organization and nature of legal activity, political-power space, etc.), but also with the activity corresponding to such an understanding of the formation of state, political and legal systems, etc. This function allows us to talk about a topical for modern Russia historical, theoretical, and legal "Enlightenment", - the internalization of the meaning, "codes", matrices and schemes of the state legal regulation hidden in the depths of centuries, in the "depths" of the domestic ethno-social world;
2. Regulating and integrating function is aimed at ensuring a stable, sound legal order of society as a whole, and at regulation of relationships of social groups (classes, strata), families, and individuals. Ideals, traditions and patterns of behavior, ways of understanding the legal and political sphere inherent in the national legal mentality can serve as the basis for the design and very long existence (due to the identity of the style of legal thinking, the coincidence of the content with other mental structures) of different social communities (nations, nationalities, civilizations, tribes Etc.); they can help achieve public consensus, promote the consolidation of various social groups and strata of citizens, concentrate their efforts on the formation of the state and legal space, adequate to national interests, the needs of the individual and the society;
3. The evaluation function of the legal mentality is expressed through the aggregate of the emotional axiological characteristics of the individual, social groups, and the society. It manifests itself in various facts reflected in the minds and behaviors of individuals and groups associated with the assessment, the emotional attitude (conscious and/or unconscious, both in a particular situation and in general) of subjects to certain elements of legal and political life. All components of the national legal and state reality are objects of evaluation. It is necessary to talk about mental values in law and about the law itself as a value;
4. The cumulative-protective and translational functions assume a constant addition (although, for a very long period of historical time), an increase

in ethno-legal information at the level of architectonic structures (in the inseparable relationship of rational and irrational components) while keeping (for subsequent generations) already available information. Accumulation, naturally, can be seen at the level of legal mental manifestations: for a long time and not always positively, new legal values, attitudes, symbols, rituals, stereotypes, etc., arise (are formed, borrowed); they somehow correlate with the socio-political and spiritual situation (cultural scenario) taking place in a particular era in a particular society or type of civilization. In general, it is the well-known scheme: from generation to generation ... and even with amazing perseverance;

5. The socializing function covers the area of general individual socialization and inculturation as an initiation of the individual to the national social and legal experience. The latter is preserved in the mnemonic structures of people's sense of justice as a collection of spiritual and practical knowledge, skills accumulated in the course of historical development of society and the state in the legal sphere. Personality is involved in a complex process of mastering the standards of legal (lawful or unlawful) behavior that are established in the society. In addition, there is development of motivational structures as internal guarantors, ensuring compliance by individuals or social groups with existing legal regulations, i.e. motivational and behavioral adaptation of the individual in a specific state-legal environment. Of course, in the case of a clear discrepancy between the norms of positive law created by the legislator and the socio-legal experience recorded at the mental level, the content of legal manifestations, the process of socialization of individuals turns out to be extremely controversial and unsuccessful. In the framework of the socializing function of the legal mentality, its functions for stabilizing and preserving the legal consciousness should be singled out in this connection. The stationarity of legal awareness depends on the qualitative state of the national legal mentality. The main institutions that carry out the process of legal socialization of new generations are the family, the community, education and science, society as a whole, the state, etc. ;
6. Predictive (prospective) function includes analysis of trends and prospects for the development of the national legal (political) system. This seems particularly important in the time of crisis (reform, revolution, military defeat, etc.). It is undoubtedly an indispensable element of genuinely scientific forecasting and planning in the legal sphere to take into account the content of the architectonic structures of the legal mentality and its manifestations. For example, this function can and should be reflected in legislative activities when it comes to the logic and consistency of the development, content, adoption of relevant regulatory norms. Interesting

are also the issues underlying the effectiveness of the rule of law in society, and the relationship between the legal and actual constitution¹, etc.

Old Believers of the 17th century: political and legal mentality of the epoch of spiritual breakdown. Of course, in the history of Russian statehood, there are several crucial epochs associated with various radical changes in the Russian life, changes in the political, legal, socio-economic order of life, and also (which was often much harder in the course of “modernization”, and afterwards) in the spiritual and religious domain. One can recall the devastating consequences of the Time of Troubles at the turn of the 16th and 17th centuries, when the country experienced not just a period of chaos and collapse of the system of state power and administration, in fact, ceasing to exist as a “geopolitical reality” (Muscovy was already being “erased” from European geographical maps), but also led to the appearance of a special type of Russian man – “the man of the Troubled Times,” with his new values, deformed legal consciousness, his attitude toward “will” (his freedom, in the understanding of the West), etc.

One can also recall the fact that it is since the Time of Troubles that the “rupture” of the capital and the province in Russia becomes tangible (existing even today!). At this time, at the level of the national (all-Russian) self-consciousness, Moscow was perceived as “a gang of traitors” that helped the interventionists to destroy both the Russian statehood, the Russian Orthodox Church, and the Russian ethnos itself. In general, at the turn of the 16th and 17th centuries, there was an “eradication of ancient skills” and “humiliation of Russians in their own heart”, which of course caused wild protests, not in the capital, but ... in the Russian province. In fact, the notion of the country as the “Fatherland” appeared, for the salvation of which “the Councils of all the Lands, for example, in Yaroslavl and other provincial cities were called (without any state interference, at the level, as they would say today, of “institutions of the civil society”, which in the Moscow State had exclusively conciliar forms of existence and expression).

Having come out with dignity from the Time of Troubles, having restored and greatly strengthened the system of state power, recreating the “symphony” of spiritual and secular power that was disturbed in the Troubles, eradicating spiritual vices among the population and elites, by the middle of the 17th century, the Russian state enters a new, but now exclusively spiritual (ideological) break-up – the Church Schism.

“The significance of the Schism in Russian history is determined by the fact that it represents the visible starting point of spiritual turmoil and confusion that culminated in the early 20th century into the defeat of the Russian Orthodox statehood ...”. However, in the opinion of Metropolitan John, “as a phenomenon of Russian self-consciousness, the Schism can be understood only within the framework of the Orthodox worldview, the church’s view of the history of Russia”.

Apparently he means the actual religious (canonical-ritual) side of the church schism, therefore (without pretending to deep orthodox understanding of the split) we will single out and attempt to describe its state-legal and socio-political manifestations, as the “Old Believer, in fact, is a very new soulful type”.

In search of the causes of the Schism in the mid-17th century, let us outline the basic legal, political and spiritual practices that determined the “face” of the events under consideration:

1. From the middle of the 17th century, the Moscow kingdom (which had survived the Troubles, which in the politico-legal aspect led to the crisis of the Russian monarchy and, as a consequence, to de-sovereignization of the national statehood) begins to strengthen its positions in the Eurasian space (admission of the Ukraine, the return of Smolensk and other Russian cities on the western border of the country, the development of Eastern Siberia, etc.);
2. The political and legal form of the “Eurasian development” of the Moscow state took the form of an Empire (which was inevitable for the country), or rather an Orthodox empire, the only one of this kind (after the fall of Constantinople and Turkish expansion in the Balkans and other parts of Europe and Asia) at that moment, a truly sovereign Orthodox state that developed in a conservative, traditional spiritual space, cemented, among other things, by a special Orthodox-messianic idea (“Moscow as the Third Rome”; under Patriarch Nikon, “Moscow as the Second Jerusalem”);
3. During the reign of Tsar Alexis Mikhailovich, an old conflict (known since the late 15th - early 16th centuries) was “brought to life” once again. It was a dispute between Non-possessors and Josephis under Ivan III), the conflict between the spiritual and religious outlook of the “Holy Russia” (the patristic church tradition) and the Orthodox ideology of the emerging Orthodox empire. In the middle of the second half of the 17th century this conflict escalated, and eventually led to a church split. In general, it would be wrong to reduce the Schism in the Russian Orthodox Church exclusively to the desire of a part of the clergy and the laymen to preserve the essential-ceremonial side of the Russian Orthodoxy (continue to follow the canons, the commandments of Stoglavny Sobor, the church tradition of the Holy Fathers), because this would only be a superficial view of the problem. Looking deeper, the Schism was, in fact, the expected reaction to the fear of the loss of the national religious identity that had been preserved even during the Time of Troubles, and all other (closely related to the first) kinds of “identities” – legal, political, social, and economic. Conversely, the preservation of one’s own spiritual “face” was considered by the Old Believers as a reliable guarantee for the preservation of mentally familiar, accepted and sanctified by the centuries State, various institutions of

monarchical power (sovereign's pardon, "petition to the sovereign", etc.), the orthodox legal system, special monastic status and way of life, family, everyday lifestyle, etc. Moreover, such "fears" were not unfounded; for example, earlier "no one was limited in their right to personally petition the Tsar with a request for some kind of favor, with a complaint about any judicial sentence or any actions of authorities..." Moscow tsars did not attempt to limit this right for a long time, even when, with the growth of the state, it became very a heavy burden for them. For the first time, in the Decree of 1649, it was decided: "without prior appeal to the Prikaz, cannot any appeal on any matter be submitted to the Tsar (Art. X, Chapter 20)" (Veselovsky, 2005). Largely, this (as well as many others) state-legal institution was an expression of the content of the Russian legal mentality of the "patristic" (Pre-Nikonian) era, and determined the specifics of the legal and social dialogue between the autocracy and the people (the "Land").

In this social, spiritual, state-legal context, the question of the peculiarities of the political legal mentality of the Old Believers as the bearers of protest self-awareness, in particular its evaluation-content side (naturally, while preserving the structure and functions) arises. First, it is important to clarify a number of key aspects of the Old Believers' legal and spiritual being, namely, the problem of preserving the dignity of a person as a subject of the national religious, political and legal life, and in many ways, the attitude of these "schismatics" (in the Nikonian context), or rather, "preachers of schism" to the institution of monarchy, the figure of the Tsar, the autocrat, and other institutions of state (secular) power, i.e. their idea of the legitimacy of the Christian autocrat.

Of course, "it would be absurd to impose institutions, to which has not come in its own development. What is timely in the inner spirit, happens unconditionally and necessary. The state system is a matter of the state of this inner spirit ... and thinking is the basis of law and the state system in general" (Hegel, 1990). In this respect (following the historical method) it is necessary to take into account the specifics of the spiritual environment of the 16th – 17th centuries, in which a unique culture of "similarity" (beginning in the 16th century) was formed, when the "reverend" meant "similar to Christ" (although Ivan IV considered himself "similar to God the Father", in which he saw the special legitimacy of his repressive acts), and "the level of piety of Russian life in the 17th century" was extremely high even in everyday life". Such a state of "spiritual affairs" was most often simply incomprehensible to many foreign researchers of Russian statehood, and from then on an illusion arose (which is shared by modern Westerners and liberals) that Russia simply lost the rightful subject, lost in the labyrinths of the genesis of the Russian social and legal reality; it was "left behind" at the complex intersections of the development of the Russian state and law, giving way to other, more important and valuable ideas – "statehood", "sobornost", "sovereign", or something else.

However, the appeal to the Russian Old Believers' (and therefore protesting) political and legal mentality, expressed in their few writings, convinces us of the opposite, namely, in what was substantiated (in the 18th century) by I. Kant (whose social and philosophical ideas became fundamental liberal legal and other motives), "status of self-value" of man as absolute beginning of any true humanism also took place in the Old Believers' religious and political discourse. However, the form of his presentation, the language and the methods of substantiation, of course, were different, in particular, not in any way connected with the well-known theories about natural human rights of the European space.

The works of protopope Avvakum, the Borisoglebsk priest Lazar, the deacon Ignatii Solovetsky, the deacon Fedor (Ivanov), and others, convinces us that these treatises ("Life", "petitions") not only increase the "tense" tone, but also the consistently affirm the right of every Christian to defend the truth and his duty, a special spiritual duty not to obey the supreme power when its prescriptions obviously contradict "ancient piety", as the unshakable basis of the Russian world in general, the political and legal outlook and the religious worldview of the Russian Orthodox people in particular.

Thus, in his petition to Tsar Alexei Mikhailovich, Lazar writes: "It is not useful to be praised. I am guilty before you ... but before the law, I am clean. I am a sinner, but the fathers and brethren are the holy ones ... I am just as bad as a donkey. Even though I am a sinner, I believe that I am the rightful servant of the Son of God".

So, before the Tsar, understood by the Old Believers, despite all their persecutions and oppression, in the traditional way, namely, as a sacred political and legal value for the country, they recognize themselves as sinners, both in the religious sense of "sin", and in the secular and legal interpretation of it – as an "earthly" criminal act, but they retain their dignity, because they see it in the preservation of the "right faith" before the "higher sovereign" – "the king of heaven".

RESULTS

It is this irrational, but distinctly expressed Christian Orthodox (and not generally religious) dignity was considered by the supporters of the pre-Nikonian Russian Orthodoxy as the right, firstly, to petition the Tsar in person; second, to present very serious claims to the Russian autocrat; and third, to openly disobey the decisions of both the Tsar's power and church councils (for example, the famous Council of 1667, which laid an "anathema" on all "schismatics"). Summing up all the above, we note that in legal context of that time, the Old Believers singled themselves out of Russian society as the only carriers of "Pravda" - "Truth" (the term "law" in the domestic monarchy appears only during the reforms of Peter I and its content and meaning differs from the "Pravda"). Beginning with the treatise of the Metropolitan of Kiev, Hilarion "The Word of Law and Grace," the concept of "Pravda" includes

such social and value characteristics as morality, truth and justice (both divine and terrestrial). It is clear that the “alloy” of these categories was a serious motive for the Old Believers to affirm their spiritual exclusivity.

What is the attitude of these worthy and therefore retaining the right to a “righteous” protest (this particular right was studied in detail and evaluated in different ways by T. Hobbs, J. Locke, C. Montesquieu and other Western European researchers of the 17th - 19th centuries) people to the institution of Tsar’s power? Did they retain what many foreigners of both that time and our contemporaries believe can now be called “slavish mentality” or “slavish attitude to power”, especially since, for example, J. Fletcher who personally visited Muscovy in the 16th century wrote: “Their government is purely tyrannical: all its actions tend to benefit the Tsar alone, moreover, in the most obvious and barbarous way”?

Responding to this complex and ambiguous question, we should first briefly discuss one legal peculiarity of Russians, which determines the style of their legal and political thinking. This peculiarity was noticed back in the 19th century and is described as follows: “In this way there are two types of peoples: the one that needs spiritual autocracy but does not tolerate it in the political sphere - it is the West of the Hellenic-Roman culture; and another type - the East led by Russia, firmly standing for civil autocracy, but not tolerating any power interference in the affairs of the spirit and even almost not understanding it” (Khomyakov, 1982).

In the political legal and axiological dimensions of the content of Old Believers’ thinking, the assertion of one’s right to “a republic in the realm of the spiritual” takes place, while preserving the “autocracy of the state”.

In this context, it is hardly worth agreeing with the idea shared by many representatives of Soviet historiography that the opposition of the “schismatics” to the disastrous Nikonian reform and to all that followed, including with the direct participation of the Russian autocrat, has “anti-Tsarist” and even “anti-feudal” character. This, appearing apparently later, opinion goes back to the Narodniks’ ideas about the church Schism as a “pro-state” movement, and has nothing to do with reality; moreover, it is sometimes expressed in curious assertions, for example, that “Life” by protopope Avvakum bears an “anti-religious” character (Gusev, 1958).

Within the framework of modern cultural discourse, using the hermeneutic “understanding” (rather than explaining) heuristic constructions, the problem is seen differently; namely, no “tsarist illusions”, even after the defeat of the Solovetsky Monastery uprising, disappeared among the Old Believers (as O.V. Chumicheva notes in her study (Chumicheva, 1998)). In order to admit this, one must simply believe in the fundamental possibility of “resetting” the national monarchical political and legal mentality, and this is impossible by definition, due to its very nature.

It was a different matter. First, in his “Confession”, Ignatius Solovetsky compares the Russian Tsars-“Nikonians” to the Byzantine iconoclastic emperors, after who, however, “righteous” emperors came to power who destroyed the

“heresy”, and in this regard, the institution of monarchical power was “salvatory”; therefore, it is not necessary to condemn this institution (“generating” also “righteous kings”), but only the personality and concrete actions of a concrete tsar (emperor, etc.), ruling at a certain historical moment; secondly, it is possible (this requires additional clarification) that Avvakum was the first in the domestic (pre-Petrine) state-legal discourse to write about the regulatory “limits of the tsarist power” – “... in which rules is it written that the tsar should own the church and change the dogmas? Only that befits him to watch and protect the church from the wolf that ruin it, and not teach how to hold faith and how to cross oneself... “, while never asserting the necessity of giving up on the Tsar.

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References

- Baranov, P.P., Mamychev, A.Y., Ovchinnikov, A.I. (2016). *Management of the conservative political platform of the transformation public-power organization in Eurasia*. International Review of Management and Marketing. No. 6 (S6). P. 241-246
- Chirkin, V.E. (2008). *Constitution: the Russian model*. Moscow.
- Chumicheva, O. (1998). *The Solovetsian Uprising of 1667-1676*. Novosibirsk, p. 125.
- Gusev, V.E. (1958). “Life” of protopope Avvakum is a product of democratic literature of the 17th century. TODRL.
- Hegel, G.V.F. (1990). *Philosophy of law*. Moscow.
- Khomyakov, D.A. (1982). *Orthodoxy, autocracy and nationality*. Montreal.
- Mamut, L.S. (1996). Metamorphoses of Perception of the State. *Problems of the Value Approach in Law: Traditions and Renewal*. Moscow.
- Maritain, J. (2000). *Man and the State*. Moscow.
- Menshikov, M.O. (2005). *Letters to the Russian nation*. Moscow.
- Mordovtsev, A.Yu. & Popov, V.V. (2007). *Russian legal mentality*. Rostov-on-Don.
- Mordovcev, A., Mamychev, A., Mordovceva, T. (2016). *Democratic Transit in the South Caucasian countries*. Central Asia and the Caucasus. 2016. Vol. 17. Issue 3. p. 7-14
- Mordovtseva, T.V., Popov, V.V. & Ivchenko, E.V. (2007). *Russian public policy in anomie*. Rostov-on-Don.
- Ovchinnikov, A.I., Mamychev, A.Y., Manastyryn, A.V. & Tyurin, M.Y. (2009). *Legal archetypes in the legal policy of Russia*. Rostov-on-Don.
- Polyakov, A.V. (2001). *General theory of law*. St. Petersburg.
- Sinyukov, V.N. (2010). *The Russian legal system. Introduction to the general theory*. Moscow.
- Sinyukov, V.N. & Grigoryev, F.A. (1995). *Legal system: questions of law making*. Saratov.
- Solonevich, I.L. (2003). *The People’s Monarchy*. Moscow.
- Veselovsky, S.B. (2005). *From the history of the Moscow state in the XVII century*. Moscow.