

Customs Regulation in the Constitutions of Asian-Pacific States

Sergey Ovchinnikov

School of Law Far Eastern Federal University, Vladivostok, Russia

Abstract: This paper focuses on the constitutions of Asian-Pacific States as sources of customs law. There are two types of norms of customs law in constitutions: direct regulations of customs law and constitutional principles of customs law. Regulation of the customs relations among states and international organizations is realized through the norms of international customs law, which is a branch of international public law. In this study, we investigate customs regulation in constitutions from the point of view of international law, focusing on the constitutional foundations of supranational regulation. The main objective of this paper is to analyse concrete examples of customs regulations in constitutions and the organizational and legal aspects of such regulations.

Key words: Comparative Constitutional Law • Customs Law • Customs Regulation • Asian-Pacific States

INTRODUCTION

Modern political and scientific thought increasingly analyzes processes in the Asia-Pacific region because it has become a center of global economic and political activity. In this regard, the need to consider these countries' political and legal characteristics has increased, especially because of their levels of diversity. Asian-Pacific countries differ by their levels of economic development, economic models used (the market or the state), degrees of democratization of the state regime, etc. All of these features are reflected in the countries' constitutions.

The constitutions of modern states provide ample opportunities for comparison because "alongside the main trend towards convergence of the different constitutional and legal systems, the variety of constitutional and legal institutions increases; different variants are generated by specific historical and ethnic-specific conditions" [1]. Constitutions, as the fundamental law of a country, establish the principles of the constitutional order and the political, legal and economic systems of the State. Constitutions are also the basis for the legal status of the individual and are the primary legal basis for all laws and legislation, including customs legislation. Sources of law in the formal legal sense are means of phrasing and fixing the rules of law. The fact that certain rules relating to customs regulation

are fixed in a constitution does not make them the norms of customs law because they remain constitutional rules. Hence, an understanding of the constitution as the source of the rules for a field of law is quite conditional, although very common. The constitutions of some countries have been the subject of research from the point of view of customs regulation [2]. Two types of rules relating to customs law have been identified in constitutions: general principles and the original legal foundation for all of the branches of the law and regulations directly related to the customs law; however, studies focusing on the latter are relatively few.

MATERIALS AND METHOD

The role of comparative law has greatly increased as a method to gain knowledge of the law and the legal discipline in modern conditions. Comparative law focuses on both practical and theoretical factors. From a practical point of view, comparative law provides the ability to assess the level of the development of a national legal system by analyzing the achievements of other legal systems. From a theoretical point of view, comparative law allows researchers to identify factors that affect the law, govern its content and determine the characteristics of different countries' legal systems.

In the framework of comparative law, different levels of comparison can be distinguished: the comparison of entire legal systems or the legal systems' families and the comparison of certain branches of the law, including institutions and norms. This second level of comparison allows us to examine comparative customs law.

In the literature, the idea is often expressed that the most important aspect of comparative law is not so much an analysis of certain legal norms or institutions as the consideration of other components of the legal system: the general principles of law, legal culture, legal doctrine, legal traditions, etc. Consideration of the specific legal norms and institutions has more empirical and applied importance than fundamental academic importance [3]. It hardly makes sense to argue which aspect is more important, applied or academic. Both are significant in different ways. Law as a social phenomenon is a regulator of human behavior. Hence, legal science in general and the science of a particular branch of the law above all have a practical orientation and perform a practical function. Accordingly, the development of and even the current boom in comparative legal studies are due to the practical needs of legal regulation.

There are distinct meanings for the term 'constitution.' In this paper, a constitution refers to a written text that contains the fundamental rules of a state or the legal rules and principles that claim priority over other rules and principles. Because constitutional texts tend to be highly incomplete, they often only hint at actual practice in a legal system. Nevertheless, the text of constitutions is still a necessary starting point for study [4].

The problem with any comparative legal study is determining the objects for comparison. In comparing areas of law or legal regulation, it is necessary to precisely define what can and should be compared. The complex nature of customs law includes all of the rules relating to the regulation of the movement of goods across the customs borders and these rules, as combined and used in institutions, are the objects of comparison for this study. In addition, the sources of customs law—codes, legislation, the role of executive acts and the impact of judicial practice—can serve as more detailed objects for comparison because they ultimately determine the regulations in this sphere.

Different levels of comparison can be distinguished in comparative customs law. From this viewpoint, we note the comparison of the customs legislation of two legal systems based in the same political and geographic region, such as the Asian-Pacific States, which tend to be similar to ensure their harmonization.

The present study is interdisciplinary in nature and is not so much an analysis of comparative customs as an analysis of comparative constitutional law. While comparative customs law is a relatively new area of science, comparative constitutional law has a long history and a developed methodology and system of categories.

Main Part: In the modern period, one can observe an extension of constitutional legal regulation that has a fundamental significance. If earlier constitutions were primarily limited to the issues of the organization of state power and the relations between the state and the individual, almost all modern constitutions include provisions relating to the economy and other spheres of life and society. Among the constitutional provisions directly relating to the sphere of customs, we can distinguish between norms defining the authority to regulate the export and import of goods, the establishment of customs tariffs and procedures for the adoption of laws and other regulations relating to the establishment of duties.

For example, the first section of Art. XII of the 1987 Constitution of the Republic of the Philippines, "National economy and patrimony," states "the State shall protect Filipino enterprises against unfair foreign competition and trade practices." Section 28, Art. VI, "The legislative department," establishes that "the Congress may, by law, authorize the President to fix within specified limits and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues and other duties or imposts within the framework of the national development program of the Government." According to Art. 142 of the 2007 Constitution of the Kingdom of Thailand, in a case where a bill submitted is a money bill, it may be introduced only with the endorsement of the Prime Minister. Art. 143 states that a money bill refers to a bill with provisions dealing with the imposition, repeal, reduction, alteration, modification, remission, or regulation of taxes or duties. In the 2008 Constitution of the Republic of the Union of Myanmar, parliament "shall have the right to enact laws for the entire or any part of the Union related to matters prescribed in Schedule One of the Union Legislative List." Schedule One of the Union Legislative List includes customs duties, imports, exports and quality control.

The constitutions of federal states are essential to the distribution of powers between the federation and the subjects of the federation. One basic constitutional feature is the unity of the implementation of public

policies, including customs policy, throughout a national territory. This unity eliminates the possibility of disputes between the federation as a whole and its constituent entities on matters relating to customs. Thus, the 1957 Constitution of the Federation of Malaysia lists the issues that are within the competence of the Federation, including trade, commerce and industry, which encompass imports and exports of the Federation; participation in international organizations and international bodies; and the implementation of decisions taken thereon. However, Part V of the Tenth Schedule of the Constitution, "Grants and sources of revenue assigned to States," is titled "Additional sources of revenue assigned to the States of Sabah and Sarawak"; the section provides those states with the power to establish import duties and excise duties on petroleum products and export duties on timber and other forest products.

The 2009 Socialist Constitution of the Democratic People's Republic of Korea establishes a monopoly on foreign trade and, in Art. 36, states "foreign trade is conducted by the State organs and enterprises and social, cooperative organizations. The State shall develop foreign trade on the principles of complete equality and mutual benefit." Art. 38 establishes that "the State shall pursue a tariff policy to protect the independent national economy."

The 1993 Constitution of the Kingdom of Cambodia draws attention to the law enforcement aspect of customs regulation. Art. 64 states the "State shall ban and severely punish those who import, manufacture, or sell illicit drugs and counterfeit and expired goods that affect the health and life of consumers."

Not all of the studied constitutions directly mention customs issues. Of course, the importance of constitutions for customs regulation is not limited to only the specific articles that expressly refer to customs issues. Many other constitutional provisions are also related to customs law and are used in the legal regulation of customs relations. The importance of a constitution is determined not only by the rules that directly regulate certain social relations but also by its principles of regulation and its basic foundation. A constitution is always a special document that affects all spheres of social relations and fixes the social values that are to receive universal recognition. When such values are concentrated in a constitution, they are transformed into the constitutional foundations, ideas and principles upon which all of the other branches of a country's laws are built. Thus, for example, Art. 24 of the 1992 Constitution

of the Socialist Republic of Vietnam states "The State expands external economic activities and assumes their unified administration and expands different forms of economic relations with all countries and international organizations on the principles of respect for independence, sovereignty and mutual benefit and of appropriate protection for domestic production."

All constitutions emphasize the inviolability of national sovereignty. However, the process of the globalization of constitutional law intensifies the issue of sovereignty because of the influence of many factors [5], especially the sovereignty of developing countries. National customs regulation may not function without international norms and treaties that are implemented in national legislation, but at the same time, countries also wish to emphasize the inviolability of the sovereignty of the state. For example, Section 7, Art. II of the Philippine Constitution, "Declaration of principles and state policies," states "the State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest and the right to self-determination." This idea is emphasized even stronger in Part III of the 1965 Constitution of the Republic of Singapore, "Protection of the sovereignty of the Republic of Singapore," which states "that there shall be no surrender or transfer, either wholly or in part, of the sovereignty of the Republic of Singapore as an independent nation, whether by way of merger or incorporation with any other sovereign state or with any Federation, Confederation, country or territory or in any other manner whatsoever, unless such surrender, transfer or relinquishment has been supported, at a national referendum, by not less than two-thirds of the total number of votes".

In the traditional understanding, state sovereignty is the property of state power and is expressed through the supremacy of state power in a country and the state's independence in relation to other states. The scientific literature also makes distinctions between political, economic [6], legal [7], territorial [8], fiscal [9], tax [10], monetary [11], food [12] and other varieties of sovereignty, including customs sovereignty. Customs sovereignty can be defined as the supremacy and independence of the state in regulating customs relations, *i.e.*, relations connected to the movement of goods and vehicles across customs borders. Modern states cannot exist without entering into various unions and interstate associations, including customs unions and free trade zones. Through these mechanisms, states

self-limit their sovereignty and these limits are reflected in their constitutions. For example, Art. 7 of The Constitution of the Republic of Singapore, "Participation in co-operative international schemes that are beneficial to Singapore," provides for the possibility of entering into any treaty, agreement, contract, pact or other arrangement with any other sovereign state, with any Federation, Confederation, country or countries or with any association, body or organization therein, where such treaty, agreement, contract, pact or arrangement provides for mutual or collective security or any other object or purpose, whatsoever that is, or appears to be beneficial or advantageous to Singapore in any way.

National customs regulations are heavily influenced by international customs law. International customs law is a system of rules and principles that govern the relationships between states and intergovernmental organizations in the course of their cooperation in customs affairs. These rules are contained in multilateral international agreements and conventions developed under the auspices of the World Customs Organization, the World Trade Organization, the Association of Southeast Asian Nations and other organizations. States differ in ways that give effect to international law. To avoid collisions between national and international legal systems, many states have constitutional provisions that make international law a part of the national law in some form. In this regard, Section 2, Art. II of the Constitution of the Philippines, "Declaration of principles and state policies," states that the Philippines "adopts the generally accepted principles of international law as part of the law of the land." The constitutions of other surveyed countries do not contain such a provision, which is a matter of those countries' constitutional and judicial practices, the examination of which is beyond the scope of this study.

CONCLUSION

Constitutions address the sphere of customs regulation to different degrees. Some constitutions do not address the issue at all (e.g., Japan). Customs regulation is considered more in the constitutions of socialist states (e.g., North Korea). For the constitutions of federal states, it is essential that the distribution of powers between the federation and the subjects of the federation are enumerated in the customs sphere (e.g., Malaysia). Because of the tendency to form free trade areas and

customs unions, some constitutions note the limitations of foreign policy, including foreign economic policy (e.g., the Philippines and Singapore). The vector of the development of the constitutions of the surveyed countries is difficult to determine. We can assume that there will be further universalization of constitutional law and therefore further integration and unification of customs regulations.

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